

2002-2003-2004

The Parliament of the  
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

EXPOSURE DRAFT (21/05/2004)

**Administrative Appeals Tribunal  
Amendment Bill 2004**

**No.     , 2004**

*(Attorney-General)*

**A Bill for an Act to amend the *Administrative  
Appeals Tribunal Act 1975*, and for other purposes**

EXPOSURE DRAFT (21/05/2004)



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## Contents

1	Short title.....	1
2	Commencement.....	1
3	Schedule(s).....	3
<b>Schedule 1—Amendments</b>		<b>4</b>
	<i>Administrative Appeals Tribunal Act 1975</i>	4
	<i>Archives Act 1983</i>	63
	<i>Commonwealth Electoral Act 1918</i>	63
	<i>Environment Protection and Biodiversity Conservation Act 1999</i>	63
	<i>Federal Proceedings (Costs) Act 1981</i>	64
	<i>Freedom of Information Act 1982</i>	64
	<i>Imported Food Control Act 1992</i>	65
	<i>Insurance Acquisitions and Takeovers Act 1991</i>	65
	<i>Insurance Act 1973</i>	65
	<i>Judges’ Pensions Act 1968</i>	65
	<i>Lands Acquisition Act 1989</i>	66
	<i>Life Insurance Act 1995</i>	66
	<i>Migration Act 1958</i>	66
	<i>Military Rehabilitation and Compensation Act 2004</i>	67
	<i>Narcotic Drugs Act 1967</i>	67
	<i>Privacy Act 1988</i>	67
	<i>Safety, Rehabilitation and Compensation Act 1988</i>	68
	<i>Seafarers Rehabilitation and Compensation Act 1992</i>	68
	<i>Superannuation Act 1976</i>	68
	<i>Trans-Tasman Mutual Recognition Act 1997</i>	68



1     **A Bill for an Act to amend the *Administrative***  
2     ***Appeals Tribunal Act 1975*, and for other purposes**

3     The Parliament of Australia enacts:

4     **1 Short title**

5                     This Act may be cited as the *Administrative Appeals Tribunal*  
6                     *Amendment Act 2004*.

7     **2 Commencement**

8             (1) Each provision of this Act specified in column 1 of the table  
9             commences, or is taken to have commenced, in accordance with  
10            column 2 of the table. Any other statement in column 2 has effect  
11            according to its terms.  
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**Commencement information**

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<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provision(s)</b>	<b>Commencement</b>	<b>Date/Details</b>
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day on which this Act receives the Royal Assent.	
2. Schedule 1, items 1 to 96	A single day to be fixed by Proclamation. However, if any of the provision(s) do not commence within the period of 6 months beginning on the day on which this Act receives the Royal Assent, they commence on the first day after the end of that period.	
3. Schedule 1, item 96A	The day on which this Act receives the Royal Assent.	
4. Schedule 1, items 97 to 145	At the same time as the provision(s) covered by table item 2.	
5. Schedule 1, item 145A	The day on which this Act receives the Royal Assent.	
6. Schedule 1, items 146 to 188	At the same time as the provision(s) covered by table item 2.	
7. Schedule 1, item 189	The later of: (a) the commencement of the provision(s) covered by table item 2; and (b) immediately after the commencement of section 355 of the <i>Military Rehabilitation and Compensation Act 2004</i> .	
8. Schedule 1, items 190 to 199	At the same time as the provision(s) covered by table item 2.	

1 Note: This table relates only to the provisions of this Act as originally  
2 passed by the Parliament and assented to. It will not be expanded to  
3 deal with provisions inserted in this Act after assent.

4 (2) Column 3 of the table contains additional information that is not  
5 part of this Act. Information in this column may be added to or  
6 edited in any published version of this Act.

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2  
3  
4  
5

### **3 Schedule(s)**

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

1  
2  
3

## Schedule 1—Amendments

4

### *Administrative Appeals Tribunal Act 1975*

5

#### **1 After section 2**

6

Insert:

7

#### **2A Tribunal's objective**

8

In carrying out its functions, the Tribunal must pursue the objective of providing a mechanism of review that is fair, just, economical, informal and quick.

9

10

11

#### **2 Subsection 3(1) (definition of *ACT enactment*)**

12

Repeal the definition.

13

#### **3 Subsection 3(1)**

14

Insert:

15

*alternative dispute resolution processes* means procedures and services for the resolution of disputes, and includes:

16

17

(a) conferencing; and

18

(b) mediation; and

19

(c) neutral evaluation; and

20

(d) case appraisal; and

21

(e) conciliation; and

22

(f) procedures or services specified in the regulations;

23

but does not include:

24

(g) arbitration; or

25

(h) court procedures or services.

26

Paragraphs (b) to (f) of this definition do not limit paragraph (a) of this definition.

27

28

#### **4 Subsection 3(1)**

29

Insert:

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1                    *authorised member* means a member who has been authorised by  
2                    the President under section 59A for the purposes of the provision  
3                    in which the expression occurs.

4                    **5 Subsection 3(1) (definition of *enactment*)**

5                    Omit “, subject to section 3A”.

6                    **6 Subsection 3(1) (paragraph (b) of the definition of**  
7                    ***enactment*)**

8                    After “the Northern Territory”, insert “or the Australian Capital  
9                    Territory”.

10                   **8 Subsection 3(1) (definition of *State*)**

11                   Omit “except in section 16 or 64,”.

12                   **9 Subsection 3(1) (at the end of the definition of *State*)**

13                   Add “and the Australian Capital Territory”.

14                   **10 Subsection 3(3)**

15                   Omit “A reference”, substitute “Unless the contrary intention appears, a  
16                   reference”.

17                   **11 Subsections 3(4) and (5)**

18                   Repeal the subsections.

19                   **12 Transitional—subsections 3(4) and (5) of the**  
20                   ***Administrative Appeals Tribunal Act 1975***

21                   Despite the repeal of subsections 3(4) and (5) of the *Administrative*  
22                   *Appeals Tribunal Act 1975* by this Schedule, those subsections continue  
23                   to apply after the commencement of this item, in relation to a document,  
24                   statement, notice or other notification posted before the commencement  
25                   of this item, as if:

- 26                   (a) that repeal had not happened; and  
27                   (b) each reference in those subsections to furnished included a  
28                   reference to given; and  
29                   (c) each reference in those subsections to furnishing included a  
30                   reference to giving; and  
31                   (d) each reference in those subsections to service on included a  
32                   reference to giving to; and

1 (e) each reference in those subsections to served included a  
2 reference to given.

3 **13 Sections 3A and 3B**

4 Repeal the sections.

5 **14 Before section 5**

6 Insert:

7 **Division 1—Establishment of Tribunal**

8 **15 Before section 6**

9 Insert:

10 **Division 2—Members of Tribunal**

11 **16 Subsections 7(1) and (1A)**

12 Repeal the subsections, substitute:

13 *President*

14 (1) A person must not be appointed as the President unless he or she:

15 (a) is a judge of a federal court; or

16 (b) has been:

17 (i) a judge of a federal court; or

18 (ii) a judge of the Supreme Court of a State or Territory; or

19 (c) is enrolled as a legal practitioner (however described) of:

20 (i) the High Court; or

21 (ii) the Supreme Court of a State or Territory;

22 and has been so enrolled for at least 5 years.

23 Note: For *federal court*, see paragraph 26(b) of the *Acts Interpretation Act*  
24 *1901*.

25 (1A) The definition of *Judge* in subsection 3(1) does not apply to  
26 subsection (1) of this section.

27 *Deputy President*

28 (1AA) A person must not be appointed as a Deputy President unless he or  
29 she is enrolled as a legal practitioner (however described) of:

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- 
- 1 (a) the High Court; or  
2 (b) the Supreme Court of a State or Territory;  
3 and has been so enrolled for at least 5 years.

4 **17A Subsection 7(1B)**

5 Omit “shall”, substitute “must”.

6 Note: The following heading to subsection 7(1B) is inserted “*Senior member*”.

7 **17B Paragraph 7(1B)(a)**

8 Repeal the paragraph, substitute:

- 9 (a) is enrolled as a legal practitioner (however described) of:  
10 (i) the High Court; or  
11 (ii) the Supreme Court of a State or Territory;  
12 and has been so enrolled for at least 5 years; or

13 **17C Subsection 7(2)**

14 Omit “shall”, substitute “must”.

15 Note: The following heading to subsection 7(2) is inserted “*Non-presidential member*”.

16 **17D Paragraph 7(2)(a)**

17 Repeal the paragraph, substitute:

- 18 (a) is enrolled as a legal practitioner (however described) of:  
19 (i) the High Court; or  
20 (ii) the Supreme Court of a State or Territory; or

21 **17E Paragraph 7(2)(b)**

22 Omit “government;”, substitute “government; or”.

23 **18 Subsections 8(1) and (2)**

24 Repeal the subsections.

25 **19 Transitional—section 8 of the *Administrative Appeals***  
26 ***Tribunal Act 1975***

- 27 (1) This item applies to a member if the member was covered by subsection  
28 8(1) or (2) of the *Administrative Appeals Tribunal Act 1975*  
29 immediately before the commencement of this item.

- 1 (2) Despite the repeal of subsections 8(1) and (2) of the *Administrative*  
2 *Appeals Tribunal Act 1975* by this Schedule, those subsections continue  
3 to apply after the commencement of this item, in relation to the  
4 member's appointment, as if those repeals had not happened.

5 **20 After subsection 8(3)**

6 Insert:

- 7 (4) A presidential member who is a Judge ceases to hold office as a  
8 member if he or she ceases to be a Judge.

9 **21 Subsection 8(5)**

10 Repeal the subsection.

11 **22 Section 8A**

12 Repeal the section.

13 **23 Subsection 10(1)**

14 Omit "Judge of the Federal Court of Australia", substitute "person  
15 qualified to be appointed as President".

16 Note: The following heading to subsection 10(1) is inserted "*Acting President*".

17 **24 Subsection 10(2)**

18 Repeal the subsection, substitute:

19 *Acting Deputy President*

- 20 (2) If a Deputy President is, or is expected to be:  
21 (a) in the case of a full-time Deputy President—absent from duty  
22 or from Australia; or  
23 (b) in the case of a part-time Deputy President—unavailable to  
24 perform the duties of his or her office;  
25 the Governor-General may appoint a person qualified to be  
26 appointed as a Deputy President:  
27 (c) in a case to which paragraph (a) applies—to act as a full-time  
28 Deputy President during the absence; or  
29 (d) in a case to which paragraph (b) applies—to act as a  
30 part-time Deputy President during the period of  
31 unavailability.

1 Note 1: The following heading to subsection 10(3) is inserted “*Acting non-presidential*  
2 *member*”.

3 Note 2: The following heading to subsection 10(5) is inserted “*Extension of acting*  
4 *appointment*”.

5 **24A Transitional—subsection 10(2) of the *Administrative***  
6 ***Appeals Tribunal Act 1975***

7 (1) This item applies to an appointment if:  
8 (a) the appointment was made under subsection 10(2) of the  
9 *Administrative Appeals Tribunal Act 1975*; and  
10 (b) the appointment was in force immediately before the  
11 commencement of this item.

12 (2) The appointment has effect, after the commencement of this item, as if  
13 it had been made under subsection 10(2) of the *Administrative Appeals*  
14 *Tribunal Act 1975* as amended by this Schedule.

15 **25 Subsection 10(9)**

16 Repeal the subsection, substitute:

17 *Resignation*

18 (9) A person who is acting as:  
19 (a) President; or  
20 (b) a Deputy President; or  
21 (c) a non-presidential member;  
22 may resign his or her acting appointment by giving the  
23 Governor-General a written resignation. The resignation takes  
24 effect on the day it is received by the Governor-General or, if a  
25 later day is specified in the resignation, on that later day.

26 Note 1: The following heading to subsection 10(7) is inserted “*Terms and conditions*”.

27 Note 2: The following heading to subsection 10(10) is inserted “*Exercise of powers*”.

28 Note 3: The following heading to subsection 10(11) is inserted “*Validity of decisions etc.*”.

29 **25A Subsection 13(8)**

30 Repeal the subsection.

31 Note 1: The following heading to subsection 13(1) is inserted “*Removal on grounds of proved*  
32 *misbehaviour or incapacity*”.

33 Note 2: The following heading to subsection 13(2) is inserted “*Suspension on grounds of*  
34 *misbehaviour or incapacity*”.

- 1 Note 3: The following heading to subsection 13(7) is inserted “*Removal on ground of*  
2 *bankruptcy*”.
- 3 Note 4: The following heading to subsection 13(9) is inserted “*Retirement on ground of*  
4 *incapacity*”.
- 5 Note 5: The following heading to subsection 13(10) is inserted “*No removal or suspension*  
6 *except under this section*”.
- 7 Note 6: The following heading to subsection 13(11) is inserted “*Judge*”.
- 8 Note 7: The following heading to subsection 13(12) is inserted “*CSS*”.
- 9 Note 8: The following heading to subsection 13(13) is inserted “*PSS*”.

10 **25B Transitional—subsection 13(8) of the *Administrative***  
11 ***Appeals Tribunal Act 1975***

12 Despite the repeal of subsection 13(8) of the *Administrative Appeals*  
13 *Tribunal Act 1975* by this Schedule, that subsection continues to apply  
14 after the commencement of this item, in relation to a person to whom  
15 the *Judges’ Pensions Act 1968* applies, as if that repeal had not  
16 happened.

