

Chapter 3: Workload and performance



Workload

This section of the annual report provides key statistical information on the number of applications lodged and finalised in 2005–06 and the number of applications current at the end of the reporting period. This section also provides information relating to the Tribunal's major jurisdictions: social security, taxation, veterans' affairs and workers' compensation. Information relating to the previous two reporting periods is provided for the purposes of comparison.

OVERALL RESULTS

Chart 3.1 sets out the total number of applications lodged and finalised and the number of current applications for the last three years.

The number of applications lodged with the Tribunal continues to rise. The number of lodgements in 2005–06 was 12 per cent higher than the number lodged in 2004–05. As Chart 3.2 demonstrates, this increase can be attributed primarily to a further rise in the number of applications relating to taxation decisions.

The number of applications finalised by the Tribunal in 2005–06 was 8 per cent higher than the number of finalisations in 2004–05. This increase can also be attributed primarily to the finalisation of a larger number of applications in the Taxation Appeals Division (Taxation Division). Approximately two-thirds of these finalisations related to taxation scheme matters.

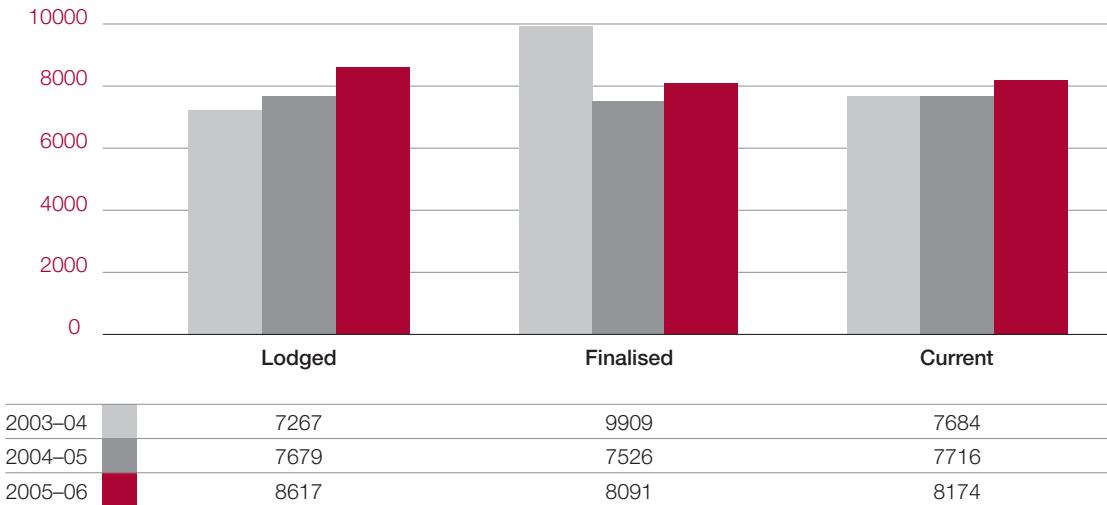
The number of applications current at 30 June 2006 is 6 per cent higher than the number current at the end of 2004–05. The increase in the number of applications lodged in the Taxation Division has contributed significantly to this result.

APPLICATIONS LODGED

The number of applications lodged in the Tribunal's major jurisdictions in each of the past three years is shown in Chart 3.2.

Applications relating to taxation decisions were the most common type of application lodged with the Tribunal in 2005–06 and constituted 43 per cent of all lodgements. Applications relating to social security and workers' compensation were the next

CHART 3.1 APPLICATIONS LODGED, FINALISED AND CURRENT



largest jurisdictions comprising 19 per cent and 17 per cent of total lodgements respectively.

There has been a 62 per cent increase in the number of applications lodged in the Taxation Division over the number lodged in 2004–05. Two-thirds of these lodgements were applications relating to taxation schemes or employee benefit arrangements.

