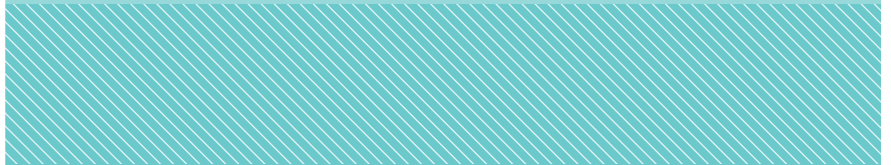




## CHAPTER 3

### OUR PERFORMANCE



The following data illustrates the workload of the Tribunal, variations between jurisdictions in recent years, and a measure of the Tribunal’s performance in meeting its outcome and program.

### WORKLOAD OVERVIEW

The Tribunal received 5,787 applications and finalised 7,447 applications in 2009–10. There were 4,532 applications current at 30 June 2010, 27 percent fewer than a year earlier.

The total number of applications lodged during the reporting year was seven percent lower than in 2008–09, but the number of finalisations was slightly higher. Chart 3.1 summarises applications lodged and finalised in the three most recent reporting years, and applications current at 30 June in each year.

#### Workload by jurisdiction

Applications for review of family assistance and social security decisions were the most common type of application lodged with the Tribunal in 2009–10, constituting 36 percent of all lodgements. These were followed by applications in relation to workers’ compensation and taxation, comprising 21 percent and 18 percent of total lodgements respectively.

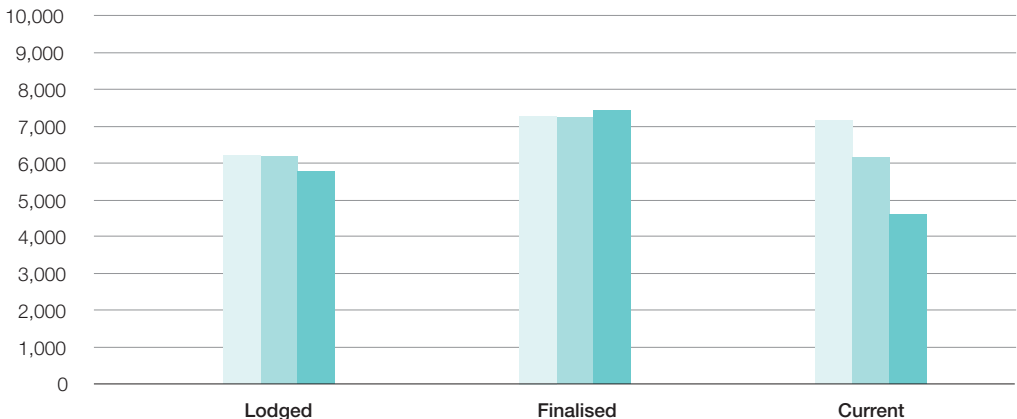
The Tribunal finalised more applications than were lodged in 2009–10 in all major jurisdictions, leading to the overall reduction in matters on hand at year-end. The taxation jurisdiction has the greatest number of current matters, a legacy of a larger number of applications lodged in earlier years.

Chart 3.2 summarises lodgements and finalisations in 2009–10, and current matters at 30 June 2010 for each of the Tribunal’s major jurisdictions. More detailed information on the types of applications lodged and finalised, and the outcomes of matters finalised during the reporting year is in Appendix 3. A discussion of the trends in lodgements, finalisations and current matters in each of the Tribunal’s major jurisdictions follows.

#### Social security

The seven percent fall in the number of applications lodged in this jurisdiction in 2009–10 can be mostly attributed to the decline in the number of applications about participation failures from recipients of Newstart Allowance. The number of applications lodged by the departments that administer family assistance and social security entitlements continued to fall, down 38 percent from the previous year to 65 applications.

**Chart 3.1** Applications lodged, finalised and current



2007-08	6,312	7,237	7,191
2008-09	6,226	7,231	6,179
2009-10	5,787	7,447	4,532

The number of applications finalised in 2009–10 was nine percent higher than in the previous year, and the number of applications on hand at 30 June 2010 was 23 percent lower than a year earlier. These results illustrate the flexibility and efficiency of the Tribunal’s case management processes as they respond to, and manage, variations in lodgement numbers.

