

# CHAPTER 3

## OUR PERFORMANCE



The Tribunal manages its workload by responding to and anticipating changes in the number and nature of applications. Performance targets define standards for dealing with applications, and assist the Tribunal meet the outcome and program requirements defined in the Portfolio Budget Statements.

### WORKLOAD OVERVIEW

The Tribunal received 5,437 applications and finalised 6,177 applications in 2010-11. There were 3,858 applications current at 30 June 2011, 15 percent fewer than a year earlier.

The number of applications lodged during the reporting year was six percent lower than in 2009-10, continuing the downward trend of recent years. The number of finalisations was 17 percent lower than in the previous year, as shown in Chart 3.1.

#### Workload by jurisdiction

Applications for review of family assistance and social security decisions were the most common type of applications lodged with the Tribunal in 2010-11, constituting 30 percent of all lodgements. The number of applications relating to taxation and workers' compensation was also high, at 22 percent and 21 percent of all lodgements respectively.

The Tribunal finalised more applications than were lodged in 2010-11 in all major jurisdictions, leading to the 15 percent reduction in number of matters on hand at year-end, as shown in Chart 3.2.

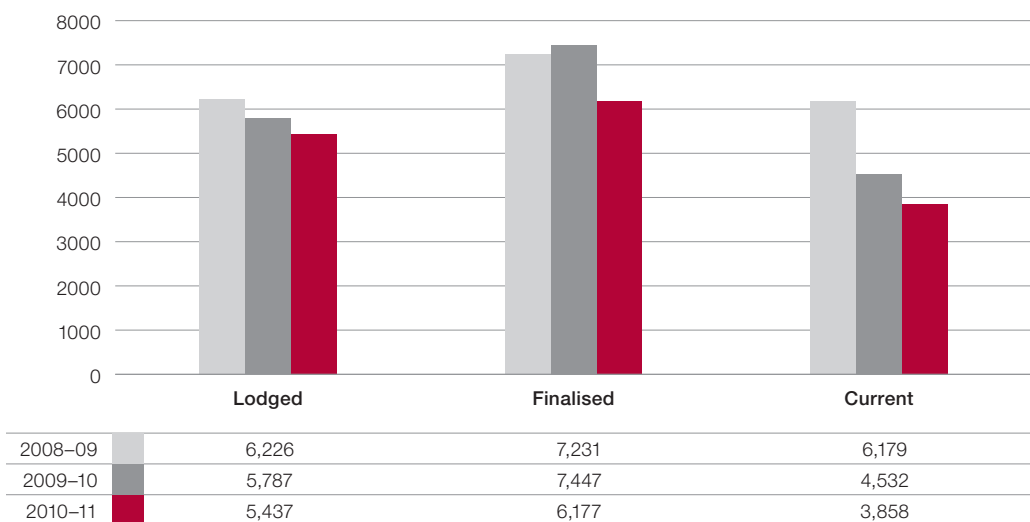
More detailed information on the types of applications lodged and finalised, and the outcomes of matters finalised during the reporting year is in Appendix 3.

#### Social security

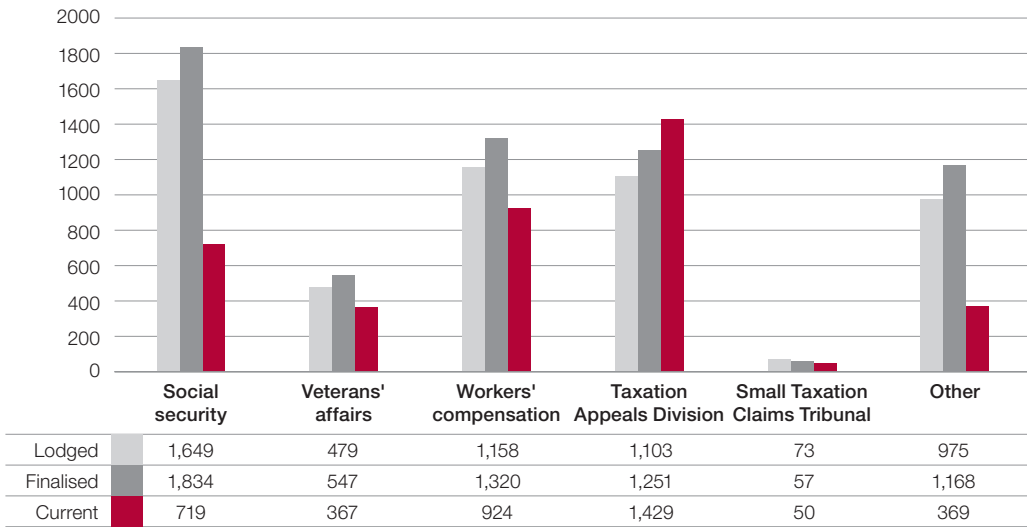
The number of social security applications made to the Tribunal in 2010-11 was 21 percent lower than in 2009-10, as shown in Chart 3.3. In particular, there were fewer applications in relation to decisions involving overpayment and debt recovery, participation failures by recipients of Newstart Allowance, and review of Family Tax Benefit decisions. Applications lodged by the departments that administer family assistance and social security entitlements dropped to 31 in 2010-11, down from 65 in the previous year.