The number of applications relating to family assistance and social security decisions also increased by 10 per cent. In part, this increase can be attributed to an increase in the number of applications lodged by Departments and, in particular, by the Department of Employment and Workplace Relations. There were almost 250 departmental appeals in 2005–06 compared with approximately 80 in 2004–05. Departmental appeals represented 15 per cent of total lodgements in the social security jurisdiction during the reporting year.

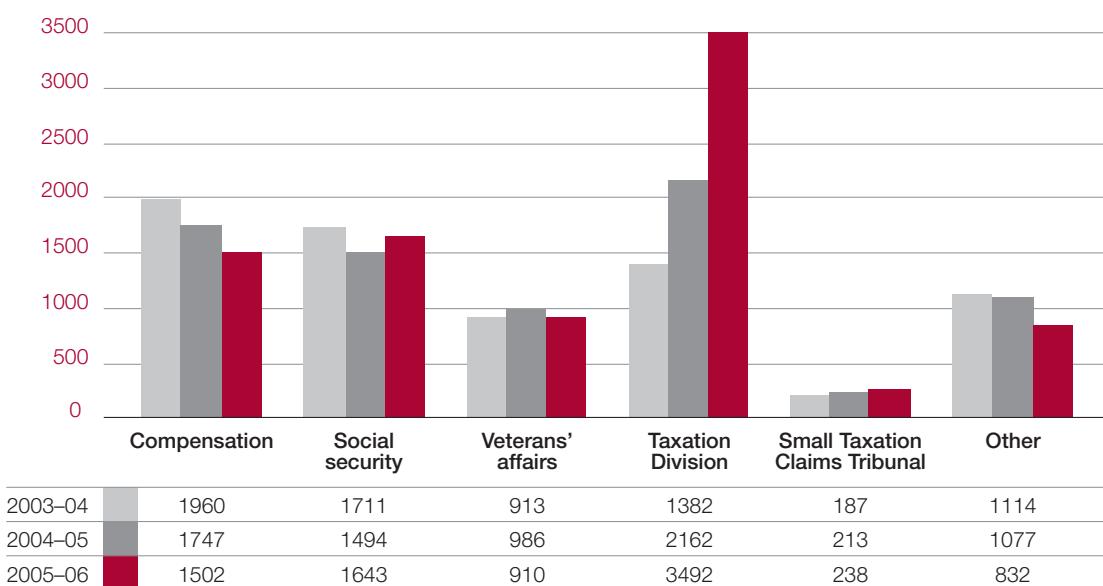
The number of lodgements in the workers' compensation jurisdiction in 2005–06 was 14 per cent lower than in 2004–05. This continues

a trend that has been evident since 2002–03. The Tribunal notes that the recent grant of licences to a number of corporations under the *Safety, Rehabilitation and Compensation Act 1988* may lead to an increase in applications in this jurisdiction in the future. During the reporting year, the Tribunal received its first applications relating to employees of Optus Administration Pty Ltd. The Tribunal will continue to monitor developments in workload in this jurisdiction.

The number of applications lodged in the veterans' affairs jurisdiction also decreased in 2005–06 by 8 per cent. However, the number of lodgements in 2005–06 is consistent with the number lodged in 2003–04. The Tribunal notes that it received its first application for review of a decision under the new *Military Rehabilitation and Compensation Act 2004* during the reporting period.

Table 3.1 in Appendix 3 provides more detail on the applications lodged in the reporting year for all jurisdictions. Chart 3.2 in Appendix 3 provides details in relation to the number of applications lodged in each registry.