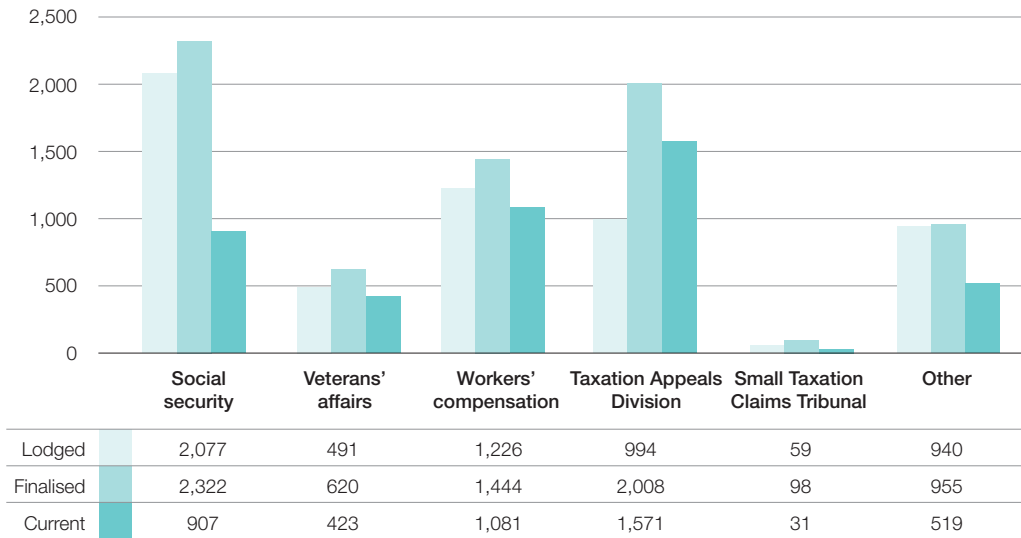
Chart 3.3 summarises applications lodged, finalised and current at 30 June in the

Tribunal’s social security jurisdiction in the last three years.

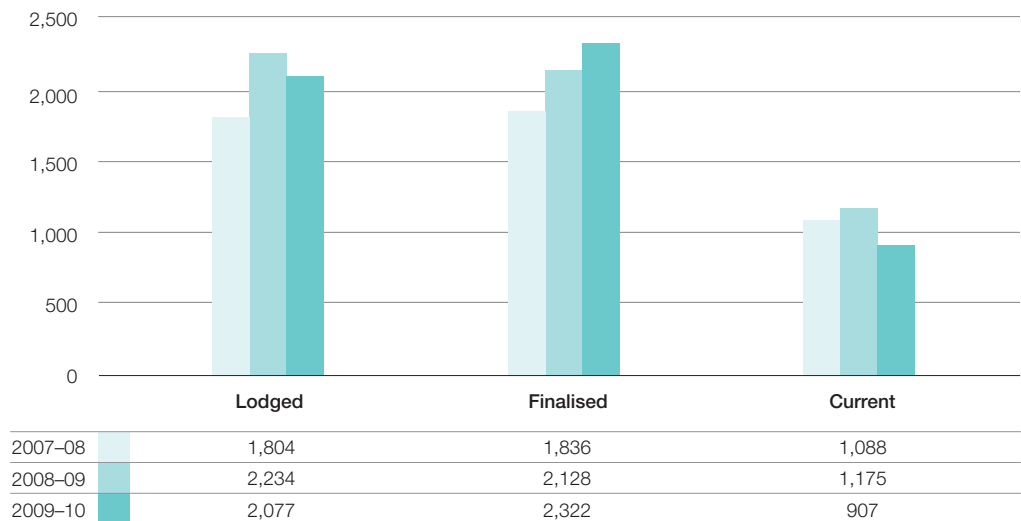
**Veterans’ affairs**

The number of applications lodged in the veterans’ affairs jurisdiction fell by 20 percent in 2009–10. The number of applications under the *Veterans’ Entitlements Act 1986* continues to decline over time, and applications under the *Military Rehabilitation and Compensation*

**Chart 3.2** Applications lodged, finalised and current in 2009–10 — by jurisdiction



**Chart 3.3** Applications lodged, finalised and current — social security



*Act 2004* remain a relatively small proportion of total lodgements.

