



Administrative Appeals Tribunal Act 1975

No. 91, 1975 as amended

Compilation start date: 29 June 2013

Includes amendments up to: Act No. 103, 2013

Prepared by the Office of Parliamentary Counsel, Canberra

About this compilation

This compilation

This is a compilation of the *Administrative Appeals Tribunal Act 1975* as in force on 29 June 2013. It includes any commenced amendment affecting the compilation to that date.

This compilation was prepared on 20 August 2013.

The notes at the end of this compilation (the *endnotes*) include information about amending laws and the amendment history of each amended provision.

Uncommenced amendments

The effect of uncommenced amendments is not reflected in the text of the compiled law but the text of the amendments is included in the endnotes.

Application, saving and transitional provisions for provisions and amendments

If the operation of a provision or amendment is affected by an application, saving or transitional provision that is not included in this compilation, details are included in the endnotes.

Modifications

If a provision of the compiled law is affected by a modification that is in force, details are included in the endnotes.

Provisions ceasing to have effect

If a provision of the compiled law has expired or otherwise ceased to have effect in accordance with a provision of the law, details are included in the endnotes.

Contents

Part I—Preliminary	1
1 Short title	1
2 Commencement	1
2A Tribunal's objective	1
3 Interpretation	1
4 Extension to external Territories	5
Part II—Establishment of the Administrative Appeals Tribunal	6
Division 1—Establishment of Tribunal	6
5 Establishment of Tribunal	6
Division 2—Members of Tribunal	7
6 Appointment of members of Tribunal	7
7 Qualifications for appointment	7
7A Appointment of a Judge as a presidential member not to affect tenure etc.	8
8 Term of appointment	9
9 Remuneration and allowances	9
10 Acting appointments	9
10A Delegation	12
10B Oath or affirmation of office	12
11 Outside employment	13
12 Leave of absence	13
13 Removal from office	13
14 Disclosure of interests by members	15
15 Resignation	16
Part III—Organization of the Tribunal	17
Division 1—Divisions of the Tribunal	17
19 Divisions of the Tribunal	17
Division 2—Arrangement of business of the Tribunal	20
20 Arrangement of business	20
20A Places of sitting	20
Division 3—Constitution and reconstitution of the Tribunal	21
20B President may give directions as to constitution of Tribunal	21
21 Constitution of Tribunal for exercise of powers	21
21AA Constitution of Security Appeals Division—general	22

21AB	Constitution of Security Appeals Division—proceedings to review certain decisions under the <i>Archives Act 1983</i>	23
21A	Reconstitution of Tribunal at the request of a party	26
22	Member Presiding	27
23	Reconstitution of Tribunal if member is unavailable	28
23A	Reconstitution of Tribunal to achieve expeditious and efficient conduct of proceeding	30
23B	Matters to which the President must have regard in constituting the Tribunal	31
23C	Limitation on composition of reconstituted Tribunal	32
23D	Tribunal may have regard to record of previous proceeding	32
23E	Constitution of Tribunal for review of amount taxed—general rule	33
23F	Constitution of Tribunal for review of amount taxed—member unavailable	34
Part IIIAA—Small Taxation Claims Tribunal		36
24AA	Definitions	36
24AB	Reviews of relevant taxation decisions to be heard before the Taxation Appeals Division	36
24AC	Small Taxation Claims Tribunal to hear certain tax disputes	36
24AD	What happens if the Small Taxation Claims Tribunal considers that the tax in dispute is not less than the determined amount	37
Part IIIA—Management of the Tribunal		40
Division 1—Management responsibilities of President and Registrar		40
24A	Management of administrative affairs of Tribunal	40
24B	Registrar of the Tribunal	40
Division 2—Appointment, powers etc. of Registrar		41
24C	Appointment of Registrar	41
24D	Powers of the Registrar	41
24E	Remuneration of Registrar	41
24F	Terms and conditions of appointment of Registrar	41
24G	Leave of absence	42
24H	Resignation	42
24J	Outside employment of Registrar	42
24K	Termination of appointment	42
24L	Disclosure of interests by Registrar	43
24M	Acting Registrar	44

Division 3—Other officers and staff of Tribunal	45
24N Officers and staff of the Tribunal	45
24P Statutory Agency etc. for purposes of Public Service Act	45
24Q Engagement of consultants etc.	46
Division 4—Miscellaneous administrative matters	47
24R Annual report.....	47
24V Delegation of administrative powers of President	47
24W Proceedings arising out of administration of Tribunal.....	47
Part IV—Reviews by the Tribunal of decisions	48
Division 1—Applications for review of decisions	48
25 Tribunal may review certain decisions	48
26 Restriction on powers of decision-maker after application for review is made	51
27 Persons who may apply to Tribunal	51
27AA Applications to Tribunal under Australian Security Intelligence Organisation Act	52
27A Notice of decision and review rights to be given	52
27B Review—Code of Practice	54
28 Person affected by decision may obtain reasons for decision	54
29 Manner of applying for review	58
29B Notice of application	62
Division 2—Parties and procedure	63
30 Parties to proceeding before Tribunal.....	63
30A Intervention by Attorney-General.....	64
31 Tribunal to determine persons whose interests are affected by decision.....	64
32 Representation before Tribunal	64
33 Procedure of Tribunal.....	64
Division 3—Alternative dispute resolution processes	67
34 Scope of Division	67
34A Referral of proceeding for alternative dispute resolution process.....	67
34B Alternative dispute resolution processes—proceeding before the Small Taxation Claims Tribunal.....	68
34C Directions by President.....	69
34D Agreement about the terms of a decision etc.	69
34E Evidence not admissible	70
34F Eligibility of person conducting alternative dispute resolution process to sit as a member of the Tribunal.....	71
34G Participation by telephone etc.....	71

34H	Engagement of persons to conduct alternative dispute resolution processes.....	72
Division 4—Hearings and evidence		73
34J	Circumstances in which hearing may be dispensed with.....	73
35	Hearings to be in public except in special circumstances	73
35AA	Restriction on publication of evidence and findings in a proceeding before the Security Appeals Division.....	74
35A	Participation by telephone etc.....	75
36	Disclosure not required: Attorney-General’s public interest certificate	75
36A	Answering questions where Attorney-General intervenes on public interest grounds.....	77
36B	Disclosure not required: State Attorney-General’s public interest certificate	78
36C	Answering questions where State Attorney-General intervenes on public interest grounds	80
36D	Public interest questions under sections 36, 36A and 36C	81
37	Lodging of material documents with Tribunal	83
38	Power of Tribunal to obtain additional statements	86
38A	Director-General of Security to lodge certain material with Tribunal	87
39	Opportunity to make submissions concerning evidence	87
39A	Procedure at certain hearings in Security Appeals Division	88
39B	Certain documents and information not to be disclosed in proceedings before Security Appeals Division.....	91
Division 5—Procedural powers of Tribunal		94
40	Powers of Tribunal etc.....	94
41	Operation and implementation of a decision that is subject to review	96
42	Resolving disagreements	98
42A	Discontinuance, dismissal, reinstatement etc. of application	99
42B	Power of Tribunal where a proceeding is frivolous or vexatious.....	101
42C	Power of Tribunal if parties reach agreement.....	101
42D	Power to remit matters to decision-maker for further consideration	102
Division 6—Tribunal’s decision on review		104
43	Tribunal’s decision on review	104
Division 7—Miscellaneous		107
43AAA	Findings of Tribunal in certain proceedings before Security Appeals Division	107
43AA	Correction of errors in decisions or statement of reasons	108

43A	Return of documents etc. at completion of proceeding.....	109
Part IVA—Appeals and references of questions of law to the Federal Court of Australia		110
43B	Part applies whether Tribunal’s power conferred by an enactment or by a law of a State	110
44	Appeals to Federal Court of Australia from decisions of the Tribunal	110
44AA	Transfer of appeals from Federal Court to Federal Circuit Court.....	113
44A	Operation and implementation of a decision that is subject to appeal	115
45	Reference of questions of law to Federal Court of Australia	117
46	Sending of documents to, and disclosure of documents by, the Federal Court and the Federal Circuit Court.....	117
Part V—Administrative Review Council		120
47	Interpretation	120
48	Establishment of Council.....	120
49	Composition of Council.....	120
50	Qualifications for appointment.....	121
51	Functions and powers of Council	121
51A	Minister may give directions to the Council.....	123
51B	Minister may refer matters to the Council	123
51C	Reports by the Council	123
52	Period of appointment	124
53	Remuneration and allowances	124
54	Resignation.....	125
55	Removal from office.....	125
56	Meetings	125
57	Staff of Council	126
58	Annual Report	127
Part VI—Miscellaneous		128
59	Advisory opinions	128
59A	Authorised members.....	128
60	Protection of members, alternative dispute resolution practitioners, Registrars, District Registrars, Deputy Registrars, Conference Registrars, barristers and witnesses	129
61	Failure to comply with summons	130
62	Refusal to be sworn or to answer questions.....	131
62A	False or misleading evidence.....	132
62B	Extended operation of certain provisions	132

63	Contempt of Tribunal	132
64	Registries	133
65	Officers of Tribunal	134
66	Confidential information not to be disclosed	134
66A	Application of confidentiality provisions in other Acts	135
67	Fees for compliance with summons	136
67A	Giving of notices	136
68	Lodging of documents	137
68AA	How documents may be given to a person	137
68A	Calculation of short periods of time	138
69	Legal assistance	138
69A	Procedure for taxing costs	139
69B	Costs in certain proceedings in Security Appeals Division	140
69C	Dismissal of application for non-payment of application fee	140
70	Regulations	141
Schedule 2		142
Endnotes		143
Endnote 1—About the endnotes		143
Endnote 2—Abbreviation key		145
Endnote 3—Legislation history		146
Endnote 4—Amendment history		158
Endnote 5—Uncommenced amendments [none]		172
Endnote 6—Modifications		173
	Safety, Rehabilitation and Compensation Act 1988	173
	Social Security Act 1991	173
	Taxation Laws Amendment Act (No. 3) 1991	173
	Migration Reform Act 1992	173
	A.C.T. Self-Government (Consequential Provisions) Regulations	173
Endnote 7—Misdescribed amendments		174
	National Disability Insurance Scheme Legislation Amendment Act 2013 (No. 44, 2013)	174
Endnote 8—Miscellaneous [none]		175

An Act to establish an Administrative Appeals Tribunal

Part I—Preliminary

1 Short title

This Act may be cited as the *Administrative Appeals Tribunal Act 1975*.

2 Commencement

This Act shall come into operation on a day to be fixed by Proclamation.

2A Tribunal's objective

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.

3 Interpretation

- (1) In this Act, unless the contrary intention appears:

adduce includes give.

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

- (a) conferencing; and
- (b) mediation; and
- (c) neutral evaluation; and
- (d) case appraisal; and
- (e) conciliation; and
- (f) procedures or services specified in the regulations;

but does not include:

- (g) arbitration; or
- (h) court procedures or services.

Section 3

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

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

authority of Norfolk Island means an authority, tribunal or other body, whether incorporated or not, that is established by a Norfolk Island enactment.

authority of the Commonwealth means an authority, tribunal or other body, whether incorporated or not, that is established by an enactment.

Commonwealth agency means a Minister or an authority of the Commonwealth.

Conference Registrar means a Conference Registrar of the Tribunal.

CSC (short for Commonwealth Superannuation Corporation) has the same meaning as in the *Governance of Australian Government Superannuation Schemes Act 2011*.

Deputy President means a member appointed as a Deputy President of the Tribunal after the commencement of Part III of the *Statute Law (Miscellaneous Amendments) Act (No. 1) 1982*.

Deputy Registrar means a Deputy Registrar of the Tribunal.

District Registrar means a District Registrar of the Tribunal.

enactment means:

- (a) an Act;
- (b) an Ordinance of a Territory other than the Northern Territory, the Australian Capital Territory or Norfolk Island; or
- (c) an instrument (including rules, regulations or by-laws) made under an Act or under such an Ordinance;

and includes an enactment as amended by another enactment.

Note: See also subsection 25(8) (Norfolk Island enactments).

full-time member means a member who is appointed as a full-time member.

Judge means:

- (a) a Judge of a court created by the Parliament; or
- (b) a person who has the same designation and status as a Judge of a court created by the Parliament.

member means a presidential member, a senior member, or any other member of the Tribunal.

non-presidential member means a member other than a presidential member.

Norfolk Island enactment means:

- (a) an enactment (within the meaning of the *Norfolk Island Act 1979*); or
- (b) an instrument (including rules, regulations or by-laws) made under such an enactment;

and includes a Norfolk Island enactment as amended by another Norfolk Island enactment.

Norfolk Island Justice Minister means the Norfolk Island Minister who is responsible, or principally responsible, for the administration of the *Interpretation Act 1979* of Norfolk Island.

Norfolk Island Minister means a Minister of Norfolk Island.

officer of the Tribunal means the Registrar, a District Registrar, a Conference Registrar or a Deputy Registrar.

part-time member means a member who is appointed as a part-time member.

President means the President of the Tribunal.

presidential member means the President, a member who is a Judge or a Deputy President.

proceeding, in relation to the Tribunal, includes:

- (a) an application to the Tribunal for review of a decision; and
- (b) an application to the Tribunal under subsection 28(1AC); and
- (c) an application to the Tribunal 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; and

Section 3

- (d) an application to the Tribunal for a costs certificate under section 10A of the *Federal Proceedings (Costs) Act 1981*; and
- (e) an application to the Tribunal under subsection 62(2) of the *Freedom of Information Act 1982*; and
- (f) any other application to the Tribunal under this Act or any other Act; and
- (g) any matter referred to the Tribunal for inquiry and/or review under this Act or any other Act; and
- (h) an incidental application to the Tribunal made in the course of, or in connection with, an application or proposed application, or a matter, referred to in a preceding paragraph.