CHART 3.2 APPLICATIONS LODGED IN MAJOR JURISDICTIONS



APPLICATIONS FINALISED

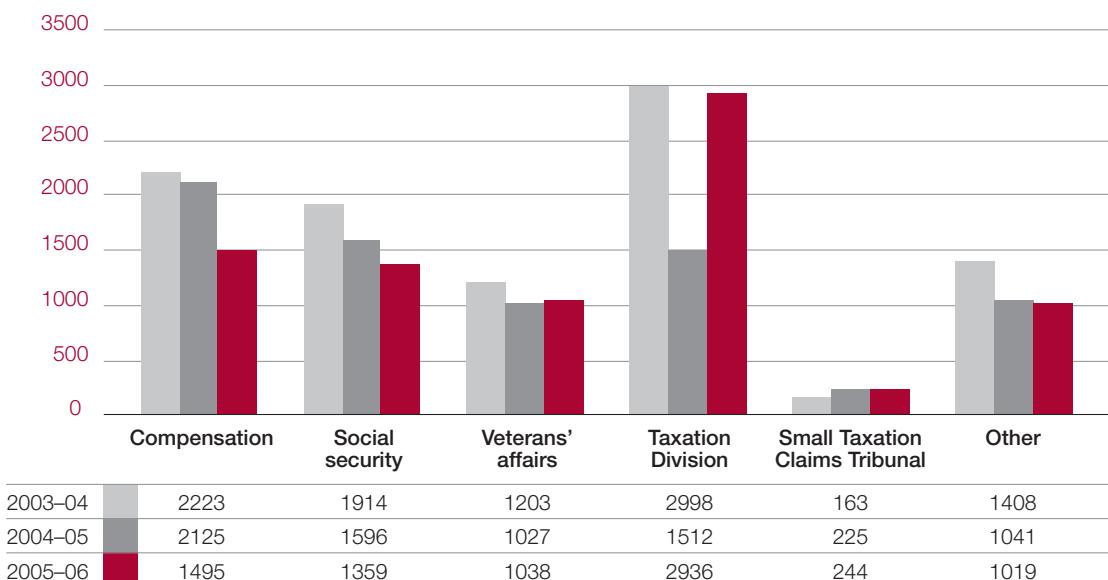
The number of applications finalised in the Tribunal's major jurisdictions in each of the past three years is shown in Chart 3.3.

The number of applications finalised in the Taxation Division in 2005–06 was 94 per cent higher than the number of finalisations in 2004–05. This increase is attributable to a significantly higher number of finalisations of taxation scheme applications. These constitute approximately two-thirds of all finalisations in the Taxation Division in 2005–06. The majority of applications were finalised by way of a negotiated agreement between the parties.

The number of applications finalised in the workers' compensation and social security jurisdictions in 2005–06 fell by 30 per cent and 15 per cent respectively. The smaller number of finalisations reflects the lower number of applications lodged in these jurisdictions during previous years.

Table 3.1 in Appendix 3 provides more details on applications finalised in the reporting year for all jurisdictions. Chart 3.3 in Appendix 3 provides information in relation to the number of applications finalised in each registry. Table 3.5 in Appendix 3 provides statistical information on the outcomes of matters finalised in the reporting year.

CHART 3.3 APPLICATIONS FINALISED IN MAJOR JURISDICTIONS



CURRENT APPLICATIONS

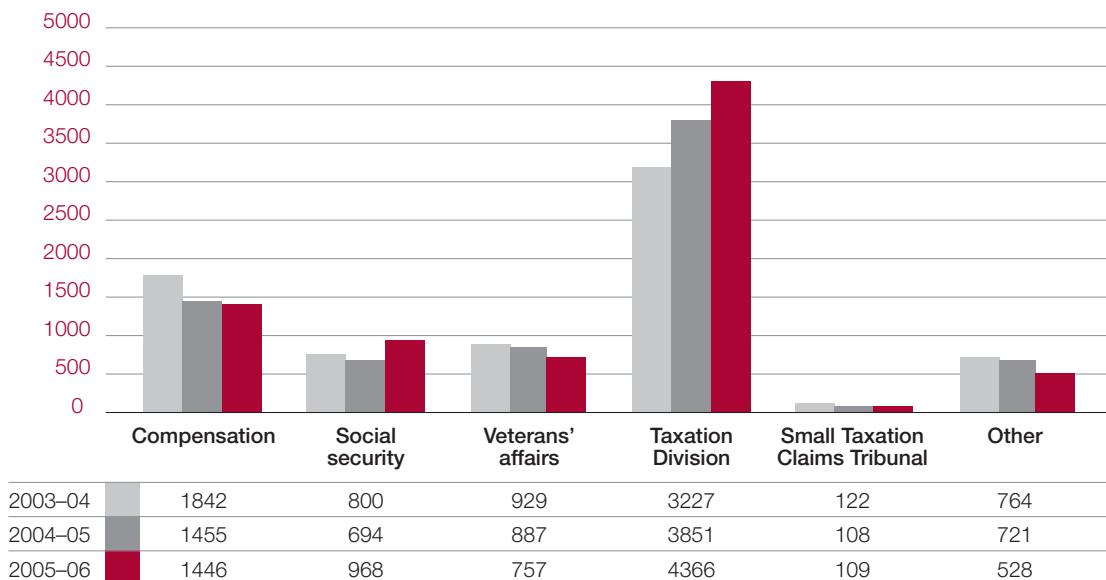
The number of applications current in the Tribunal's major jurisdictions at the end of the current and the previous two reporting periods is shown in Chart 3.4.