17 **26 Section 15**

18 Repeal the section, substitute:

19 **15 Resignation**

- 20 (1) A member may resign his or her appointment by giving the  
21 Governor-General a written resignation.
- 22 (2) The resignation takes effect on the day it is received by the  
23 Governor-General or, if a later day is specified in the resignation,  
24 on that later day.

25 **27 Section 16**

26 Repeal the section.

27 **28 Transitional—section 16 of the *Administrative Appeals***  
28 ***Tribunal Act 1975***

- 29 (1) This item applies if a person was appointed as a presidential member  
30 (within the meaning of section 16 of the *Administrative Appeals*  
31 *Tribunal Act 1975*) before the commencement of this item.

- 1 (2) Despite the repeal of section 16 of the *Administrative Appeals Tribunal*  
2 *Act 1975* by this Schedule, that section continues to apply after the  
3 commencement of this item, in relation to the person, as if that repeal  
4 had not happened.

5 **28A Before section 19**

6 Insert:

7 **Division 1—Divisions of the Tribunal**

8 **29 Subsection 19(3)**

9 Repeal the subsection, substitute:

10 *Assignment of non-presidential member to Division or Divisions*

- 11 (3) The Minister must assign a non-presidential member to a particular  
12 Division or Divisions of the Tribunal and may, with the consent of  
13 the member but not otherwise, vary the assignment.

14 Note 1: The heading to section 19 is replaced by the heading “**Divisions of the Tribunal**”.

15 Note 2: The following heading to subsection 19(2) is inserted “*Divisions of the Tribunal*”.

16 Note 3: The following heading to subsection 19(3A) is inserted “*Taxation Appeals Division*”.

17 Note 4: The following heading to subsection 19(3B) is inserted “*Security Appeals Division*”.

18 Note 5: The following heading to subsection 19(4) is inserted “*Exercise of powers*”.

19 Note 6: The following heading to subsection 19(5) is inserted “*Validity*”.

20 Note 7: The following heading to subsection 19(6) is inserted “*Certain powers to be exercised*  
21 *in Security Appeals Division*”.

22 **30 Transitional—subsection 19(3) of the *Administrative***  
23 ***Appeals Tribunal Act 1975***

- 24 (1) This item applies if the assignment of a non-presidential member to a  
25 particular Division or Divisions of the Tribunal was in force  
26 immediately before the commencement of this item.
- 27 (2) The *Administrative Appeals Tribunal Act 1975* has effect, after the  
28 commencement of this item, as if the Minister had, immediately after  
29 that commencement, assigned the member to that Division or those  
30 Divisions under subsection 19(3) of that Act.

- 1 (3) To avoid doubt, the Minister is not bound by the member's instrument  
2 of appointment in exercising a power conferred by subsection 19(3) of  
3 the *Administrative Appeals Tribunal Act 1975*.

4 **32 Before section 20**

5 Insert:

6 **Division 2—Arrangement of business of the Tribunal**

7 **33 Subsection 20(1)**

8 Omit “orderly and expeditious”, substitute “expeditious and efficient”.

9 **34 Subsections 20(1A), (2) and (3)**

10 Repeal the subsections, substitute:

11 *President may give directions*

- 12 (2) The President may give directions as to:  
13 (a) the operations of the Tribunal generally; and  
14 (b) the operations of the Tribunal at a particular place; and  
15 (c) the procedure of the Tribunal generally; and  
16 (d) the procedure of the Tribunal at a particular place; and  
17 (e) the conduct of reviews by the Tribunal.
- 18 (3) Subsection (2) does not limit subsection (1).
- 19 (4) The President may give directions as to:  
20 (a) the arrangement of the business of the Tribunal; and  
21 (b) the places at which the Tribunal may sit.
- 22 (5) Subsection (4) does not limit subsection (1).
- 23 (6) The President may at any time vary or revoke a direction under this  
24 section.

25 **35 Transitional—subsection 20(2) of the *Administrative***  
26 ***Appeals Tribunal Act 1975***

- 27 (1) This item applies to a direction if:

- 1 (a) the direction was given for the purposes of paragraph  
2 20(1A)(d) or (e) of the *Administrative Appeals Tribunal Act*  
3 *1975*; and  
4 (b) the direction was in force immediately before the  
5 commencement of this item.
- 6 (2) The direction has effect, after the commencement of this item, as if it  
7 had been given under subsection 20(2) of the *Administrative Appeals*  
8 *Tribunal Act 1975* as amended by this Schedule.

9 **36 Transitional—subsection 20(4) of the *Administrative***  
10 ***Appeals Tribunal Act 1975***

- 11 (1) This item applies to a direction if:  
12 (a) the direction was given for the purposes of paragraph  
13 20(1A)(a) or (c) of the *Administrative Appeals Tribunal Act*  
14 *1975*; and  
15 (b) the direction was in force immediately before the  
16 commencement of this item.
- 17 (2) The direction has effect, after the commencement of this item, as if it  
18 had been given under subsection 20(4) of the *Administrative Appeals*  
19 *Tribunal Act 1975* as amended by this Schedule.

20 **37 After section 20**

21 Insert:

22 **20A Places of sitting**

23 Sitings of the Tribunal are to be held from time to time as required  
24 at the places at which the Registries of the Tribunal are established,  
25 but the Tribunal may sit at any place in Australia or in an external  
26 Territory.

27 **38 Before section 21**

28 Insert:

1 **Division 3—Constitution and reconstitution of the Tribunal**

2 **20B President may give directions as to constitution of Tribunal**

3 (1) The President may give directions as to the persons who are to  
4 constitute the Tribunal for the purposes of a particular proceeding.

5 Note: See also section 23C.

6 (2) If the President gives a direction as to the persons who are to  
7 constitute the Tribunal for the purposes of a particular proceeding,  
8 he or she may at any time after the giving of the direction and  
9 before the commencement of the hearing of the proceeding:

10 (a) revoke the direction; and

11 (b) give a further direction under subsection (1) as to the persons  
12 who are to constitute the Tribunal for the purposes of the  
13 proceeding.

14 **39 Transitional—section 20B of the *Administrative Appeals***  
15 ***Tribunal Act 1975***

16 (1) This item applies to a direction if:

17 (a) the direction was given for the purposes of paragraph  
18 20(1A)(b) or subsection 20(2) of the *Administrative Appeals*  
19 *Tribunal Act 1975*; and

20 (b) the direction was in force immediately before the  
21 commencement of this item.

22 (2) The direction has effect, after the commencement of this item, as if it  
23 had been given under subsection 20B(1) of the *Administrative Appeals*  
24 *Tribunal Act 1975* as amended by this Schedule.

25 **40 Subsection 21(1)**

26 Omit “, (1AB)”.

27 Note 1: The following heading to subsection 21(1AAA) is inserted “*Scope*”.

28 Note 2: The following heading to subsection 21(1) is inserted “*Constitution of Tribunal*”.

29 **41 Subsection 21(1AB)**

30 Repeal the subsection.

31 **42 Subsection 21(1A)**

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1 Omit “34A(4)”, substitute “34D(1)”.

2 **42A Subsection 21(1A)**

3 Omit “42A”, substitute “subsection 41(2) or (3), section 42A”.

4 **43 Paragraph 21(1A)(a)**

5 Repeal the paragraph, substitute:

6 (a) where the hearing of the relevant proceeding has not  
7 commenced—by a presidential member or an authorised  
8 member; or

9 **43A Transitional—paragraph 21(1A)(a) of the *Administrative***  
10 ***Appeals Tribunal Act 1975***

11 The amendment made by item 43 does not apply to a proceeding if,  
12 immediately before the commencement of this item, the Tribunal was  
13 constituted for the purposes of the proceeding by one or more members.

14 **44 Subsection 21(2)**

15 Omit “shall” (first occurring), substitute “should”.

16 **45 Subsection 21(2)**

17 Omit “shall” (second occurring), substitute “may, if the President  
18 directs under section 20B,”.

19 **46 Transitional—subsection 21(2) of the *Administrative***  
20 ***Appeals Tribunal Act 1975***

21 (1) This item applies to a proceeding before the Tribunal if, immediately  
22 before the commencement of this item, the Tribunal was constituted by  
23 a particular member, for the purposes of the proceeding, in accordance  
24 with subsection 21(2) of the *Administrative Appeals Tribunal Act 1975*.

25 (2) The *Administrative Appeals Tribunal Act 1975* has effect, after the  
26 commencement of this item, as if the Tribunal had been constituted by  
27 that member, for the purposes of the proceeding, in accordance with a  
28 direction given under section 20B of that Act.

29 (3) Subitem (2) does not prevent the reconstitution of the Tribunal.

30 **46A Subsections 21(3) and (4)**

31 Repeal the subsections.

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- 1 Note 1: The following heading to subsection 21AA(1) is inserted “*Scope*”.
- 2 Note 2: The following heading to subsection 21AA(2) is inserted “*Constitution of Security*  
3 *Appeals Division*”.
- 4 Note 3: The following heading to subsection 21AA(3) is inserted “*When presidential member*  
5 *must not participate*”.
- 6 Note 4: The following heading to subsection 21AA(4) is inserted “*Presidential member to*  
7 *preside*”.
- 8 Note 5: The following heading to subsection 21AA(5) is inserted “*Qualifications*”.
- 9 Note 6: The following heading to subsection 21AA(6) is inserted “*What happens if member*  
10 *ceases to be available*”.

11 **46B Transitional—subsections 21(3) and (4) of the**  
12 ***Administrative Appeals Tribunal Act 1975***

13 The amendment made by item 46A does not apply to a proceeding if,  
14 immediately before the commencement of this item, the Tribunal was  
15 constituted for the purposes of the proceeding by one or more members.

16 **48 Subsection 21A(2)**

17 Omit “furnish him or her with”, substitute “give him or her”.

- 18 Note 1: The heading to section 21A is altered by omitting “**in certain cases**” and substituting  
19 “**at the request of a party**”.
- 20 Note 2: The following heading to subsection 21A(1AA) is inserted “*Scope*”.
- 21 Note 3: The following heading to subsection 21A(1) is inserted “*Party may request*  
22 *reconstitution of Tribunal*”.

23 **49 Subsection 21A(3)**

24 Omit “varying the constitution of the Tribunal for the purposes of the  
25 proceeding.”, substitute:  
26 that the Tribunal as constituted for the purposes of the proceeding  
27 be reconstituted by:  
28 (a) adding one or more members; or  
29 (b) removing one or more members; or  
30 (c) substituting one or more other members;  
31 (or any combination of these).

32 **49AA Transitional—subsection 21A(3) of the *Administrative***  
33 ***Appeals Tribunal Act 1975***

1 The amendment of subsection 21A(3) of the *Administrative Appeals*  
 2 *Tribunal Act 1975* made by this Schedule does not affect the continuity  
 3 of a direction that was given under that subsection before the  
 4 commencement of this item.

5 **49A At the end of subsection 21A(4)**

6 Add:

7 Note: Section 23E provides that the reconstituted Tribunal may have regard  
 8 to any record of the proceeding before the Tribunal as previously  
 9 constituted.

10 **50 Subsection 21A(6)**

11 Repeal the subsection.

12 **51 Subsection 22(2)**

13 Omit “20(2) or section 21A varying the constitution of”, substitute  
 14 “20B(2), section 21A, subsection 23(3) or (4) or section 23A  
 15 reconstituting”.

16 Note 1: The following heading to subsection 22(1AA) is inserted “*Scope*”.

17 Note 2: The following heading to subsection 22(1) is inserted “*Multiple member Tribunal—who*  
 18 *is to preside*”.

19 Note 3: The following heading to subsection 22(2) is inserted “*Reconstituted Tribunal—who is*  
 20 *to preside*”.

21 **52 Subsection 22(2)**

22 Omit “or in a case to which paragraph 23(1)(a) applies”.

23 **53 Subsection 22(2)**

24 Omit “or as constituted by the remaining member or members, as the  
 25 case may be”.

26 **53A Transitional—subsection 22(2) of the *Administrative***  
 27 ***Appeals Tribunal Act 1975***

28 The amendments of subsection 22(2) of the *Administrative Appeals*  
 29 *Tribunal Act 1975* made by this Schedule do not affect the continuity of  
 30 a direction that was given under that subsection before the  
 31 commencement of this item.

32 **54 Sections 23, 23A and 23B**

33 Repeal the sections, substitute:

1       **23 Reconstitution of Tribunal if member is unavailable**

2                       *Scope*

- 3               (1) This section does not apply in relation to a proceeding in the  
4               Security Appeals Division.
- 5               (2) This section applies if:
- 6                       (a) the hearing of a proceeding has commenced or is completed;  
7                       and
- 8                       (b) a member (the *unavailable member*) who constitutes, or is  
9                       one of the members who constitute, the Tribunal for the  
10                      purposes of the proceeding:
- 11                               (i) stops being a member; or
- 12                               (ii) for any reason, is not available for the purposes of the  
13                               proceeding; or
- 14                               (iii) is directed by the President not to continue to take part  
15                               in the proceeding.

16                       *Single member Tribunal*

- 17               (3) If the unavailable member constitutes the Tribunal, the President  
18               must direct another member or members to constitute the Tribunal  
19               for the purposes of completing the proceeding.