Registrar means the Registrar of the Tribunal.

security assessment or **assessment** has the same meaning as in the *Australian Security Intelligence Organisation Act 1979*.

senior member means a senior member of the Tribunal.

Small Taxation Claims Tribunal means the Taxation Appeals Division of the Tribunal when that Division is required under Part IIIAA to be known as the Small Taxation Claims Tribunal.

State includes the Northern Territory and the Australian Capital Territory.

Tribunal:

- (a) means the Administrative Appeals Tribunal established by this Act; and
 - (b) in relation to a proceeding, means the Administrative Appeals Tribunal so established as constituted for the purposes of the proceeding; and
 - (c) includes a member, or an officer of the Tribunal, exercising powers of the Tribunal.
- (2) Where a board, committee or other unincorporated body constituted by 2 or more persons is empowered by an enactment to make decisions, this Act applies as if that board, committee or other body were a person empowered to make those decisions.

- (3) Unless the contrary intention appears, a reference in this Act to a decision includes a reference to:
- (a) making, suspending, revoking or refusing to make an order or determination;
 - (b) giving, suspending, revoking or refusing to give a certificate, direction, approval, consent or permission;
 - (c) issuing, suspending, revoking or refusing to issue a licence, authority or other instrument;
 - (d) imposing a condition or restriction;
 - (e) making a declaration, demand or requirement;
 - (f) retaining, or refusing to deliver up, an article; or
 - (g) doing or refusing to do any other act or thing.

4 Extension to external Territories

This Act extends to every external Territory.

Part II—Establishment of the Administrative Appeals Tribunal

Division 1—Establishment of Tribunal

5 Establishment of Tribunal

There is hereby established an Administrative Appeals Tribunal, which shall consist of a President, the other presidential members, the senior members, and the other members, appointed in accordance with this Act.

Division 2—Members of Tribunal

6 Appointment of members of Tribunal

- (1) The members shall be appointed by the Governor-General.
- (2) A Judge who is to be appointed as a member (other than the President) of the Tribunal shall be appointed as a presidential member.
- (3) A person (other than a Judge) who is to be appointed as a member of the Tribunal shall be appointed as a Deputy President of the Tribunal, as a senior member of the Tribunal, or as a member of the Tribunal.
- (4) A member (other than a Judge) shall be appointed either as a full-time member or as a part-time member.

7 Qualifications for appointment

President

- (1) A person must not be appointed as the President unless he or she is a Judge of the Federal Court of Australia.

Deputy President

- (1AA) A person must not be appointed as a Deputy President unless he or she is enrolled as a legal practitioner (however described) of:
 - (a) the High Court; or
 - (b) the Supreme Court of a State or Territory;and has been so enrolled for at least 5 years.

Senior member

- (1B) A person must not be appointed as a senior member unless he or she:
 - (a) is enrolled as a legal practitioner (however described) of:
 - (i) the High Court; or
 - (ii) the Supreme Court of a State or Territory;and has been so enrolled for at least 5 years; or

Section 7A

- (b) has, in the opinion of the Governor-General, special knowledge or skill relevant to the duties of a senior member.

Non-presidential member

- (2) A person must not be appointed as a non-presidential member (other than a senior member) unless he or she:
 - (a) is enrolled as a legal practitioner (however described) of:
 - (i) the High Court; or
 - (ii) the Supreme Court of a State or Territory; or
 - (b) has had experience, for not less than 5 years, at a high level in industry, commerce, public administration, industrial relations, the practice of a profession or the service of a government or of an authority of a government; or
 - (c) has obtained a degree of a university, or an educational qualification of a similar standing, after studies in the field of law, economics or public administration or some other field considered by the Governor-General to have substantial relevance to the duties of such a member; or
 - (d) has, in the opinion of the Governor-General, special knowledge or skill in relation to any class of matters in respect of which decisions may be made in the exercise of powers conferred by an enactment, being decisions in respect of which applications may be made to the Tribunal for review.

7A Appointment of a Judge as a presidential member not to affect tenure etc.

The appointment of a Judge as a presidential member, or service by a Judge as a presidential member, whether the appointment was or is made or the service occurred or occurs before or after the commencement of this section, does not affect, and shall be deemed never to have affected, his or her tenure of office as a Judge or his or her rank, title, status, precedence, salary, annual or other allowances or other rights or privileges as the holder of his or her office as a Judge and, for all purposes, his or her service, whether before or after the commencement of this section, as a presidential member shall be taken to have been, or to be, service as the holder of his or her office as a Judge.

8 Term of appointment

- (3) Subject to this Part, a member holds office for such period of at most 7 years as is specified in the instrument of appointment, but is eligible for re-appointment.
- (4) A presidential member who is a Judge ceases to hold office as a member if he or she ceases to be a Judge.
- (7) Subject to this Part, a member holds office on such terms and conditions as are prescribed.

9 Remuneration and allowances

- (1) A member, other than a member who is a Judge, shall be paid such remuneration as is determined by the Remuneration Tribunal, but, if no determination of that remuneration by the Remuneration Tribunal is in operation, he or she shall be paid such remuneration as is prescribed.
- (2) A member to whom subsection (1) applies shall be paid such allowances as are prescribed.
- (3) Subsections (1) and (2) have effect subject to the *Remuneration Tribunal Act 1973*.

10 Acting appointments

Acting President

- (1) The Governor-General may appoint a Judge of the Federal Court of Australia to act as President during any period, or during all periods, when the President is absent from duty or from Australia or during a vacancy in the office of President.

Acting Deputy President

- (2) If a Deputy President is, or is expected to be:
 - (a) in the case of a full-time Deputy President—absent from duty or from Australia; or

Section 10

- (b) in the case of a part-time Deputy President—unavailable to perform the duties of his or her office;
the Governor-General may appoint a person qualified to be appointed as a Deputy President:
- (c) in a case to which paragraph (a) applies—to act as a full-time Deputy President during the absence; or
- (d) in a case to which paragraph (b) applies—to act as a part-time Deputy President during the period of unavailability.

Acting non-presidential member

- (3) Where a non-presidential member is, or is expected to be:
 - (a) in the case of a full-time member—absent from duty or from Australia; or
 - (b) in the case of a part-time member—unavailable to perform the duties of his or her office;the Governor-General may appoint a person:
 - (c) in a case to which paragraph (a) applies—to act as a full-time non-presidential member during the absence; or
 - (d) in a case to which paragraph (b) applies—to act as a part-time non-presidential member during the period of unavailability.
- (4) A person shall not be appointed under subsection (3) to act as a senior member, or as a non-presidential member other than a senior member, unless the person is qualified to be appointed as a senior member or as such a non-presidential member, as the case requires.

Extension of acting appointment

- (5) Where a person has been appointed under subsection (2) or (3), the Minister may, by reason of a pending proceeding or other special circumstances, direct, before the absent or unavailable member ceases to be absent or unavailable, that the person so appointed shall continue to act under the appointment after the member ceases to be absent or unavailable until he or she resigns the appointment or the Governor-General terminates the appointment, but a person shall not continue to act by virtue of this subsection for more than 12 months after the member ceases to be absent or unavailable.

- (6) Where a person has been appointed under this section to act as a member during the absence or unavailability of a member and the member ceases to hold office without having resumed duty or become available to perform the duties of his or her office, the period of appointment of the person so appointed shall, subject to this Act, be deemed to continue until he or she resigns the appointment, the appointment is terminated by the Governor-General or a period of 12 months elapses from the day on which the absent or unavailable member ceases to hold office, whichever first happens.

Terms and conditions

- (7) A person acting as a Deputy President or as a non-presidential member shall act in that capacity on such terms and conditions as the Minister determines.

Resignation

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

Exercise of powers

- (10) A person acting as the President, as a Deputy President, as a senior member or as a non-presidential member other than a senior member in accordance with this section has and may exercise all the powers, and shall perform all the functions and duties, conferred or imposed by this Act on the President, on a Deputy President, on a senior member or on a non-presidential member other than a senior member, as the case may be, and, for the purposes of the exercise of those powers, or the performance of those functions and duties, this Act has effect as if a reference to the President, to a Deputy President, to a senior member or to a non-presidential member other than a senior member included a reference to a person acting as the President, as a Deputy President,

Section 10A

as a senior member, or as a non-presidential member other than a senior member, as the case may be.

Validity of decisions etc.

- (11) Where the Tribunal is constituted for the purposes of a proceeding by, or the Tribunal as constituted for the purposes of a proceeding includes, a person acting or purporting to be appointed under this section, or a person so acting or purporting to be appointed has done any act, the validity of any decision of, or of any direction given or other act done by, the Tribunal as so constituted or of the act done by the person so acting or purporting to be appointed shall not be called in question in any proceeding on the ground that the occasion for the person to act or for the appointment of the person had not arisen or that the occasion for his or her appointment had passed or his or her appointment had ceased to have effect.

10A Delegation

- (1) The President may, either generally or as otherwise provided by the instrument of delegation, by writing signed by him or her, delegate to a member all or any of his or her powers under this Act, other than this power of delegation.
- (2) A power so delegated, when exercised by the delegate, shall, for the purposes of this Act, be deemed to have been exercised by the President.
- (3) A delegation may be made to a member under this section notwithstanding that a delegation to another member is, or delegations to other members are, in force under this section.
- (4) A delegation under this section does not prevent the exercise of a power by the President.

10B Oath or affirmation of office

A person who is appointed or re-appointed after the commencement of this section as a member shall, before proceeding to discharge the duties of his or her office, take before the Governor-General, a Justice of the High Court or a Judge of another federal court or of the Supreme Court of a State or

Territory an oath or affirmation in accordance with the form in Schedule 2.

11 Outside employment

- (1) Subject to subsection (2), a full-time member shall not, except with the consent of the Minister, engage in paid employment outside the duties of his or her office.
- (2) Subsection (1) does not apply in relation to the holding by a full-time member of an office or appointment in the Defence Force.

12 Leave of absence

- (1) A full-time member has such recreation leave entitlements as are determined by the Remuneration Tribunal.
- (2) The Minister may grant a full-time member leave of absence, other than recreation leave, on such terms and conditions as to remuneration or otherwise as the Minister determines.

13 Removal from office

Removal on grounds of proved misbehaviour or incapacity

- (1) The Governor-General may remove a member from office on an address praying for his or her removal on the ground of proved misbehaviour or incapacity being presented to the Governor-General by each House of the Parliament in the same session of the Parliament.

Suspension on grounds of misbehaviour or incapacity

- (2) The Governor-General may suspend a non-presidential member from office on the ground of misbehaviour or incapacity.
- (3) Where the Governor-General suspends a non-presidential member from office, the Minister shall cause a statement of the ground of the suspension to be laid before each House of the Parliament within 7 sitting days of that House after the suspension.
- (4) Where such a statement has been laid before a House of the Parliament, that House may, within 15 sitting days of that House

Section 13

after the day on which the statement has been laid before it, by resolution, declare that the member should be removed from office and, if each House so passes such a resolution, the Governor-General shall remove the member from office.

- (5) If, at the expiration of 15 sitting days of a House of the Parliament after the day on which the statement has been laid before that House, that House has not passed such a resolution, the suspension terminates.
- (6) The suspension of a member from office under this section does not affect any entitlement of the member to be paid remuneration and allowances.

Removal on ground of bankruptcy

- (7) If a member becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit, the Governor-General shall remove him or her from office.

Retirement on ground of incapacity

- (9) The Governor-General may, with the consent of a member who is:
 - (a) an eligible employee for the purposes of the *Superannuation Act 1976*; or
 - (b) a member of the superannuation scheme established by deed under the *Superannuation Act 1990*; or
 - (c) an ordinary employer-sponsored member of PSSAP, within the meaning of the *Superannuation Act 2005*;retire the member from office on the ground of incapacity.

No removal or suspension except under this section

- (10) A member shall not be removed or suspended from office except as provided by this section.

Judge

- (11) A reference in subsections (1), (7) and (10) to a member does not include a reference to a member who is a Judge.

CSS

- (12) In spite of anything contained in this section, a member who:
- (a) is an eligible employee for the purposes of the *Superannuation Act 1976*; and
 - (b) has not reached his or her maximum retiring age (within the meaning of that Act);
- is not capable of being retired from office on the ground of invalidity (within the meaning of Part IVA of that Act) unless CSC has given a certificate under section 54C of that Act.

PSS

- (13) In spite of anything contained in this section, a member who:
- (a) is a member of the superannuation scheme established by deed under the *Superannuation Act 1990*; and
 - (b) is under 60 years of age;
- is not capable of being retired from office on the ground of invalidity (within the meaning of that Act) unless CSC has given a certificate under section 13 of that Act.

PSSAP

- (14) In spite of anything contained in this section, a member who:
- (a) is an ordinary employer-sponsored member of PSSAP, within the meaning of the *Superannuation Act 2005*; and
 - (b) is under 60 years of age;
- is not capable of being retired from office on the ground of invalidity (within the meaning of that Act) unless CSC has given an approval and certificate under section 43 of that Act.

