Administrative Appeals Tribunal

Tax Bar Association of Victoria

Tax Dispute Resolution: The AAT Perspective

Hon Justice Duncan Kerr - President of the Administrative Appeals Tribunal and Judge of the Federal Court of Australia

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In July 1986 the Administrative Appeals Tribunal (AAT) assumed the jurisdiction in taxation matters which previously had been exercised by Taxation Boards of Review. Most members of the Boards became members of the Tribunal.[1]

The AAT now has jurisdiction under the *Taxation Administration Act 1953* (TAA) to review many decisions made by the Commissioner of Taxation. The Tribunal also reviews decisions made by the Commissioner under a number of other Acts and Regulations.

Tax-related decisions most commonly brought before the Tribunal are those in respect of:

- the assessment of income tax, including allowable deductions, tax avoidance schemes and capital gains tax liability;
- the assessment of GST, the superannuation guarantee charge, fringe benefits tax and, more recently, excess superannuation contributions tax;
- the imposition or remission of penalties for failure to comply with taxation law;
- private rulings made by the ATO;
- a refusal to extend the time for lodging a tax objection; and
- the release of taxpayers from taxation liabilities on hardship grounds.

In most cases a taxpayer can choose between proceedings in the AAT or the Federal Court of Australia.[2] It is the taxpayer's choice, not the Commissioner's. Approximately 80% of matters where the taxpayer has a choice between merits review in the AAT or an appeal in the Federal Court of Australia are currently commenced in the Tribunal.[3]

A taxpayer's decision once made pursuant to s14ZZ of the TAA is irrevocable.

This paper addresses the factors that may be relevant to a taxpayer's decision regarding the most suitable forum for their purposes in which to commence proceedings.[4]

Acknowledgements
I gratefully acknowledge the input of Deputy President Stephen Frost in the preparation of this paper. I am also greatly appreciative of the staff of the Tribunal who assisted with revising it and collating the data.

[1] See 'Twenty Five Years of Tax Cases in the AAT; Eleven years of the "practical business tax"', delivered by the Hon. Justice Garry Downes AM, on 17 October 2011 at the Corporate Tax Association 2011 GST Corporate Intensive in Sydney, http://www.aat.gov.au/Publications/SpeechesAndPapers/Downes/CorporateTaxAssociationOctober2011.htm and published in (2012) 50(1) *Law Society Journal* 70.
[2] The most important exception relates to discretions on penalties which only the AAT can exercise—discussed further below.
[3] See for example the ATO's Annual Report 2011-11 at p 96 where a figure of 86% is cited.
[4] See also A McDonald 'Quo Vadis: Choosing between the AAT and Federal Court for tax disputes' *Bulletin* October 2012 Law Society of South Australia 38-39

Reasons favouring the AAT as the preferred forum may include:

- **lesser fees;**[5]

  The AAT application fee for taxation matters is $816, except for applications dealt with in the Small Taxation Claims Tribunal (STCT). In the STCT the application fee is $81.

  The Federal Court filing fee[6] is:

  - $4,720 for a publicly listed company;
  - $3,145 for a corporation as defined;

  or

  - $1,080 for an individual, small business or not-for-profit association.

  For proceedings in the Federal Court further fees are payable as the matter progresses.[7] There are no further fees for proceedings in the AAT.

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- **lesser 'front end loading' of costs**;

  Section 37(1) *Administrative Appeals Tribunal Act 1975* (AAT Act), as modified by s 14ZZF of the TAA, provides that the Commissioner within 28 days of an application for review being filed must lodge with the Tribunal a statement of reasons, together with every document or part of a document that is in the Commissioner's control and is considered by the Commissioner to be necessary to the review of the proceedings.

  The obligation on the Commissioner to give the Tribunal and the taxpayer documents held by the ATO relating to the case at an early stage (commonly referred to as the "T" documents) contributes to early and full disclosure of the ATO's case against a taxpayer. The conferencing practices of the Tribunal then seek to narrow the areas of dispute. This, combined with the relative informality of the Tribunal system can limit the financial costs of the early stages of dispute handling.

  In a tax matter in the Federal Court the Commissioner must file an Appeal Statement within 28 days. The applicant must file their Appeal Statement within 40 days of receiving it. This requires an Applicant to be well advanced in preparing not only the evidential basis of their case and but also their argument and case theory. That can run up costs at the early stages of the proceedings because it may require considerable work to properly prepare. Those costs may not be fully recovered even if there is a later settlement.