The 10 percent decrease in the number of applications finalised in the veterans' affairs jurisdiction in 2009–10, and 24 percent fall in the number of applications on hand at 30 June 2010 correspond to the continued decline in lodgements in this jurisdiction in 2009–10.

Chart 3.4 shows the number of applications lodged, finalised and current at 30 June in the Tribunal's veterans' affairs jurisdiction in the last three years.

**Workers' compensation**

There were slightly fewer lodgements in the workers' compensation jurisdiction in 2009–10 than in the previous year. The decreases in the number of applications for review of decisions by the Military Rehabilitation and Compensation Commission and Australia Post were offset by increases relating to the Commonwealth Bank of Australia, National Australia Bank, Telstra and other corporations.

Although the number of applications finalised in 2009–10 was six percent less than a year earlier, the net effect of the balance between lodgements and finalisations was a 17 percent fall in current compensation applications on hand at 30 June.

Chart 3.5 shows the number of applications lodged, finalised and current at 30 June in the Tribunal's workers' compensation jurisdiction in the last three years.

**Taxation**

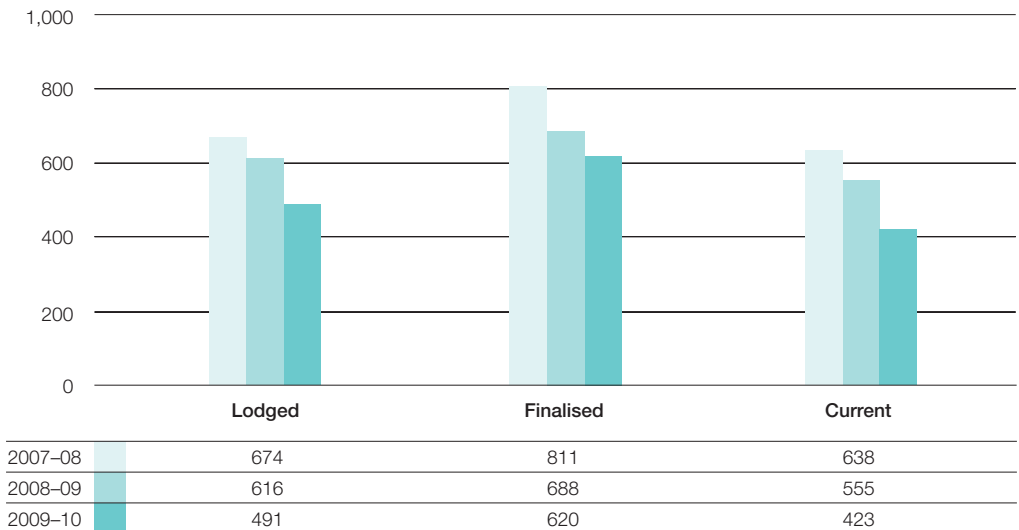
The 10 percent fall in lodgements in the Taxation Appeals Division in 2009–10 is primarily due to fewer applications relating to income tax.

The finalisation of a large number of applications about tax schemes led to both the 11 percent increase in applications finalised in the same period, and the 38 percent fall in the number of applications on hand at 30 June 2010. The Tribunal expects to finalise the bulk of the 250 or so applications relating to tax schemes yet to be completed before 30 June 2011.