14 Disclosure of interests by members

- (1) Where a member is, or is to be, a member of the Tribunal as constituted for the purposes of a proceeding and he or she has or acquires any interest, pecuniary or otherwise, that could conflict with the proper performance of his or her functions in relation to that proceeding:
- (a) he or she shall disclose the interest to the parties to the proceeding; and

Section 15

- (b) except with the consent of all the parties to the proceeding, he or she shall not take part in the proceeding or exercise any powers in relation to the review by the Tribunal of the decision to which the proceeding relates.
- (2) Where the President becomes aware that a member is, or is to be, a member of the Tribunal as constituted for the purposes of a proceeding and that the member has in relation to that proceeding such an interest as is mentioned in subsection (1):
 - (a) if the President considers that the member should not take part, or should not continue to take part, in the proceeding—he or she shall give a direction to the member accordingly; or
 - (b) in any other case—he or she shall cause the interest of the member to be disclosed to the parties to the proceeding.

15 Resignation

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

Part III—Organization of the Tribunal

Division 1—Divisions of the Tribunal

19 Divisions of the Tribunal

- (1) The Tribunal shall exercise powers conferred on it in Divisions of the Tribunal in accordance with this section.

Divisions of the Tribunal

- (2) The Divisions of the Tribunal are as follows:
- (a) General Administrative Division;
 - (b) Medical Appeals Division;
 - (baaa) National Disability Insurance Scheme Division;
 - (baa) Security Appeals Division;
 - (ba) Taxation Appeals Division;
 - (c) Valuation and Compensation Division; and
 - (d) such other Divisions as are prescribed.

Assignment of non-presidential member to Division or Divisions

- (3) The Minister must assign a non-presidential member to a particular Division or Divisions of the Tribunal and may, with the consent of the member but not otherwise, vary the assignment.
- (3AA) Before the Minister exercises a power conferred by subsection (3), the Minister must consult the President.

Taxation Appeals Division

- (3A) A member shall not be assigned to the Taxation Appeals Division unless the Minister has consulted with the Treasurer in relation to the assignment of the member.

Section 19

Security Appeals Division

- (3B) A non-presidential member must not be assigned to the Security Appeals Division if he or she is, or has been, the Director-General of Security or an officer, employee or agent of the Australian Security Intelligence Organisation.

National Disability Insurance Scheme Division

- (3C) A member must not be assigned to the National Disability Insurance Scheme Division unless the Minister has consulted with the Minister responsible for administering the *National Disability Insurance Scheme Act 2013* in relation to the assignment of the member.
- (3D) A non-presidential member must not be assigned to the National Disability Insurance Scheme Division unless the Minister is satisfied that the non-presidential member:
- (a) has training, knowledge or experience relating to disability; or
 - (b) has other relevant knowledge or experience that will assist the non-presidential member in considering matters relating to the National Disability Insurance Scheme.

Exercise of powers

- (4) A non-presidential member shall exercise, or participate in the exercise of, the powers of the Tribunal only in the Division or Divisions of the Tribunal to which he or she is assigned.

Validity

- (5) The foregoing provisions of this section do not affect the validity of any exercise of powers by the Tribunal otherwise than in accordance with those provisions.

Certain powers to be exercised in Security Appeals Division

- (6) The following powers conferred on the Tribunal:
- (a) the powers of review in respect of applications made under section 54 of the *Australian Security Intelligence Organisation Act 1979*;

(b) the power under the *Archives Act 1983* to review a decision of the Australian Archives in respect of access to a record of the Australian Security Intelligence Organisation; may be exercised by the Tribunal only in the Security Appeals Division.

Division 2—Arrangement of business of the Tribunal

20 Arrangement of business

- (1) Subject to this Act and to the regulations, the President is responsible for ensuring the expeditious and efficient discharge of the business of the Tribunal.

President may give directions

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

20A Places of sitting

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

Division 3—Constitution and reconstitution of the Tribunal

20B President may give directions as to constitution of Tribunal

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

Note: See also section 23B.

- (2) If the President gives a direction as to the persons who are to constitute the Tribunal for the purposes of a particular proceeding, he or she may at any time after the giving of the direction and before the commencement of the hearing of the proceeding:
- (a) revoke the direction; and
 - (b) give a further direction under subsection (1) as to the persons who are to constitute the Tribunal for the purposes of the proceeding.

21 Constitution of Tribunal for exercise of powers

Scope

- (1AAA) This section does not apply in relation to proceedings in the Security Appeals Division.

Constitution of Tribunal

- (1) Subject to subsections (1AA) and (1A) and to any other provision made in this Act or in any other enactment with respect to the constitution of the Tribunal in relation to a particular proceeding, the Tribunal is, for the purposes of a proceeding, to be constituted by not more than 3 members.
- (1AA) The Tribunal as constituted for the purposes of a proceeding must not include more than one presidential member who is a judge.
- (1A) For the purpose of the exercise of the powers of the Tribunal under subsection 29(4), (7) or (9) or 30(1A), section 31, subsection 34D(1), 35(2) or 37(1A), (1C) or (2), section 38, subsection 41(2) or (3), section 42A or 42B, subsection 42C(1) or section 69A or 69B, the Tribunal shall be constituted:

Section 21AA

- (a) where the hearing of the relevant proceeding has not commenced—by a presidential member or an authorised member; or
 - (b) where the hearing of the relevant proceeding has commenced—by the members by whom the Tribunal is constituted for the purposes of that proceeding.
- (2) Where, before the commencement of the hearing of a proceeding before the Tribunal, there is lodged with the Tribunal, as prescribed, a notice, signed by or on behalf of all the parties, stating that they have agreed that the proceeding should be dealt with by the Tribunal constituted by a presidential member alone, the Tribunal may, if the President directs under section 20B, be constituted for the purposes of that proceeding by a presidential member alone.

21AA Constitution of Security Appeals Division—general

Scope

- (1) This section applies to a proceeding in the Security Appeals Division (other than a proceeding to which section 21AB applies) but has effect subject to subsection 65(2) of the *Australian Security Intelligence Organisation Act 1979*.

Constitution of Security Appeals Division

- (2) Subject to this section, the Security Appeals Division is to be constituted by a presidential member and 2 other members.

When presidential member must not participate

- (3) A presidential member must not participate in the proceeding if he or she is, or has been, the Director-General of Security or an officer, employee or agent of the Australian Security Intelligence Organisation.

Presidential member to preside

- (4) The presidential member referred to in subsection (2) is to preside at a hearing of the proceeding.

Section 21AB

Qualifications

- (5) If the proceeding is a review of a security assessment, at least one of the 2 other members referred to in subsection (2) must:
- (a) if the matter to which the assessment related concerns employment or proposed employment in the Australian Public Service—be a former member of that Service; or
 - (b) if the matter to which the assessment related concerns service or proposed service in the Defence Force—be a former member of that Force; or
 - (c) if the matter to which the assessment related concerns the *Australian Citizenship Act 2007*, the *Migration Act 1958* or the *Australian Passports Act 2005*—be a person with knowledge of, or experience in relation to, the needs and concerns of people who are or have been immigrants; or
 - (d) if the matter to which the assessment related concerns employment under Commonwealth contractors—be a person with experience in relation to such employment; or
 - (e) in any other case—be a person with knowledge of, or experience in relation to, matters of the kind to which the assessment related.

What happens if member ceases to be available

- (6) If, before the proceeding has been completed, one of the members constituting the Division for the purposes of the proceeding has ceased to be available for the purposes of the proceeding:
- (a) the proceeding is to be reheard by the Division as reconstituted in accordance with this section; and
 - (b) on the rehearing, the members of the Division may have regard to any record of the proceeding in the Division as previously constituted, including a record of any evidence taken in the proceeding.

21AB Constitution of Security Appeals Division—proceedings to review certain decisions under the *Archives Act 1983*

Scope

- (1) This section applies to a proceeding in the Security Appeals Division in relation to a review of a decision of the Australian Archives under the *Archives Act 1983* refusing to grant access to a

Section 21AB

record in accordance with an application under section 40 of that Act, being a record that is:

- (a) a record of the Australian Security Intelligence Organisation; and
- (b) claimed to be an exempt record for the reason that it contains information or matter of a kind referred to in paragraph 33(1)(a) or (b) of that Act.

Constitution of Security Appeals Division

- (2) Subject to this section, the Security Appeals Division is to be constituted by:
 - (a) 3 presidential members; or
 - (b) a presidential member alone.

When presidential member must not participate

- (3) A presidential member must not participate in the proceeding if he or she is, or has been, the Director-General of Security or an officer, employee or agent of the Australian Security Intelligence Organisation.

Reconstitution of Division at the request of a party

- (4) At any time during the hearing of a proceeding before the Division, constituted by a presidential member alone, a party to the proceeding may apply to the Division as constituted for the purposes of the proceeding requesting that the Division be reconstituted for the purposes of the proceeding.
- (5) If an application is made under subsection (4), the Division as constituted for the purposes of the proceeding must, after receiving the submissions made in support of the application and any submissions made in opposition to the application, notify the President of the making of the application and give him or her particulars of those submissions.
- (6) The President may, after taking the submissions into account, if he or she considers that the matters to which the proceeding relates are of such public importance as to justify him or her in so doing, give a direction that the Division as constituted for the purposes of the proceeding be reconstituted by 3 presidential members.

Section 21AB

- (7) If a direction is given under subsection (6), the Division as reconstituted in accordance with the direction must continue the proceeding and may either:
 - (a) complete the proceeding; or
 - (b) at any time remit the proceeding to the Division as previously constituted for completion by the Division as previously constituted.
- (8) If the Division as reconstituted remits a proceeding to the Division as previously constituted, the Division as reconstituted may give directions in relation to the proceeding to the Division as previously constituted and the Division as previously constituted must, in making a decision on the review, comply with those directions.

Member presiding

- (9) At the hearing of a proceeding before the Division at which the Division is constituted for the purposes of the proceeding by presidential members:
 - (a) if the President is a member of the Division as so constituted—he or she is to preside; or
 - (b) if the President is not a member of the Division as so constituted, but only one presidential member who is a Judge is a member of the Division as so constituted—that presidential member is to preside; or
 - (c) if the President is not a member of the Division as so constituted, but 2 or more presidential members who are Judges are members of the Division as so constituted—the senior Judge is to preside; or
 - (d) if neither the President, nor a Judge is a member of the Division as so constituted—a Deputy President of the Division as so constituted who is directed by the President to do so is to preside.

What happens if member ceases to be available

- (10) If, before the proceeding has been completed, one of the members constituting the Division for the purposes of the proceeding has ceased to be available for the purposes of the proceeding the proceeding is to be reheard by the Division as reconstituted in accordance with this section.

Section 21A

Regard may be had to record of previous proceeding

- (11) If the Division:
- (a) is reconstituted in accordance with a direction under subsection (6); or
 - (b) is reconstituted because proceedings are remitted under paragraph (7)(b) to the Division as previously constituted; or
 - (c) is reconstituted under subsection (10) because a member ceases to be available;
- the members of the Division may have regard to any record of the proceeding in the Division as previously constituted, including a record of any evidence taken in the proceeding.

21A Reconstitution of Tribunal at the request of a party

Scope

- (1AA) This section does not apply in relation to proceedings in the Security Appeals Division.

Party may request reconstitution of Tribunal

- (1) At any time during the hearing of a proceeding before the Tribunal (other than a proceeding in which the Tribunal is constituted by a presidential member who is a Judge and 2 other members), a party to the proceeding may apply to the Tribunal as constituted for the purposes of the proceeding requesting that the Tribunal be reconstituted for the purposes of the proceeding.
- (2) Upon the making of an application under subsection (1), the Tribunal as constituted for the purposes of the proceeding shall, after receiving the submissions made in support of the application and any submissions made in opposition to the application, notify the President of the making of the application and give him or her particulars of those submissions.
- (3) The President may, after taking the submissions into account, if he or she considers that the matters to which the proceeding relates are of such public importance as to justify him or her in so doing, give a direction that the Tribunal as constituted for the purposes of the proceeding be reconstituted by:
 - (a) adding one or more members; or

- (b) removing one or more members; or
 - (c) substituting one or more other members;(or any combination of these).
 - (4) Where a direction is so given, the Tribunal as reconstituted in accordance with the direction shall continue the proceeding and may either:
 - (a) complete the proceeding; or
 - (b) at any time remit the proceeding to the Tribunal as previously constituted for completion by the Tribunal as previously constituted.
- Note: Section 23D provides that the reconstituted Tribunal may have regard to any record of the proceeding before the Tribunal as previously constituted.
- (5) Where the Tribunal as reconstituted so remits a proceeding to the Tribunal as previously constituted, the Tribunal as reconstituted may give directions in relation to the proceeding to the Tribunal as previously constituted and the Tribunal as previously constituted shall, in making a decision on the review, comply with those directions.
 - (7) Where, by virtue of subsection (4), a proceeding is remitted by the Tribunal as reconstituted to the Tribunal as previously constituted, the Tribunal as previously constituted may, for the purposes of that proceeding, have regard to any record of the proceeding before the Tribunal as reconstituted including a record of any evidence taken under the proceeding.

22 Member Presiding

Scope

- (1AA) This section does not apply in relation to proceedings in the Security Appeals Division.

Multiple member Tribunal—who is to preside

- (1) At the hearing of a proceeding before the Tribunal at which the Tribunal is constituted for the purposes of the proceeding by more than one member:
 - (a) if the President is a member of the Tribunal as so constituted—he or she shall preside;

Section 23

- (aa) if the President is not a member of the Tribunal as so constituted, but a presidential member who is a Judge is a member of the Tribunal as so constituted—that presidential member shall preside;
- (ab) if a presidential member who is a Judge is not a member of the Tribunal as so constituted but 2 or more Deputy Presidents are members of the Tribunal as so constituted—one of those Deputy Presidents who is directed by the President to do so is to preside;
- (b) if a presidential member who is a Judge is not a member of the Tribunal as so constituted, but a Deputy President is a member of the Tribunal as so constituted—that Deputy President shall preside; or
- (c) if the Tribunal is constituted only by non-presidential members:
 - (i) where one only of those non-presidential members is a senior member—he or she shall preside;
 - (ii) where 2 or more of those non-presidential members are senior members—one of those senior members who is directed by the President to do so shall preside; or
 - (iii) where none of those non-presidential members is a senior member—one of those non-presidential members who is directed by the President to do so shall preside.