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[5] For certain categories of people (e.g. holders of concession cards) or in the case of financial hardship, the AAT can reduce the application fee payable in the Taxation Appeals Division to $100. The Federal Court can waive in full the filing fee or any other fees that may be payable during the course of the proceedings.

[6] These are the applicable fees for the Federal Court of Australia as at 1 May 2013

[7] These include setting down fees and hearing fees.

- **the right to confidentiality**;

  Section 14ZZE of the TAA confers on an applicant the right to request that any hearing (other than in relation to a proceeding in the STCT) be in private. In the STCT, pursuant to s 35 of the AAT Act, the Tribunal can exercise a similar power upon request but there is no automatic right for a private hearing. If the hearing is held in private, an associated provision, s 14ZZJ of the TAA, requires that the applicant is not to be identified in the Tribunal's reasons for decision.

  It is possible but rare to obtain confidentiality orders withholding the names of parties in the Federal Court.[8]

- **the absence of a requirement to comply with the rules of evidence**;

  In most tax matters, the applicant bears the burden of proof to establish that the Commissioner's assessment was excessive. To establish that an assessment was excessive a taxpayer generally needs to show not only that the assessment was greater than it should have been but also what the correct assessment should have been. There is a useful summary of the authorities in *Hamed and Commissioner of Taxation* [2010] AATA 684.

  It can be simpler for an applicant, particularly a self-represented applicant, to put their case before the AAT than it would be before a court strictly applying the rules of evidence. The absence of the requirement to comply with the rules of evidence obliges the Tribunal to give attention to questions of relevance and weight unburdened by technical rules of admissibility. The ATO has a duty to assist the Tribunal and a party may seek its assistance in that regard.

  The AAT regards itself as an ideal fact finding forum both because of its flexibility in getting all of the relevant evidence and because it undertakes a total review on the merits. The Tribunal is used to assisting self-represented parties.

  However the AAT is equally familiar with high value and complex tax matters where parties are represented by counsel. A review in the AAT involving a matter where parties are legally represented will generally follow the same structure, if with less formality, as a court proceeding. That includes permitting addresses by counsel, tendering of documents, the calling of witnesses and their examination and cross-examination. If there are multiple expert witnesses the Tribunal's usual practice is to require the expert evidence to be given concurrently.

- **power to exercise discretion as to penalties**;

  The AAT is an administrative body. It makes decisions on the merits. It can be said to stand in the shoes of the Commissioner.

  If a matter involves the exercise of a discretion (such as a penalty remission question), the AAT has the power to substitute its own decision if it considers the Commissioner's decision was not the 'preferable' one.

[8] See Part VAA *Federal Court of Australia Act 1976.* Such an order will only be made when it is 'necessary' to protect the administration of justice: *Hogan v Australian Crime Commission* (2010) 240 CLR 651.

The Federal Court, being incapable of being invested with administrative power, can only overturn a discretionary decision if there was an error of law in making it. It cannot substitute a different decision even if the judge would have come to a different conclusion.

- **no adverse costs order if a party is unsuccessful**;

  Costs can be a factor in the risk assessment as to whether and, if so in which forum, proceedings should be commenced. The Federal Court will usually order an unsuccessful party to pay some or all of the other side's costs. If an applicant is less than fully certain of the strength of their case, the fact that costs cannot be awarded against an unsuccessful party in the AAT may be a consideration towards commencing in that jurisdiction.

  Conversely, if a party is confident of their position and hopes to get costs from the ATO when they succeed only the Federal Court can make such orders.

- **a fall-back right to appeal, on a question of law, to the Federal Court**.

  The parties have a right to appeal in respect of any error of law made by the AAT. They can have the Tribunal determine the facts and give reasons for a decision while reserving their position as to a possible appeal on a novel or complex question of law.

  If there is a high probability that one or both parties will want to exercise appeal rights warranting the attention of a Full Court of the Federal Court of Australia, then to avoid the cost and inconvenience of multiple levels of appeal, a party can ask for a presidential member to hear the case at the AAT so that any appeal can go directly to the Full Court.[9]

Reasons why the AAT may not be the preferred forum may include:

- **Binding Precedent**

  Decisions of the AAT take effect as a substitute exercise of the powers and discretions conferred under the relevant taxation law on the person who made the original decision subject to review.[10] The AAT's functions are administrative, not judicial in character.