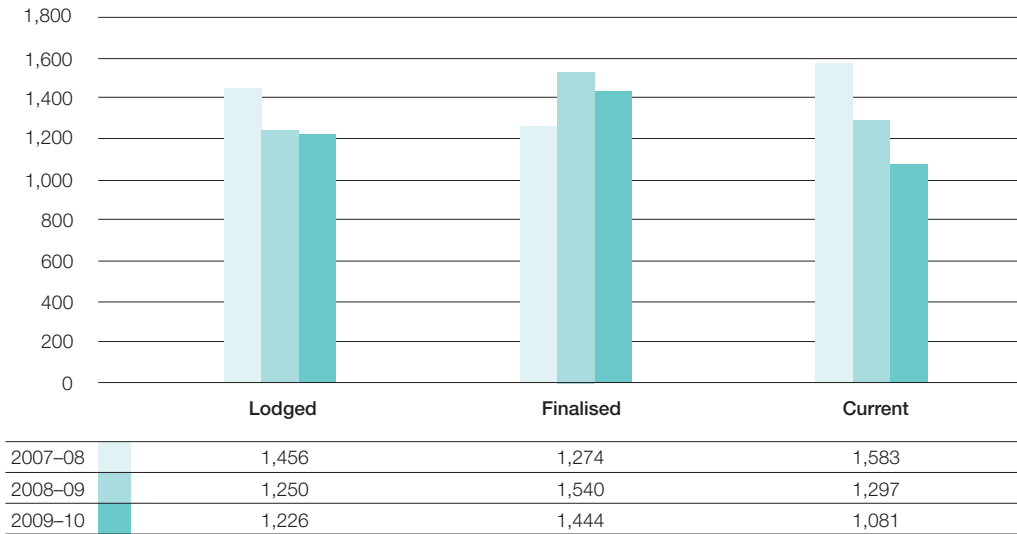
Lodgements in the Small Taxation Claims Tribunal were significantly fewer in 2009–10 than in the previous year, and there was a marked decline in the number of applications concerning release from taxation liabilities. The number of applications on hand continues to be low.

Chart 3.6 shows the number of applications lodged, finalised and current at 30 June in the Taxation Appeals Division and the Small Taxation Claims Tribunal in the three most recent reporting years.

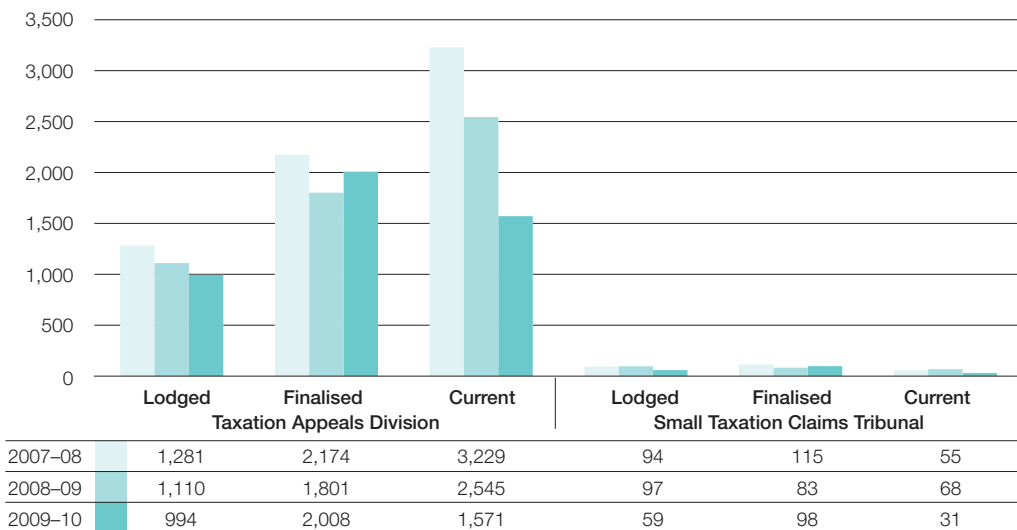
**Chart 3.4** Applications lodged, finalised and current — veterans' affairs



**Chart 3.5** Applications lodged, finalised and current — workers' compensation



**Chart 3.6** Applications lodged, finalised and current — taxation



## PERFORMANCE

### Outcome and program structure

The Tribunal has one outcome specified in the 2009–10 Portfolio Budget Statements:

*Access to a fair, just, economical, informal and quick review mechanism for applicants through review of government administrative decisions, including dispute resolution processes and independent formal hearings.*

The Tribunal is a single program agency. The primary deliverable is completed review of decisions, and there are two paths to achieving it:

- applications finalised without a hearing, and
- applications finalised with a hearing.

See Appendix 4 for the summary table showing total resources for the Tribunal compared with the total payments made during 2009–10. The appendix also includes a summary table showing the total resources for the Tribunal’s outcome.

### Performance measures and results

The performance measures and actual performance for the Tribunal’s outcome are shown in Table 3.7.

The number of applications finalised by the Tribunal without a hearing was higher than the budget projections for 2009–10, leading to a lower than expected price per completed application. For more information on the percentage of applications finalised without a hearing in the major jurisdictions, see Table A3.4 in Appendix 3.