Reconstituted Tribunal—who is to preside

- (2) In a case where a direction is given under subsection 20B(2), section 21A, subsection 23(3) or (4) or section 23A reconstituting the Tribunal for the purposes of a proceeding, any necessary direction may be given under this section as to the member who is to preside at the hearing of the proceeding by the Tribunal as reconstituted.

23 Reconstitution of Tribunal if member is unavailable

Scope

- (1) This section does not apply in relation to a proceeding in the Security Appeals Division.
- (2) This section applies if:

- (a) the hearing of a proceeding has commenced or is completed; and
- (b) a member (the **unavailable member**) who constitutes, or is one of the members who constitute, the Tribunal for the purposes of the proceeding:
 - (i) stops being a member; or
 - (ii) for any reason, is not available for the purposes of the proceeding; or
 - (iii) is directed by the President not to continue to take part in the proceeding.

Single member Tribunal

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

Multiple member Tribunal

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

Note: See also section 23B.

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

Member who stops being a member and becomes a member again

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

Reconstituted Tribunal must continue proceeding

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

Section 23A

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

Limitations on President's powers to give directions

- (8) The President must not give a direction under this section about the constitution of the Tribunal if the Tribunal has made a decision under subsection 43(1).
- (9) The President must not give a direction under subparagraph (2)(b)(iii) unless:
 - (a) the President is satisfied that the direction is in the interests of justice; and
 - (b) the President has consulted the member concerned.
- (10) The President must not give a direction under subsection (3) or (4) unless the President has consulted the parties to the proceeding.
- (11) The President must not give a direction under paragraph (4)(b) that results in the remaining member, or any of the remaining members, not constituting the Tribunal for the purposes of completing the proceeding unless:
 - (a) the President is satisfied that the direction is in the interests of justice; and
 - (b) the President has consulted the remaining member concerned.
- (12) In determining whether a direction covered by subsection (9) or (11) is in the interests of justice, the President must have regard to the objective of proceedings that are conducted in a manner that is fair, just, economical, informal and quick.

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

Scope

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

Section 23B

Reconstitution of Tribunal to achieve expeditious and efficient conduct of proceeding

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

Note: See also section 23B.

Reconstituted Tribunal must continue proceeding

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

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

Limitations on President's power to give direction

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

23B Matters to which the President must have regard in constituting the Tribunal

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

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

Section 23C

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

23C Limitation on composition of reconstituted Tribunal

Scope

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

Limitation on composition of reconstituted Tribunal

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

23D Tribunal may have regard to record of previous proceeding

Scope

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

Section 23E

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 Circuit Court of Australia.

Note 2: Paragraph 44(6)(b) deals with a proceeding reheard by the Tribunal following an appeal.

23E 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 23F.

Section 23F

23F Constitution of Tribunal for review of amount taxed—member unavailable

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***) if:
 - (a) in a case where the Tribunal was constituted for the purposes of the substantive proceeding by a single member—that member (the ***unavailable member***):
 - (i) has stopped being a member; or
 - (ii) for any reason, is not available to take part in the taxing review proceeding; or
 - (iii) is directed by the President not to take part in the taxing review proceeding; or
 - (b) in a case where the Tribunal was constituted for the purposes of the substantive proceeding by 2 or 3 members—the member (the ***unavailable member***) who presided at the substantive proceeding:
 - (i) has stopped being a member; or
 - (ii) for any reason, is not available to take part in the taxing review proceeding; or
 - (iii) is directed by the President not to take part in the taxing review proceeding.

Single member Tribunal

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

Multiple member Tribunal

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

Section 23F

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

Member who stops being a member and becomes a member again

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

Limitations on President's powers to give directions

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

Part IIIAA—Small Taxation Claims Tribunal

24AA Definitions

In this Part:

determined amount means:

- (a) subject to paragraph (b)—\$5,000; or
- (b) if a higher amount is determined by the regulations—the higher amount.

lower application fee means the fee payable in respect of an application for the review of a relevant taxation decision where subsection 24AC(1) applies in respect of the hearing and determination of the application.

relevant taxation decision means:

- (a) a reviewable objection decision under Part IVC of the *Taxation Administration Act 1953*; or
- (b) a decision refusing a request for an extension of time within which to make a taxation objection under section 14ZL of the *Taxation Administration Act 1953*.

standard application fee means the fee payable in respect of an application for the review of a relevant taxation decision where subsection 24AC(1) does not apply in respect of the hearing and determination of the application.

24AB Reviews of relevant taxation decisions to be heard before the Taxation Appeals Division

Subject to this Part, an application for the review of a relevant taxation decision is to be heard in the Taxation Appeals Division of the Tribunal.

24AC Small Taxation Claims Tribunal to hear certain tax disputes

- (1) Subject to section 24AD, if an application is made for the review of a relevant taxation decision and:
 - (a) either:

Section 24AD

- (i) the application states the amount that the applicant considers to be the amount of tax in dispute and the amount so stated is less than the determined amount; or
 - (ii) the application does not state as mentioned in subparagraph (i) but, before the start of the hearing of the application, the applicant notifies the Tribunal in writing of the amount that the applicant considers to be the amount of tax in dispute and the amount so notified is less than the determined amount; or
 - (aa) the decision relates to an application made by the applicant under section 340-5 in Schedule 1 to the *Taxation Administration Act 1953*; or
 - (b) the decision is a decision refusing a request for an extension of time;
- the Taxation Appeals Division, when hearing and determining the application, is to be known as the Small Taxation Claims Tribunal.
- (2) A notification may be given to the Tribunal under subparagraph (1)(a)(ii) in respect of any application for the review of a relevant taxation decision, whether the application was made before, or is made after, the commencement of this section.
 - (3) Subject to section 24AD, if subparagraph (1)(a)(ii) applies, the applicant is entitled to a refund of so much of the application fee paid as exceeds the lower application fee.

24AD What happens if the Small Taxation Claims Tribunal considers that the tax in dispute is not less than the determined amount

- (1) If:
 - (a) an application is before the Small Taxation Claims Tribunal under paragraph 24AC(1)(a); and
 - (b) the Tribunal considers that the amount of tax in dispute is not less than the determined amount;the Tribunal may make an order declaring that subsection 24AC(1) is not to apply.

Section 24AD

- (2) If such an order is made:
 - (a) the Taxation Appeals Division, when hearing and determining the application, is not to be known as the Small Taxation Claims Tribunal; and
 - (b) the Tribunal must not proceed to hear and determine the application until the applicant pays an additional fee in respect of the application equal to the difference between the standard application fee and the lower application fee; and
 - (c) if the additional fee is not paid within the period directed by the Tribunal or, if no such direction is given, within the prescribed period, the Tribunal may dismiss the application but:
 - (i) if the additional fee is paid after the application is dismissed, the applicant may apply to the Tribunal for reinstatement of the application; and
 - (ii) if the Tribunal considers it appropriate to do so, the Tribunal may reinstate the application and give any directions that appear to it to be appropriate in the circumstances.
- (3) If the Tribunal waives the whole or a part of the additional fee:
 - (a) if the whole of the fee is waived—paragraphs (2)(b) and (c) do not apply; or
 - (b) if part of the fee is waived—references in those paragraphs to the additional fee are taken to be references to the part of the fee that is not waived.
- (4) If:
 - (a) an application is, or 2 or more applications by the same applicant are, before the Small Taxation Claims Tribunal under subsection 24AC(1); and
 - (b) another application is before the Administrative Appeals Tribunal that:
 - (i) is made by the same applicant; and
 - (ii) may, in the opinion of the Registrar, a District Registrar or a Deputy Registrar, be conveniently heard before the Administrative Appeals Tribunal at the same time as the first-mentioned application or applications;

Section 24AD

the following provisions apply:

- (c) the applications are to be heard and determined before the Taxation Appeals Division;
- (d) that Division, when hearing and determining the applications, is not to be known as the Small Taxation Claims Tribunal;
- (e) the Registrar, a District Registrar or a Deputy Registrar may order that only one standard application fee is payable for the applications.

Part IIIA—Management of the Tribunal

Division 1—Management responsibilities of President and Registrar

24A Management of administrative affairs of Tribunal

- (1) The President is responsible for managing the administrative affairs of the Tribunal.
- (2) For that purpose, the President has power to do all things that are necessary or convenient to be done, including, on behalf of the Commonwealth:
 - (a) entering into contracts; and
 - (b) acquiring or disposing of personal property.
- (3) The powers given to the President by subsection (2) are in addition to any powers given to the President by any other provision of this Act or by any other Act.
- (4) Subsection (2) does not authorise the President to enter into a contract under which the Commonwealth is to pay or receive an amount exceeding \$250,000 or, if a higher amount is prescribed, that higher amount, except with the approval of the Minister.

24B Registrar of the Tribunal

In the management of the administrative affairs of the Tribunal, the President is assisted by the Registrar of the Tribunal.

Division 2—Appointment, powers etc. of Registrar

24C Appointment of Registrar

The Registrar is appointed by the Governor-General on the nomination of the President.

24D Powers of the Registrar

- (1) The Registrar has power to do all things necessary or convenient to be done for the purpose of assisting the President under section 24B.
- (2) In particular, the Registrar may act on behalf of the President in relation to the administrative affairs of the Tribunal.
- (3) The President may give the Registrar directions regarding the exercise of his or her powers under this Part.

24E Remuneration of Registrar

- (1) The Registrar is to be paid the remuneration and allowances determined by the Remuneration Tribunal.
- (2) If there is no determination in force, the Registrar is to be paid such remuneration as is prescribed.
- (3) The Registrar is to be paid such other allowances as are prescribed.
- (4) Remuneration and allowances payable to the Registrar under this section are to be paid out of money appropriated by the Parliament for the purposes of the Tribunal.

24F Terms and conditions of appointment of Registrar

- (1) The Registrar holds office for the period (not longer than 5 years) specified in the instrument of his or her appointment, but is eligible for re-appointment.
- (4) The Registrar holds office on such terms and conditions (if any) in respect of matters not provided for by this Act as are determined by the President.

Section 24G

24G Leave of absence

- (1) The Registrar has such recreation leave entitlements as are determined by the Remuneration Tribunal.
- (2) The President may grant the Registrar leave of absence, other than recreation leave, on such terms and conditions as to remuneration or otherwise as the President, with the approval of the Minister, determines.

24H Resignation

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

24J Outside employment of Registrar

- (1) Except with the consent of the President, the Registrar must not engage in paid employment outside the duties of his or her office.
- (2) The reference in subsection (1) to paid employment does not include service in the Defence Force.

24K Termination of appointment

- (1) The Governor-General may terminate the appointment of the Registrar for misbehaviour or physical or mental incapacity.
- (2) The Governor-General is required to terminate the appointment of the Registrar if the Registrar:
 - (a) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with creditors or makes an assignment of remuneration for their benefit; or
 - (b) is absent from duty, except on leave of absence granted by the President, for 14 consecutive days or for 28 days in any 12 months; or
 - (c) engages in paid employment contrary to section 24J; or
 - (d) fails, without reasonable excuse, to comply with section 24L.

Section 24L

- (3) If the Registrar is:
- (a) an eligible employee for the purposes of the *Superannuation Act 1976*; or
 - (b) a member of the superannuation scheme established by deed under the *Superannuation Act 1990*; or
 - (c) an ordinary employer-sponsored member of PSSAP, within the meaning of the *Superannuation Act 2005*;
- the Governor-General may, with the Registrar's consent, retire the Registrar from office on the ground of incapacity.
- (4) In spite of anything contained in this section, a Registrar who:
- (a) is an eligible employee for the purposes of the *Superannuation Act 1976*; and
 - (b) has not reached his or her maximum retiring age (within the meaning of that Act);
- is not capable of being retired from office on the ground of invalidity (within the meaning of Part IVA of that Act) unless CSC has given a certificate under section 54C of that Act.
- (5) In spite of anything contained in this section, a Registrar who:
- (a) is a member of the superannuation scheme established by deed under the *Superannuation Act 1990*; and
 - (b) is under 60 years of age;
- is not capable of being retired from office on the ground of invalidity (within the meaning of that Act) unless CSC has given a certificate under section 13 of that Act.
- (6) In spite of anything contained in this section, a Registrar who:
- (a) is an ordinary employer-sponsored member of PSSAP, within the meaning of the *Superannuation Act 2005*; and
 - (b) is under 60 years of age;
- is not capable of being retired from office on the ground of invalidity (within the meaning of that Act) unless CSC has given an approval and certificate under section 43 of that Act.

24L Disclosure of interests by Registrar

The Registrar must give written notice to the President of all direct or indirect pecuniary interests that the Registrar has or acquires in any business or in any body corporate carrying on a business.

Section 24M

24M Acting Registrar

The President may, in writing, appoint a person to act in the office of Registrar:

- (a) during a vacancy in the office (whether or not an appointment has previously been made to the office); or
- (b) during any period, or during all periods, when the Registrar is absent from duty or from Australia or is, for any other reason, unable to perform the duties of the office.

Note: For rules that apply to acting appointments, see section 33A of the *Acts Interpretation Act 1901*.