  This remains a fundamental constitutional distinction notwithstanding that in most instances a party will be equally satisfied with success in the AAT as in the Court. However, if a party requires a judicial determination of their rights, binding in law, the Tribunal cannot provide that outcome.

  The distinction has some practical consequences. If there is a decision of a single judge of the Federal Court to the contrary of that contended for by a taxpayer, the AAT is bound to follow that decision.

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[9] Section 44(3) AAT Act. However, unless the Tribunal was constituted by a member who is also a Judge, the Chief Justice can determine that such an appeal, although heard in the Tribunal by a presidential member, is nonetheless appropriate to be decided by a single judge.

[10] Section 43(1) AAT Act.

A single judge will also usually follow such a decision but is not strictly bound to do so and it is at least theoretically possible to submit that the previous decision was 'plainly wrong'.

Members of the Tribunal are not bound to follow other AAT decisions but, unless persuaded that an earlier decision of the Tribunal was plainly wrong, in practice they usually do so for reasons of consistency and sound administration.

- **No 'Rocket docket'**

  The AAT is focussed on reducing delay but does not have a 'rocket docket' or expedited hearing list for urgent matters. The Tribunal is examining whether it should trial such a system but for the moment all tax matters are managed through a listing system involving conferencing before allocation to a hearing member or members. Further the Tribunal lacks the capacity to encourage expedition by making adverse costs orders.

  The Federal Court's procedures for obtaining expedition are, for the present, potentially more robust and certain.

  The current system in the AAT generally suits less experienced applicants and their advisors because it is often not until a matter comes before the Tribunal that the further factual materials needed to enable the Tribunal to make a decision on the merits are identified and produced by the applicant. This is nearly always the case in the Small Taxation Claims Tribunal.

  However, the AAT has the flexibility to adjust its procedures if the parties have cooperated to streamline the preparation of a matter. The Tribunal will always seek to accommodate a joint request from the parties for an early hearing.

Usually neutral considerations relevant to taxpayer choice

Decision maker: judge or tribunal member?

In a number of areas the AAT and the Federal Court have equivalent advantages. Both offer highly skilled decision makers in taxation law. A number of judges of the Federal Court also hold appointments as presidential members of the AAT.

Since the AAT was conferred its tax jurisdiction, the Tribunal has been privileged that some of Australia's most distinguished taxation specialists have served as members—from the days of Dr Paul Gerber who, before his appointment, had been a member of the No.3 Board of Taxation Review to the present. Given that a large proportion of the AAT's work involves taxation matters, the Tribunal has actively sought support from the Attorney-General to recruit such specialists so that applicants and the ATO alike can have confidence in the professionalism and skills of those members. Consultation must occur with the Treasurer before a member is appointed to the Taxation Appeals Division. A full list of current non-judicial members who can hear matters in the Taxation Appeals Division can be found at the end of this paper. Those Federal Court judges who also serve as judicial members of the AAT such as Edmonds J continue to bring enormous expertise to bear in the resolution of tax disputes.

Practitioners may have a preference for one forum over the other depending on their experience and comfort with administrative as opposed to judicial proceedings but, putting

aside all of the procedural differences each applies the same substantive law and "it is a common mistake caused by inexperience to think the AAT case can be less well prepared or takes substantially less time to prepare or run".[11]

Alternative Dispute Resolution

Both the AAT and the Federal Court encourage consensual settlement of disputes. The AAT prides itself on the availability of a range of flexible, informal, inexpensive and effective ADR processes that include, but are not restricted to formal mediation.

Approximately 80% of all AAT proceedings are resolved informally without a hearing being required. The ATO ensures that an officer with authority to settle all outstanding matters will personally attend conciliations and mediations conducted in tax cases.

Before commencing action in the Federal Court an applicant must file a genuine steps statement in accordance with the *Civil Dispute Resolution Act 2011.* Good ADR options and professional ADR facilitators are also available in the Federal Court.

Fragmented proceedings

It is a mistake to conceive of the AAT and the Federal Court as being in competition for tax-related work. Parliament provides an option for taxpayers and no single factor will govern what they and their advisers decide.

Sometimes this availability of choice will lead to a number of taxpayers seeking review in the AAT while others in an identical position will file in the Federal Court of Australia.

Sometimes the way the TAA operates may lead to a single taxpayer filing in both the Federal Court and the AAT. A common instance is where a substantive appeal is filed in the Federal Court but administrative penalties are also in issue. Review of the Commissioner's discretion on administrative penalty can be sought only in the AAT.