20                       *Multiple member Tribunal*

- 21               (4) If the unavailable member is one of the members who constitute  
22               the Tribunal, the President must:
- 23                       (a) direct the remaining member or members to constitute the  
24                       Tribunal for the purposes of completing the proceeding; or
- 25                       (b) direct a member or members to constitute the Tribunal for the  
26                       purposes of completing the proceeding.

27               Note:        See also section 23C.

- 28               (5) A member who is the subject of a direction under paragraph (4)(b)  
29               may be the remaining member or one of the remaining members.

30                       *Member who stops being a member and becomes a member again*

- 31               (6) For the purposes of this section, a member who:  
32                       (a) stops being a member; and
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1 (b) at a later time becomes a member again;  
2 is taken, from that later time, to be another member.

3 *Reconstituted Tribunal must continue proceeding*

4 (7) The Tribunal as reconstituted in accordance with a direction under  
5 subsection (3) or (4) must continue the proceeding.

6 Note: Section 23E provides that the reconstituted Tribunal may have regard  
7 to any record of the proceeding before the Tribunal as previously  
8 constituted.

9 *Limitations on President's powers to give directions*

10 (8) The President must not give a direction under this section about the  
11 constitution of the Tribunal if the Tribunal has made a decision  
12 under subsection 43(1).

13 (9) The President must not give a direction under  
14 subparagraph (2)(b)(iii) unless:

15 (a) the President is satisfied that the direction is in the interests  
16 of justice; and

17 (b) the President has consulted the member concerned.

18 (10) The President must not give a direction under subsection (3) or (4)  
19 unless the President has consulted the parties to the proceeding.

20 (11) The President must not give a direction under paragraph (4)(b) that  
21 results in the remaining member, or any of the remaining members,  
22 not constituting the Tribunal for the purposes of completing the  
23 proceeding unless:

24 (a) the President is satisfied that the direction is in the interests  
25 of justice; and

26 (b) the President has consulted the remaining member  
27 concerned.

28 **23A Reconstitution of Tribunal to achieve expeditious and efficient**  
29 **conduct of proceeding**

30 *Scope*

31 (1) This section does not apply in relation to a proceeding in the  
32 Security Appeals Division.

1                                    *Reconstitution of Tribunal to achieve expeditious and efficient*  
2                                    *conduct of proceeding*

- 3                                    (2) If the hearing of a proceeding has commenced or is completed, the  
4                                    President may direct that the Tribunal as constituted for the  
5                                    purposes of a particular proceeding be reconstituted by:  
6                                    (a) adding one or more members; or  
7                                    (b) removing one or more members; or  
8                                    (c) substituting one or more other members;  
9                                    (or any combination of these) if the President thinks that the  
10                                    reconstitution is in the interests of achieving the expeditious and  
11                                    efficient conduct of the proceeding.

12                                    Note:        See also section 23C.

13                                    *Reconstituted Tribunal must continue proceeding*

- 14                                    (3) The Tribunal as constituted in accordance with a direction under  
15                                    subsection (2) must continue the proceeding.

16                                    Note:        Section 23E provides that the reconstituted Tribunal may have regard  
17                                    to any record of the proceeding before the Tribunal as previously  
18                                    constituted.

19                                    *Limitations on President's power to give direction*

- 20                                    (4) The President must not give a direction under this section about the  
21                                    constitution of the Tribunal if the Tribunal has made a decision  
22                                    under subsection 43(1).  
23                                    (5) The President must not give a direction under this section unless  
24                                    the President has consulted the parties to the proceeding.

25                                    **23C Matters to which the President must have regard in constituting**  
26                                    **the Tribunal**

27                                    In giving a direction under section 20B, 23 or 23A as to the  
28                                    persons who are to constitute the Tribunal for the purposes of a  
29                                    particular proceeding, the President must have regard to:

- 30                                    (a) the degree of public importance or complexity of the matters  
31                                    to which that proceeding relates; and  
32                                    (b) the status of the position or office held by the person who  
33                                    made the decision that is to be reviewed by the Tribunal; and

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- 1 (c) the degree to which the matters to which that proceeding  
2 relates concern the security, defence or international relations  
3 of Australia; and  
4 (d) the degree of financial importance of the matters to which  
5 that proceeding relates; and  
6 (e) if that proceeding relates to the review of a decision made in  
7 the exercise of powers conferred by a particular enactment—  
8 the purpose or object underlying the enactment (whether or  
9 not that purpose or object is expressly stated); and  
10 (f) the degree to which it is desirable for any or all of the  
11 persons who are to constitute the Tribunal to have  
12 knowledge, expertise or experience in relation to the matters  
13 to which that proceeding relates; and  
14 (g) any notice given under subsection 21(2) by the parties to that  
15 proceeding; and  
16 (h) such other matters (if any) as the President considers  
17 relevant.

### 18 **23D Limitation on composition of reconstituted Tribunal**

#### 19 *Scope*

- 20 (1) This section does not apply in relation to a proceeding in the  
21 Security Appeals Division.

#### 22 *Limitation on composition of reconstituted Tribunal*

- 23 (2) A direction relating to the reconstitution of the Tribunal must not  
24 be given unless the member or members who constitute the  
25 reconstituted Tribunal could have constituted the Tribunal for the  
26 purposes of the proceeding if the proceeding had commenced  
27 immediately before the direction was given.

### 28 **23E Tribunal may have regard to record of previous proceeding**

#### 29 *Scope*

- 30 (1) This section does not apply in relation to a proceeding in the  
31 Security Appeals Division.

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*Tribunal may have regard to record of previous proceeding*

- (2) If the Tribunal is reconstituted, the Tribunal may, for the purposes of the proceeding, have regard to any record of the proceeding before the Tribunal as previously constituted (including a record of any evidence taken in the proceeding).
- (3) Subsection (2) does not apply in a case where the Tribunal is reconstituted following an order under subsection 44(4) remitting a case to be heard and decided again.

Note 1: Subsection 44AA(9) applies subsection 44(4) to appeals transferred to the Federal Magistrates Court.  
Note 2: Paragraph 44(6)(b) deals with a proceeding reheard by the Tribunal following an appeal.

**23F Constitution of Tribunal for review of amount taxed—general rule**

*Scope*

- (1) This section applies to a proceeding (the ***taxing review proceeding***) by way of an application to the Tribunal under subsection 69A(2) for review of a decision by the Registrar, a District Registrar or a Deputy Registrar taxing any costs ordered by the Tribunal to be paid by a party to another proceeding (the ***substantive proceeding***).

*Constitution of Tribunal for taxing review proceeding*

- (2) For the purposes of the taxing review proceeding, the Tribunal is to be constituted by:
  - (a) if the Tribunal was constituted for the purposes of the substantive proceeding by a single member—that member; or
  - (b) if the Tribunal was constituted for the purposes of the substantive proceeding by 2 or 3 members—the member who presided for the purposes of the substantive proceeding.
- (3) This section has effect subject to section 23G.

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1     **23G Constitution of Tribunal for review of amount taxed—member**  
2             **unavailable**

3             *Scope*

- 4             (1) This section applies to a proceeding (the ***taxing review***  
5             ***proceeding***) by way of an application to the Tribunal under  
6             subsection 69A(2) for review of a decision by the Registrar, a  
7             District Registrar or a Deputy Registrar taxing any costs ordered by  
8             the Tribunal to be paid by a party to another proceeding (the  
9             ***substantive proceeding***) if:
- 10            (a) in a case where the Tribunal was constituted for the purposes  
11            of the substantive proceeding by a single member—that  
12            member (the ***unavailable member***):
- 13            (i) has stopped being a member; or  
14            (ii) for any reason, is not available to take part in the taxing  
15            review proceeding; or  
16            (iii) is directed by the President not to take part in the taxing  
17            review proceeding; or
- 18            (b) in a case where the Tribunal was constituted for the purposes  
19            of the substantive proceeding by 2 or 3 members—the  
20            member (the ***unavailable member***) who presided at the  
21            substantive proceeding:
- 22            (i) has stopped being a member; or  
23            (ii) for any reason, is not available to take part in the taxing  
24            review proceeding; or  
25            (iii) is directed by the President not to take part in the taxing  
26            review proceeding.

27             *Single member Tribunal*

- 28             (2) If the unavailable member constituted the Tribunal for the purposes  
29             of the substantive proceeding, the President must direct another  
30             member to constitute the Tribunal for the purposes of the taxing  
31             review proceeding.

32             *Multiple member Tribunal*

- 33             (3) If the unavailable member is one of the members who constituted  
34             the Tribunal for the purposes of the substantive proceeding, the  
35             President must:

- 1 (a) direct the remaining member, or one of the remaining  
2 members, to constitute the Tribunal for the purposes of the  
3 taxing review proceeding; or  
4 (b) direct another member to constitute the Tribunal for the  
5 purposes of the taxing review proceeding.

6 *Member who stops being a member and becomes a member again*

- 7 (4) For the purposes of this section, a member who:  
8 (a) stops being a member; and  
9 (b) at a later time becomes a member again;  
10 is taken, from that later time, to be another member.

11 *Limitations on President's powers to give directions*

- 12 (5) The President must not give a direction under  
13 subparagraph (1)(a)(iii) or (b)(iii) unless the President is satisfied  
14 that the direction is in the interests of justice.
- 15 (6) The President must not give a direction under paragraph (3)(b) that  
16 results in the remaining member, or any of the remaining members,  
17 not constituting the Tribunal for the purposes of the taxing review  
18 proceeding unless the President is satisfied that the direction is in  
19 the interests of justice.

20 **55 Transitional—paragraph 23(1)(a) of the *Administrative***  
21 ***Appeals Tribunal Act 1975***

- 22 (1) This item applies to a proceeding before the Tribunal if, immediately  
23 before the commencement of this item, the Tribunal was constituted by  
24 a particular member or members, for the purposes of the proceeding, in  
25 accordance with paragraph 23(1)(a) of the *Administrative Appeals*  
26 *Tribunal Act 1975*.
- 27 (2) The *Administrative Appeals Tribunal Act 1975* has effect, after the  
28 commencement of this item, as if the Tribunal had been constituted by  
29 that member or those members, for the purposes of the proceeding, in  
30 accordance with a direction given under subsection 20B(1) of that Act.
- 31 (3) Subitem (2) does not prevent the reconstitution of the Tribunal.

32 **55A Transitional—section 23E of the *Administrative Appeals***  
33 ***Tribunal Act 1975***

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1 Section 23E of the *Administrative Appeals Tribunal Act 1975* applies in  
2 relation to a reconstitution of the Tribunal before or after the  
3 commencement of this item.

4 **56 Application of amendment—sections 23F and 23G of the**  
5 ***Administrative Appeals Tribunal Act 1975***

6 Sections 23F and 23G of the *Administrative Appeals Tribunal Act 1975*  
7 do not apply to a taxing review proceeding if, immediately before the  
8 commencement of this item, the Tribunal was constituted for the  
9 purposes of the taxing review proceeding by one or more members.

10 **57 Section 24**

11 Repeal the section.

12 **58 Section 24H**

13 Repeal the section, substitute:

14 **24H Resignation**

- 15 (1) The Registrar may resign his or her appointment by giving the  
16 Governor-General a written resignation.
- 17 (2) The resignation takes effect on the day it is received by the  
18 Governor-General or, if a later day is specified in the resignation,  
19 on that later day.

20 **59 Before section 25**

21 Insert:

22 **Division 1—Applications for review of decisions**

23 **60 After subsection 25(4)**

24 Insert:

25 *Tribunal may determine scope of review*

- 26 (4A) The Tribunal may determine the scope of the review of a decision  
27 by limiting the questions of fact, the evidence and the issues that it  
28 considers.

29 Note 1: The following heading to subsection 25(1) is inserted “*Enactment may provide for*  
30 *applications for review of decisions*”.

- 1 Note 2: The following heading to subsection 25(3A) is inserted “*Delegations, acting*  
2 *appointments and authorisations*”.
- 3 Note 3: The following heading to subsection 25(4) is inserted “*Tribunal’s power to review*  
4 *decisions*”.
- 5 Note 4: The following heading to subsection 25(5) is inserted “*Failure of decision-maker to*  
6 *meet deadline*”.

7 **61 Subsections 25(6) and (6A)**

8 Repeal the subsections, substitute:

9 *Enactment may add to, exclude or modify operation of certain*  
10 *provisions*

- 11 (6) If an enactment provides for applications to the Tribunal:  
12 (a) that enactment may also include provisions adding to,  
13 excluding or modifying the operation of any of the provisions  
14 of sections 27, 29, 32, 33 and 35 or of subsection 41(1) or  
15 43(1) or (2) in relation to such applications; and  
16 (b) those sections and subsections have effect subject to any  
17 provisions so included.

18 **62 Paragraph 25(7)(e)**

19 Omit “, or another member authorized by the President,”, substitute “or  
20 an authorised member”.

21 Note: The following heading to subsection 25(7) is inserted “*What happens if decision-maker*  
22 *ceases to hold office etc.*”.

23 **63 Subsections 25(8), (9), (10), (11) and (12)**

24 Repeal the subsections.

25 **64 Subsection 28(1)**

26 Omit “furnish” (wherever occurring), substitute “give”.

27 Note 1: The following heading to subsection 28(1) is inserted “*Request for statement of*  
28 *reasons*”.

29 Note 2: The following heading to subsection 28(1AAA) is inserted “*Exception—Security*  
30 *Appeals Division*”.

31 **65 Subsections 28(1AA) and (1AB)**

32 Omit “furnished with”, substitute “given”.

33 Note: The following heading to subsection 28(1AA) is inserted “*What happens if*  
34 *decision-maker contests applicant’s entitlement to statement of reasons*”.