The Tribunal’s case management process pursues the dual goals of attempting to resolve matters by agreement while ensuring that appropriate steps are taken to prepare matters that do not settle for hearing. As Table 3.7 makes clear, most applications lodged with the Tribunal are finalised pre-hearing, including by agreement and following alternative dispute resolution, rather than by decision following a hearing.

During the pre-hearing process, the Tribunal works with the parties to discuss and define the issues in dispute, identify any further supporting material they may wish to obtain, and explore whether the matter can be settled.

**Table 3.7** Performance standards and results, 2009–10

Program description	Performance	
	standard <sup>a</sup>	result
<b>Program 1.1 — Completed reviews of decisions</b>		
Program 1.1.1 — Applications finalised without a hearing	<i>Quality:</i> matters have first conference within 13 weeks	85% 87%
	<i>Quantity:</i> finalisations	5,218 6,129
	<i>Price:</i> per completed application	\$2,946 \$2,600
Program 1.1.2 — Applications finalised with a hearing	<i>Quality:</i> matters to hearing within 40 weeks	85% 52%
	<i>Quantity:</i> finalisations	1,476 1,318
	<i>Price:</i> per completed application	\$13,878 \$14,620

a Projection for 2009–10

Applications that cannot be resolved during the pre-hearing process are referred for hearing.

Eighty-seven percent of first conferences were held within 13 weeks of lodgement, slightly less than in 2008–09 although the Tribunal again exceeded the performance standard in the Portfolio Budget Statements by two percentage points, as shown in Table 3.7 and again in Table 3.8.

The proportion of hearings held within 40 weeks of lodgement of the application was six percentage points higher than in 2008–09, but again substantially lower than the 85 percent standard in the Portfolio Budget Statements.

There are many reasons why a hearing may not be held within 40 weeks of an application being lodged. The most common reason is that the parties need more time. The pace that applications progress through the pre-hearing stage is heavily influenced by the time the parties need to obtain expert medical evidence, undertake other investigations and gather relevant material. Some applications are delayed pending a decision by a department or agency on a related matter, the decision of a court in a test case, or in criminal proceedings. Delays also occur when parties cannot proceed because of illness or other adverse circumstances. The Tribunal's ability to list hearings in a timely manner is affected generally by the availability of parties, representatives and witnesses for the hearing.

### Time standards

The Tribunal monitors its performance against time standards for steps in the review process and for the finalisation of applications generally.

Two of the time standards for steps in the review process are included in the Portfolio Budget Statements: 85 percent of matters have the first conference within 13 weeks, and 85 percent of matters go to hearing within 40 weeks, as shown in Table 3.7.

The two additional steps are: the time for the decision-maker to lodge the documents required under section 37 of the Administrative Appeals Tribunal Act; and the time to deliver a decision following the last day of hearing or the date of receipt of further material after a hearing.

The decision-maker controls step one; the Tribunal and the parties share the responsibility for the timeliness of steps two and three; and the Tribunal controls the timeliness of step four.

Timeliness results for 2009–10 and the two previous reporting periods are shown in Table 3.8.

The proportion of applications for which the Section 37 Documents were lodged within five weeks was slightly higher in 2009–10 than in the previous year. The Tribunal also improved the timeliness of delivery of decisions following a hearing by nine percentage points in 2009–10.

**Table 3.8** Performance against time standards

Step	Time standard (weeks)	2007–08 %	2008–09 %	2009–10 %	
1	Receipt of Section 37 Documents after notifying decision-maker of application	5	82	85 <sup>a</sup>	87 <sup>a</sup>
2	Receipt of application to first conference	13	88	88	87
3	Receipt of application to first day of hearing	40	49	46	52
4	Last day of hearing or date of receipt of further material to delivery of decision	8.4 <sup>b</sup>	70	73	82

a This figure excludes applications relating to tax schemes. For many applications relating to tax schemes, the Tribunal agreed to extend the time for lodging the Section 37 Documents until they were ready to proceed.

b This figure equates to 60 days.

### *Time standards for finalising applications*

The Tribunal aims to complete the majority of applications within 12 months of lodgement, and to meet its targets for the major jurisdictions. Its performance and comparison with the targets is in Table 3.9.