Where the docket judge in the Federal Court is also a member of the AAT it is frequently convenient and appropriate to constitute the Tribunal with that judge as a presidential member so that he or she can determine all of the parallel cases or associated matters. It is open to the parties to request the President to so constitute the Tribunal.

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[11] A McDonald 'Quo Vadis: Choosing between the AAT and Federal Court for tax disputes' *Bulletin* October 2012 Law Society of South Australia 38 [39]

Annexures:

Information regarding proceedings in the AAT

Workload: Taxation Appeals Division and the Small Taxation Claims Tribunal

The number of lodgements in the Taxation Appeals Division rose by 30 per cent in 2011–12 to 1,438 with particular increases noted in relation to applications for review of decisions about income tax and goods and services tax. There was also an increase in the number of lodgements in the STCT in 2011–12 to 274.

Applications for review of tax decisions were the most common type of application lodged with the Tribunal in 2011–12, constituting 30 per cent of all lodgements.

The Tribunal aims to finalise applications in the Taxation Appeals Division within 12 months of lodgement and the Tribunal achieved this in 59 per cent of cases, a significant improvement over the result for previous years. 37 per cent of STCT matters were finalised within the STCT target of 84 days.

The following table shows the figures for the number of lodgements and finalisations in 2011-12 as well as the number of current applications at 30 June 2012 in both the Taxation Appeals Division and the STCT. A percentage figure is also given showing what proportion of the Tribunal's total workload these figures represent.

	TAD		STCT	
	No	**% of total**	**No**	**% of total**
Lodged	1,438	25	274	5
Finalised	1,063	21	101	2
Current	1,722	39	270	6

ALTERNATIVE DISPUTE RESOLUTION AT THE AAT

During 2011–12, 79 per cent of Taxation Appeals Division matters and 90 per cent of STCT matters were finalised other than by way of a decision on the merits following a hearing. The Tribunal was an early adopter of alternative dispute resolution (ADR) processes to assist parties to distil and narrow the issues in dispute and, where possible, arrive at consensual outcomes.

The normal conferencing process used by the Tribunal often incorporates informal use of ADR. Conferencing remains the most important tool used by the Tribunal to facilitate settlement of disputes.

Conferencing

A conference is usually the first case event in an application to the Tribunal. It is generally scheduled around six to ten weeks after receipt of an application. Conferences are usually conducted by Conference Registrars who are lawyers and skilled ADR practitioners.

A conference is an informal meeting with the parties and/or their representatives for the purpose of:

- discussing and identifying the issues in dispute;
- identifying what, if any, further factual material needs to be put before the Tribunal to enable it to make a decision on the merits;
- setting timetables;
- exploring the potential for settlement; and,
- determining the future conduct of the matter which may involve a further conference, referral to another type of ADR process or, if it is appropriate to do so, preparing the matter for hearing.

All Conference Registrars have at their disposal the full range of tools provided by more formal mediation training and the skills and knowledge to draw on these tools as and when appropriate.

It is not unusual for there to be more than one conference. That will often be appropriate when further information is to be provided or where parties will need to consider their position or seek instructions after the initial discussion.

Conferencing is the primary ADR process used by the AAT. Many applications settle during the conferencing process.

The Tribunal has conducted more than 4,000 conferences in tax cases between 1 July 2008 and 30 June 2012.

Formal ADR

Division 3 of Part IV of the AAT Act (sections 34–34H) deals with "*Alternative dispute resolution processes*". The processes referred to in the Act and used by the Tribunal are conferencing, conciliation, mediation, case appraisal and neutral evaluation. Division 3 provides that parties may be directed to attend an ADR process and must participate in good faith. Section 34C provides for directions to be made about the procedures to be followed, who will conduct the ADR process and what happens afterward.

Process models have been developed for each form of ADR which set out information on:

- the way in which it will be conducted,
- the role of the facilitator,
- the roles of the parties and their representatives, and
- what is likely to occur at the conclusion of the process.

The Tribunal has also developed a policy for guiding referral of applications to these different ADR processes.

The Tribunal has a robust programme of professional development for those who conduct ADR processes. The Tribunal has also become a Recognised Mediator Accreditation Body

under the National Mediator Accreditation System so that it can accredit members and staff who conduct mediations in the Tribunal.