The number of applications finalised in 2010-11 was 21 percent lower than in 2009-10. The number of applications on hand at 30 June 2011 was also 21 percent lower than a year earlier. These trends reflect the drop in the number of applications lodged.

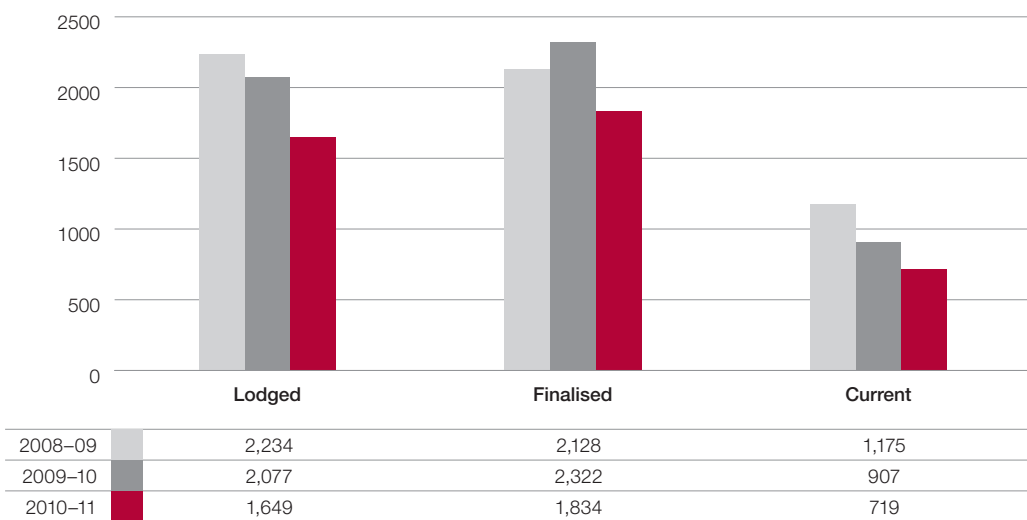
**Chart 3.1** Applications lodged, finalised and current at 30 June



**Chart 3.2** Applications lodged, finalised and current in 2010–11 – by jurisdiction



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



**Veterans’ affairs**

The number of applications lodged in the veterans’ affairs jurisdiction fell by two percent in 2010–11. The number of applications under the *Veterans’ Entitlements Act 1986* declined by seven percent. While there was a small increase in the number of applications under the *Military Rehabilitation and Compensation Act 2004*, they remain a relatively small proportion of total lodgements.

The number of applications finalised in the veterans’ affairs jurisdiction in 2010–11 decreased by 12 percent, and the number of applications current at 30 June 2011 fell by 13 percent. These changes reflect the general decline in lodgements over the last few years, as shown in Chart 3.4.

**Workers’ compensation**

There was a six percent decline in lodgements in the workers’ compensation jurisdiction in 2010–11, largely attributable to a 24 percent reduction in the number of applications for review of decisions made by Comcare. There were notable increases, however, in the number of applications for review of decisions made by Telstra and TNT Australia, and under the seafarers’ compensation scheme.