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**66 Subsection 28(1AB)**

Omit “furnish”, substitute “give”.

**67 Subsection 28(1AC)**

Omit “furnished with”, substitute “given”.

**68 Subsection 28(1A)**

Omit “furnish”, substitute “give”.

Note: The following heading to subsection 28(1A) is inserted “*When decision-maker may refuse to give statement of reasons*”.

**69 Subsection 28(1A)**

Omit “furnished” (wherever occurring), substitute “given”.

**69A Subsection 28(2)**

Omit “the following provisions of this section have effect”, substitute “subsections (3) and (3A) have effect”.

Note: The following heading to subsection 28(2) is inserted “*Public interest certificate*”.

**70 Paragraph 28(3)(b)**

Omit “furnish”, substitute “give”.

**71 Subparagraph 28(3A)(a)(ii)**

Omit “furnished” (wherever occurring), substitute “given”.

**72 Subparagraph 28(3A)(a)(ii)**

Omit “furnishing”, substitute “giving”.

**73 Subsections 28(4) and (5)**

Omit “furnished” (wherever occurring), substitute “given”.

Note 1: The following heading to subsection 28(4) is inserted “*When applicant not entitled to request statement of reasons*”.

Note 2: The following heading to subsection 28(5) is inserted “*Inadequate statement of reasons*”.

**74 Subsection 28(5)**

Omit “furnish”, substitute “give”.

**75 Paragraph 29(1)(d)**

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1 Omit “furnished”, substitute “given”.

2 **76 At the end of subsection 29(1)**

3 Add:

4 Note: Paragraph 33(1)(c) provides that the Tribunal is not bound by the rules  
5 of evidence but may inform itself on any matter in such manner as it  
6 thinks appropriate.

7 **77 Subsection 29(1A)**

8 Omit “furnish”, substitute “provide”.

9 Note: The following heading to subsection 29(1A) is inserted “*Address at which documents*  
10 *may be given*”.

11 **78 Subsection 29(1A)**

12 Omit “served” (wherever occurring), substitute “given”.

13 **79 Subsection 29(1A)**

14 Omit “for service”, substitute “at which such documents may be given”.

15 **80 Subsection 29(1A)**

16 Omit “furnished”, substitute “provided”.

17 **81 After subsection 29(1A)**

18 Insert:

19 *Tribunal may request amendment of insufficient statement*

20 (1B) If:

21 (a) an application contains a statement under paragraph (1)(c);  
22 and

23 (b) the Tribunal is of the opinion that the statement is not  
24 sufficient to enable the Tribunal to readily identify the  
25 respects in which the applicant believes that the decision is  
26 not the correct or preferable decision;

27 the Tribunal may, by notice given to the applicant, request the  
28 applicant to amend the statement, within the period specified in the  
29 notice, so that the statement is sufficient to enable the Tribunal to  
30 readily identify the respects in which the applicant believes that the  
31 decision is not the correct or preferable decision.

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**82 Subsection 29(2)**

Omit “furnished” (wherever occurring), substitute “given”.

Note: The following heading to subsection 29(2) is inserted “*Prescribed time for making applications—general*”.

**83 Subparagraph 29(2)(b)(ii)**

Omit “furnish”, substitute “give”.

**84 Subsection 29(3)**

Omit “furnished” (wherever occurring), substitute “given”.

Note 1: The following heading to subsection 29(3) is inserted “*Prescribed time for making applications—decision-maker’s failure to meet deadline*”.

Note 2: The following heading to subsection 29(4) is inserted “*What happens if there is no prescribed time for making applications*”.

**85 At the end of subsection 29(7)**

Add “if the Tribunal is satisfied that it is reasonable in all the circumstances to do so”.

Note: The following heading to subsection 29(7) is inserted “*Tribunal may extend time for making application*”.

**86 Transitional—subsection 29(7) of the *Administrative Appeals Tribunal Act 1975***

The amendment of subsection 29(7) of the *Administrative Appeals Tribunal Act 1975* made by this Schedule does not affect an extension of time granted under that subsection before the commencement of this item.

**87 Subsection 29(9)**

Omit “serve notice of the application on”, substitute “give notice of the application to”.

**88 Subsection 29(10)**

Omit “on whom a notice is served”, substitute “to whom a notice is given”.

**89 Subsection 29(11)**

Omit “served on”, substitute “given to”.

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1 Note: The following heading to subsection 29(11) is inserted “*Decision-maker to be notified*  
2 *of application for review*”.

3 **90 Before section 30**

4 Insert:

5 **Division 2—Parties and procedure**

6 **91 At the end of subsection 30(1)**

7 Add:

8 Note: See also subsections 36(3A) and 36A(2A) (Attorney-General deemed  
9 to be a party to certain proceedings), and subsections 36B(4) and  
10 36C(3) (State Attorney-General deemed to be a party to certain  
11 proceedings).

12 Note 1: The following heading to subsection 30(1AA) is inserted “*Scope*”.

13 Note 2: The following heading to subsection 30(1) is inserted “*Parties*”.

14 Note 3: The following heading to subsection 30(1A) is inserted “*Person whose interests are*  
15 *affected may apply to be a party*”.

16 Note 4: The following heading to subsection 30(2) is inserted “*Official name*”.

17 **92 After subsection 33(1)**

18 Insert:

19 *Decision-maker must assist Tribunal*

20 (1AA) In a proceeding before the Tribunal for a review of a decision, the  
21 person who made the decision must use his or her best endeavours  
22 to assist the Tribunal to make its decision in relation to the  
23 proceeding.

24 **93 Subsection 33(1A)**

25 Repeal the subsection, substitute:

26 *Directions hearing*

27 (1A) The President or an authorised member may hold a directions  
28 hearing in relation to a proceeding.

29 **94 Paragraph 33(2)(a)**

1 Omit “or by a member authorized by the President to give directions for  
 2 the purposes of this paragraph”, substitute “, by an authorised member  
 3 or by an authorised Conference Registrar”.

4 Note 1: The following heading to subsection 33(2) is inserted “*Who may give directions*”.

5 Note 2: The following heading to subsection 33(2A) is inserted “*Types of directions*”.

6 **95 Subsection 33(3)**

7 After “member”, insert “or Conference Registrar”.

8 Note: The following heading to subsection 33(3) is inserted “*Directions may be varied or*  
 9 *revoked*”.

10 **96 Subsections 33(4) and (5)**

11 Repeal the subsections, substitute:

12 *Authorised Conference Registrar*

13 (4) The President may authorise a particular Conference Registrar to  
 14 be an authorised Conference Registrar for the purposes of  
 15 paragraph (2)(a).

16 (5) An authorisation under subsection (4) may be:

17 (a) general; or

18 (b) limited to:

19 (i) a particular reviewable decision or particular reviewable  
 20 decisions; or

21 (ii) reviewable decisions included in a particular class or  
 22 classes of reviewable decisions; or

23 (iii) a particular proceeding or particular proceedings; or

24 (iv) proceedings included in a particular class or classes of  
 25 proceedings.

26 (6) The President may at any time vary or revoke an authorisation  
 27 under subsection (4).

28 (7) In this section:

29 *authorised Conference Registrar* means a Conference Registrar  
 30 authorised under subsection (4).

31 *reviewable decision* means a decision in respect of which an  
 32 application to the Tribunal for review has been, or may be, made.

1 **96A Transitional—subsection 33(4) of the *Administrative***  
2 ***Appeals Tribunal Act 1975***

- 3 (1) This item applies to the power to make an authorisation under  
4 subsection 33(4) of the *Administrative Appeals Tribunal Act 1975* as  
5 amended by this Schedule.
- 6 (2) For the purposes of section 4 of the *Acts Interpretation Act 1901*, that  
7 power is taken to be a power to make an instrument of an administrative  
8 character.

9 **97 Sections 34 and 34A**

10 Repeal the sections, substitute:

11 **Division 3—Alternative dispute resolution processes**

12 **34 Scope of Division**

13 This Division does not apply to a proceeding in the Security  
14 Appeals Division to which section 39A applies.

15 **34A Referral of proceeding for alternative dispute resolution**  
16 **process**

- 17 (1) If an application is made to the Tribunal for review of a decision,  
18 the President may:
- 19 (a) direct the holding of a conference of the parties or their  
20 representatives in relation to the proceeding, or any part of  
21 the proceeding or any matter arising out of the proceeding; or
- 22 (b) direct that the proceeding, or any part of the proceeding or  
23 any matter arising out of the proceeding, be referred for a  
24 particular alternative dispute resolution process (other than  
25 conferencing).
- 26 (2) The President may also direct the holding of conferences of the  
27 parties or their representatives in the case of applications made to  
28 the Tribunal for review of decisions of a kind specified in the  
29 direction.
- 30 (3) The President may also direct that proceedings be referred for a  
31 particular alternative dispute resolution process (other than

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1 conferencing) in the case of applications made to the Tribunal for  
2 review of decisions of a kind specified in the direction.

- 3 (4) A direction may be given under a particular paragraph of  
4 subsection (1):
- 5 (a) whether or not a direction has previously been given under  
6 the same or the other paragraph of that subsection in relation  
7 to the proceeding; and
  - 8 (b) whether or not a direction under subsection (2) or (3) has  
9 applied.

10 **34B Alternative dispute resolution processes—proceeding before the**  
11 **Small Taxation Claims Tribunal**

12 *Scope*

- 13 (1) This section applies to a proceeding before the Small Taxation  
14 Claims Tribunal.

15 *Statement about alternative dispute resolution processes to be*  
16 *given to applicant*

- 17 (2) The Registrar, a District Registrar or a Deputy Registrar must give  
18 to the applicant:
- 19 (a) if the proceeding relates to an application to which  
20 subparagraph 24AC(1)(a)(i) or paragraph 24AC(1)(b)  
21 applies—when the application is made; or
  - 22 (b) if the proceeding relates to an application to which  
23 subparagraph 24AC(1)(a)(ii) applies—when the notification  
24 referred to in that subparagraph is given;
- 25 a statement setting out the procedures to be followed by the  
26 Tribunal and the alternative dispute resolution processes that are  
27 available under this Act.

28 *Referral of matter for alternative dispute resolution process*

- 29 (3) If the Tribunal considers at any time that it may assist in the  
30 resolution of the dispute between the parties if:
- 31 (a) the proceeding; or
  - 32 (b) any part of the proceeding; or
  - 33 (c) any matter arising out of the proceeding;

1 were dealt with by an alternative dispute resolution process, the  
2 Tribunal must:

- 3 (d) direct the holding of a conference of the parties or their  
4 representatives in relation to the proceeding, part of the  
5 proceeding, or matter, as the case may be; or  
6 (e) direct that the proceeding, part of the proceeding, or matter,  
7 as the case may be, be referred for a particular alternative  
8 dispute resolution process (other than conferencing).

9 **34C Directions by President**

- 10 (1) The President may give directions about alternative dispute  
11 resolution processes.
- 12 (2) Directions under subsection (1) may relate to:  
13 (a) the procedure to be followed in the conduct of an alternative  
14 dispute resolution process; and  
15 (b) the person who is to conduct an alternative dispute resolution  
16 process; and  
17 (c) the procedure to be followed when an alternative dispute  
18 resolution process ends.
- 19 (3) Subsection (2) does not limit subsection (1).
- 20 (4) The President may at any time vary or revoke a direction under  
21 subsection (1).
- 22 (5) A person is not entitled to conduct an alternative dispute resolution  
23 process unless the person is:  
24 (a) a member; or  
25 (b) an officer of the Tribunal; or  
26 (c) a person engaged under section 34H.

27 **34D Agreement about the terms of a decision etc.**

- 28 (1) If:  
29 (a) in the course of an alternative dispute resolution process  
30 under this Division, agreement is reached between the parties  
31 or their representatives as to the terms of a decision of the  
32 Tribunal:  
33 (i) in the proceeding; or

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- 1 (ii) in relation to the part of the proceeding; or  
2 (iii) in relation to the matter arising out of the proceeding;  
3 that would be acceptable to the parties; and  
4 (b) the terms of the agreement are reduced to writing, signed by  
5 or on behalf of the parties and lodged with the Tribunal; and  
6 (c) 7 days pass after lodgment, and none of the parties has  
7 notified the Tribunal in writing that he or she wishes to  
8 withdraw from the agreement; and  
9 (d) the Tribunal is satisfied that a decision in the terms of the  
10 agreement or consistent with those terms would be within the  
11 powers of the Tribunal;  
12 the Tribunal may, if it appears to it to be appropriate to do so, act  
13 in accordance with whichever of subsection (2) or (3) is relevant in  
14 the particular case.
- 15 (2) If the agreement reached is to the terms of a decision of the  
16 Tribunal in the proceeding, the Tribunal may, without holding a  
17 hearing of the proceeding, make a decision in accordance with  
18 those terms.
- 19 (3) If the agreement relates to:  
20 (a) a part of the proceeding; or  
21 (b) a matter arising out of the proceeding;  
22 the Tribunal may, in its decision in the proceeding, give effect to  
23 the terms of the agreement without dealing at the hearing of the  
24 proceeding with the part of the proceeding or the matter arising out  
25 of the proceeding, as the case may be, to which the agreement  
26 relates.