In 2009–10, the Tribunal again made a small improvement in timeliness and finalised 63 percent of all applications within 12 months of lodgement despite the presence of the large number of older applications relating to tax schemes. Excluding these applications lifts the performance to 73 percent for applications finalised within 12 months, and 87 percent for applications finalised within 18 months of lodgement.

The Tribunal improved its results in the social security jurisdiction, meeting the 90 percent target for the year. Sixty-three percent of all social security applications were finalised within six months of lodgement, and 97 percent within 18 months.

An increased focus on timeliness in the workers' compensation jurisdiction in 2009–10 improved the results (57 percent), although they still fell short of the target (75 percent). The proportion of matters finalised within 12 months was four percentage points higher than in 2008–09, and 78 percent of applications were finalised within 18 months.

Timeliness fell slightly in the other major jurisdictions – down to 63 percent from 65 percent in veterans' affairs, although 83 percent of applications were finalised within 18 months. In the Taxation Appeals Division, the result was affected by the finalisation of a large number of older tax scheme applications. The proportion of applications finished within 12 months continued to decline, falling from 29 to 26 percent, well short of the 75 percent target.

The reasons identified earlier about why the Tribunal may not hold a hearing within the 40-week target are also relevant in explaining why it may not finalise an application within 12 months of lodgement. Delays in the delivery of decisions following a hearing can also contribute to delays in finalising applications.

The Small Taxation Claims Tribunal aims to finalise applications within 12 weeks of lodgement. In the reporting year, the proportion of applications meeting this standard increased to 22 percent, as shown in Table 3.10. It is the Tribunal's experience that applications dealt with in the Small Taxation Claims Tribunal cannot necessarily be completed faster than other types of taxation reviews. Although the amount of tax in dispute may not be large, the issues in dispute can be complex and the parties may require additional time to gather relevant material.

**Table 3.9** Percentage of applications finalised within 12 months

Jurisdiction	Target %	2007–08 %	2008–09 %	2009–10 %
All	—	61	62	63
Social security	90	84	88	90
Veterans' affairs	80	62	65	63
Workers' compensation	75	60	53	57
Taxation Appeals Division	75	31	29	26

**Table 3.10** Time standard for Small Taxation Claims Tribunal

	Target	2007–08 %	2008–09 %	2009–10 %
Percentage of applications to Small Taxation Claims Tribunal finalised within 12 weeks	12 weeks	17	18	22



In 2009–10, the Tribunal’s initiatives for improving the timeliness of the review process included a national system of monitoring and addressing non-compliance by parties with legislative requirements and Tribunal directions, and close management of tax scheme matters on a national basis.

The Tribunal has increased its focus on improving case management practices (see Chapter 4), and introduced file audits and regular reporting on the time that applications spend in each of the major stages of a review. The Tribunal continues to identify sources of unnecessary delay in the various jurisdictions, and work with stakeholders on minimising such delays.

## EXTERNAL SCRUTINY

Tribunal decisions may be appealed to the courts. The Tribunal’s operations are also subject to external scrutiny by way of complaints to the Commonwealth Ombudsman, requests under the *Freedom of Information Act 1982*, inquiries by Parliamentary Committees and audits by the Australian National Audit Office.

### Appeals from Tribunal decisions

A party may appeal to the Federal Court, on a question of law, from most final decisions of the Tribunal pursuant to section 44 of the Administrative Appeals Tribunal Act. The Federal Court may transfer the appeal to the Federal Magistrates Court unless the Tribunal was constituted by, or included, a presidential member.

A party may also seek judicial review of decisions made in the course of the review process and certain final decisions under the *Administrative Decisions (Judicial Review) Act 1977*, section 39B of the *Judiciary Act 1903*, Part 8 of the *Migration Act 1958* or section 75(v) of the Constitution. Applications may be made to the Federal Court, the Federal Magistrates Court or the High Court.

In 2009–10, 83 appeals made pursuant to section 44 of the Administrative Appeals Tribunal Act were lodged with the Federal Court. There were 19 applications for judicial review made under other enactments,

13 relating to decisions concerning visas under the Migration Act. Table A3.9 in Appendix 3 provides information on the number of appeals lodged against decisions in each of the Tribunal’s major jurisdictions.