While fewer applications were finalised in 2010–11 than in the previous reporting year, finalisations remained higher than lodgements, resulting in a 15 percent fall in the number of compensation applications on hand at 30 June 2011, as shown in Chart 3.5.

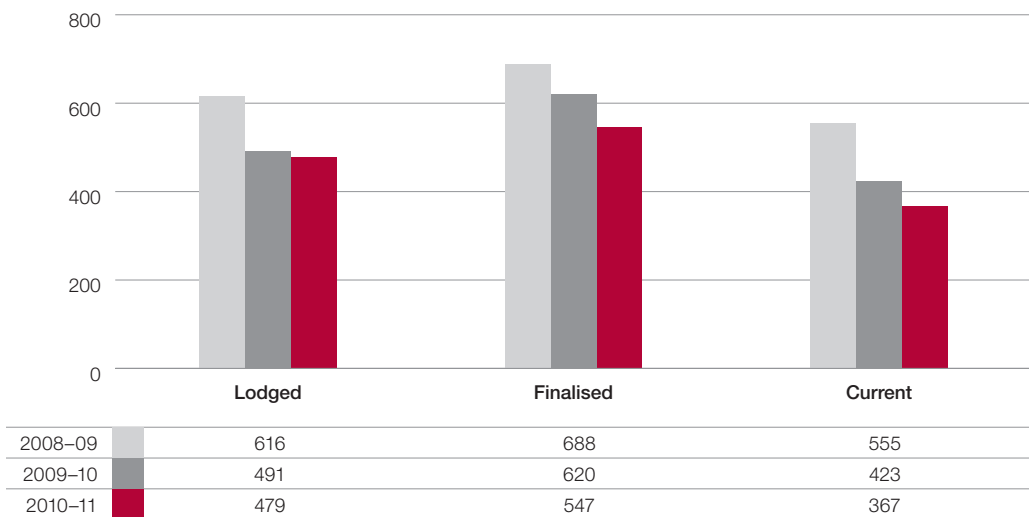
**Taxation**

The number of lodgements in the Taxation Appeals Division rose by 11 percent in 2010–11 to be similar to the number of lodgements in 2008–09. Most of this increase is related to applications relating to decisions about income tax. There were no new lodgements relating to tax schemes.

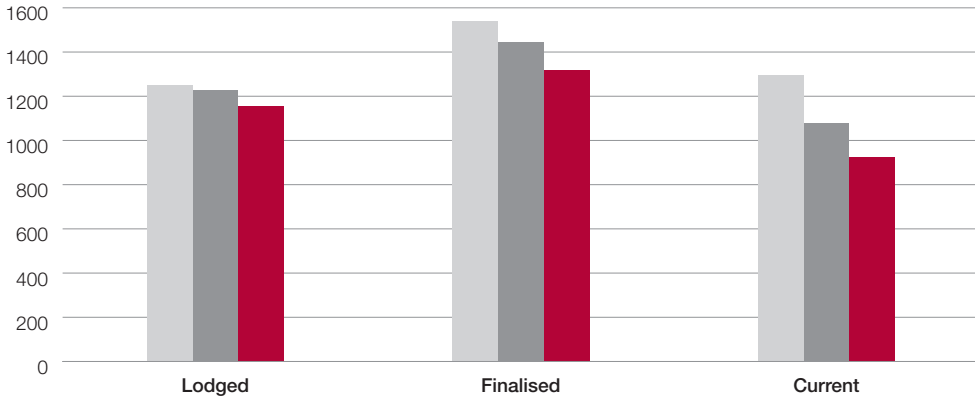
While more applications were finalised than were lodged, there was a 38 percent fall in the number of finalised applications as a result of the very high number of tax scheme applications that had been finalised in 2009-10. Only a small number of tax scheme applications remain to be completed.

There was a small increase in the number of lodgements in the Small Taxation Claims Tribunal in 2010–11, but the total number remains low, as shown in Chart 3.6.