### 27 **34E Evidence not admissible**

- 28 (1) Evidence of anything said, or any act done, at an alternative  
29 dispute resolution process under this Division is not admissible:  
30 (a) in any court; or  
31 (b) in any proceedings before a person authorised by a law of the  
32 Commonwealth or of a State or Territory to hear evidence; or  
33 (c) in any proceedings before a person authorised by the consent  
34 of the parties to hear evidence.

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*Exceptions*

- (2) Subsection (1) does not apply so as to prevent the admission, at the hearing of a proceeding before the Tribunal, of particular evidence if the parties agree to the evidence being admissible at the hearing.
- (3) Subsection (1) does not apply so as to prevent the admission, at the hearing of a proceeding before the Tribunal, of:
  - (a) a case appraisal report prepared by a person conducting an alternative dispute resolution process under this Division; or
  - (b) a neutral evaluation report prepared by a person conducting an alternative dispute resolution process under this Division;unless a party to the proceeding notifies the Tribunal before the hearing that he or she objects to the report being admissible at the hearing.

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**34F Eligibility of person conducting alternative dispute resolution process to sit as a member of the Tribunal**

- If:
- (a) an alternative dispute resolution process under this Division in relation to a proceeding is conducted by a member of the Tribunal; and
  - (b) a party to the proceeding notifies the Tribunal before the hearing that he or she objects to that member participating in the hearing;
- that member is not entitled to be a member of the Tribunal as constituted for the purposes of the proceeding.

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**34G Participation by telephone etc.**

- The person conducting an alternative dispute resolution process under this Division may allow a person to participate by:
- (a) telephone; or
  - (b) closed-circuit television; or
  - (c) any other means of communication.

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1 **34H Engagement of persons to conduct alternative dispute**  
2 **resolution processes**

3 (1) The Registrar may, on behalf of the Commonwealth, engage  
4 persons to conduct one or more kinds of alternative dispute  
5 resolution processes under this Division.

6 (2) The Registrar must not engage a person under subsection (1) unless  
7 the Registrar is satisfied, having regard to the person's  
8 qualifications and experience, that the person is a suitable person to  
9 conduct the relevant kind or kinds of alternative dispute resolution  
10 processes under this Division.

11 **97A Transitional—paragraph 34A(1)(a) of the *Administrative***  
12 ***Appeals Tribunal Act 1975***

13 (1) This item applies to a direction if:

14 (a) the direction was given under subsection 34(1) of the  
15 *Administrative Appeals Tribunal Act 1975*; and

16 (b) the direction was in force immediately before the  
17 commencement of this item.

18 (2) The direction, except to the extent to which it identifies the person who  
19 is to preside over a conference, has effect, after the commencement of  
20 this item, as if it had been given under paragraph 34A(1)(a) of the  
21 *Administrative Appeals Tribunal Act 1975* as amended by this  
22 Schedule.

23 **97B Transitional—paragraph 34A(1)(b) of the *Administrative***  
24 ***Appeals Tribunal Act 1975***

25 (1) This item applies to a direction if:

26 (a) the direction was given under subsection 34A(1) of the  
27 *Administrative Appeals Tribunal Act 1975*; and

28 (b) the direction was in force immediately before the  
29 commencement of this item.

30 (2) The direction, except to the extent to which it identifies the person who  
31 is to be the mediator, has effect, after the commencement of this item,  
32 as if it had been given under paragraph 34A(1)(b) of the *Administrative*  
33 *Appeals Tribunal Act 1975* as amended by this Schedule.

1 **97C Transitional—paragraph 34B(3)(e) of the *Administrative***  
2 ***Appeals Tribunal Act 1975***

- 3 (1) This item applies to a direction if:  
4 (a) the direction was given under subparagraph 34A(1A)(b)(ii)  
5 of the *Administrative Appeals Tribunal Act 1975*; and  
6 (b) the direction was in force immediately before the  
7 commencement of this item.
- 8 (2) The direction, except to the extent to which it identifies the person who  
9 is to be the mediator, has effect, after the commencement of this item,  
10 as if it had been given under paragraph 34B(3)(e) of the *Administrative*  
11 *Appeals Tribunal Act 1975* as amended by this Schedule.

12 **97D Transitional—subsection 34A(2) of the *Administrative***  
13 ***Appeals Tribunal Act 1975***

- 14 (1) This item applies to a direction if:  
15 (a) the direction was given under subsection 34(2) of the  
16 *Administrative Appeals Tribunal Act 1975*; and  
17 (b) the direction was in force immediately before the  
18 commencement of this item.
- 19 (2) The direction has effect, after the commencement of this item, as if it  
20 had been given under subsection 34A(2) of the *Administrative Appeals*  
21 *Tribunal Act 1975* as amended by this Schedule.

22 **97E Transitional—Division 3 of Part IV of the *Administrative***  
23 ***Appeals Tribunal Act 1975***

- 24 (1) This item applies to a conference or mediation if:  
25 (a) the conference or mediation had begun, before the  
26 commencement of this item, under section 34 or 34A of the  
27 *Administrative Appeals Tribunal Act 1975*; and  
28 (b) the conference or mediation had not been completed before  
29 the commencement of this item.
- 30 (2) The *Administrative Appeals Tribunal Act 1975* has effect, after the  
31 commencement of this item, as if:  
32 (a) the conference or mediation were a conference or mediation  
33 under Division 3 of Part IV of that Act; and

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1 (b) in the case of a conference—the person presiding at the  
2 conference had been directed under subsection 34C(1) of that  
3 Act to conduct the conference; and

4 (c) in the case of a mediation—the mediator had been directed  
5 under subsection 34C(1) of that Act to conduct the  
6 mediation;

7 and the conference or mediation is to be continued accordingly.

8 **97F Transitional—paragraph 34D(1)(a) of the *Administrative***  
9 ***Appeals Tribunal Act 1975***

10 (1) This item applies to an agreement if:

11 (a) the agreement was entered into before the commencement of  
12 this item; and

13 (b) the agreement was an agreement to which paragraph  
14 34A(4)(a) of the *Administrative Appeals Tribunal Act 1975*  
15 applied; and

16 (c) the Tribunal had not exercised its powers under subsection  
17 34A(5) or (6) of that Act, in relation to the agreement, before  
18 the commencement of this item.

19 (2) The *Administrative Appeals Tribunal Act 1975* has effect, after the  
20 commencement of this item, as if the agreement were an agreement to  
21 which paragraph 34D(1)(a) of that Act applies.

22 **97G Transitional—subsections 34(3) and 34A(7) of the**  
23 ***Administrative Appeals Tribunal Act 1975***

24 Despite the repeal of subsections 34(3) and 34A(7) of the  
25 *Administrative Appeals Tribunal Act 1975* by this Schedule, those  
26 subsections continue to apply after the commencement of this item, in  
27 relation to anything said, or any act done, before the commencement of  
28 this item, at a conference or mediation, as if those repeals had not  
29 happened.

30 **97H Transitional—subsections 34(4) and 34A(8) of the**  
31 ***Administrative Appeals Tribunal Act 1975***

32 (1) Despite the repeal of subsection 34(4) of the *Administrative Appeals*  
33 *Tribunal Act 1975* by this Schedule, that subsection continues to apply  
34 after the commencement of this item, in relation to a conference that

1 was completed before the commencement of this item, as if that repeal  
2 had not happened.

3 (2) Despite the repeal of subsection 34A(8) of the *Administrative Appeals*  
4 *Tribunal Act 1975* by this Schedule, that subsection continues to apply  
5 after the commencement of this item, in relation to a mediation that was  
6 completed before the commencement of this item, as if:

7 (a) that repeal had not happened; and

8 (b) the reference in that subsection to subsection 34A(5) or (6) of  
9 the *Administrative Appeals Tribunal Act 1975* were a  
10 reference to subsection 34D(2) or (3) of the *Administrative*  
11 *Appeals Tribunal Act 1975* as amended by this Schedule.

## 12 **98 Before section 34B**

13 Insert:

## 14 **Division 4—Hearings and evidence**

### 15 **99 Section 34B**

16 Renumber as section 34J.

17 Note 1: The following heading to subsection 35(1AA) is inserted “*Scope*”.

18 Note 2: The following heading to subsection 35(1) is inserted “*Public hearing*”.

19 Note 3: The following heading to subsection 35(2) is inserted “*Private hearing etc.*”.

### 20 **100 Subsection 35A(1)**

21 Omit “or presiding over a conference mentioned in section 34, a  
22 mediator conducting a mediation under section 34A”.

23 Note 1: The following heading to subsection 36(1AA) is inserted “*Scope*”.

24 Note 2: The following heading to subsection 36(1) is inserted “*Attorney-General may issue*  
25 *public interest certificate*”.

26 Note 3: The following heading to subsection 36(2) is inserted “*Protection of information etc.*”.

27 Note 4: The following heading to subsection 36(3) is inserted “*Disclosure of information etc.*”.

28 Note 5: The following heading to subsection 36(3A) is inserted “*Attorney-General taken to be a*  
29 *party*”.

30 Note 6: The following heading to subsection 36(4) is inserted “*What Tribunal must consider in*  
31 *deciding whether to disclose information etc.*”.

32 Note 7: The following heading to subsection 36A(1AA) is inserted “*Scope*”.

33 Note 8: The following heading to subsection 36A(1) is inserted “*Intervention by*  
34 *Attorney-General*”.

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- 1 Note 9: The following heading to subsection 36A(2) is inserted “*When person excused from*  
2 *answering question*”.
- 3 Note 10: The following heading to subsection 36A(2A) is inserted “*Attorney-General taken to be*  
4 *a party*”.
- 5 Note 11: The following heading to subsection 36B(1AA) is inserted “*Scope*”.
- 6 Note 12: The following heading to subsection 36B(1) is inserted “*State Attorney-General may*  
7 *issue public interest certificate*”.
- 8 Note 13: The following heading to subsection 36B(2) is inserted “*Protection of information etc.*”.
- 9 Note 14: The following heading to subsection 36B(3) is inserted “*Disclosure of information etc.*”.
- 10 Note 15: The following heading to subsection 36B(4) is inserted “*State Attorney-General taken*  
11 *to be a party*”.
- 12 Note 16: The following heading to subsection 36B(5) is inserted “*What Tribunal must consider*  
13 *in deciding whether to disclose information etc.*”.

### 14 **101 Paragraph 37(1)(b)**

- 15 Omit “considered by the person to be”.
- 16 Note 1: The following heading to subsection 36C(1AA) is inserted “*Scope*”.
- 17 Note 2: The following heading to subsection 36C(1) is inserted “*Intervention by State*  
18 *Attorney-General*”.
- 19 Note 3: The following heading to subsection 36C(2) is inserted “*When person excused from*  
20 *answering question*”.
- 21 Note 4: The following heading to subsection 36C(3) is inserted “*State Attorney-General taken*  
22 *to be a party*”.
- 23 Note 5: The following heading to subsection 36D(1AA) is inserted “*Scope*”.
- 24 Note 6: The following heading to subsection 36D(1) is inserted “*Parties to be notified of*  
25 *Tribunal’s decision*”.
- 26 Note 7: The following heading to subsection 36D(2) is inserted “*Question of law*”.
- 27 Note 8: The following heading to subsection 36D(3) is inserted “*Constitution of Tribunal*”.
- 28 Note 9: The following heading to subsection 36D(4) is inserted “*Appeals*”.
- 29 Note 10: The following heading to subsection 36D(5) is inserted “*Disclosure of information etc.*  
30 *to officers and staff of Tribunal*”.
- 31 Note 11: The following heading to subsection 36D(6) is inserted “*Public interest*”.
- 32 Note 12: The following heading to subsection 36D(7) is inserted “*Commonwealth*  
33 *Attorney-General or State Attorney-General may appear or be represented*”.
- 34 Note 13: The following heading to subsection 37(1AAA) is inserted “*Scope*”.
- 35 Note 14: The following heading to subsection 37(1) is inserted “*Decision-maker must lodge*  
36 *statement of reasons and relevant documents*”.
- 37 Note 15: The following heading to subsection 37(1AB) is inserted “*Document setting out reasons*  
38 *for decision may be lodged instead of statement*”.
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1 **101A Transitional—paragraph 37(1)(b) of the *Administrative***  
2 ***Appeals Tribunal Act 1975***

3 The amendment made by item 101 does not apply to a proceeding by  
4 way of an application to the Tribunal for review of a decision made by a  
5 person if, before the commencement of this item, the person had  
6 complied with paragraph 37(1)(b) of the *Administrative Appeals*  
7 *Tribunal Act 1975* in relation to the proceeding.

8 **102 Subparagraph 37(1AF)(b)(ii)**

9 Omit “serves a copy of the application for the direction on”, substitute  
10 “gives a copy of the application for the direction to”.

11 Note 1: The following heading to subsection 37(1AE) is inserted “*Statement of reasons and*  
12 *relevant documents to be given to other party*”.

13 Note 2: The following heading to subsection 37(1AF) is inserted “*When document not required*  
14 *to be lodged*”.

15 Note 3: The following heading to subsection 37(1A) is inserted “*Tribunal may shorten deadline*  
16 *for lodging documents*”.

17 Note 4: The following heading to subsection 37(1B) is inserted “*What happens if application*  
18 *lodged out of time*”.

19 **103 Subsection 37(2)**

20 Omit “served on”, substitute “given to”.

21 Note: The following heading to subsection 37(2) is inserted “*Tribunal may require other*  
22 *documents to be lodged*”.