During the reporting year, 107 appeals lodged under section 44 of the Administrative Appeals Tribunal Act and 18 applications for judicial review under other enactments were finally determined. The Tribunal’s decision was set aside in 35 cases. This constitutes 28 percent of the total number of appeals determined during the reporting period and less than one percent of all applications finalised by the Tribunal during the reporting year. This is a slight improvement on the result for the previous year.

Tables A3.10 and A3.11 in Appendix 3 offer more information on appeals determined during the reporting year and their outcomes.

During the reporting year, there were no judicial decisions or decisions of other tribunals that had, or may have had, a significant impact on the operations of the Tribunal.

### Freedom of information

The Tribunal received four requests for access to documents under the Freedom of Information Act in 2009–10. One request that had been made in 2008–09 was outstanding at the beginning of the reporting period.

Four requests were finalised in 2009–10. One was granted in part and two were refused on the basis that no relevant documents existed. One request was taken to have been withdrawn as the applicant did not respond to a notice from the Tribunal relating to charges.

One request under the Freedom of Information Act was outstanding at the end of the reporting period.

The Tribunal did not receive any requests to amend or annotate records.

For the statement required to be published in this annual report under section 8 of the Freedom of Information Act, see Appendix 8.

### Ombudsman

During 2009–10, the Commonwealth Ombudsman received 29 approaches concerning the Tribunal, three more than in the previous reporting year.

The Ombudsman investigated one approach and closed 26 approaches, making no findings of administrative deficiency. Many of the complaints were about Tribunal decisions that are outside the Ombudsman’s jurisdiction.

### Complaints to other bodies

There were no complaints to other complaint-handling organisations such as the Australian Human Rights Commission or the Office of the Privacy Commissioner during the reporting period.

### Reports by the Auditor-General or Parliamentary Committees

The Tribunal’s operations were not the subject of any report by the Auditor-General or any Parliamentary Committee during the reporting period.

## TRIBUNAL SERVICE CHARTER

The Tribunal’s Service Charter sets out the Tribunal’s service standards and information relating to making complaints about the Tribunal, including the standards for responding to complaints. Information on the extent of the Tribunal’s compliance with the service standards (where information is available) is in Table 3.12. Information on the number and nature of complaints made to the Tribunal follows.

### Complaints to the Tribunal

When a complaint is made in person or by telephone the Tribunal will attempt to resolve it immediately. The Tribunal aims to respond to written complaints within 20 working days or within 30 working days to complaints submitted in a language other than English. If more time is required, because of the complexity of the complaint or the need to consult with other persons before providing a response, the Tribunal will advise the complainant of progress in handling the

complaint. Responses to complaints must address the issues that led to the complaint being made. When appropriate, a complaint will result in an apology or a change to practice and procedure.

During 2009–10, the Tribunal received 32 written complaints from 30 individuals, about the issues shown in Table 3.11. Some of these complaints were about multiple issues.

**Table 3.11** Complaints to the Tribunal

Issue	Number of complaints*
Conduct of members of the Tribunal	10
General procedural issues	9
Complaints about Tribunal decisions	8
Conduct of conferences	6
Conduct of staff of the Tribunal	4
Privacy	3
Timeliness of Tribunal decision following a hearing	1
Complaints about other parties to Tribunal proceedings	1
<b>Total</b>	<b>42</b>

\* Any one complaint may raise multiple issues

In 2009–10, the Tribunal responded to 32 complaints within the 20 days for all but seven of the complaints. The average number of days from complaint to final response was 17 working days.

The Tribunal does not measure whether a complainant believes his or her complaint was resolved. Eleven complainants wrote again to the Tribunal after receiving an initial response to their complaint, and in most instances, they were given further information to address any outstanding concerns.