**Chart 3.4** Applications lodged, finalised and current – veterans’ affairs

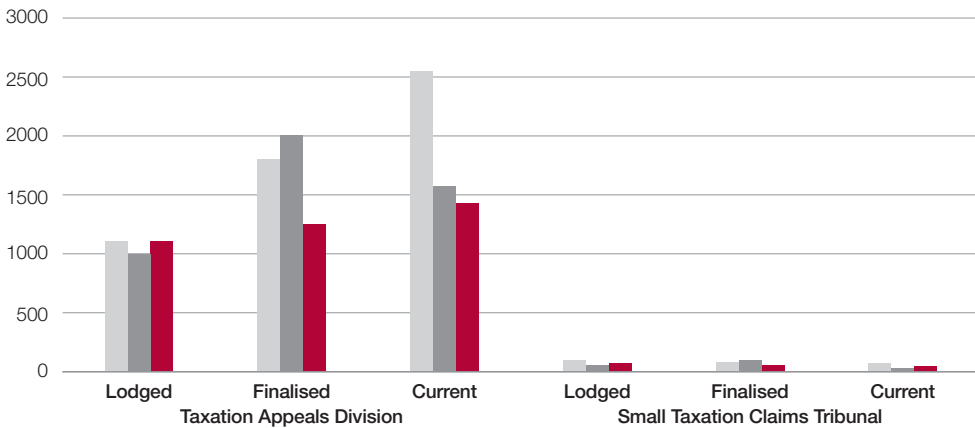


**Chart 3.5** Applications lodged, finalised and current – workers' compensation



Year	Lodged	Finalised	Current
2008-09	1,250	1,540	1,297
2009-10	1,226	1,444	1,081
2010-11	1,158	1,320	924

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



Year	Taxation Appeals Division			Small Taxation Claims Tribunal		
Year	Lodged	Finalised	Current	Lodged	Finalised	Current
2008-09	1,110	1,801	2,545	97	83	68
2009-10	994	2,008	1,571	59	98	31
2010-11	1,103	1,251	1,429	73	57	50



## PERFORMANCE

### Outcome and program structure

The Tribunal has one outcome specified in the 2010–11 Portfolio Budget Statements:

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

The Tribunal is a single program agency. The primary deliverable is completed reviews 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 2010–11. 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 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 during the pre-hearing process, including by way of an agreed resolution following alternative dispute resolution, rather than by decision following a hearing.

**Table 3.7** Performance standards and results, 2010–11

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%      91%
	<i>Quantity:</i> finalisations	5,218      4,902
	<i>Price:</i> per completed application	\$3,043      \$3,362
Program 1.1.2 — Applications finalised with a hearing	<i>Quality:</i> matters to hearing within 40 weeks	85%      59%
	<i>Quantity:</i> finalisations	1,476      1,275
	<i>Price:</i> per completed application	\$14,165      \$15,754

a Projection for 2010–11

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

Ninety-one percent of first conferences in 2010–11 were held within 13 weeks of lodgement, four percentage points higher than the result for 2009–10. The Tribunal exceeded the performance standard in the Portfolio Budget Statements by six percentage points, as shown in Tables 3.7 and 3.8.

The number of applications finalised by the Tribunal without a hearing was lower than the budget projections for 2010–11, leading to a higher 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 proportion of hearings held within 40 weeks of lodgement of the application was seven percentage points higher than in 2009–10, but still substantially lower than the 85 percent standard in the Portfolio Budget Statements.

There are a number of reasons why a hearing may not be held within 40 weeks of an application being lodged. The pace that applications progress through the pre-hearing stage is heavily influenced by the time the parties need to obtain expert 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 by 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.

#### *Time standards for steps in the review process*

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 those matters that go to hearing do so within 40 weeks, as shown in Table 3.7.

Two other steps are: the time for the decision-maker to lodge the documents relating to the decision under review that are 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 2010–11 and the past two reporting periods are shown in Table 3.8.

**Table 3.8** Performance against time standards

Step	Time standard (weeks)	2008–09 %	2009–10 %	2010–11 %
1 Receipt of Section 37 Documents after notifying decision maker of application	5	85 <sup>a</sup>	87 <sup>a</sup>	85
2 Receipt of application to first conference	13	88	87	91
3 Receipt of application to first day of hearing	40	46	52	59
4 Last day of hearing or date of receipt of further material to delivery of decision	8.4 <sup>b</sup>	73	82	83

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.