The Tribunal conducted the following number of other ADR processes in tax cases in that same period.

Process	No
Conciliation	323
Mediation	41
Case appraisal and neutral evaluation	31

Conciliation and Mediation

Conciliation and mediation are concepts familiar to most tax practitioners. Within the AAT, they are conducted either by a member or Conference Registrar.

Conciliation and mediation are both processes in which the parties to a dispute, with the assistance of the conciliator or mediator, identify the disputed issues, develop options, consider alternatives and seek to reach an agreement. A mediator plays no role beyond guiding the parties through that process. A conciliator, however, may comment on the substantive issues in dispute in assisting the participants to reach an agreement.

If a Conference Registrar forms the view that the matter would benefit from the availability of an independent view on the substantive issues and possible settlement options, that factor may influence the case being referred to conciliation.

Case appraisal and neutral evaluation

Case appraisals and neutral evaluations are generally conducted by a member chosen because of his or her knowledge or understanding of the subject matter. The appraiser or evaluator provides a non-binding opinion on the issue or issues presented to him or her for consideration: this could be a significant issue of fact or law that arises in the matter or the likely outcome of the matter overall. The opinion may be given in person or on the papers. The opinion is then used to assist the parties attempt to narrow the issues in dispute or resolve the matter. This further discussion with the parties is generally held in person or by telephone by the appraiser or evaluator or another ADR practitioner.

In summary

The full range of ADR processes are used more frequently in tax cases than in any of the Tribunal's other jurisdictions.

While yearly statistics show some variation, over time around 80 per cent of tax applications have been finalised without the need for a hearing and decision.

Those were the cases that were finalised:

- by consent under 34D or 42C of the AAT Act;
- by being withdrawn by the applicant; or

- by dismissal for failure to proceed, failure to comply with a Tribunal direction or failure to appear at a hearing.

CONCERNS AND EMERGING ISSUES

Delays in pre-hearing processes

Tax cases constitute the largest proportion of cases at the AAT that are more than 12 months old. The corollary is that tax is also the jurisdiction with the lowest proportion of cases that are finalised within 12 months.

The Tribunal is concerned about the causes of this delay. While robust data is lacking, there is strong anecdotal evidence that suggests two factors are highly relevant:

1. Underrepresentation and unacknowledged conflicts of interest

Usually, an applicant being represented either by a lawyer or a person with other relevant knowledge assists with the efficient handling of matters, including taking steps to progress the case and explore settlement. Unfortunately some representatives in the tax divisions have only limited knowledge of the AAT's processes and procedures. Many representatives in the tax jurisdiction at the AAT are not lawyers. They can be accountants from a small practice. Some have limited resources to properly advise their clients about their application, their prospects of success or possible areas of agreement between the applicant and the ATO in the Tribunal context.

In some instances such a representative will also have been the applicant's accountant/tax advisor. Where an applicant has a weak position, or if his or her representative was partly responsible for the circumstances giving rise to the application, it can be very difficult to achieve sensible ADR outcomes.

The Tribunal welcomes views from the profession as to whether it or the Tribunal can take any practical steps that will minimise this problem.

2. *Missing documents and delays obtaining documents*

The AAT often encounters difficulty ensuring that an applicant has provided all documents relevant to the decision(s) in dispute. In cases where an application has merit and these documents are finally provided, the ATO will often revise its decision without the application having to proceed beyond the conferencing process. However, a common experience is that an agreement is made at the first conference for the applicant's documents to be provided or directions are made for the documents to be provided. The Tribunal sometimes finds that the agreement is not honoured or the directions are either not complied with or only complied with partially. Requests for extensions are common.

In circumstances where both the applicant and respondent have been aware of the documents needed to resolve the matter since the objection decision stage, and the applicant has had ample time to provide the documents prior to lodging an application at the AAT, such requests are unlikely to be well received.

The Tribunal has recognised this as a problem and will be giving priority to moving matters more speedily to a hearing as soon as it becomes clear that no further documents can or will be provided.