The overall increase in the number of applications current at the end of 30 June 2006 is related primarily to a 13 per cent rise in the number of current Taxation Division applications and a 39 per cent rise in the number of social security applications on hand. Increases in lodgements in both of these areas in 2005–06 have contributed to this result.

The number of current applications in the veterans' affairs jurisdiction at 30 June 2006 was 15 per cent lower than at the end of the previous reporting period. The number of applications on hand in the workers' compensation jurisdiction remained steady.

Table 3.6 in Appendix 3 provides information about the status of applications on hand at 30 June 2006. Chart 3.7 in Appendix 3 provides information about the number of applications current in each registry.

CHART 3.4 CURRENT APPLICATIONS BY MAJOR JURISDICTION



Our performance

OUTCOME AND OUTPUTS STRUCTURE

The Tribunal has one outcome specified in the 2005–06 Portfolio Budget Statements:

to provide aggrieved persons and agencies with timely, fair and independent merits review of administrative decisions over which the Tribunal has jurisdiction.

There is one output group relating to this outcome:

Output group 1.1 – Completed review of decisions

Output 1.1.1 – Applications finalised without a hearing

Output 1.1.2 – Applications finalised with a hearing.

TOTAL RESOURCING FOR OUTCOME

Table 3.5 shows how the 2005–06 budget appropriations for the Tribunal translate to total resourcing for the Tribunal's outcome, including administered expenses, revenue from the Government (appropriation), revenue from other sources and the total price of the outputs.

TABLE 3.5 TOTAL RESOURCES FOR OUTCOME 1 (\$'000)

| | Budget 2005–06 | Actual expenses 2005–06 | Variation | Budget 2006–07 |
|---|-------------------|-------------------------------|-----------|-------------------|
| <i>Departmental appropriations</i> | | | | |
| Output group 1.1 – Completed reviews of decisions | | | | |
| Output 1.1.1 – Applications finalised without a hearing | 12,389 | 12,905 | 516 | 13,213 |
| Output 1.1.2 – Applications finalised with a hearing | 16,507 | 15,991 | (516) | 17,607 |
| Total revenue from government (appropriations) contributing to the price of departmental outputs | 28,896 | 28,896 | – | 30,820 |
| <i>Revenue from other sources</i> | | | | |
| Output 1.1.1 – Applications finalised without a hearing | 465 | 565 | 100 | 530 |
| Output 1.1.2 – Applications finalised with a hearing | 620 | 700 | 80 | 706 |
| Total revenue from other sources | 1,085 | 1,265 | 180 | 1,236 |
| Total price of departmental outputs | 29,981 | 30,161 | 180 | 32,056 |
| (Total revenue from government and other sources) | | | | |
| Total estimated resourcing for Outcome 1 | 30,832 | 30,702 | (130) | 32,005 |
| (Total price of outputs and administered expenses) | | | | |

PERFORMANCE MEASURES

Table 3.6 sets out the performance measures for the Tribunal's outcome. The Tribunal's performance against these standards is described below.