Division 3—Other officers and staff of Tribunal

24N Officers and staff of the Tribunal

- (1) In addition to the Registrar, there are to be such District Registrars, Conference Registrars, Deputy Registrars and staff of the Tribunal as are necessary.
- (1A) The Conference Registrars are appointed by the President.
- (1B) A person who holds an office of District Registrar, Deputy Registrar or Conference Registrar may be appointed to another of those offices without the appointment affecting his or her appointment to the first-mentioned office.
- (2) The District Registrars and Deputy Registrars are appointed by the Registrar.
- (3) The District Registrars, Conference Registrars, Deputy Registrars and the staff of the Tribunal are to be persons engaged under the *Public Service Act 1999*.
- (4) The Registrar may, on behalf of the President, arrange with an Agency Head within the meaning of the *Public Service Act 1999*, or with an authority of the Commonwealth, for the services of officers or employees of the Agency or of the authority to be made available for the purposes of the Tribunal.
- (5) The District Registrars, Conference Registrars, Deputy Registrars and the staff of the Tribunal have such duties, powers and functions as are given by this Act or by the President.

24P Statutory Agency etc. for purposes of Public Service Act

For the purposes of the *Public Service Act 1999*:

- (a) the Registrar and the APS employees assisting the Registrar together constitute a Statutory Agency; and
- (b) the Registrar is the Head of that Statutory Agency.

Section 24Q

24Q Engagement of consultants etc.

- (1) The Registrar may engage persons having suitable qualifications and experience as consultants to, or to perform services for, the Registrar.
- (2) An engagement under subsection (1) is to be made:
 - (a) on behalf of the Commonwealth; and
 - (b) by written agreement.

Division 4—Miscellaneous administrative matters

24R Annual report

- (1) As soon as practicable after 30 June in each year, the President must prepare and give to the Minister a report of the management of the administrative affairs of the Tribunal during the year.
- (2) The report must include:
 - (a) the financial statements required by section 49 of the *Financial Management and Accountability Act 1997*; and
 - (b) an audit report on those statements under section 57 of the *Financial Management and Accountability Act 1997*.
- (3) The Minister must cause a copy of the report to be tabled in each House of the Parliament as soon as practicable.

24V Delegation of administrative powers of President

The President may, in writing, delegate all or any of his or her powers under section 24A to any one or more of the members of the Tribunal.

24W Proceedings arising out of administration of Tribunal

Any judicial or other proceeding relating to a matter arising out of the management of the administrative affairs of the Tribunal under this Part, including any proceeding relating to anything done by the Registrar under this Part, may be instituted by or against the Commonwealth, as the case requires.

Part IV—Reviews by the Tribunal of decisions

Division 1—Applications for review of decisions

25 Tribunal may review certain decisions

Enactment may provide for applications for review of decisions

- (1) An enactment may provide that applications may be made to the Tribunal:
 - (a) for review of decisions made in the exercise of powers conferred by that enactment; or
 - (b) for the review of decisions made in the exercise of powers conferred, or that may be conferred, by another enactment having effect under that enactment.
- (2) The regulations may provide that applications may be made to the Tribunal for review of decisions made in the exercise of powers conferred by a Norfolk Island enactment.
- (3) Where an enactment makes provision in accordance with subsection (1) or (2), that enactment:
 - (a) shall specify the person or persons to whose decisions the provision applies;
 - (b) may be expressed to apply to all decisions of a person, or to a class of such decisions; and
 - (c) may specify conditions subject to which applications may be made.

Delegations, acting appointments and authorisations

- (3A) Where an enactment makes provision in accordance with this section for the making of applications to the Tribunal for the review of decisions of a person made in the exercise of a power conferred on that person, that provision of that enactment applies also in relation to decisions made in the exercise of that power:
 - (a) by any person to whom that power has been delegated;
 - (b) in the case where the provision specifies the person by reference to his or her being the holder of a particular office or appointment—by any person for the time being acting in,

- or performing any of the duties of, that office or appointment; or
- (c) by any other person lawfully authorized to exercise that power.

Tribunal's power to review decisions

- (4) The Tribunal has power to review any decision in respect of which application is made to it under any enactment.

Tribunal may determine scope of review

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

Failure of decision-maker to meet deadline

- (5) For the purposes of an enactment that makes provision in accordance with this section for the making of applications to the Tribunal for review of decisions, a failure by a person to do an act or thing within the period prescribed by that enactment, or by another enactment having effect under that enactment, as the period within which that person is required or permitted to do that act or thing shall be deemed to constitute the making of a decision by that person at the expiration of that period not to do that act or thing.
- (5A) For the purposes of regulations that make provision in accordance with this section for the making of applications to the Tribunal for review of decisions made in the exercise of powers conferred by a Norfolk Island enactment, a failure by a person to do an act or thing within the period prescribed by:
 - (a) that Norfolk Island enactment; or
 - (b) another Norfolk Island enactment having effect under that Norfolk Island enactment;as the period within which that person is required or permitted to do that act or thing is taken to constitute the making of a decision by that person at the end of that period not to do that act or thing.

Section 25

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

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

What happens if decision-maker ceases to hold office etc.

- (7) Where:
- (a) a person has made a decision in respect of which an application may be made to the Tribunal;
 - (b) the person made the decision by reason that he or she held or performed the duties of an office or appointment; and
 - (c) the person no longer holds or performs the duties of the office or appointment;
- this Act has effect as if the decision had been made by:
- (d) the person for the time being holding or performing the duties of that office or appointment; or
 - (e) if there is no person for the time being holding or performing the duties of that office or appointment or the office no longer exists—such person as the President or an authorised member specifies.

Norfolk Island enactment

- (8) If the regulations make provision in accordance with subsection (2) for the making of applications to the Tribunal for review of decisions made in the exercise of powers conferred by a Norfolk Island enactment (the **primary Norfolk Island enactment**), this Act, other than:
- (a) the definition of **authority of the Commonwealth** in subsection 3(1); and
 - (b) subsections (1), (5) and (6) of this section; and
 - (c) subsection 21(1); and
 - (d) subsection 27(1); and
 - (e) paragraph 27A(2)(b); and

- (f) paragraph 33(1)(a); and
 - (g) paragraph 43B(1)(a); and
 - (h) section 59;
- has effect as if:
- (i) the primary Norfolk Island enactment; and
 - (j) any other Norfolk Island enactment, in so far as it relates to the primary Norfolk Island enactment;
- were an enactment (within the meaning of this Act).

26 Restriction on powers of decision-maker after application for review is made

- (1) Subject to section 42D, after an application is made to the Tribunal for a review of a decision, the decision may not be altered otherwise than by the Tribunal on the review unless:
 - (a) if regulations made for the purposes of subsection 25(2) (which deals with Norfolk Island) did not authorise the making of the application—the enactment that authorised the making of the application expressly permits the decision to be altered; or
 - (aa) if regulations made for the purposes of subsection 25(2) authorised the making of the application—the Norfolk Island enactment under which the decision was made expressly permits the decision to be altered; or
 - (b) the parties to the proceeding, and the Tribunal, consent to the making of the alteration.
- (2) A reference in subsection (1) to the alteration of a decision is a reference to:
 - (a) the variation of a decision; or
 - (b) the setting aside of a decision; or
 - (c) the setting aside of a decision and the making of a decision in substitution for the decision set aside.

27 Persons who may apply to Tribunal

- (1) Where this Act or any other enactment (other than the *Australian Security Intelligence Organisation Act 1979*) provides that an application may be made to the Tribunal for a review of a decision, the application may be made by or on behalf of any person or

Section 27AA

persons (including the Commonwealth or an authority of the Commonwealth or Norfolk Island or an authority of Norfolk Island) whose interests are affected by the decision.

Note: The enactment may be regulations made for the purposes of subsection 25(2) (review of decisions made in the exercise of powers conferred by a Norfolk Island enactment).

- (2) An organization or association of persons, whether incorporated or not, shall be taken to have interests that are affected by a decision if the decision relates to a matter included in the objects or purposes of the organization or association.
- (3) Subsection (2) does not apply in relation to a decision given before the organization or association was formed or before the objects or purposes of the organization or association included the matter concerned.

27AA Applications to Tribunal under Australian Security Intelligence Organisation Act

- (1) An application under subsection 54(1) of the *Australian Security Intelligence Organisation Act 1979* for review of a security assessment may be made by a person in respect of whom the assessment was made and who has, in accordance with Part IV of that Act, been given notice of the assessment.
- (2) An application under subsection 54(2) of the *Australian Security Intelligence Organisation Act 1979* for review of the findings of the Tribunal on a review of a security assessment may be made by the person who applied for the review in which the findings were made.
- (3) If the Tribunal is satisfied that an application referred to in subsection (2) is justified, it may review its previous findings, and this Act applies in relation to such a review and the findings in such a review as if it were the review of an assessment.

27A Notice of decision and review rights to be given

- (1) Subject to subsection (2), a person who makes a reviewable decision must take such steps as are reasonable in the circumstances to give to any person whose interests are affected by the decision notice, in writing or otherwise:

Section 27A

- (a) of the making of the decision; and
 - (b) of the right of the person to have the decision reviewed.
- (2) Subsection (1) does not apply to:
- (a) a decision that is deemed to be made because of the operation of subsection 25(5) or (5A); or
 - (b) a decision in respect of which provision relating to the notification of a right of review is made by another enactment; or
 - (c) any of the following decisions:
 - (i) a decision not to impose a liability, penalty or any kind of limitation on a person;
 - (ii) a decision making an adjustment to the level of periodic payments to be made to a person as a member of a class of persons where a similar adjustment is being made to the level of such payments to the other members of the class;
 - (iii) if an enactment establishes several categories of entitlement to a monetary benefit—a decision that determines a person to be in the most favourable of those categories;if the decision does not adversely affect the interests of any other person; or
 - (d) a decision under the *Corporations Act 2001* to which section 1317B of that Act applies;
 - (e) a decision under the *Australian Securities and Investments Commission Act 2001* to which section 244 of that Act applies.
- (3) A failure to do what this section requires does not affect the validity of the decision.
- (4) In this section:
- reviewable decision** means:
- (a) a decision that is reviewable by the Tribunal; or
 - (b) a decision that is reviewable by:
 - (i) a person whose decision on review is reviewable by the Tribunal; or
 - (ii) a person whose decision on review, because of subparagraph (i), is a reviewable decision.
-

Section 27B

27B Review—Code of Practice

- (1) The Attorney-General may, by legislative instrument, determine a Code of Practice for the purpose of facilitating the operation of subsection 27A(1).
- (2) A person, in taking action under subsection 27A(1), must have regard to any such Code of Practice that is then in force.

28 Person affected by decision may obtain reasons for decision

Request for statement of reasons

- (1) Subject to subsection (1AAA), if a person makes a decision in respect of which an application may be made to the Tribunal for a review, any person (in this section referred to as the *applicant*) who is entitled to apply to the Tribunal for a review of the decision may, by notice in writing given to the person who made the decision, request that person to give to the applicant a statement in writing setting out the findings on material questions of fact, referring to the evidence or other material on which those findings were based and giving the reasons for the decision, and the person who made the decision shall, as soon as practicable but in any case within 28 days after receiving the request, prepare, and give to the applicant, such a statement.

Exception—Security Appeals Division

- (1AAA) Subsection (1) does not apply to a decision if the powers of the Tribunal in respect of an application for review of the decision are required by subsection 19(6) to be exercised in the Security Appeals Division.

What happens if decision-maker contests applicant's entitlement to statement of reasons

- (1AA) Where a person to whom a request for a statement in relation to a decision is made by an applicant under subsection (1) is of the opinion that the applicant is not entitled to be given the statement, that person shall, as soon as practicable but in any case within 28 days after receiving the request, give to the applicant notice in writing of his or her opinion.
- (1AB) A person who gives a notice under subsection (1AA) with respect to a request for a statement in relation to a decision is not required to comply with the request unless the Tribunal, on application under subsection (1AC), decides that the applicant was entitled to be given the statement, and, if the Tribunal so decides, the first-mentioned person shall prepare the statement and give it to the applicant within 28 days after the decision of the Tribunal is given.
- (1AC) The Tribunal shall, on an application being made, as prescribed, by an applicant who has received a notice under subsection (1AA) with respect to a request for a statement in relation to a decision, decide whether the applicant was, or was not, entitled to be given the statement.

When decision-maker may refuse to give statement of reasons

- (1A) A person to whom a request for a statement in relation to a decision is made under subsection (1) may refuse to prepare and give the statement if:
- (a) in the case of a decision the terms of which were recorded in writing and set out in a document that was given to the applicant—the request was not made on or before the twenty-eighth day after the day on which that document was given to the applicant; or
 - (b) in any other case—the request was not made within a reasonable time after the decision was made;
- and in any such case the person to whom the request was made shall give to the applicant, as soon as practicable but in any case within 28 days after receiving the request, notice in writing stating that the statement will not be given to him or her and giving the reason why the statement will not be so given.

Section 28

- (1B) For the purposes of paragraph (1A)(b), a request for a statement in relation to a decision shall be deemed to have been made within a reasonable time after the decision was made if the Tribunal, on application by the person who made the request, declares that the request was made within a reasonable time after the decision was made.

