No. of Complaints Received/On Hand

1985	Jan	Feb	Mar	Apr	May	June
Complaints received:						
Oral	1486 (82%)	1518 (84%)	1588 (82%)	1506 (81%)	1560 (80%)	1608 (78%)
Written	327 (18%)	288 (16%)	354 (18%)	350 (19%)	392 (20%)	442 (22%)
TOTAL	1813	1806	1942	1856	1952	2050
Written Complaints on hand	1964	1932	1903	1908	1918	1929

1984	Jan	Feb	Mar	Apr	May	June
Complaints received:						
Oral	1325 (86%)	1525 (86%)	1557 (86%)	1360 (90%)	1455 (79%)	1359 (84%)
Written	217 (14%)	243 (14%)	256 (14%)	155 (10%)	385 (21%)	253 (16%)
TOTAL	1542	1768	1813	1515	1840	1612
Written Complaints on hand	1682	1783	1791	1730	1789	1806

The Courts

Scope of Review Under the AD(JR) Act

In Australian Film Commission v Mabey (12 April 1985) an appeal was allowed by the Full Federal Court from a decision of a single judge. The primary judge quashed a decision terminating the respondent's employment on the grounds of denial of natural

justice. The Full Court concluded that although section 29 of the Australian Film Commission Act 1975 gave the Commission power to hire staff, the power being exercised by the Commission when it dismissed the respondent did not arise under a statute, but rather under a contract of employment. Therefore the decision was not reviewable under the AD(JR) Act as it was not made 'under an enactment'. Special leave to appeal to the High Court was refused on 21 June 1985.

The Full Federal Court held, by a majority, in the case Minister for Immigration and Ethnic Affairs v Mayer (13 March 1985) that a decision of the Minister refusing refugee status to the respondent was made under an enactment and was therefore reviewable under the AD(JR) Act. In his minority decision, Mr Justice McGregor concluded that paragraph 6A(1)(c) of the Migration Act 1958, which came into effect in January 1981, did not empower or authorise the making of a decision as to refugee status. He referred to the established system operating prior to January 1981 without explicit statutory provision, and concluded that paragraph 6A(1)(c) did no more than recognise the pre-existence of a formal step by the Minister, implementing Australia's commitment to the Convention and Protocol. An appeal against this decision was heard by the High Court in Brisbane on 8 July 1985 but to date no decision is available.

There have been two recent cases on whether decisions relating to tenders are decisions made "under an enactment". In Australian Capital Territory Health Authority v Limro Pty Ltd and Anor (12 June 1985) a decision not to consider a tender for a cleaning contract was held by the Full Federal Court to be reviewable as a major contract directly affecting the administration of the applicant's hospital could only be regarded as having been made under the authority to contract given by the relevant Ordinance. However, in ABE Copiers Pty Ltd v Secretary to the Department of Administrative Services (17 June 1985), there was no comparable legislative power and Justice Fox held that a decision not to accept the applicant's tender to supply certain items over a period of time was not a decision made 'under an enactment'.

Error of law

A decision of the Australian Broadcasting Tribunal was set aside by the Federal Court in Canberra Stereo Public Radio Inc v Australian Broadcasting Tribunal and Anor (5 June 1985) because of an error of law. The Tribunal's decision to grant a public broadcasting station licence did not comply with sub-section 81(4) of the Broadcasting and Television Act 1942 as the objects of the corporation granted the licence included the acquisition of profit or gain for the benefit of its individual members.

Bias in Committal Proceedings

A magistrate's committal order was set aside under the AD(JR) Act by the Federal Court in Tahmindjis v Brown & Ors (31 May 1985) on

the grounds of bias. The order was invalid because of private communications between the magistrate and an officer of the Attorney-General's Department who was a legal adviser to the prosecution.

STATISTICAL TRENDS

Statistics for the first half of 1985 indicate that a significant number of cases continue to arise in the migration, customs, tax, broadcasting and repatriation jurisdictions.

Jurisdiction	No. of Applications under the AD(JR) Act				
	Oct 1980-Dec 1981	1982	1983	1984	1 Jan 1985-4 July 1985
Income Tax Assessment Act 1936	-	5	25	42	14
Customs legislation*	3	9	6	35	19
Migration Act 1958	14	26	33	36	26
Public Service Act 1922	7	31	15	12	5
Broadcasting and Television Act 1942	1	5	4	7	10
Repatriation Act 1920	6	2	5	9	7
Telecommunications Act 1975	3	2	9	3	6
Compensation (Commonwealth Government Employees) Act 1971	5	4	5	3	1
Other	41	34	62	77	25
TOTAL	80	118	164	224	113

* Includes legislation relating to dumping and countervailing duties.

Freedom of Information

Payment of Costs

Five recent decisions of the AAT relate to requests for payment of costs by the Commonwealth. In three cases the applicants were granted access to all or most of the documents they had requested shortly before the date set down for hearing: Re Paterson and Department of Home Affairs and Environment (19 April 1985), Re Rae and Department of Home Affairs and Environment (13 May 1985) and Re Hounslow and Department of Immigration and Ethnic Affairs (20 June 1985). The Tribunal classified these three cases as being substantially successful within the meaning of sub-section 66(1) of the Act. However, in the first-mentioned case, the Tribunal applied the criteria set out in sub-section 66(2) but declined to exercise its discretion to make a recommendation that the Commonwealth pay the applicant's costs. The Tribunal held that it was not appropriate when applying the criterion of "the reasonableness of the decision" to have regard to any delaying conduct by the respondent, as such conduct was merely a step leading to the final result. In the second-mentioned case, the Tribunal held that sub-section 66(1) was the dominant provision and the criteria listed in sub-section 66(2) were mandatory considerations only in cases where the Tribunal had made a decision after conducting a review of the primary decision. In the last-mentioned case, the Tribunal endorsed the decision in Re Paterson and held that it was not limited to the criteria set out in sub-section 66(2) and recommended that the applicant's costs be paid by the Commonwealth.

The Tribunal will not recommend that the costs of a legally-aided applicant be paid for by the Commonwealth if there is no evidence that the Legal Aid Commission would seek to recover any of its expenditure from the applicant: Re Chan and Department of Immigration and Ethnic Affairs (21 June 1985).

Secrecy Provision Exemption

In Re Arnold Mann and Australian Taxation Office (14 June 1985) the Tribunal held, by taking a narrow rather than broad statutory interpretation of section 38 of the FOI Act, that sub-section