PERFORMANCE RESULTS

Notification of review rights

The Tribunal provides advice and information to agencies and other decision-makers in relation to the notification of review rights. Advice and information is provided on request and where the Tribunal identifies issues of concern regarding notices of rights of review.

The Tribunal informs agencies and other decision-makers of the Code of Practice for Notification of Reviewable Decisions and Rights of Review determined under section 27B of the AAT Act and provides advice on the form and content of notices of rights of review. The Tribunal has developed a range of pro-forma statements of review rights.

The Tribunal provided advice and information of this kind to one agency during the reporting year.

TABLE 3.6 PERFORMANCE STANDARDS 2005–06

Effectiveness – Overall achievement of the outcome

| <i>Effectiveness indicators</i> | <i>Measures</i> |
|--|--|
| Those affected by administrative decisions within the Tribunal's jurisdiction are advised of their rights of review. | All decision-makers are provided with relevant material so they can advise people of their review rights. |
| Review processes are efficient and fair. | Parties to the review process are satisfied that the Tribunal's practices and procedures are efficient and fair, and complaints are dealt with efficiently and fairly. |
| Applications to the Tribunal are resolved in a timely manner. | Time standards are complied with. |

Performance information for departmental outputs

| <i>Output description</i> | <i>Performance measure</i> | |
|---|----------------------------|--|
| Output group 1.1 – Completed reviews of decisions | | |
| Output 1.1.1 – Applications finalised without a hearing | Price: | \$2,533 per completed application ^a |
| | Quality: | 85% of matters have first conference within 13 weeks |
| | Quantity: | 5,218 finalisations |
| Output 1.1.2 – Applications finalised with a hearing | Price: | \$11,933 per completed application ^a |
| | Quality: | 85% of matters to hearing within 40 weeks |
| | Quantity: | 1,476 finalisations |

^a Projection for 2005–06; see Table 3.7 for actual figures.

Review processes are efficient and fair

The Tribunal is committed to providing a high-quality merits review process, which is efficient and fair. This is reflected in the Organisational Plan 2005–06 and is embodied, in particular, in the goal relating to our users. The Tribunal's performance in relation to this goal is discussed in Chapter 4. Information on complaints made to the Tribunal and complaints-handling by the Tribunal is provided later in this chapter.

Price, quality and quantity of applications finalised

Table 3.7 sets out the Tribunal's performance against the effectiveness indicators and measures related to applications finalised, including the cost per finalised application.

The number of applications finalised by the Tribunal during the year, both with and without a hearing, was above the budget projections for 2005–06. As a result, the price per completed application was less than anticipated. Further information relating to the percentage of applications finalised without a hearing in the major jurisdictions is set out in Table 3.4 in Appendix 3.

The Tribunal exceeded the target of holding a first conference within 13 weeks of lodgement in 85 per cent of applications. However, the Tribunal continued to experience difficulties in meeting the target of holding a hearing within 40 weeks of lodgement in 85 per cent of applications. Comparative information relating to the Tribunal's performance against these targets in previous years is provided below in Table 3.10.

TIMELINESS OF REVIEW

As a means of monitoring its performance, the Tribunal has set time standards for the finalisation of applications generally and in relation to particular steps in the review process from receipt of an application to the delivery of a decision.

The Tribunal aims to finalise the majority of applications within 12 months of lodgement. It has set percentage targets for the finalisation of applications within this timeframe for the major jurisdictions. Information on compliance with these targets in the reporting period and in previous years is set out in Table 3.8.

TABLE 3.7 PERFORMANCE RESULTS 2005–06

Output group 1.1 – Completed reviews of decisions

| <i>Output description</i> | <i>Performance result</i> | |
|---|---------------------------|--|
| Output group 1.1 – Completed reviews of decisions | | |
| Output 1.1.1 – Applications finalised without a hearing | Price: | \$2,087 per completed application |
| | Quality: | 86% of matters had first conference within 13 weeks ^a |
| | Quantity: | 6,570 finalisations |
| Output 1.1.2 – Applications finalised with a hearing | Price: | \$11,170 per completed application |
| | Quality: | 50% of matters had hearing within 40 weeks ^a |
| | Quantity: | 1,521 finalisations |

a These figures do not include applications dealt with in the Small Taxation Claims Tribunal, which are subject to shorter time standards for this event.