Public interest certificate

- (2) If the Attorney-General certifies, by writing signed by him or her, that the disclosure of any matter contained in a statement prepared in accordance with subsection (1) would be contrary to the public interest:
- (a) by reason that it would prejudice the security, defence or international relations of Australia;
 - (b) by reason that it would involve the disclosure of deliberations of the Cabinet or of a Committee of the Cabinet; or
 - (c) for any other reason specified in the certificate that could form the basis for a claim by the Crown in right of the Commonwealth in a judicial proceeding that the matter should not be disclosed;
- subsections (3) and (3A) have effect.
- (3) A person to whom a request for a statement in relation to a decision is made under subsection (1):
- (a) is not required to include in the statement any matter in relation to which the Attorney-General has given a certificate under subsection (2); and
 - (b) where the statement would be false or misleading if it did not include such matter—is not required by subsection (1) to give the statement to the applicant.
- (3A) Where a certificate is given under subsection (2) in relation to matter contained in a statement prepared in accordance with subsection (1) in relation to a decision:
- (a) the person who made the decision shall notify the applicant in writing:
 - (i) in a case where the matter is not included in the statement—that the matter is not so included and giving the reason for not including the matter; or

- (ii) in a case where the statement is not given—that the statement will not be given and giving the reason for not giving the statement; and
- (b) subsections 36(2), (3), (3A) and (4) and 36D(1) to (6), inclusive, apply in relation to any statement referred to in paragraph 37(1)(a) in relation to that decision that is lodged with the Tribunal under section 37 as if the certificate were a certificate given under subsection 36(1) in relation to any such matter that is contained in the last-mentioned statement.

When applicant not entitled to request statement of reasons

- (4) The applicant is not entitled to make a request under subsection (1) if:
 - (a) the decision sets out the findings on material questions of fact, refers to the evidence or other material on which those findings were based and gives the reasons for the decision, and a document setting out the terms of the decision has been given to him or her; or
 - (b) a statement in writing setting out the findings on material questions of fact, referring to the evidence or other material on which those findings were based and giving the reasons for the decision has already been given to him or her.

Inadequate statement of reasons

- (5) If the Tribunal, upon application, as prescribed, for a declaration under this subsection made to it by an applicant to whom a statement has been given in pursuance of a request under subsection (1), considers that the statement does not contain adequate particulars of findings on material questions of fact, an adequate reference to the evidence or other material on which those findings were based or adequate particulars of the reasons for the decision, the Tribunal may make a declaration accordingly, and, where the Tribunal makes such a declaration, the person to whom the request for the statement was made shall, as soon as practicable but in any case within 28 days after the Tribunal makes the declaration, give to the applicant an additional statement or additional statements containing further and better particulars in relation to matters specified in the declaration with respect to those findings, that evidence or other material or those reasons.

Section 29

29 Manner of applying for review

- (1) An application to the Tribunal for a review of a decision:
- (a) shall be in writing; and
 - (b) may be made in accordance with the prescribed form; and
 - (c) except if paragraph (ca) or (cb) applies—must contain a statement of the reasons for the application; and
 - (ca) in respect of an application made under subsection 54(1) of the *Australian Security Intelligence Organisation Act 1979* for review of a security assessment—must be accompanied by:
 - (i) a copy of the assessment as given to the applicant; and
 - (ii) a statement indicating any part or parts of the assessment with which the applicant does not agree and setting out the grounds on which the application is made; and
 - (cb) in respect of an application under subsection 54(2) of the *Australian Security Intelligence Organisation Act 1979*—must be accompanied by a statement setting out the grounds on which the application is made;
 - (d) if the terms of the decision were recorded in writing and set out in a document that was given to the applicant or the decision is deemed to be made by reason of the operation of subsection 25(5) or (5A)—shall be lodged with the Tribunal within the prescribed time.

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

Address at which documents may be given

- (1A) If, in an application, a person does not provide an address at which documents in relation to the proceeding may be given, any address of the person shown in the application, or later notified to the Tribunal as an address at which such documents may be given, is taken to be an address provided by the person at which such documents may be given.

Tribunal may request amendment of insufficient statement

(1B) If:

- (a) an application contains a statement under paragraph (1)(c);
and
- (b) the Tribunal is of the opinion that the statement is not sufficient to enable the Tribunal to readily identify the respects in which the applicant believes that the decision is not the correct or preferable decision;

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

Prescribed time for making applications—general

- (2) Subject to subsection (3), the prescribed time for the purposes of paragraph (1)(d) is the period commencing on the day on which the decision is made and ending on the twenty-eighth day after:
 - (a) if the decision sets out the findings on material questions of fact and the reasons for the decision—the day on which a document setting out the terms of the decision is given to the applicant; or
 - (b) if the decision does not set out those findings and reasons:
 - (i) if a statement in writing setting out those findings and reasons is given to the applicant otherwise than in pursuance of a request under subsection 28(1) not later than the twenty-eighth day after the day on which a document setting out the terms of the decision is given to the applicant—the day on which the statement is so given;
 - (ii) if the applicant, in accordance with subsection 28(1), requests the person who made the decision to give a statement as mentioned in that subsection—the day on which the statement is given or the applicant is notified in accordance with subsection 28(3A) that the statement will not be given; or
 - (iii) in any other case—the day on which a document setting out the terms of the decision is given to the applicant.

Section 29

Prescribed time for making applications—decision-maker's failure to meet deadline

- (3) In the case of a decision that is deemed to be made by reason of the operation of subsection 25(5) or (5A), the prescribed time for the purposes of paragraph (1)(d) is the period commencing on the day on which the decision is deemed to be made and ending:
- (a) in a case to which paragraph (b) does not apply—on the twenty-eighth day after that day; or
 - (b) in the case where the person whose failure to do an act or thing within a particular period is deemed by subsection 25(5) or (5A) to constitute the making of the decision makes or purports to make, after the expiration of that period, a decision either to do or not to do that act or thing, being a decision the terms of which were recorded in writing and set out in a document that was given to the applicant—on the twenty-eighth day after:
 - (i) if the decision sets out the findings on material questions of fact and the reasons for the decision—the day on which a document setting out the terms of the decision is given to the applicant; or
 - (ii) if the decision does not set out those findings and reasons—the day that would be ascertained under paragraph (2)(b) if subsection (2) were applicable in relation to the decision.

What happens if there is no prescribed time for making applications

- (4) Where:
- (a) no time is prescribed for the lodging with the Tribunal of applications for review of a particular decision; or
 - (b) no time is prescribed for the lodging with the Tribunal by a particular person of an application for a review of a particular decision;
- and the Tribunal is of the opinion that the application was not lodged within a reasonable time after the decision was made, the Tribunal shall, subject to subsection (6):
- (c) in a case to which paragraph (a) applies—refuse to entertain an application for a review of the decision referred to in that paragraph; or

- (d) in a case to which paragraph (b) applies—refuse to entertain an application by the person referred to in that paragraph for a review of the decision so referred to.
- (5) In forming an opinion for the purposes of subsection (4), the Tribunal shall have regard to:
 - (a) the time when the applicant became aware of the making of the decision; and
 - (b) in a case to which paragraph (4)(b) applies—the period or periods prescribed for the lodging by another person or other persons of an application or applications for review of the decision;and may have regard to any other matters that it considers relevant.
- (6) Notwithstanding subsection (4), the Tribunal may entertain an application referred to in that subsection if it is of the opinion that there are special circumstances that justify it in doing so.

Tribunal may extend time for making application

- (7) The Tribunal may, upon application in writing by a person, extend the time for the making by that person of an application to the Tribunal for a review of a decision (including a decision made before the commencement of this section) if the Tribunal is satisfied that it is reasonable in all the circumstances to do so.
- (8) The time for making an application to the Tribunal for a review of a decision may be extended under subsection (7) although that time has expired.
- (9) Before determining an application for an extension of time, the Tribunal may, if it thinks fit, require the applicant to give notice of the application to a specified person or persons, being a person or persons whom the Tribunal considers to be affected by the application.

Section 29B

- (10) If a person to whom a notice is given under subsection (9), within the prescribed time after the notice is received by him or her, gives notice to the Tribunal, as prescribed, stating that he or she wishes to oppose the application, the Tribunal shall not determine the application except after a hearing at which the applicant and any person who so gave notice to the Tribunal are given a reasonable opportunity of presenting their respective cases.

Decision-maker to be notified of application for review

- (11) The Registrar, a District Registrar or a Deputy Registrar shall cause notice in writing of an application for a review of a decision, in accordance with the prescribed form, to be given to the person who made the decision.

29B Notice of application

If an application is duly made to the Tribunal for the review of a security assessment, the Tribunal must cause a copy of the application, and of the statement lodged with the application, to be given to the Director-General of Security and to the Commonwealth agency to which the assessment was given.

Division 2—Parties and procedure

30 Parties to proceeding before Tribunal

Scope

- (1AA) This section does not apply to a proceeding in the Security Appeals Division to which section 39A applies.

Parties

- (1) Subject to paragraph 42A(2)(b), the parties to a proceeding before the Tribunal for a review of a decision are:
- (a) any person who, being entitled to do so, has duly applied to the Tribunal for a review of the decision;
 - (b) the person who made the decision;
 - (c) if the Attorney-General intervenes in the proceeding under section 30A—the Attorney-General; and
 - (d) any other person who has been made a party to the proceeding by the Tribunal on application by the person in accordance with subsection (1A).

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

Person whose interests are affected may apply to be a party

- (1A) Where an application has been made by a person to the Tribunal for a review of a decision, any other person whose interests are affected by the decision may apply, in writing, to the Tribunal to be made a party to the proceeding, and the Tribunal may, in its discretion, by order, make that person a party to the proceeding.

Official name

- (2) A person who is a party to a proceeding before the Tribunal:
- (a) by reason of a decision made by him or her in the performance of the duties of an office or appointment; or
 - (b) by reason of the operation of subsection 25(7);
- shall be described in the proceeding by his or her official name.

Section 30A

30A Intervention by Attorney-General

- (1AA) This section does not apply to a proceeding in the Security Appeals Division to which section 39A applies.
- (1) The Attorney-General may, on behalf of the Commonwealth, intervene in a proceeding before the Tribunal.
- (2) Where the Attorney-General intervenes under subsection (1) in a proceeding for a review of a decision, the Attorney-General may authorize the payment to a party to the proceeding by the Commonwealth of such costs as he or she considers were reasonably incurred by that party in relation to the proceeding as a result of that intervention.

31 Tribunal to determine persons whose interests are affected by decision

- (1) Where it is necessary for the purposes of this Act to decide whether the interests of a person are affected by a decision, that matter shall be decided by the Tribunal and, if the Tribunal decides that the interests of a person are affected by a decision, the decision of the Tribunal is conclusive.
- (2) This section does not apply to a proceeding in the Security Appeals Division to which section 39A applies.

32 Representation before Tribunal

At the hearing of a proceeding before the Tribunal, a party to the proceeding may appear in person or may be represented by some other person.

33 Procedure of Tribunal

- (1) In a proceeding before the Tribunal:
- (a) the procedure of the Tribunal is, subject to this Act and the regulations and to any other enactment, within the discretion of the Tribunal;
- (b) the proceeding shall be conducted with as little formality and technicality, and with as much expedition, as the requirements of this Act and of every other relevant

enactment and a proper consideration of the matters before the Tribunal permit; and

- (c) the Tribunal is not bound by the rules of evidence but may inform itself on any matter in such manner as it thinks appropriate.

Decision-maker must assist Tribunal

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

Directions hearing

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

Who may give directions

- (2) For the purposes of subsection (1), directions as to the procedure to be followed at or in connection with the hearing of a proceeding before the Tribunal may be given:
 - (a) where the hearing of the proceeding has not commenced—by a person holding a directions hearing in relation to the proceeding, by the President, by an authorised member or by an authorised Conference Registrar; and
 - (b) where the hearing of the proceeding has commenced—by the member presiding at the hearing or by any other member authorized by the member presiding to give such directions.

Types of directions

- (2A) Without limiting the operation of this section, a direction as to the procedure to be followed at or in connection with the hearing of a proceeding before the Tribunal may:
 - (a) require any person who is a party to the proceeding to provide further information in relation to the proceeding; or
 - (b) require the person who made the decision to provide a statement of the grounds on which the application will be resisted at the hearing; or

Section 33

- (c) require any person who is a party to the proceeding to provide a statement of matters or contentions upon which reliance is intended to be placed at the hearing.

Directions may be varied or revoked

- (3) A direction as to the procedure to be followed at or in connection with the hearing of a proceeding before the Tribunal may be varied or revoked at any time by any member or Conference Registrar empowered in accordance with this section to give such a direction in relation to the proceeding at that time.

Authorised Conference Registrar

- (4) The President may authorise a particular Conference Registrar to be an authorised Conference Registrar for the purposes of paragraph (2)(a).
- (5) An authorisation under subsection (4) may be:
 - (a) general; or
 - (b) limited to:
 - (i) a particular reviewable decision or particular reviewable decisions; or
 - (ii) reviewable decisions included in a particular class or classes of reviewable decisions; or
 - (iii) a particular proceeding or particular proceedings; or
 - (iv) proceedings included in a particular class or classes of proceedings.
- (6) The President may at any time vary or revoke an authorisation under subsection (4).
- (7) In this section:

authorised Conference Registrar means a Conference Registrar authorised under subsection (4).