WORKLOAD INFORMATION

TAXATION APPEALS DIVISION (EXCLUDING SMALL TAXATION CLAIMS TRIBUNAL)

Section 1: Applications Lodged, Finalised and Current

Table 1A: Applications lodged, finalised and current and changes

	2009–10	2010–11	% Change from 2009–10 (No.)	2011–12	% Change from 2010–11 (No.)
Lodged	994	1,103	+ 11% (+ 109)	1,438	+ 30.4% (+ 335)
Finalised	2,008	1,251	- 38% (- 757)	1,063	- 15% (- 188)
Current	1,571	1,429	- 9% (- 142)	1,722	+ 20.5% (+ 293)

Chart 1B: Applications lodged, finalised and current

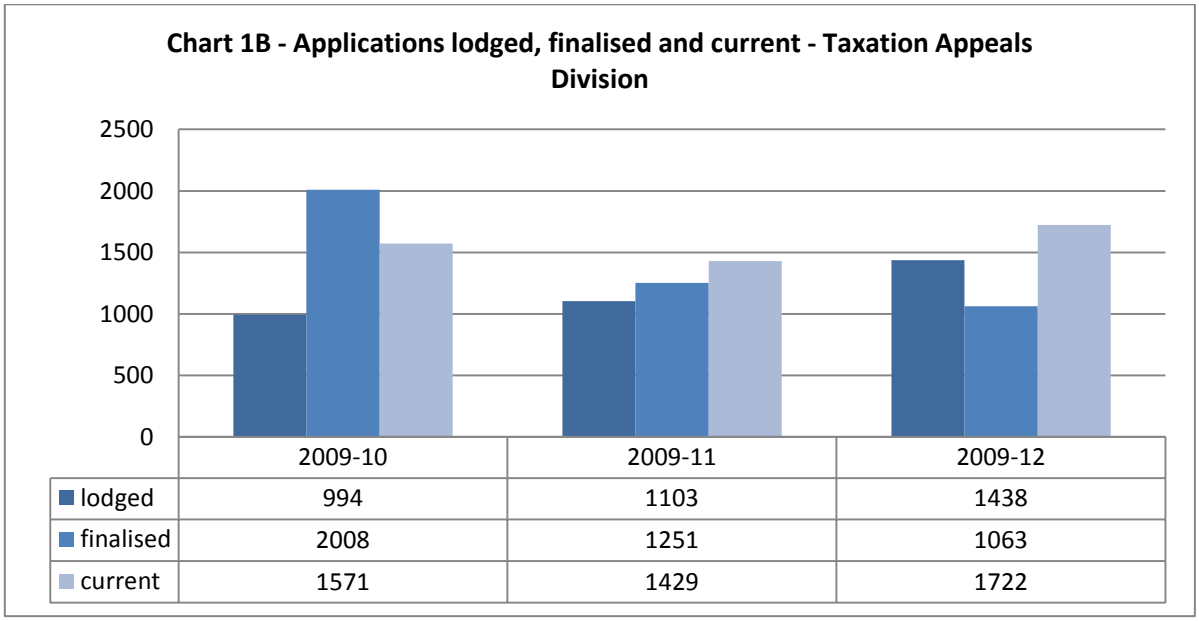

Table 1C: Taxation Appeals Division applications lodged – by case type

Case Type	2009–10	2010–11	2011–12
Fringe benefits tax	19	18	9
Good and services tax	99	97	162
Income tax (other than tax schemes)	712	820	1,112
Income tax (tax schemes)	34	0	0
Private rulings	0	13	26
Self-managed superannuation fund regulation	16	11	5
Superannuation guarantee charge	16	26	18
Taxation administration	13	12	14
Other	85	106	92
TOTAL	**994**	**1,103**	**1,438**

Section 2: Taxation Appeals Division Finalisations

Table 2A: Percentage of applications finalised without a hearing*

Jurisdiction	2009–10	2010–11	2011–12
Taxation Appeals Division	92%	85%	79%

* Applications finalised without a hearing refer to applications that were finalised by the Tribunal without it completing the review and giving a decision on the merits under section 43 of the *Administrative Appeals Tribunal Act 1975*. This includes applications finalised in accordance with terms of agreement lodged by the parties (sections 34D and 42C), applications withdrawn by the applicant (subsection 42A(1A)) and applications dismissed by the Tribunal (sections 42A and 42B).

Section 3: Appeals

Table 3A: Appeals against decisions of the Tribunal in Taxation Appeals Division Matters

2009–10		2010–11		2011–12	
Section 44[a]	Other[b]	Section 44[a]	Other[b]	Section 44[a]	Other[b]
17	0	14	1	17	1

a Appeals lodged in the Federal Court under section 44 of the Administrative Appeals Tribunal Act. In some circumstances, a party may lodge an application seeking relief under section 44 of the Administrative Appeals Tribunal Act and under another enactment. These applications are treated as section 44 appeals for statistical purposes.

b Applications for judicial review made under other enactments, including the *Administrative Decisions (Judicial Review) Act 1977*, the *Judiciary Act 1903*, Part 8 of the *Migration Act 1958* and section 75(v) of the Constitution.