Table 3.12 Service standards

Commitment	Result for 2009–10
<b>We will treat you with respect and courtesy</b>	
We will be polite, respectful and courteous and use language that is clear and understandable.	Tribunal members and staff continue to be polite, respectful and courteous and use language that is clear and understandable so that Tribunal users can understand the processes.
<b>We will make ourselves accessible</b>	
Country residents can contact us on our national telephone number for the cost of a local call.	The Tribunal's national telephone number was available throughout the year.
People who are deaf or have a hearing or speech impairment can contact the Tribunal.	The Tribunal uses the National Relay Service to provide users with a range of call options including a TTY service.
Wheelchair access and hearing induction loops will be available at each office.	All Tribunal premises are wheelchair-accessible. Induction loops are available at each of the Tribunal's registries.
Hearings will be held in capital cities and in country centres.	The Tribunal conducted 118 hearings and 11 conciliations in locations outside capital cities.
Where appropriate you may participate in a hearing by telephone or video-link.	The Tribunal conducted the following listings by telephone: conferences — 6,600 other ADR processes — 1 directions hearings — 1,485 interlocutory hearings — 246 hearings — 41.
If you need an interpreter, we will provide one free of charge.	The Tribunal arranges for an interpreter to participate in an alternative dispute resolution process or hearing where needed.
If you are self-represented we will help you understand AAT procedures through our Outreach program. Outreach officers will contact self-represented parties by telephone within 4–6 weeks of an application being lodged.	Data collated for Outreach, for 1,100 parties, shows the average time from lodgement of an application to Outreach was 30 days, slightly more than four weeks.
<b>We will deal with you fairly</b>	
Applicants, respondents and/or their representatives will have a reasonable opportunity to present their cases.	Applicants, respondents and their representatives continue to have a reasonable opportunity to present their cases.
A private conference will usually be held within 6–10 weeks after receipt of an application.	69 percent of applications had a first conference within 10 weeks of lodgement, down from 72 percent in 2008–09.
<b>We will operate in an efficient manner</b>	
If a decision was not given orally at a hearing, written decisions will usually be provided within two months.	82 percent of decisions were delivered within 60 days of the last day of hearing or the receipt of further submissions or other material, up from 73 percent in 2008–09 (see Table 3.8).

## ADDITIONAL FUNCTIONS CONFERRED ON TRIBUNAL MEMBERS

As well as performing their role under the Administrative Appeals Tribunal Act, Tribunal members may exercise powers under a range of other Acts.

### Warrants, controlled operations and other functions

All Deputy Presidents and full-time Senior Members, and any part-time Senior Member or Member who has been enrolled as a legal practitioner for at least five years, may be nominated to:

- issue telecommunications interception warrants and stored communications warrants under the *Telecommunications (Interception and Access) Act 1979*
- issue warrants and exercise related powers under the *Surveillance Devices Act 2004*, and
- vary controlled operations authorities under the *Crimes Act 1914*.

The President and all Deputy Presidents, and any Senior Member who has been enrolled as a legal practitioner for at least five years, may be nominated to make orders allowing information given to the Inspector of Transport Security to be disclosed to another government agency, under the *Inspector of Transport Security Act 2006*.

The President and all Deputy Presidents are eligible to be appointed as issuing authorities for making continued preventative detention orders under the *Criminal Code Act 1995*.

All members of the Tribunal are authorised to exercise a range of powers relating to monitoring overseas students' compliance with visa conditions, under the *Education Services for Overseas Students Act 2000* and the *Migration Act 1958*.

Table 3.13 sets out the number of occasions on which Tribunal members considered applications under any of these Acts in the three most recent reporting years.

The Tribunal is flexible in performing these functions and members are available outside standard business hours. In the reporting period, there were 82 out-of-hours appointments (before 9 am or after 5 pm on weekdays or at any time on the weekend or on a public holiday).

### Proceeds of crime examinations

All presidential members of the Tribunal, and any Senior Member or Member who has been enrolled as a legal practitioner for at least five years, may be appointed as an approved examiner under the *Proceeds of Crime Act 2002* or the *Proceeds of Crime Regulations 2002*. Approved examiners are authorised to issue examination notices at the request of the Commonwealth Director of Public Prosecutions and oversee compulsory examinations in connection with confiscation proceedings. See Table 3.14 for the number of examination sessions conducted by Tribunal members in the past three reporting years.

**Table 3.13** Applications relating to warrants, controlled operations and other functions considered by Tribunal members

	2007-08	2008-09	2009-10
Number of occasions on which applications considered	1,946	1,877	1,924

**Table 3.14** Examinations held under the *Proceeds of Crime Act 2002*

	2007-08	2008-09	2009-10
Number of examination sessions held	26	24	18