23 **103A Subsection 37(2)**

24 Omit “prescribed”, substitute “specified”.

25 **103B Application—subsection 37(2) of the *Administrative***  
26 ***Appeals Tribunal Act 1975***

27 The amendment made by item 103A does not apply to a notice under  
28 subsection 37(2) of the *Administrative Appeals Tribunal Act 1975* if the  
29 notice was served before the commencement of this item.

30 **104 Subsection 37(2)**

31 Omit “on whom such a notice is served”, substitute “to whom such a  
32 notice is given”.

33 Note: The following heading to subsection 37(3) is inserted “*Privilege and public interest*”.

**104A Subsection 37(4)**

Repeal the subsection.

**106 Before section 40**

Insert:

**Division 5—Procedural powers of Tribunal**

Note 1: The following heading to subsection 39A(1) is inserted “*Review of security assessment*”.

Note 2: The following heading to subsection 39A(2) is inserted “*Parties*”.

Note 3: The following heading to subsection 39A(3) is inserted “*Director-General of Security must present all relevant information*”.

Note 4: The following heading to subsection 39A(4) is inserted “*Member may require parties to attend etc.*”.

Note 5: The following heading to subsection 39A(5) is inserted “*Proceedings to be in private*”.

Note 6: The following heading to subsection 39A(6) is inserted “*Right of parties etc. to be present*”.

Note 7: The following heading to subsection 39A(8) is inserted “*Security/defence certificate*”.

Note 8: The following heading to subsection 39A(11) is inserted “*Protection of identity of person giving evidence*”.

Note 9: The following heading to subsection 39A(12) is inserted “*Evidence and submissions*”.

Note 10: The following heading to subsection 39A(18) is inserted “*Dismissal of application*”.

Note 11: The following heading to subsection 39B(1) is inserted “*Scope*”.

Note 12: The following heading to subsection 39B(2) is inserted “*Attorney-General may issue public interest certificate*”.

Note 13: The following heading to subsection 39B(3) is inserted “*Protection of information etc.*”.

Note 14: The following heading to subsection 39B(5) is inserted “*Disclosure of information etc.*”.

Note 15: The following heading to subsection 39B(6) is inserted “*What presidential member must consider in deciding whether to authorise disclosure of information etc.*”.

Note 16: The following heading to subsection 39B(7) is inserted “*Disclosure of information etc. to staff of Tribunal*”.

Note 17: The following heading to subsection 39B(8) is inserted “*Public interest*”.

Note 18: The following heading to subsection 39B(9) is inserted “*Copy of document*”.

Note 19: The following heading to subsection 39B(10) is inserted “*Certificate lodged under subsection 38A(1)*”.

Note 20: The following heading to subsection 39B(11) is inserted “*Duty of Tribunal*”.

**106B Subsection 40(1C)**

1 Omit “or a senior member” (first occurring), substitute “, a senior  
2 member or an authorised member”.

3 Note: The following heading to subsection 40(1A) is inserted “*Summons*”.

4 **107 Subsection 40(1C)**

5 Omit “or a senior member” (last occurring), substitute “, a senior  
6 member or an authorised member”.

7 **108 Subsection 40(1D)**

8 Omit “or senior member”, substitute “, a senior member or an  
9 authorised member”.

10 **108A Subsection 40(1E)**

11 Omit “of the hearing or directions hearing, as the case may be,”,  
12 substitute “specified in the summons”.

13 **108B Subsection 40(1E)**

14 Omit “that hearing” (wherever occurring), substitute “the hearing  
15 concerned”.

16 Note: The following heading to subsection 40(2) is inserted “*Oath or affirmation*”.

17 **108C Application of amendments—subsection 40(1E) of the**  
18 ***Administrative Appeals Tribunal Act 1975***

19 The amendments made by items 108A and 108B apply to a summons  
20 issued after the commencement of this item.

21 **109 Subsection 40(7)**

22 Omit “, a conference mentioned in section 34 or a mediation under  
23 section 34A”, substitute “under this Act or an alternative dispute  
24 resolution process under Division 3”.

25 Note 1: The following heading to subsection 40(4) is inserted “*Representation*”.

26 Note 2: The following heading to subsection 40(5) is inserted “*Tribunal’s power to take*  
27 *evidence*”.

28 Note 3: The following heading to subsection 40(7) is inserted “*Incidental proceedings*”.

29 **110 Subsection 40(7)**

30 Omit “conference, or the mediator”, substitute “person conducting the  
31 alternative dispute resolution process”.

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**111 Subsection 41(2)**

Omit “or a presidential member”.

**112 Subsection 41(2)**

Omit “or presidential member” (wherever occurring).

**113 Subsection 41(3)**

Omit “or a presidential member”.

**113A Transitional—subsections 41(2) and (3) of the  
Administrative Appeals Tribunal Act 1975**

- (1) This item applies to an order if:
- (a) the order was made by a presidential member under subsection 41(2) or (3) of the *Administrative Appeals Tribunal Act 1975*; and
  - (b) the order was in force immediately before the commencement of this item.
- (2) The order has effect, after the commencement of this item, as if it had been made by the Tribunal under subsection 41(2) or (3), as the case may be, of the *Administrative Appeals Tribunal Act 1975* as amended by this Schedule.

**114 Subsection 41(4)**

Omit “or a presidential member”.

**115 Subsection 41(4)**

Omit “or presidential member” (wherever occurring).

**116 Subsection 41(5)**

Omit “or a presidential member”.

**117 Subsection 41(5)**

Omit “or presidential member” (wherever occurring).

**118 Subsection 41(5)**

Omit “served on”, substitute “given to”.

**119 Subsections 41(7) and (8)**

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1 Repeal the subsections.

2 **120 Section 42**

3 Repeal the section, substitute:

4 **42 Resolving disagreements**

5 *2 members*

6 (1) If:

- 7 (a) 2 members constitute the Tribunal for the purposes of a  
8 particular proceeding; and  
9 (b) the members do not agree about any matter arising in the  
10 proceeding;  
11 the view of the presiding member prevails.

12 *3 members*

13 (2) If:

- 14 (a) 3 members constitute the Tribunal for the purposes of a  
15 particular proceeding; and  
16 (b) the members do not agree about any matter arising in the  
17 proceeding; and  
18 (c) the matter does not consist of a question of law;  
19 then:  
20 (d) if the majority agree—the view of the majority prevails; or  
21 (e) otherwise—the view of the presiding member prevails.

22 (3) If:

- 23 (a) 3 members constitute the Tribunal for the purposes of a  
24 particular proceeding; and  
25 (b) the members do not agree about a question of law arising in  
26 the proceeding;  
27 the view of the presiding member prevails.

28 *Question of law*

- 29 (4) A reference in this section to a *question of law* includes a reference  
30 to the question of whether a particular question is one of law.

1 **120A Application—section 42 of the *Administrative Appeals***  
 2 ***Tribunal Act 1975***

3 The amendment made by item 120 does not apply to a proceeding if,  
 4 immediately before the commencement of this item, the Tribunal was  
 5 constituted for the purposes of the proceeding by one or more members.

6 **121 Subsection 42A(2)**

7 Omit “, a conference mentioned in section 34, or a mediation under  
 8 section 34A,” substitute “, or an alternative dispute resolution process  
 9 under Division 3,”.

10 Note 1: The following heading to subsection 42A(1) is inserted “*Dismissal if parties consent*”.

11 Note 2: The following heading to subsection 42A(1A) is inserted “*Deemed dismissal—applicant*  
 12 *discontinues or withdraws application*”.

13 Note 3: The following heading to subsection 42A(2) is inserted “*Dismissal if party fails to*  
 14 *appear*”.

15 **123 Subsection 42A(3)**

16 Omit “, conference, mediation”.

17 **124 After subsection 42A(3)**

18 Insert:

19 (3A) For the purposes of subsection (2), a person is taken to appear in  
 20 person or by a representative at an alternative dispute resolution  
 21 process if the person or the person’s representative, as the case may  
 22 be, participates in it by a means allowed under section 34G.

23 Note: The following heading to subsection 42A(4) is inserted “*Dismissal if decision not*  
 24 *reviewable*”.

25 **124A Subsection 42A(5)**

26 Omit “a presidential member or senior member, on behalf of the  
 27 Tribunal,” substitute “the Tribunal”.

28 Note 1: The following heading to subsection 42A(5) is inserted “*Dismissal if applicant fails to*  
 29 *proceed or fails to comply with Tribunal’s direction*”.

30 Note 2: The following heading to subsection 42A(6) is inserted “*Dismissed application taken to*  
 31 *be concluded*”.

32 Note 3: The following heading to subsection 42A(7) is inserted “*Dismissal if party fails to*  
 33 *appear—giving of appropriate notice*”.

34 Note 4: The following heading to subsection 42A(8) is inserted “*Reinstatement of application*”.

1 **127 Paragraph 42C(1)(a)**

2 Omit “a mediation under section 34A”, substitute “an alternative  
3 dispute resolution process under Division 3”.

4 **128 At the end of subsection 42D(2)**

5 Add:

6 Note: For time limits, see subsection (5).

7 Note: The following heading to subsection 42D(2) is inserted “*Powers of person to whom a*  
8 *decision is remitted*”.

9 **129 At the end of section 42D**

10 Add:

11 *Time limits*

12 (5) The person must reconsider the decision, and do one of the things  
13 mentioned in paragraphs (2)(a), (b) and (c), within whichever of  
14 the following periods is applicable:

15 (a) if the Tribunal, when remitting the decision, specified a  
16 period within which the person was to reconsider the  
17 decision—that period;

18 (b) in any other case—the period of 28 days beginning on the  
19 day on which the decision was remitted to the person.

20 (6) The Tribunal may, on the application of the person, extend the  
21 period applicable under subsection (5).

22 (7) If the person has not reconsidered the decision, and done one of the  
23 things mentioned in paragraphs (2)(a), (b) and (c), within the  
24 period applicable under subsection (5), the person is taken to have  
25 affirmed the decision.

26 (8) If the person affirms the decision, the proceeding resumes.

27 **129A Application of amendment—subsections 42D(5), (6), (7)**  
28 **and (8) of the *Administrative Appeals Tribunal Act 1975***

29 Subsections 42D(5), (6), (7) and (8) of the *Administrative Appeals*  
30 *Tribunal Act 1975* apply in relation to a decision remitted after the  
31 commencement of this item.

32 **130 Before section 43**

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1                   Insert:

2                   **Division 6—Tribunal’s decision on review**

3                   **131 Subsection 43(2A)**

4                   Omit “served on”, substitute “given to”.

5                   Note 1: The heading to section 43 is replaced by the heading “**Tribunal’s decision on review**”.

6                   Note 2: The following heading to subsection 43(1) is inserted “*Tribunal’s decision on review*”.

7                   Note 3: The following heading to subsection 43(2) is inserted “*Tribunal must give reasons for*  
8                   *its decision*”.

9                   **132 Subsection 43(2A)**

10                  Omit “furnish” (wherever occurring), substitute “give”.

11                  **133 Subsection 43(3)**

12                  Omit “served on”, substitute “given to”.

13                  Note 1: The following heading to subsection 43(3) is inserted “*Tribunal must give copies of its*  
14                  *decision to parties*”.

15                  Note 2: The following heading to subsection 43(4) is inserted “*Evidence of Tribunal’s decision*  
16                  *or order*”.

17                  Note 3: The following heading to subsection 43(5A) is inserted “*When Tribunal’s decision*  
18                  *comes into operation*”.

19                  Note 4: The following heading to subsection 43(6) is inserted “*Tribunal’s decision taken to be*  
20                  *decision of decision-maker*”.

21                  **134 Before section 43AAA**

22                  Insert:

23                  **Division 7—Miscellaneous**

24                  Note 1: The following heading to subsection 43AAA(1) is inserted “*Scope*”.

25                  Note 2: The following heading to subsection 43AAA(2) is inserted “*Findings*”.

26                  Note 3: The following heading to subsection 43AAA(4) is inserted “*Copies of findings to be*  
27                  *given to parties etc.*”.

28                  Note 4: The following heading to subsection 43AAA(6) is inserted “*Applicant may publish*  
29                  *findings*”.

30                  Note 5: The following heading to subsection 43AAA(7) is inserted “*Tribunal may attach*  
31                  *comments to findings*”.

32                  **135 Section 43A**

- 1 Omit “furnished” (wherever occurring), substitute “given”.
- 2 Note 1: The following heading to subsection 43AA(1) is inserted “*Correction of errors*”.
- 3 Note 2: The following heading to subsection 43AA(3) is inserted “*Examples of obvious errors*”.
- 4 Note 3: The following heading to subsection 43AA(4) is inserted “*Exercise of powers*”.

5 **136 Paragraph 43B(1)(b)**

- 6 Omit “or of the Australian Capital Territory”.
- 7 Note: The heading to section 43B is altered by omitting “**or the ACT**”.

8 **137 Subsection 43B(2)**

- 9 Omit “or of the Australian Capital Territory” (first occurring).

10 **138 Subsection 43B(2)**

- 11 Omit “or of the Australian Capital Territory, as the case requires”.