Table 3B: Appeals finalised – by outcome type

Outcome	2009–10		2010–11		2011–12	
	Section 44	Other	Section 44	Other	Section 44	Other
Allowed/Remitted	7	0	3	0	7	1
Dismissed	9	0	9	1	5	1
Discontinued	4	0	1	1	5	0
Total	**20**	**0**	**13**	**2**	**17**	**2**

Section 4: Time standards

Table 4A: Time standards – percentage finalised within 12 months

Jurisdiction (Target % rate for finalisation within 365 days)	2009–10	2010–11	2011–12
Taxation Appeals Division (75% target)	26%	36%	59%

SMALL TAXATION CLAIMS TRIBUNAL (STCT)

Section 1: Applications Lodged, Finalised and Current

Table 1A: Small Taxation Claims Tribunal Applications lodged, finalised and current and changes

	2009-10	2010-11	% Change from 2009-10 (No.)	2011-12	% Change from 2010-11 (No.)
Lodged	59	73	+ 24% (+ 14)	274	+ 275% (+ 201)
Finalised	98	57	- 42% (- 41)	101	+ 77% (+ 44)
Current	31	50	+ 61% (+ 19)	270	+ 440% (+ 220)

Chart 1B: Small Taxation Claims Tribunal Applications lodged, finalised and current

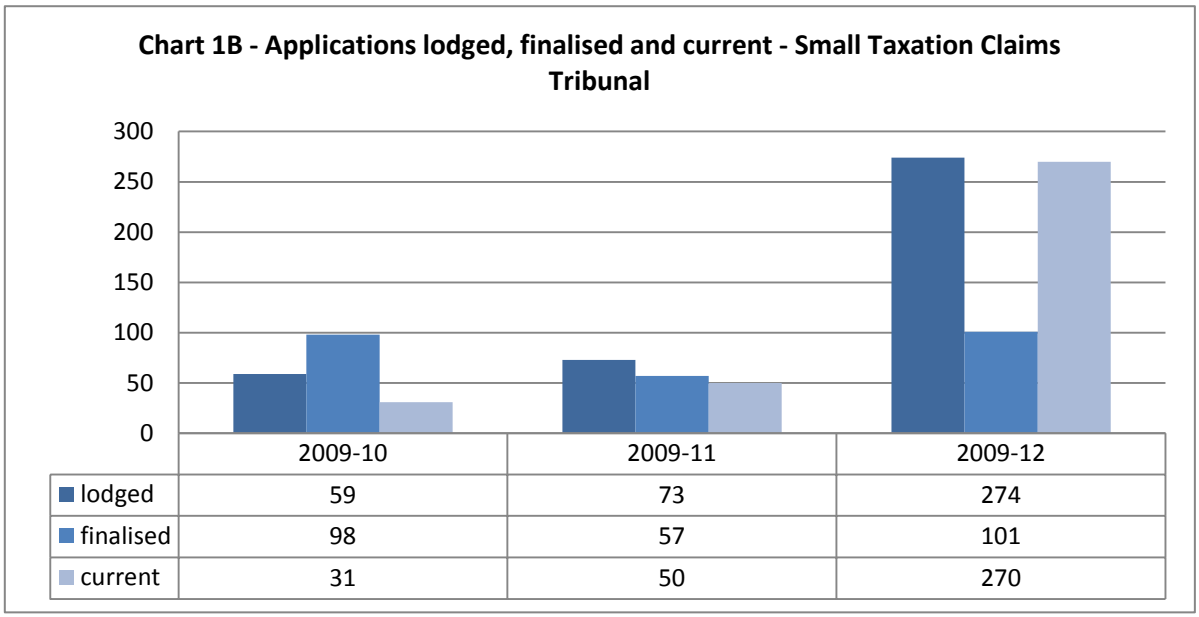

Table 1C: Small Taxation Claims Tribunal applications lodged – by case type

Case Type	2009–10	2010–11	2011–12
Good and services tax	2	3	3
Income tax (other than tax schemes)	27	30	87
Income tax (tax schemes)	0	0	0
Refusal of extension of time to lodge objection	14	18	94
Release from taxation liabilities	9	7	24
Superannuation guarantee charge	4	2	6
Other	3	13	60
TOTAL	**59**	**73**	**274**