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

Division 3—Alternative dispute resolution processes

34 Scope of Division

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

34A Referral of proceeding for alternative dispute resolution process

- (1) If an application is made to the Tribunal for review of a decision, the President may:
 - (a) direct the holding of a conference of the parties or their representatives in relation to the proceeding, or any part of the proceeding or any matter arising out of the proceeding; or
 - (b) direct that the proceeding, or any part of the proceeding or any matter arising out of the proceeding, be referred for a particular alternative dispute resolution process (other than conferencing).
- (2) The President may also direct the holding of conferences of the parties or their representatives in the case of applications made to the Tribunal for review of decisions of a kind specified in the direction.
- (3) The President may also direct that proceedings be referred for a particular alternative dispute resolution process (other than conferencing) in the case of applications made to the Tribunal for review of decisions of a kind specified in the direction.
- (4) A direction may be given under a particular paragraph of subsection (1):
 - (a) whether or not a direction has previously been given under the same or the other paragraph of that subsection in relation to the proceeding; and
 - (b) whether or not a direction under subsection (2) or (3) has applied.
- (5) If a direction under this section is applicable to:
 - (a) a proceeding; or
 - (b) a part of a proceeding; or

Section 34B

(c) a matter arising out of a proceeding;
each party must act in good faith in relation to the conduct of the
alternative dispute resolution process concerned.

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

Scope

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

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

- (2) The Registrar, a District Registrar or a Deputy Registrar must give
to the applicant:
- (a) if the proceeding relates to an application to which
subparagraph 24AC(1)(a)(i) or paragraph 24AC(1)(aa) or (b)
applies—when the application is made; or
 - (b) if the proceeding relates to an application to which
subparagraph 24AC(1)(a)(ii) applies—when the notification
referred to in that subparagraph is given;

a statement setting out the procedures to be followed by the
Tribunal and the alternative dispute resolution processes that are
available under this Act.

Referral of matter for alternative dispute resolution process

- (3) If the Tribunal considers at any time that it may assist in the
resolution of the dispute between the parties if:
- (a) the proceeding; or
 - (b) any part of the proceeding; or
 - (c) any matter arising out of the proceeding;
- were dealt with by an alternative dispute resolution process, the
Tribunal must:
- (d) direct the holding of a conference of the parties or their
representatives in relation to the proceeding, part of the
proceeding, or matter, as the case may be; or

Section 34C

- (e) direct that the proceeding, part of the proceeding, or matter, as the case may be, be referred for a particular alternative dispute resolution process (other than conferencing).
- (4) If a direction under this section is applicable to:
 - (a) a proceeding; or
 - (b) a part of a proceeding; or
 - (c) a matter arising out of a proceeding;each party must act in good faith in relation to the conduct of the alternative dispute resolution process concerned.

34C Directions by President

- (1) The President may give directions about alternative dispute resolution processes.
- (2) Directions under subsection (1) may relate to:
 - (a) the procedure to be followed in the conduct of an alternative dispute resolution process; and
 - (b) the person who is to conduct an alternative dispute resolution process; and
 - (c) the procedure to be followed when an alternative dispute resolution process ends.
- (3) Subsection (2) does not limit subsection (1).
- (4) The President may at any time vary or revoke a direction under subsection (1).
- (5) A person is not entitled to conduct an alternative dispute resolution process unless the person is:
 - (a) a member; or
 - (b) an officer of the Tribunal; or
 - (c) a person engaged under section 34H.

34D Agreement about the terms of a decision etc.

- (1) If:
 - (a) in the course of an alternative dispute resolution process under this Division, agreement is reached between the parties or their representatives as to the terms of a decision of the Tribunal:

Section 34E

- (i) in the proceeding; or
 - (ii) in relation to the part of the proceeding; or
 - (iii) in relation to the matter arising out of the proceeding; that would be acceptable to the parties; and
 - (b) the terms of the agreement are reduced to writing, signed by or on behalf of the parties and lodged with the Tribunal; and
 - (c) 7 days pass after lodgment, and none of the parties has notified the Tribunal in writing that he or she wishes to withdraw from the agreement; and
 - (d) the Tribunal is satisfied that a decision in the terms of the agreement or consistent with those terms would be within the powers of the Tribunal;
- the Tribunal may, if it appears to it to be appropriate to do so, act in accordance with whichever of subsection (2) or (3) is relevant in the particular case.
- (2) If the agreement reached is an agreement as to the terms of a decision of the Tribunal in the proceeding, the Tribunal may, without holding a hearing of the proceeding, make a decision in accordance with those terms.
 - (3) If the agreement relates to:
 - (a) a part of the proceeding; or
 - (b) a matter arising out of the proceeding;the Tribunal may, in its decision in the proceeding, give effect to the terms of the agreement without dealing at the hearing of the proceeding with the part of the proceeding or the matter arising out of the proceeding, as the case may be, to which the agreement relates.

34E Evidence not admissible

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

Section 34F

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.

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.

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.

Section 34H

34H Engagement of persons to conduct alternative dispute resolution processes

- (1) The Registrar may, on behalf of the Commonwealth, engage persons to conduct one or more kinds of alternative dispute resolution processes under this Division.
- (2) The Registrar must not engage a person under subsection (1) unless the Registrar is satisfied, having regard to the person's qualifications and experience, that the person is a suitable person to conduct the relevant kind or kinds of alternative dispute resolution processes under this Division.

Division 4—Hearings and evidence

34J Circumstances in which hearing may be dispensed with

If:

- (a) it appears to the Tribunal that the issues for determination on the review of a decision can be adequately determined in the absence of the parties; and
- (b) the parties consent to the review being determined without a hearing;

the Tribunal may review the decision by considering the documents or other material lodged with or provided to the Tribunal and without holding a hearing.

35 Hearings to be in public except in special circumstances

Scope

- (1AA) This section does not apply to a proceeding in the Security Appeals Division to which section 39A applies.

Public hearing

- (1) Subject to this section, the hearing of a proceeding before the Tribunal shall be in public.
- (1A) If, at a time a hearing is in public, a person participates in the hearing by a means allowed under section 35A, the Tribunal is to take such steps as are reasonably necessary to ensure that the public nature of the hearing is preserved.

Private hearing etc.

- (2) Where the Tribunal is satisfied that it is desirable to do so by reason of the confidential nature of any evidence or matter or for any other reason, the Tribunal may, by order:
 - (a) direct that a hearing or part of a hearing shall take place in private and give directions as to the persons who may be present; and

Section 35AA

- (aa) give directions prohibiting or restricting the publication of the names and addresses of witnesses appearing before the Tribunal; and
 - (b) give directions prohibiting or restricting the publication of evidence given before the Tribunal, whether in public or in private, or of matters contained in documents lodged with the Tribunal or received in evidence by the Tribunal; and
 - (c) give directions prohibiting or restricting the disclosure to some or all of the parties to a proceeding of evidence given before the Tribunal, or of the contents of a document lodged with the Tribunal or received in evidence by the Tribunal, in relation to the proceeding.
- (3) In considering:
- (a) whether the hearing of a proceeding should be held in private; or
 - (b) whether publication, or disclosure to some or all of the parties, of evidence given before the Tribunal, or of a matter contained in a document lodged with the Tribunal or received in evidence by the Tribunal, should be prohibited or restricted;

the Tribunal shall take as the basis of its consideration the principle that it is desirable that hearings of proceedings before the Tribunal should be held in public and that evidence given before the Tribunal and the contents of documents lodged with the Tribunal or received in evidence by the Tribunal should be made available to the public and to all the parties, but shall pay due regard to any reasons given to the Tribunal why the hearing should be held in private or why publication or disclosure of the evidence or the matter contained in the document should be prohibited or restricted.

35AA Restriction on publication of evidence and findings in a proceeding before the Security Appeals Division

For the purposes of a proceeding before the Security Appeals Division to which section 39A applies, the Tribunal may give directions prohibiting or restricting the publication of:

- (a) evidence given before the Tribunal; or
- (b) the names and addresses of witnesses before the Tribunal; or

Section 35A

- (c) matters contained in documents lodged with the Tribunal or received in evidence by the Tribunal; or
- (d) the whole or any part of its findings on the review.

35A Participation by telephone etc.

- (1) A person holding a directions hearing and the Tribunal in the hearing of a proceeding may allow a person to participate by:
 - (a) telephone; or
 - (b) closed-circuit television; or
 - (c) any other means of communication.
- (2) This section does not apply to a proceeding in the Security Appeals Division to which section 39A applies.

36 Disclosure not required: Attorney-General's public interest certificate

Scope

- (1AA) This section does not apply to a proceeding in the Security Appeals Division to which section 39A applies.

Attorney-General may issue public interest certificate

- (1) If the Attorney-General certifies, by writing signed by him or her, that the disclosure of information concerning a specified matter, or the disclosure of any matter contained in a document, would be contrary to the public interest:
 - (a) by reason that it would prejudice the security, defence or international relations of Australia;
 - (b) by reason that it would involve the disclosure of deliberations or decisions of the Cabinet or of a Committee of the Cabinet; or
 - (c) for any other reason specified in the certificate that could form the basis for a claim by the Crown in right of the Commonwealth in a judicial proceeding that the information or the matter contained in the document should not be disclosed;
- the following provisions of this section have effect.

Section 36

Protection of information etc.

- (2) A person who is required by or under this Act to disclose the information or to produce to, or lodge with, the Tribunal the document in which the matter is contained for the purposes of a proceeding is not excused from the requirement but the Tribunal shall, subject to subsection (3) and to section 46, do all things necessary to ensure that the information or the matter contained in the document is not disclosed to any person other than a member of the Tribunal as constituted for the purposes of the proceeding, and, in the case of a document produced to or lodged with the Tribunal, to ensure the return of the document to the person by whom it was produced or lodged.

Disclosure of information etc.

- (3) Where the Attorney-General has certified in accordance with subsection (1) that the disclosure of information, or of matter contained in a document, would be contrary to the public interest but the certificate does not specify a reason referred to in paragraph (1)(a) or (b), the Tribunal shall consider whether the information or the matter should be disclosed to all or any of the parties to the proceeding and, if it decides that the information or the matter should be so disclosed, the Tribunal shall make the information available or permit the part of the document containing the matter to be inspected accordingly.

Attorney-General taken to be a party

- (3A) Where, in relation to a proceeding to which the Attorney-General would not, but for this subsection, be a party, the Attorney-General certifies in accordance with subsection (1) that the disclosure of information, or of matter contained in a document, would be contrary to the public interest but the certificate does not specify a reason referred to in paragraph (1)(a) or (b), the Attorney-General shall, for the purposes of this Act, be deemed to be a party to the proceeding.

What Tribunal must consider in deciding whether to disclose information etc.

- (4) In considering whether information or matter contained in a document should be disclosed as mentioned in subsection (3), the

Section 36A

Tribunal shall take as the basis of its consideration the principle that it is desirable in the interest of securing the effective performance of the functions of the Tribunal that the parties to a proceeding should be made aware of all relevant matters but shall pay due regard to any reason specified by the Attorney-General in the certificate as a reason why the disclosure of the information or of the matter contained in the document, as the case may be, would be contrary to the public interest.

36A Answering questions where Attorney-General intervenes on public interest grounds

Scope

- (1AA) This section does not apply to a proceeding in the Security Appeals Division to which section 39A applies.

Intervention by Attorney-General

- (1) Where, at the hearing of a proceeding before the Tribunal, a person is asked a question in the course of giving evidence, the Attorney-General may inform the Tribunal that, in his or her opinion, the answering of the question would be contrary to the public interest for a specified reason or reasons, being a reason or reasons mentioned in subsection 36(1).

When person excused from answering question

- (2) Where the Attorney-General so informs the Tribunal that, in his or her opinion, the answering by a person of a question would be contrary to the public interest, that person is excused from answering the question unless:
- (a) in the case where the reason specified is, or the reasons specified include, a reason referred to in paragraph 36(1)(a) or (b)—a court, on an appeal under section 44 or a reference under section 45, decides that the answering of the question would not be contrary to the public interest; or
 - (b) in any other case—the Tribunal decides that the answering of the question would not be contrary to the public interest.

Section 36B

Attorney-General taken to be a party

- (2A) Where the Attorney-General informs the Tribunal that, in his or her opinion, the answering by a person of a question at the hearing of a proceeding would be contrary to the public interest, being a proceeding to which the Attorney-General would not, but for this subsection, be a party, the Attorney-General shall, for the purposes of this Act, be deemed to be a party to the proceeding.

36B Disclosure not required: State Attorney-General's public interest certificate

Scope

- (1AA) This section does not apply to a proceeding in the Security Appeals Division to which section 39A applies.

State Attorney-General may issue public interest certificate

- (1) If the Attorney-General of a State certifies, by writing signed by him or her, that the disclosure of information concerning a specified matter, or the disclosure of any matter contained in a document, would be contrary to the public interest:
- (a) by reason that it would involve the disclosure of deliberations or decisions of the Cabinet, or of a Committee of the Cabinet, of the State; or
 - (b) for any other specified reason that could form the basis for a claim by the Crown in right of the State in a judicial proceeding that the information or the matter contained in the document should not be disclosed;
- the following provisions of this section have effect.

Protection of information etc.

- (2) A person who is required by or under this Act to disclose the information, or to produce to, or lodge with, the Tribunal the document in which the matter is contained, for the purposes of a proceeding is not excused from the requirement, but the Tribunal shall, subject to subsection (3) and to section 46, do all things necessary to ensure that the information, or the matter contained in the document, is not disclosed to any person other than a member of the Tribunal as constituted for the purposes of the proceeding, and, in the case of a document produced to or lodged with the

Section 36B

Tribunal, to ensure the return of the document to the person by whom it was produced or lodged.

Disclosure of information etc.

- (3) Where the Attorney-General of a State has certified in accordance with subsection (1) that the disclosure of information, or of matter contained in a document, would be contrary to the public interest but the certificate does not specify a reason referred to in paragraph (1)(a), the Tribunal shall consider whether the information or the matter should be disclosed to all or any of the parties to the proceeding and, if it decides that the information or the matter should be so disclosed, the Tribunal shall make the information available or permit the part of the document containing the matter to be inspected accordingly.