12 **139 Paragraph 44(2A)(a)**

- 13 Omit “furnished”, substitute “given”.
- 14 Note 1: The following heading to subsection 44(1) is inserted “*Appeal on question of law*”.
- 15 Note 2: The following heading to subsection 44(2) is inserted “*Appeal about standing*”.
- 16 Note 3: The following heading to subsection 44(2A) is inserted “*When and how appeal*  
17 *instituted*”.
- 18 Note 4: The following heading to subsection 44(3) is inserted “*Jurisdiction*”.
- 19 Note 5: The following heading to subsection 44(4) is inserted “*Powers of Federal Court*”.

20 **139A Subsection 44(6)**

- 21 Omit all the words after “again”, substitute:  
22 by the Tribunal:
- 23 (a) the Tribunal need not be constituted for the hearing by the  
24 person or persons who made the decision to which the appeal  
25 relates; and
- 26 (b) whether or not the Tribunal is reconstituted for the hearing—  
27 the Tribunal may, for the purposes of the proceeding, have  
28 regard to any record of the proceeding before the Tribunal  
29 prior to the appeal (including a record of any evidence taken  
30 in the proceeding), so long as doing so is not inconsistent  
31 with the directions of the Court.
- 32 Note: The following heading to subsection 44(6) is inserted “*Constitution of Tribunal if*  
33 *Federal Court remits case etc.*”.
-

**140 At the end of section 44**

Add:

*Federal Court may make findings of fact*

- (7) If a party to a proceeding before the Tribunal appeals to the Federal Court of Australia under subsection (1), the Court may make findings of fact if:
- (a) the findings of fact are not inconsistent with findings of fact made by the Tribunal (other than findings made by the Tribunal as the result of an error of law); and
  - (b) it appears to the Court that it is convenient for the Court to make the findings of fact, having regard to:
    - (i) the extent (if any) to which it is necessary for facts to be found; and
    - (ii) the means by which those facts might be established; and
    - (iii) the expeditious and efficient resolution of the whole of the matter to which the proceeding before the Tribunal relates; and
    - (iv) the relative expense to the parties of the Court, rather than the Tribunal, making the findings of fact; and
    - (v) the relative delay to the parties of the Court, rather than the Tribunal, making the findings of fact; and
    - (vi) whether any of the parties considers that it is appropriate for the Court, rather than the Tribunal, to make the findings of fact; and
    - (vii) such other matters (if any) as the Court considers relevant.
- (8) For the purposes of making findings of fact under subsection (7), the Federal Court of Australia may:
- (a) have regard to the evidence given in the proceeding before the Tribunal; and
  - (b) receive further evidence.
- (9) Subsection (7) does not limit the Federal Court of Australia's power under subsection (5) to make an order remitting the case to be heard and decided again by the Tribunal.

- 1 (10) The jurisdiction of the Federal Court of Australia under  
2 subsection (3) includes jurisdiction to make findings of fact under  
3 subsection (7).

4 **141 At the end of section 44AA**

5 Add:

6 *Federal Magistrates Court may make findings of fact*

- 7 (11) If an appeal under subsection 44(1) is transferred to the Federal  
8 Magistrates Court under subsection (1) of this section, subsections  
9 44(7), (8) and (9) apply in relation to the making of findings of fact  
10 by the Federal Magistrates Court in a corresponding way to the  
11 way in which they apply to the making of findings of fact by the  
12 Federal Court of Australia.

- 13 (12) The jurisdiction of the Federal Magistrates Court under  
14 subsection (8) of this section includes jurisdiction to make findings  
15 of fact under subsection 44(7) (as applied by subsection (11) of this  
16 section).

17 Note 1: The following heading to subsection 44AA(1) is inserted "*Transfer of appeals*".

18 Note 2: The following heading to subsection 44AA(4) is inserted "*Federal Court Rules*".

19 Note 3: The following heading to subsection 44AA(7) is inserted "*Matters to which the Federal  
20 Court must have regard in transferring appeal*".

21 Note 4: The following heading to subsection 44AA(8) is inserted "*Jurisdiction*".

22 Note 5: The following heading to subsection 44AA(9) is inserted "*Powers etc.*".

23 Note 6: The following heading to subsection 44AA(10) is inserted "*No appeal from decision of  
24 Federal Court*".

25 Note 7: The following heading to subsection 44A(1) is inserted "*Appeal does not affect  
26 operation of Tribunal's decision*".

27 Note 8: The following heading to subsection 44A(2) is inserted "*Stay orders*".

28 **141A Application of amendments—sections 44 and 44AA of  
29 the *Administrative Appeals Tribunal Act 1975***

30 The amendments of sections 44 and 44AA of the *Administrative  
31 Appeals Tribunal Act 1975* made by items 140 and 141 apply in relation  
32 to an appeal instituted after the commencement of this item.

33 **142 Paragraphs 45(1)(a) and (b)**

34 Repeal the paragraphs, substitute:

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1 (a) a question must not be so referred without the concurrence of  
 2 the President; and

3 Note 1: The following heading to subsection 46(1) is inserted “*Sending of documents to courts*”.

4 Note 2: The following heading to subsection 46(2) is inserted “*Disclosure of documents by*  
 5 *courts*”.

6 **142A Application of amendment—subsection 45(1) of the**  
 7 ***Administrative Appeals Tribunal Act 1975***

8 The amendment of subsection 45(1) of the *Administrative Appeals*  
 9 *Tribunal Act 1975* made by this Schedule applies in relation to a  
 10 question of law referred after the commencement of this item.

11 **143 Section 54**

12 Repeal the section, substitute:

13 **54 Resignation**

14 (1) An appointed member may resign his or her appointment by giving  
 15 the Governor-General a written resignation.

16 (2) The resignation takes effect on the day it is received by the  
 17 Governor-General or, if a later day is specified in the resignation,  
 18 on that later day.

19 Note 1: The following heading to subsection 52(1) is inserted “*General rule*”.

20 Note 2: The following heading to subsection 52(2) is inserted “*Special rule—appointment for a*  
 21 *particular project*”.

22 Note 3: The following heading to subsection 56(2) is inserted “*Convening meeting*”.

23 Note 4: The following heading to subsection 56(4) is inserted “*Quorum*”.

24 Note 5: The following heading to subsection 56(5) is inserted “*Who is to preside*”.

25 Note 6: The following heading to subsection 56(7) is inserted “*Questions to be determined by*  
 26 *majority*”.

27 Note 7: The following heading to subsection 56(8) is inserted “*Presiding member has*  
 28 *deliberative vote etc.*”.

29 Note 8: The following heading to subsection 56(9) is inserted “*Council may regulate meetings*”.

30 Note 9: The following heading to subsection 56(10) is inserted “*Acting ombudsman may attend*  
 31 *meetings*”.

32 **144 Subsection 58(1)**

33 Omit “furnish”, substitute “give”.

1 **145 After section 59**

2 Insert:

3 **59A Authorised members**

- 4 (1) The President may authorise a particular member to be an  
5 authorised member for the purposes of one or more specified  
6 provisions of this Act.
- 7 (2) An authorisation under subsection (1), to the extent to which it  
8 relates to a particular provision of this Act, may be:
- 9 (a) general; or  
10 (b) limited to:
- 11 (i) a particular reviewable decision or particular reviewable  
12 decisions; or  
13 (ii) reviewable decisions included in a particular class or  
14 classes of reviewable decisions; or  
15 (iii) a particular proceeding or particular proceedings; or  
16 (iv) proceedings included in a particular class or classes of  
17 proceedings.
- 18 (3) The President may at any time vary or revoke an authorisation  
19 under subsection (1).
- 20 (4) In this section:

21 *reviewable decision* means a decision in respect of which an  
22 application to the Tribunal for review has been, or may be, made.

23 **145A Transitional—section 59A of the *Administrative***  
24 ***Appeals Tribunal Act 1975***

- 25 (1) This item applies to the power to make an authorisation under  
26 section 59A of the *Administrative Appeals Tribunal Act 1975* as  
27 amended by this Schedule.
- 28 (2) For the purposes of section 4 of the *Acts Interpretation Act 1901*, that  
29 power is taken to be a power to make an instrument of an administrative  
30 character.

31 **146 Subsection 60(1A)**

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1 Omit “A mediator”, substitute “An alternative dispute resolution  
2 practitioner”.

3 Note 1: The heading to section 60 is altered by omitting “**mediators**” and substituting  
4 “**alternative dispute resolution practitioners**”.

5 Note 2: The following heading to subsection 60(1) is inserted “*Members*”.

6 Note 3: The following heading to subsection 60(1A) is inserted “*Alternative dispute resolution*  
7 *practitioners*”.

8 Note 4: The following heading to subsection 60(2) is inserted “*Barristers etc.*”.

### 9 **147 Subsection 60(1A)**

10 Omit “a mediator”, substitute “an alternative dispute resolution  
11 practitioner”.

### 12 **148 Transitional—subsection 60(1A) of the *Administrative* 13 *Appeals Tribunal Act 1975***

14 Despite the amendments of subsection 60(1A) of the *Administrative*  
15 *Appeals Tribunal Act 1975* made by this Schedule, that subsection  
16 continues to apply after the commencement of this item, in relation to  
17 anything done or omitted to be done by a mediator before the  
18 commencement of this item, as if those amendments had not been  
19 made.

### 20 **149 After subsection 60(1A)**

21 Insert:

22 *Registrars, District Registrars or Deputy Registrars*

23 (1B) A Registrar, a District Registrar or a Deputy Registrar has, in the  
24 performance of his or her duties as a Registrar, a District Registrar  
25 or a Deputy Registrar under section 40 or 69A, the same protection  
26 and immunity as a Justice of the High Court.

27 *Conference Registrars*

28 (1C) A Conference Registrar has, in the performance of his or her duties  
29 as a Conference Registrar under paragraph 33(2)(a), the same  
30 protection and immunity as a Justice of the High Court.

31 Note: The heading to section 60 is altered by inserting “**Registrars, District Registrars,**  
32 **Deputy Registrars, Conference Registrars,**” before “**barristers**”.

### 33 **150 At the end of section 60**

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Add:

(4) In this section:

*alternative dispute resolution practitioner* means a person who conducts an alternative dispute resolution process under Division 3 of Part IV.

Note: The following heading to subsection 60(3) is inserted “*Witnesses*”.

**151 Sections 61, 62 and 62A**

Repeal the sections, substitute:

**61 Failure to comply with summons**

*Summons to appear as a witness*

- (1) A person is guilty of an offence if:
  - (a) the person is given, as prescribed, a summons under this Act to appear as a witness before the Tribunal; and
  - (b) the person:
    - (i) fails to attend as required by the summons; or
    - (ii) fails to appear and report from day to day unless excused, or released from further attendance, by a member.

Penalty: 30 penalty units or imprisonment for 6 months, or both.

- (2) Subsection (1) does not apply if the person has a reasonable excuse.

Note: A defendant bears an evidential burden in relation to the matter in subsection (2) (see subsection 13.3(3) of the *Criminal Code*).

*Summons to produce a book, document or thing*

- (3) A person is guilty of an offence if:
  - (a) the person is given, as prescribed, a summons under this Act to produce a book, document or thing; and
  - (b) the person fails to comply with the summons.

Penalty: 30 penalty units or imprisonment for 6 months, or both.

- (4) Subsection (3) does not apply if the person has a reasonable excuse.

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1 Note: A defendant bears an evidential burden in relation to the matter in  
2 subsection (4) (see subsection 13.3(3) of the *Criminal Code*).

3 **62 Refusal to be sworn or to answer questions**

4 *Oath or affirmation*

- 5 (1) A person is guilty of an offence if:  
6 (a) the person appears as a witness before the Tribunal; and  
7 (b) the person has been required under section 40 either to take  
8 an oath or make an affirmation; and  
9 (c) the person fails to comply with the requirement.

10 Penalty: 30 penalty units or imprisonment for 6 months, or both.

- 11 (2) Subsection (1) does not apply if the person has a reasonable  
12 excuse.

13 Note: A defendant bears an evidential burden in relation to the matter in  
14 subsection (2) (see subsection 13.3(3) of the *Criminal Code*).

15 *Questions*

- 16 (3) A person is guilty of an offence if:  
17 (a) the person appears as a witness before the Tribunal; and  
18 (b) the member presiding at the proceeding has required the  
19 person to answer a question; and  
20 (c) the person fails to answer the question.

21 Penalty: 30 penalty units or imprisonment for 6 months, or both.

- 22 (4) Subsection (3) does not apply if the person has a reasonable  
23 excuse.

24 Note: A defendant bears an evidential burden in relation to the matter in  
25 subsection (4) (see subsection 13.3(3) of the *Criminal Code*).

26 *Books, documents or things*

- 27 (5) A person is guilty of an offence if:  
28 (a) the person appears as a witness before the Tribunal; and  
29 (b) the person has been given, as prescribed, a summons under  
30 this Act to produce a book, document or thing; and  
31 (c) the person fails to produce the book, document or thing.

1 Penalty: 30 penalty units or imprisonment for 6 months, or both.

2 (6) Subsection (5) does not apply if the person has a reasonable  
3 excuse.

4 Note: A defendant bears an evidential burden in relation to the matter in  
5 subsection (6) (see subsection 13.3(3) of the *Criminal Code*).

6 **62A False or misleading evidence**

7 A person is guilty of an offence if:

- 8 (a) the person appears as a witness before the Tribunal; and  
9 (b) the person gives evidence; and  
10 (c) the person does so knowing that the evidence is false or  
11 misleading.