The proportion of applications in which the Section 37 Documents were lodged within five weeks was slightly lower in 2010-11 than in the previous year. The Tribunal improved its timeliness in delivering decisions following a hearing in 2010-11, with 83 percent of decisions delivered within the 60-day time standard.

**Time standards for finalising applications**

The Tribunal aims to complete the majority of applications within 12 months of lodgement. Targets have been set for each of the major jurisdictions. The Tribunal's performance for 2010-11 and the two previous reporting years is in Table 3.9.

The Tribunal significantly improved its timeliness in 2010-11, finalising 72 percent of all applications within 12 months of lodgement and 85 percent within 18 months. There were improvements in all of the Tribunal's major jurisdictions – particularly in the workers' compensation jurisdiction and the Taxation Appeals Division.

The proportion of applications finalised within 12 months in the social security jurisdiction exceeded the 90 percent target for the year, a slight improvement over the previous year. Sixty-six percent of all social security applications were finalised within six months of lodgement, and 97 percent within 18 months.

The Tribunal's focus on improving case management in the workers' compensation jurisdiction led to an 11 percentage point improvement in the proportion of matters finalised within 12 months in 2010-11. Eighty-six percent of applications were finalised within 18 months, an eight percentage point improvement over 2009-10.

Timeliness also improved in the veterans' affairs jurisdiction in 2010-11. The proportion of applications finalised within 12 months in 2010-11 was three percentage points higher than the previous year. Particular challenges can arise in this jurisdiction in obtaining historical material relevant to the review. Eighty-five percent of applications were finalised within 18 months, slightly more than in 2009-10.

There was a 10 percentage point improvement in the proportion of applications finalised within 12 months in the Taxation Appeals Division in 2010-11. Fifty-four percent of applications were finalised within 18 months. These results were affected, to some degree, by the finalisation of the bulk of the remaining applications relating to tax schemes that had been commenced several years ago. With these applications now largely complete, the Tribunal will focus on improving the management and timeliness of general taxation matters in 2011-12.

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

Jurisdiction	Target %	2008-09 %	2009-10 %	2010-11 %
All	—	62	63	72
Social security	90	88	90	91
Veterans' affairs	80	65	63	66
Workers' compensation	75	53	57	68
Taxation Appeals Division	75	29	26	36

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

	Target	2008-09 %	2009-10 %	2010-11 %
Percentage of applications finalised within 12 weeks	12 weeks	18	22	34



While there were improvements in timeliness, the Tribunal only met its target for completing applications within 12 months in relation to social security cases. The reasons identified on page 23 about why the Tribunal may not hold a hearing within 40 weeks of being lodged are also relevant in explaining why an application may not be finalised 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 improved by 12 percentage points, as shown in Table 3.10. The Tribunal's experience is 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.

The Tribunal maintained its focus on improving case management practices in 2010–11 (see Chapter 4 for more detail), monitored the time that applications spend in each of the major stages of a review and regularly conducted file audits on older cases. The Tribunal will continue to seek to identify sources of avoidable delay, 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 2010–11, 98 appeals made pursuant to section 44 of the Administrative Appeals Tribunal Act were lodged with the Federal Court. There were 23 applications for judicial review made under other enactments, 18 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, 93 appeals lodged under section 44 of the Administrative Appeals Tribunal Act and 21 applications for judicial review under other enactments were finally determined in the courts. The Tribunal's decision was set aside in 30 cases, being 26 percent of all appeals determined and less than one percent of all applications that the Tribunal finalised in the reporting year. The proportion of Tribunal decisions set aside on appeal in 2010–11 was two percentage points lower than in 2009–10.

Table A3.10 in Appendix 3 offers 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 one request for access to documents under the Freedom of Information Act in 2010–11. One request made in 2009–10 was outstanding at the beginning of the reporting period.

Both of these requests were finalised in 2010-11. One request was granted in full and the other was refused on the basis that no relevant documents existed.

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

For the section 8 statement – required to be published in this annual report under the Freedom of Information Act as in force before 1 May 2011 – see Appendix 8.