Overall, 65 per cent of applications finalised during the reporting period were finalised within 12 months of lodgement. This result continued to be affected by the finalisation of a number of longstanding applications relating to taxation schemes that were deferred pending the outcome of test cases in the Federal Court and the High Court. Approximately 18 per cent of applications finalised in the Taxation Division were applications relating to taxation schemes lodged prior to 1 July 2003. Compared with the result for 2004–05, there has been a significant improvement in the proportion of Taxation Division applications finalised within 12 months.

Excluding finalisations in the Taxation Division from the overall figures, there has been a small improvement in the percentage of applications finalised within 12 months of lodgement during this reporting period. Seventy-five per cent of applications were finalised within this timeframe.

In relation to the other major jurisdictions, the Tribunal met its target in the social security jurisdiction but fell short of its target in the veterans' affairs and workers' compensation jurisdictions by 14 per cent and 13 per cent respectively. The result for the veterans' affairs jurisdiction is a significant improvement over previous reporting periods. The percentage of workers' compensation applications finalised within 12 months is consistent with the result for 2003–04.

The Tribunal aims to finalise applications dealt with in the Small Taxation Claims Tribunal within 12 weeks or 84 days of lodgement. Table 3.9 shows that the percentage of Small Taxation Claims Tribunal applications finalised within 84 days has declined marginally since the previous year.

TABLE 3.8 PERCENTAGE OF APPLICATIONS FINALISED WITHIN 12 MONTHS

| Jurisdiction | Target % | 2003–04 % | 2004–05 % | 2005–06 % |
|--|----------|-----------|-----------|-----------|
| All applications | — | 54 | 66 | 65 |
| All applications (excluding Taxation Division) | — | 72 | 74 | 75 |
| Compensation | 75 | 62 | 64 | 62 |
| Social security | 90 | 90 | 91 | 91 |
| Taxation Division | 75 | 13 | 35 | 49 |
| Veterans' affairs | 80 | 56 | 59 | 66 |

Note: These figures do not include applications dealt with in the Small Taxation Claims Tribunal.

TABLE 3.9 PERCENTAGE OF SMALL TAXATION CLAIMS TRIBUNAL APPLICATIONS FINALISED WITHIN 84 DAYS

| | 2003–04 % | 2004–05 % | 2005–06 % |
|--------------------------------|-----------|-----------|-----------|
| Small Taxation Claims Tribunal | 49 | 37 | 36 |

The Tribunal has set time standards for the following intermediate steps in the review process:

- the dispatch to the decision-maker of a notice that an application has been received and receipt of the statement of reasons and documents required under section 37 of the AAT Act;
- the receipt of an application and the holding of a first conference;
- the receipt of an application and the holding of a hearing; and
- the last day of hearing or the date of receipt of further material after a hearing and delivery of a decision by the Tribunal.

The first of the steps is within the control of decision-makers. Responsibility for the timeliness of the second and third steps is shared between the Tribunal and the parties. The fourth step is within the control of the Tribunal.

Table 3.10 shows performance against these intermediate time standards in relation to all applications other than applications dealt with in the Small Taxation Claims Tribunal, which are subject to different time standards.

There has been a significant improvement in relation to the timely receipt of Section 37 Documents, which minimises delay in the early stages of the

review process. The Tribunal has maintained its standard in relation to the timing of the first conference. While there has been only a marginal improvement in relation to the timing of hearings, there has been a marked improvement in the proportion of decisions delivered in a timely manner.

The President and the Registrar monitor closely the Tribunal's performance against time standards. Detailed workload and performance statistics were provided to State and Territory Coordinators and senior staff on a quarterly basis. The following initiatives undertaken during the reporting year were aimed at improving the timeliness of review:

- maintenance of a national system of monitoring and addressing non-compliance with legislative requirements and Tribunal directions;
- regular review of matters outstanding for longer than two years to identify systemic issues;
- project management of taxation scheme matters on a national level; and
- development of an alternative dispute resolution referral policy with a view to timely and effective settlement of appropriate matters.