12 Penalty: 30 penalty units or imprisonment for 6 months, or both.

13 **153 Section 62B**

14 Omit “, a conference mentioned in section 34 or a mediation under  
15 section 34A”, substitute “or an alternative dispute resolution process  
16 under Division 3”.

17 **153A Section 63**

18 Repeal the section, substitute:

19 **63 Contempt of Tribunal**

20 *Insulting a member*

21 (1) A person is guilty of an offence if:

- 22 (a) the person engages in conduct; and  
23 (b) the person’s conduct insults a member in, or in relation to,  
24 the exercise of his or her powers or functions as a member.

25 Penalty: 30 penalty units or imprisonment for 6 months, or both.

26 *Interrupting proceedings of the Tribunal*

27 (2) A person is guilty of an offence if:

- 28 (a) the person engages in conduct; and  
29 (b) the person’s conduct interrupts the proceedings of the  
30 Tribunal.
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1 Penalty: 30 penalty units or imprisonment for 6 months, or both.

2 *Creating a disturbance*

3 (3) A person is guilty of an offence if:

4 (a) the person engages in conduct; and

5 (b) the person's conduct creates a disturbance in or near a place  
6 where the Tribunal is sitting.

7 Penalty: 30 penalty units or imprisonment for 6 months, or both.

8 *Taking part in creating or continuing a disturbance*

9 (4) A person is guilty of an offence if:

10 (a) the person takes part in creating or continuing a disturbance;  
11 and

12 (b) the disturbance is in or near a place where the Tribunal is  
13 sitting.

14 Penalty: 30 penalty units or imprisonment for 6 months, or both.

15 *Contempt of Tribunal*

16 (5) A person is guilty of an offence if:

17 (a) the person engages in conduct; and

18 (b) the person's conduct would, if the Tribunal were a court of  
19 record, constitute a contempt of that court.

20 Penalty: 30 penalty units or imprisonment for 6 months, or both.

21 **154 Subsection 64(1)**

22 Omit “, in the Australian Capital Territory and in the Northern  
23 Territory”.

24 **155 Subsection 66(2)**

25 Omit “furnished”, substitute “given”.

26 Note 1: The following heading to subsection 66(1) is inserted “*Protected information*”.

27 Note 2: The following heading to subsection 66(2) is inserted “*Protected documents*”.

28 Note 3: The following heading to subsection 66(3) is inserted “*Tribunal proceedings*”.

29 Note 4: The following heading to subsection 66(4) is inserted “*Definitions*”.

1 **155A Subsection 67(1)**

2 Omit “to appear as a witness before the Tribunal”, substitute “under this  
3 Act”.

4 Note: The heading to section 67 is altered by omitting “**witnesses**” and substituting  
5 “**compliance with summons**”.

6 **155AA Subsection 67(1)**

7 Omit “attendance”, substitute “compliance with the summons”.

8 **155B Paragraph 67(2)(a)**

9 Omit “witness”, substitute “person”.

10 **155C Paragraph 67(2)(a)**

11 Omit “other than the person who made the decision subject to review”.

12 **155D Subsection 67(3)**

13 Omit “witness”, substitute “person”.

14 **155E Application—section 67 of the *Administrative Appeals***  
15 ***Tribunal Act 1975***

16 The amendments of section 67 of the *Administrative Appeals Tribunal*  
17 *Act 1975* made by this Schedule apply in relation to a summons issued  
18 after the commencement of this item.

19 **157 Section 67A**

20 Omit “served on or” (wherever occurring).

21 **158 Paragraph 67A(b)**

22 Omit “on or to whom notices may be served or”, substitute “to whom  
23 notices may be”.

24 **159 After section 68**

25 **68AA How documents may be given to a person**

26 *Post*

27 (1) For the purposes of this Act:

- 
- 1 (a) a document, statement, notice or other notification is taken to  
2 be given to a person if it is sent by post to whichever of the  
3 following addresses is applicable:
- 4 (i) if the document, statement, notice or other notification  
5 relates to a proceeding and the person has provided an  
6 address to which documents in relation to the  
7 proceeding may be sent—that address;
- 8 (ii) if subparagraph (i) does not apply and the person is not  
9 a company—the address of the place of residence or  
10 business of the person last known to the person posting  
11 the document, statement, notice or other notification;
- 12 (iii) if subparagraph (i) does not apply and the person is a  
13 company—the address of the registered office of the  
14 company; and
- 15 (b) a document, statement, notice or other notification so sent by  
16 post is taken to have been given, unless the contrary is  
17 proved, at the time when the document, statement, notice or  
18 other notification would have been delivered in the ordinary  
19 course of post.

20 Note: See also the *Electronic Transactions Act 1999*.

21 *Tribunal direction*

- 22 (2) For the purposes of this Act:
- 23 (a) if:
- 24 (i) a person is not a company; and
- 25 (ii) the person's present or any previous place of residence  
26 or business is unknown;
- 27 a document, statement, notice or other notification is taken to  
28 be given to the person, if it is given in accordance with a  
29 direction given by the Tribunal; and
- 30 (b) if, in accordance with that direction, the document, statement,  
31 notice or notification is sent by post—the document,  
32 statement, notice or notification is taken to have been given,  
33 unless the contrary is proved, at the time when the document,  
34 statement, notice or notification would have been delivered  
35 in the ordinary course of post.



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1           The Governor-General may make regulations in relation to transitional  
2           matters arising out of the amendments made by this Schedule.

3           ***Archives Act 1983***

4           **163 Section 48**

5           Omit “(1)” (second and third occurring), substitute “(3)”.

6           **164 Section 48**

7           Omit “(including the question whether a particular question is one of  
8           law)”.

9           **164A Application of amendments—section 48 of the *Archives*  
10           ***Act 1983*****

11           The amendments made by items 163 and 164 do not apply to a  
12           proceeding if, immediately before the commencement of this item, the  
13           Tribunal was constituted for the purposes of the proceeding by one or  
14           more members.

15           ***Commonwealth Electoral Act 1918***

16           **166 Subsection 141(6)**

17           Repeal the subsection, substitute:

18           (6) For the purposes of a review referred to in subsection (5), the  
19           Administrative Appeals Tribunal is to be constituted by 3  
20           members, at least one of whom is a Judge of the Federal Court of  
21           Australia.

22           (6A) Subsection 21(1AA) of the *Administrative Appeals Tribunal Act*  
23           1975 does not apply in relation to a review referred to in  
24           subsection (5) of this section.

25           ***Environment Protection and Biodiversity Conservation Act***  
26           **1999**

27           **167 Subsection 303GJ(2)**

28           Repeal the subsection.

1 ***Federal Proceedings (Costs) Act 1981***

2 **168 Subsection 10A(1)**

3 Omit “or 23A”.

4 **168A Transitional—subsection 10A(1) of the *Federal***  
5 ***Proceedings (Costs) Act 1981***

6 Despite the amendment of subsection 10A(1) of the *Federal*  
7 *Proceedings (Costs) Act 1981* made by this Schedule, that subsection  
8 continues to apply after the commencement of this item, in relation to a  
9 rehearing that began before the commencement of this item, as if that  
10 amendment had not been made.

11 ***Freedom of Information Act 1982***

12 **172 Section 58D**

13 Omit “(1)” (second and third occurring), substitute “(3)”.

14 **172A Section 58D**

15 Omit “(including the question whether a particular question is one of  
16 law)”.

17 **172B Application of amendments—section 58D of the**  
18 ***Freedom of Information Act 1982***

19 The amendments made by items 172 and 172A do not apply to a  
20 proceeding if, immediately before the commencement of this item, the  
21 Tribunal was constituted for the purposes of the proceeding by one or  
22 more members.

23 **174 After subsection 64(1)**

24 Insert:

25 (1A) If, for the purposes of proceedings before the Tribunal under this  
26 Act in relation to a document that is claimed to be an exempt  
27 document, the document is voluntarily produced to the Tribunal,  
28 then only:

29 (a) the members of the Tribunal as constituted for the purposes  
30 of the review; or

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1 (b) a member of the staff of the Tribunal in the course of the  
2 performance of his or her duties as a member of that staff;  
3 may inspect, or have access to, the document.

4 **175 After subsection 64(4)**

5 Insert:

6 (4A) In making an order for the purposes of subsection (1), (2) or (4),  
7 the Tribunal may require the relevant document to be produced at  
8 any time later than 28 days after the decision-maker was given  
9 notice of the application, even if that time is before the Tribunal  
10 has begun to hear argument or otherwise deal with the matter.

11 **176 Subsection 64(5)**

12 After “Subsections (1)”, insert “, (1A)”.

13 **177 Subsection 64(6)**

14 After “Subsection (1)”, insert “, (1A)”.

15 **178 Subsection 64(8)**

16 After “subsection (1)”, insert “, (1A)”.

17 ***Imported Food Control Act 1992***

18 **179 Subparagraph 42(9)(b)(i)**

19 Omit “subsection 24(4)”, substitute “subsection 28(4)”.

20 ***Insurance Acquisitions and Takeovers Act 1991***

21 **180 Subsection 67(4)**

22 Repeal the subsection.

23 ***Insurance Act 1973***

24 **181 Subsections 63(10) and (11)**

25 Repeal the subsections.

26 ***Judges’ Pensions Act 1968***

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1 **182 Subsection 4(1) (subparagraph (b)(ii) of the definition of**  
2 ***period of exempt service*)**

3 Omit “section 16 of the *Administrative Appeals Tribunal Act 1975*”,  
4 substitute “repealed section 16 of the *Administrative Appeals Tribunal*  
5 *Act 1975* (including that section as it continues to apply because of  
6 item 28 of Schedule 1 to the *Administrative Appeals Tribunal*  
7 *Amendment Act 2004*)”.

8 ***Lands Acquisition Act 1989***

9 **183 Section 32**

10 Repeal the section.

11 **184 Subsection 131(2)**

12 Omit “section 32”, substitute “paragraph 42B(1)(a) of the  
13 *Administrative Appeals Tribunal Act 1975*”.

14 ***Life Insurance Act 1995***

15 **185 Subsections 237(1) and (2)**

16 Repeal the subsections.

17 **186 Subsections 237(3), (4) and (5)**

18 Omit “the Tribunal” (wherever occurring), substitute “the  
19 Administrative Appeals Tribunal”.

20 ***Migration Act 1958***

21 **187 Subsection 500(5)**

22 Repeal the subsection, substitute:

23 (5) In giving a direction under the *Administrative Appeals Tribunal*  
24 *Act 1975* as to the persons who are to constitute the Tribunal for  
25 the purposes of a proceeding for review of a decision referred to in  
26 subsection (1), the President must have regard to:

- 27 (a) the degree of public importance or complexity of the matters  
28 to which that proceeding relates; and  
29 (b) the status of the position or office held by the person who  
30 made the decision that is to be reviewed by the Tribunal; and
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- 1 (c) the degree to which the matters to which that proceeding  
2 relates concern the security, defence or international relations  
3 of Australia; and  
4 (d) if:  
5 (i) the person to whom the decision relates has been  
6 convicted of, or sentenced for, an offence; and  
7 (ii) that conviction or sentence is relevant to the matters to  
8 which that proceeding relates;  
9 the seriousness of that offence; and  
10 (e) if:  
11 (i) the person to whom the decision relates has been  
12 acquitted of an offence on the grounds of unsoundness  
13 of mind or insanity, and as a result the person has been  
14 detained in a facility or institution; and  
15 (ii) that acquittal is relevant to the matters to which that  
16 proceeding relates;  
17 the seriousness of that offence;  
18 and must not have regard to any other matters.
- 19 (5A) Section 23C of the *Administrative Appeals Tribunal Act 1975* does  
20 not apply in relation to a proceeding for review of a decision  
21 referred to in subsection (1) of this section.

22 ***Military Rehabilitation and Compensation Act 2004***

23 **189 Section 355 (table item 1)**

24 Omit “24”, substitute “20A”.

25 ***Narcotic Drugs Act 1967***

26 **190 Subsection 14A(2)**

27 Repeal the subsection.

28 ***Privacy Act 1988***

29 **191 Subsections 61(3) and (4)**

30 Repeal the subsections.

1 ***Safety, Rehabilitation and Compensation Act 1988***

2 **192 Subsection 65(2)**

3 Repeal the subsection.

4 **193 Subsection 65(3)**

5 Omit “24”, substitute “20A”.

6 ***Seafarers Rehabilitation and Compensation Act 1992***

7 **193A Subsection 89(2)**

8 Omit “24”, substitute “20A”.

9 ***Superannuation Act 1976***

10 **196 Subsection 3(1) (definition of pensioner)**

11 Omit “and, for the purposes of subsection 154(7), includes a pensioner  
12 under the superseded Act”.

13 **197 Subsections 154(7) and (8)**

14 Repeal the subsections.

15 ***Trans-Tasman Mutual Recognition Act 1997***

16 **198 Subsection 35(3)**

17 Omit “paragraph 20(1A)(b)”, substitute “subsection 20B(1)”.

18 **199 Subsection 35(5)**

19 Repeal the subsection, substitute:

20 (5) A reference in any of the following provisions to a member  
21 includes a reference to a person included in a direction under  
22 subsection (3) of this section:

23 (a) the definition of *authorised member* in subsection 3(1) of the  
24 *Administrative Appeals Tribunal Act 1975*;

25 (b) Part III, IIIA, IV or VI of the *Administrative Appeals*  
26 *Tribunal Act 1975*.