### Information publication scheme

From 1 May 2011, agencies subject to the Freedom of Information Act are required to publish information to the public as part of the Information Publication Scheme (IPS). This requirement is in Part II of the Freedom of Information Act and has replaced the former requirement to publish a section 8 statement in an annual report. The IPS requires the Tribunal to publish a broad range of information on its website ([www.aat.gov.au](http://www.aat.gov.au)) including an agency plan showing what information is published in accordance with the IPS requirements.

### Ombudsman

During 2010-11, the Commonwealth Ombudsman received 18 approaches concerning the Tribunal, three more than in the previous reporting year.

The Ombudsman investigated one approach, making no finding of administrative deficiency.

### Complaints to other bodies

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

### Complaints to the Tribunal

Complaints may be made orally or in writing. Complaints relating to Tribunal members are handled by the President personally. Complaints about staff members or other matters are dealt with by the Registrar, the Assistant Registrar or a District Registrar.

When a complaint is made in person or by telephone, the Tribunal attempts to resolve it immediately. The Tribunal aims to respond to written complaints within 20 working days, or 30 working days if the complaint is submitted in a language other than English. The length of time before a final response is provided depends on the extent of investigation which is necessary. 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.

If a complaint is upheld, possible responses include an apology, a change to practice and procedure or consideration of additional training and development for Tribunal personnel.

During 2010-11, the Tribunal received 25 written complaints and two oral complaints from 22 individuals. Table 3.11 gives the number of complaints made over the last three years.

The 27 complaints made in 2010-11 were about the issues shown in Table 3.12. Most complaints raised multiple issues.

**Table 3.11** Complaints to the Tribunal

	2008–09	2009–10	2010–11
Number of complaints made	25	32	27

**Table 3.12** Issues raised in complaints to the Tribunal

Issue	Number of complaints*
Conduct of Tribunal members	14
General procedural issues	13
Tribunal decisions	9
Other parties to Tribunal proceedings	4
Conduct of conferences	4
Conduct of Tribunal staff	4
Refund of fees	1
Timeliness of Tribunal decision following a hearing	1
<b>Total</b>	<b>50</b>

\* A single complaint may raise multiple issues

The Tribunal provided a substantive response to 21 complaints in 2010–11, responding within 20 working days to all but four of the complaints (81 percent). The average number of days from complaint to final response was 14 working days.

The Tribunal found that it could have handled matters more appropriately in relation to four complaints which raised issues concerning delay in the review process, vacation of a listing with a self-represented party and the conduct of Tribunal personnel. The Tribunal offered an apology in each case and raised the matters with relevant personnel.

The Tribunal does not measure whether a complainant believes his or her complaint was resolved. Three complainants wrote again to the Tribunal after receiving an initial response to their complaint. They were given further information to address any outstanding concerns.

**Table 3.13** Service standards

Commitment	Result for 2010-11
<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 strive to be polite, respectful and courteous and use language that is clear and understandable so that Tribunal users can understand the processes. No complaints were upheld in relation to issues of this kind.
<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 121 hearings and six 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 — 5,455 other alternative dispute resolution processes — 8 directions hearings — 1,685 interlocutory hearings — 185 hearings — 50.
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. Interpreters are provided free of charge.
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 6 weeks of an application being lodged.	Data collated for Outreach, for 951 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>	
A private conference will usually be held within 10 weeks of an application being lodged.	78 percent of applications had a first conference within 10 weeks of lodgement, up from 69 percent in 2009-10.
<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.	83 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 82 percent in 2009-10 (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 3.14 shows the increase in the number of occasions on which Tribunal members considered applications under any of these Acts over the past three years.

The Tribunal is flexible in performing these functions and members are available outside standard business hours. In the reporting period, there were 129 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. Table 3.15 lists the number of examination sessions conducted by Tribunal members in the last three years.

**Table 3.14** Applications relating to warrants, controlled operations and other functions considered by Tribunal members

	2008–09	2009–10	2010–11
Number of occasions on which applications considered	1,877	1,924	2,160

**Table 3.15** Examinations held under the *Proceeds of Crime Act 2002*

	2008–09	2009–10	2010–11
Number of examination sessions held	24	18	12