Further information about these initiatives and other initiatives designed to improve the Tribunal's review processes is contained in Chapter 4.

TABLE 3.10 INTERMEDIATE TIMELINESS STATISTICS FOR APPLICATIONS OTHER THAN SMALL TAXATION CLAIMS TRIBUNAL APPLICATIONS

| Step | Time standard (days) | 2003–04 % | 2004–05 % | 2005–06 % |
|--|-------------------------|-----------------|-----------------|-----------------|
| Dispatch of notice to decision-maker to receipt of Section 37 Documents | 35 | 80 | 77 | 83 |
| Receipt of application to first conference | 91 | 87 | 86 | 86 |
| Receipt of application to first day of hearing | 280 | 54 | 48 | 50 |
| Last day of hearing or date of receipt of further material to delivery of decision | 60 | 57 ^a | 62 ^b | 67 ^b |

a This figure may not include applications in which further material or submissions were to be provided by one or more of the parties following the last day of a hearing. Decisions in these applications may have been delivered within 60 days of receiving that further material or submissions.

b Where multiple applications have been heard together, they have been treated as one application for the purpose of compiling this figure for 2004–05 and 2005–06.

External scrutiny

Tribunal decisions are subject to external scrutiny by way of judicial review. The Tribunal's operations more generally are subject to external scrutiny by way of complaints to the Commonwealth Ombudsman, requests under the *Freedom of Information Act 1982*, inquiries undertaken by parliamentary committees and audits undertaken by the Australian National Audit Office. This section provides a summary of activity in relation to these forms of scrutiny during the reporting period.

APPEALS FROM TRIBUNAL DECISIONS

A party may appeal to the Federal Court, on a question of law, from any final decision of the Tribunal pursuant to section 44 of the AAT 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 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 of the Constitution.

Applications may be made to the Federal Court, the Federal Magistrates Court or the High Court.

In 2005–06, 142 appeals were lodged with the Federal Court under section 44 of the AAT Act.¹ There were 23 applications for judicial review made under other enactments, six of which related to interlocutory decisions. Table 3.10 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, 120 appeals lodged under section 44 of the AAT Act and 26 applications for judicial review under other enactments were finalised. The Tribunal's decision was set aside in 38 cases. This constitutes 26 per cent of the total number of appeals finalised during the reporting period and less than one per cent of

all applications finalised by the Tribunal during the reporting year.

Tables 3.11 and 3.12 in Appendix 3 provide further information in relation to appeals determined during the reporting year and the outcomes of those appeals.

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 five requests for access to documents under the *Freedom of Information Act 1982* in 2005–06. All requests were finalised during the reporting period within 30 days of receipt. Two requests were granted in full, two were granted in part and one application was refused.

The Tribunal did not receive any requests to amend or annotate records and no requests were carried over from previous years.

The statement required to be published in this report under Section 8 of the Freedom of Information Act is at Appendix 7.

OMBUDSMAN

The Ombudsman received two complaints relating to the Tribunal during the reporting year, substantially fewer than the 11 complaints made in the previous year. The Ombudsman investigated one complaint but made no finding of administrative deficiency on the part of the Tribunal. The second complaint was resolved with an explanation to the complainant and the Ombudsman.

The Tribunal and the Ombudsman have in place administrative arrangements to facilitate referral of matters between the two bodies where each might have jurisdiction.

¹ In some circumstances, a party may lodge an application seeking relief under both section 44 of the AAT Act and under another enactment. These applications are treated as section 44 appeals for statistical purposes.