Section 2: Small Taxation Claims Tribunal - Finalisations

Table 2A: Small Taxation Claims Tribunal Percentage of applications finalised without a hearing*

Jurisdiction	2009–10	2010–11	2011–12
Small Taxation Claims Tribunal	95%	82%	90%

* Applications finalised without a hearing refer to applications that were finalised by the Tribunal without it completing the review and giving a decision on the merits under section 43 of the *Administrative Appeals Tribunal Act 1975*. This includes applications finalised in accordance with terms of agreement lodged by the parties (sections 34D and 42C), applications withdrawn by the applicant (subsection 42A(1A)) and applications dismissed by the Tribunal (sections 42A and 42B).

Section 3: Appeals

Table 3A: Appeals against decisions of the Tribunal in Small Taxation Claims Tribunal Matters

2009–10		2010–11		2011–12	
Section 44[a]	Other[b]	Section 44[a]	Other[b]	Section 44[a]	Other[b]
1	0	0	0	0	0

a Appeals lodged in the Federal Court under section 44 of the Administrative Appeals Tribunal Act. In some circumstances, a party may lodge an application seeking relief under section 44 of the Administrative Appeals Tribunal Act and under another enactment. These applications are treated as section 44 appeals for statistical purposes.

b Applications for judicial review made under other enactments, including the *Administrative Decisions (Judicial Review) Act 1977*, the *Judiciary Act 1903*, Part 8 of the *Migration Act 1958* and section 75(v) of the Constitution.

Table 3B: Small Taxation Claims Tribunal Appeals finalised – by outcome type

Outcome	2009–10		2010–11		2011–12	
	Section 44	Other	Section 44	Other	Section 44	Other
Allowed/Remitted	0	0	1	0	0	0
Dismissed	0	0	0	0	0	0
Discontinued	1	0	0	0	0	0
Total	**1**	**0**	**1**	**0**	**0**	**0**

Section 4: Time standards

Table 4A: Small Taxation Claims Tribunal Time standards – percentage finalised within 84 days

Jurisdiction (Target % rate for finalisation within 84 days)	2009–10	2010–11	2011–12
Small Taxation Claims Tribunal	22%	34%	37%

NB: for further information view a copy of the AAT's latest Annual report: http://www.aat.gov.au/Publications/Publications/AnnualReport.htm

List of non-judicial AAT members who can hear cases in the Taxation Appeals Division

(as at 3 June 2013)

(Deputy Presidents and Senior Members are listed according to the date they were first appointed to that position in the AAT. Members are listed alphabetically.)

Deputy President Stephanie Forgie (Vic)

Deputy President Stanley Hotop (WA)

Deputy President the Hon Raymond Groom AO (Tas)

Deputy President Philip Hack SC (Qld)

Deputy President the Hon Robert Nicholson AO (WA)

Deputy President the Hon Brian Tamberlin QC (NSW)

Deputy President Robin Handley (NSW)

Deputy President James Constance (Vic)

Deputy President Fiona Alpins (Vic)

Deputy President Stephen Frost (NSW)

Deputy President Robert Deutsch (NSW)

Deputy President Ian Molloy (Qld)

Deputy President Katherine Bean (SA)

Senior Member John Handley (Vic)

Senior Member Geri Ettinger (NSW)

Senior Member Bernard McCabe (Qld)

Senior Member Peter McDermott RFD (Qld)

Senior Member Rodney Dunne (SA)

Senior Member Steven Penglis (WA)

Senior Member Ann Cunningham (Tas)

Senior Member Peter Taylor SC (NSW)

Senior Member Dr Kenneth Levy RFD (Qld)

Senior Member Graham Kenny (Qld)

Senior Member Robin Creyke (ACT)

Senior Member Francis O'Loughlin (Vic)

Senior Member Dean Letcher QC (NSW)

Senior Member Jan Redfern PSM (NSW)

Senior Member Egon Fice (Vic)

Senior Member Chelsea Walsh (WA)

Senior Member Gina Lazanas (NSW)

Member Conrad Ermert (Vic)

Member Kathryn Hogan (WA)

Member Dr Gordon Hughes (Vic)

Member Simon Webb (ACT)

Member Peter Wulf (Qld)