

SENATE STANDING COMMITTEE ON LEGAL AND CONSTITUTIONAL AFFAIRS  
ADMINISTRATIVE APPEALS TRIBUNAL

**Question No. 58**

**Senator Barnett asked the following question at the hearing on 24 May 2007:**

Please provide the general reasons for the delay for those decisions that are made outside the target time frame of 12 months.

**The answer to the honourable senator's question is as follows:**

The Tribunal's case management process pursues the dual goals of attempting to resolve matters by agreement between the parties where possible while ensuring that appropriate steps are taken to promptly prepare for hearing those matters that do not settle. In most applications, the parties attend one or more conferences conducted by a Conference Registrar or Tribunal member. Conferences provide an opportunity for the Tribunal and the parties to:

- discuss and define the issues in dispute;
- identify any further supporting material that parties may wish to obtain;
- explore whether the matter can be settled;
- discuss with the parties the future conduct of the application, including whether another form of ADR may assist in resolving the matter.

Where an application is not resolved, the Tribunal conducts a hearing and makes a decision.

The Tribunal aims to finalise applications within 12 months of lodgement. Applications may be finalised in a range of ways, including the following:

- the Tribunal may make a decision to affirm, vary or set aside the reviewable decision following a hearing;
- the Tribunal may make a decision in accordance with terms of agreement lodged by the parties;
- the applicant may withdraw the application;
- the Tribunal may dismiss the application without reviewing the decision in a range of circumstances.

The Tribunal has set targets for the proportion of applications in the four major jurisdictions that are to be finalised within 12 months of application. The following table sets out the percentage of applications in the Tribunal's four major jurisdictions that were finalised within 12 months of lodgement in 2004-05, 2005-06 and the first 6 months of 2006-07:

<b>Jurisdiction (Target % rate for finalisation within 365 days)</b>	<b>2004-05</b>	<b>2005-06</b>	<b>6 months to 31/12/06</b>	<b>% Change from 2005-06</b>
Compensation (75% target)	64%	62%	63%	+ 1%
Social security (90% target)	91%	91%	91%	-
Veterans' affairs (80% target)	59%	66%	67%	+ 1%
Taxation Division (excluding STCT) (75% target)	35%	49%	42%	- 7%

The Tribunal notes that approximately 18% of applications finalised in the Taxation Division in the 6-month period ending 31 December 2006 were applications relating to taxation scheme matters lodged prior to 1 July 2003. A further 22% were applications relating to taxation scheme matters lodged between 1 July 2003 and 1 July 2005. The Tribunal has been working to finalise the longstanding applications relating to taxation schemes.

There are a range of reasons why applications may take longer than 12 months to finalise. In general, it is due to the parties requiring additional time to prepare their matter rather than the Tribunal being unable to list an ADR process or a hearing in a timely manner.

In the veterans' affairs and workers' compensation jurisdictions, parties often seek additional expert medical evidence. There can be delays in obtaining appointments and receiving reports from experts, particularly in smaller cities where there are fewer specialists. Medical evidence obtained by the parties may reveal that further investigation is required which adds to the time spent gathering relevant evidence.

Particular issues arise in the veterans' affairs jurisdiction where many applicants are elderly veterans or war widows. It can take time for the parties to obtain statements and other evidence, particularly where relevant events have occurred up to 50 years in the past. If veterans are unwell, there can be further delays in obtaining medical evidence.

In the workers' compensation jurisdiction, applicants may lodge further claims for compensation during the course of the review process, sometimes as a result of investigations undertaken in the application before the Tribunal. In some cases, it is appropriate to await the outcome of the decision-making process in relation to the further claims and, if further applications are made to the Tribunal, deal with all matters at the one time. This issue can also arise in the taxation jurisdiction. It may be appropriate to await the making of further decisions within the Australian Taxation Office before dealing with an application that is before the Tribunal.

Other reasons for delay apply more generally.

- On occasion, applications may be held in abeyance pending the outcome of a test case in the Federal Court or the High Court. This occurred in relation to a large number of applications relating to taxation schemes.
- Delays can occur when parties are not in a position to proceed because of illness or other adverse circumstances.
- Issues can arise in listing and completing hearings in a timely manner. In some applications, hearings may be delayed because the parties or relevant witnesses are unavailable for some time. It can also occur that hearings are not concluded within the allotted time and further hearing days must be listed which are suitable to the Tribunal and the parties.
- Some applications may take longer than 12 months to finalise because decisions are not delivered within 60 days after they have been reserved in accordance with the Tribunal's time standard.