REPORTS BY AUDITOR-GENERAL OR PARLIAMENTARY COMMITTEES

During the reporting year, the Auditor-General released a report on an audit undertaken in relation to the reporting of expenditure on consultants by agencies covered by the *Financial Management and Accountability Act 1997: Reporting of Expenditure on Consultants*, Audit Report No. 27 2005–06. The Auditor-General identified some deficiencies on the part of the Tribunal in the reporting of consultancies in its annual reports and the notification of contracts in accordance with the Gazette Publishing System. The Tribunal has taken steps to ensure that these problems do not occur in the future. Omissions or incorrect information in previous annual reports have been corrected in this annual report.

The Tribunal's operations were not the subject of any parliamentary committee report during the reporting period.

Complaints to the Tribunal

The Tribunal's Service Charter sets out how a person may make a complaint to the Tribunal about its service. It also sets out the standards for responding to complaints. Complaints may be made verbally or in writing.

Where 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. The Tribunal aims to respond to complaints submitted in a language other than English within 30 working days. If additional 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. Where appropriate, a complaint will result in an apology or a change to practice and procedure.

During 2005–06, the Tribunal received written and verbal complaints from 39 individuals.

Two complainants each lodged two complaints and one complainant lodged four complaints. The issues raised in the complaints related to:

| | |
|---|----|
| Conduct of conferences | 2 |
| Conduct of members of the Tribunal | 8 |
| Complaints about Tribunal decisions | 14 |
| Complaints about timeliness of Tribunal decisions | 5 |
| Complaints about Tribunal decisions available on the internet | 5 |
| General procedural issues | 13 |

In all cases, the Tribunal provided an initial response within the 20-day period. The average number of days from complaint to final response was 10 working days. The longest period of time taken to investigate and respond to a complaint was 44 days. One complaint was outstanding at the end of the reporting period.

The Tribunal does not measure whether a complainant believes that their complaint was resolved. Forty per cent of complainants wrote again to the Tribunal after receiving a response to their complaint. In most instances, these complainants were provided with further information to address any outstanding concerns.

Additional functions conferred on Tribunal members

WARRANTS, CONTROLLED OPERATIONS AND OTHER FUNCTIONS

During the course of the reporting period, 39 members of the Tribunal were nominated for the purposes of issuing telecommunications interception warrants under the *Telecommunications (Interception and Access) Act 1979*. Thirty-one members were appointed as issuing authorities in relation to stored communications warrants under that Act. Thirty-nine members were authorised to exercise powers under the *Surveillance Devices Act 2004* and 35 members were nominated to review certificates authorising controlled operations under the *Crimes Act 1914*. Nine presidential

members were appointed as issuing authorities for continued preventative detention orders under the *Criminal Code*.

Table 3.11 sets out the number of occasions on which Tribunal members considered applications under any of these Acts in 2004–05 and 2005–06. There was a marginal increase in the number of applications considered in 2005–06. No requests were received for Tribunal members to exercise powers under the *Criminal Code*, the *Education Services for Overseas Students Act 2000* or the *Migration Act 1958*.

The Tribunal is flexible in relation to the performance of these functions and members are available outside standard business hours.

In the reporting period, out-of-hours appointments were arranged on 38 occasions. ‘Out-of-hours’ means before 9am or after 5pm on weekdays or at any time on the weekend or on a public holiday.

PROCEEDS OF CRIME EXAMINATIONS

During the course of 2005–06, 40 members of the Tribunal were approved examiners for the purposes of conducting examinations under the *Proceeds of Crime Act 2002*.

Chart 3.12 sets out the number of examination sessions held during the last three financial years. The number of examinations held in 2005–06 was 53 per cent lower than the number of examinations conducted in the previous reporting period.

**TABLE 3.11 APPLICATIONS RELATING TO WARRANTS, CONTROLLED OPERATIONS AND OTHER FUNCTIONS
CONSIDERED BY TRIBUNAL MEMBERS**

| | 2004–05 | 2005–06 |
|-----------------------------|--------------------|----------------|
| Number of appointments held | 1,628 ^a | 1,702 |

a Please note that this figure differs from the figure given in the 2004–05 Annual Report which was 1,755. An audit revealed that incorrect information had been entered on three statistical returns for that reporting period.

CHART 3.12 PROCEEDS OF CRIME EXAMINATIONS