State Attorney-General taken to be a party

- (4) Where, in relation to a proceeding to which the Attorney-General of a State would not, but for this subsection, be a party, that Attorney-General certifies in accordance with subsection (1) that the disclosure of information, or of matter contained in a document, would be contrary to the public interest but the certificate does not specify a reason referred to in paragraph (1)(a), that Attorney-General shall, for the purposes of this Act, be taken to be a party to the proceeding.

What Tribunal must consider in deciding whether to disclose information etc.

- (5) In considering whether information, or matter contained in a document, should be disclosed as mentioned in subsection (3), the Tribunal shall take as the basis of its consideration the principle that it is desirable in the interest of securing the effective performance of the Tribunal's functions that the parties to a proceeding should be made aware of all relevant matters, but shall pay due regard to any reason that the Attorney-General of the State has specified in the certificate as a reason why the disclosure of the information, or of the matter contained in the document, as the case may be, would be contrary to the public interest.

Section 36C

Norfolk Island

(6) In this section:

Attorney-General, in relation to Norfolk Island, means the Norfolk Island Justice Minister.

Cabinet, in relation to Norfolk Island, means a body that:

- (a) consists of Norfolk Island Ministers; and
- (b) corresponds to the Cabinet.

State includes Norfolk Island.

36C Answering questions where State Attorney-General intervenes on public interest grounds

Scope

(1AA) This section does not apply to a proceeding in the Security Appeals Division to which section 39A applies.

Intervention by State Attorney-General

(1) Where, at the hearing of a proceeding before the Tribunal, a person is asked a question in the course of giving evidence, the Attorney-General of a State may inform the Tribunal that, in his or her opinion, the answering of the question would be contrary to the public interest for a specified reason or reasons, being a reason or reasons mentioned in subsection 36B(1).

When person excused from answering question

(2) Where the Attorney-General of a State informs the Tribunal that, in his or her opinion, the answering by a person of a question would be contrary to the public interest, that person is excused from answering the question unless:

- (a) if the reason specified is, or the reasons specified include, a reason referred to in paragraph 36B(1)(a)—a court, on an appeal under section 44 or a reference under section 45, decides that the answering of the question would not be contrary to the public interest; or
- (b) otherwise—the Tribunal decides that the answering of the question would not be contrary to the public interest.

Section 36D

State Attorney-General taken to be a party

- (3) Where the Attorney-General of a State informs the Tribunal that, in his or her opinion, the answering by a person of a question at the hearing of a proceeding would be contrary to the public interest and, but for this subsection, that Attorney-General would not be a party to the proceeding, that Attorney-General shall, for the purposes of this Act, be taken to be a party to the proceeding.

Norfolk Island

- (4) In this section:

Attorney-General, in relation to Norfolk Island, means the Norfolk Island Justice Minister.

State includes Norfolk Island.

36D Public interest questions under sections 36, 36A and 36C

Scope

- (1AA) This section does not apply to a proceeding in the Security Appeals Division to which section 39A applies.

Parties to be notified of Tribunal's decision

- (1) As soon as practicable after making a decision:
- (a) under subsection 36(3) or 36B(3) in relation to information, or matter contained in a document, in relation to a proceeding; or
 - (b) under paragraph 36A(2)(b) or 36C(2)(b) in relation to the answering of a question at the hearing of a proceeding;
- the Tribunal shall give to each party to the proceeding a document setting out the terms of the Tribunal's decision.

Question of law

- (2) For the purposes of this Act:
- (a) the question whether information, or matter contained in a document, should be disclosed to the parties to a proceeding;
- or

Section 36D

(b) the question whether the answering of a question would be contrary to the public interest;
is a question of law.

Constitution of Tribunal

- (3) The Tribunal's power to make a decision under subsection 36(3) or 36B(3) or paragraph 36A(2)(b) or 36C(2)(b) may be exercised only by the Tribunal constituted by a presidential member who is a Judge of the Federal Court of Australia.

Appeals

- (4) A decision by the Tribunal:
- (a) under subsection 36(3) or 36B(3) as to whether or not information, or matter contained in a document, should be disclosed to all or any of the parties to a proceeding; or
 - (b) under paragraph 36A(2)(b) or 36C(2)(b) that the answering of a question at the hearing of a proceeding would, or would not, be contrary to the public interest;
- is a decision by the Tribunal in that proceeding for the purposes of section 44.

Disclosure of information etc. to officers and staff of Tribunal

- (5) Nothing in section 36 or 36B prevents the disclosure of information, or of matter contained in a document, to a member of the staff of the Tribunal or to the Registrar, a District Registrar, a Conference Registrar or a Deputy Registrar in the course of the performance of his or her duties as a member of the staff of the Tribunal or as Registrar, District Registrar, Conference Registrar or Deputy Registrar.

Public interest

- (6) Sections 36 and 36B exclude the operation of any rules of law that relate to the public interest and would otherwise apply in relation to the disclosure of information, or of matter contained in documents, in proceedings before the Tribunal.

Commonwealth Attorney-General or State Attorney-General may appear or be represented

- (7) The Attorney-General, or the Attorney-General of a State:
- (a) may appear before the Tribunal personally, or may be represented before the Tribunal by a barrister, solicitor or other person, in order to inform the Tribunal of his or her opinion in accordance with section 36A or 36C; or
 - (b) may so inform the Tribunal of his or her opinion by causing to be sent to the Tribunal a written certificate that is signed by him or her and sets out that opinion.

Norfolk Island

- (8) In this section:

Attorney-General, in relation to Norfolk Island, means the Norfolk Island Justice Minister.

State includes Norfolk Island.

37 Lodging of material documents with Tribunal

Scope

- (1AAA) This section does not apply to a proceeding in the Security Appeals Division to which section 39A applies.

Decision-maker must lodge statement of reasons and relevant documents

- (1) Subject to this section, a person who has made a decision that is the subject of an application for a review by the Tribunal must, within 28 days after receiving notice of the application (or within such further period as the Tribunal allows), lodge with the Tribunal 2 copies of:
- (a) a statement setting out the findings on material questions of fact, referring to the evidence or other material on which those findings were based and giving the reasons for the decision; and
 - (b) every other document or part of a document that is in the person's possession or under the person's control and is relevant to the review of the decision by the Tribunal.

Section 37

- (1AA) The Tribunal may direct a person who is required to lodge with the Tribunal 2 copies of a statement or other document or part of a document under subsection (1) to lodge with the Tribunal such number of additional copies, and within such period, as the Tribunal determines and, if the Tribunal gives such a direction, the person must comply with it.

Document setting out reasons for decision may be lodged instead of statement

- (1AB) Subject to any other Act, the President may, in relation to a particular decision or class of decisions, direct that the person who is obliged to lodge with the Tribunal the statement referred to in paragraph (1)(a) may, in lieu of lodging the statement, lodge with the Tribunal, within the period applicable under subsection (1), 2 copies of the document setting out the reasons for the decision that is the subject of the application for review.
- (1AC) If a person has, in accordance with a direction given under subsection (1AB), lodged with the Tribunal 2 copies of the document setting out the reasons for a decision, the Tribunal may at any later time direct the person to lodge with the Tribunal, within such period as the Tribunal determines, a statement in accordance with paragraph (1)(a).
- (1AD) If a person who has made a decision that is the subject of an application for a review by the Tribunal has given to a party to the proceeding a statement in relation to the decision under subsection 28(1), the reference in paragraph (1)(a) to a statement is taken to be a reference to the statement given under subsection 28(1).

Statement of reasons and relevant documents to be given to other party

- (1AE) A person who is required under subsection (1) or (1AB) to lodge 2 copies of a statement or other document or part of a document with the Tribunal under this section within a particular period must also give a copy of the statement or other document or part of a document within that period to each other party to the proceeding.

When document not required to be lodged

- (1AF) If:
-

- (a) a person who has made a decision that is the subject of an application for a review by the Tribunal would, apart from this subsection, be required under paragraph (1)(b) to lodge 2 copies of a document or a part of a document with the Tribunal in respect of the application; and
- (b) within the period applicable under subsection (1) the person:
 - (i) applies to the Tribunal for a direction under subsection 35(2) in relation to the document or part of the document and lodges with the Tribunal, together with the application for the direction, 2 copies of the document or part of the document; and
 - (ii) gives a copy of the application for the direction to each party to the application for review;

the person is not required to comply with paragraph (1)(b) in relation to the document or part of the document unless and until the Tribunal, after hearing the application for the direction, directs the person to do so.

- (1AG) Subsection (1AF) does not affect the obligation of a person referred to in that subsection to comply with paragraph (1)(b) in relation to any document or part of a document to which that subsection does not apply.

Tribunal may shorten deadline for lodging documents

- (1A) If it appears to the Tribunal that a party to a proceeding before the Tribunal for a review of a decision would or might suffer hardship if the period prescribed by subsection (1) for lodging with the Tribunal for the purposes of the review the copies of the documents mentioned in that subsection is not shortened, the Tribunal may, upon request being made, as prescribed, by that party, make an order directing that those copies be lodged with the Tribunal within such period (being a period of less than 28 days) after the person who made the decision receives or received notice of the application as is specified in the order.

What happens if application lodged out of time

- (1B) Where an application that has been lodged with the Tribunal for a review of a decision was not lodged within the time within which it was required by section 29 to be lodged, the reference in subsection (1) to the period of 28 days after the person who made

Section 38

the decision receives notice of the application for a review shall be read as a reference to the period of 28 days after the day on which that person so receives notice or the day on which the Tribunal makes a determination extending the time for the making of the application for a review, whichever is the later.

- (1C) The Tribunal may, upon request being made, as prescribed, by a party to a proceeding before the Tribunal for a review of a decision, direct, by order, that subsection (1B) shall have effect in relation to an application for a review of the decision as if the last reference in that subsection to a period of 28 days were a reference to such shorter period as is specified in the order.
- (1D) Subsection (1B) does not apply in relation to an application for a review of a decision if the decision is the subject of another application to which subsection (1B) does not apply.

Tribunal may require other documents to be lodged

- (2) Where the Tribunal is of the opinion that particular other documents or that other documents included in a particular class of documents may be relevant to the review of the decision by the Tribunal, the Tribunal may cause to be given to the person a notice in writing stating that the Tribunal is of that opinion and requiring the person to lodge with the Tribunal, within a time specified in the notice, the specified number of copies of each of those other documents that is in his or her possession or under his or her control, and a person to whom such a notice is given shall comply with the notice.

Privilege and public interest

- (3) This section has effect notwithstanding any rule of law relating to privilege or the public interest in relation to the production of documents.

38 Power of Tribunal to obtain additional statements

- (1) Where the Tribunal considers that a statement referred to in paragraph 37(1)(a) that is lodged by a person with the Tribunal does not contain adequate particulars of findings on material questions of fact, an adequate reference to the evidence or other material on which those findings were based or adequate

Section 38A

particulars of the reasons for a decision, the Tribunal may order that person to lodge with the Tribunal, within a time specified in the order, an additional statement or additional statements containing further and better particulars in relation to matters specified in the order with respect to those findings, that evidence or other material or those reasons.

- (2) This section does not apply to a proceeding in the Security Appeals Division to which section 39A applies.

38A Director-General of Security to lodge certain material with Tribunal

- (1) If an application for review of a security assessment is made in a case in which the Attorney-General has given a certificate certifying in accordance with paragraph 38(2)(b) of the *Australian Security Intelligence Organisation Act 1979*, the Director-General of Security must, within 30 days after receiving notice of the application, lodge with the Tribunal a copy of the certificate, together with a copy of the whole of the assessment.
- (2) The Tribunal must not, at any time, tell the applicant of the existence of, or permit the applicant to have access to any copy or particulars of, a certificate of the Attorney-General referred to in subsection (1) or any matter to which the certificate relates.

39 Opportunity to make submissions concerning evidence

- (1) Subject to sections 35, 36 and 36B, the Tribunal shall ensure that every party to a proceeding before the Tribunal is given a reasonable opportunity to present his or her case and, in particular, to inspect any documents to which the Tribunal proposes to have regard in reaching a decision in the proceeding and to make submissions in relation to those documents.
- (2) This section does not apply to a proceeding in the Security Appeals Division to which section 39A applies.

Section 39A

39A Procedure at certain hearings in Security Appeals Division

Review of security assessment

- (1) If an application for a review of a security assessment is made to the Tribunal, the Tribunal is to review the assessment in accordance with this section.

Parties

- (2) The parties to the proceeding are the Director-General of Security and the applicant, but the Commonwealth agency to which the assessment is given is entitled to adduce evidence and make submissions.

Director-General of Security must present all relevant information

- (3) It is the duty of the Director-General of Security to present to the Tribunal all relevant information available to the Director-General, whether favourable or unfavourable to the applicant.

Member may require parties to attend etc.

- (4) The presidential member who is to preside, or is presiding, at the hearing may, at any time, require either or both of the parties to attend or be represented before the member for the purpose of conferring with the member concerning the conduct of the review with a view to identifying the matters in issue or otherwise facilitating the conduct of the proceedings.

Proceedings to be in private

- (5) The proceedings are to be in private and, subject to this section, the Tribunal is to determine what people may be present at any time.

Right of parties etc. to be present

- (6) Subject to subsection (9), the applicant and a person representing the applicant may be present when the Tribunal is hearing submissions made or evidence adduced by the Director-General of Security or the Commonwealth agency to which the assessment was given.

Section 39A

- (7) The Director-General of Security or a person representing the Director-General, and a person representing the Commonwealth agency to which the assessment was given, may be present when the Tribunal is hearing submissions made or evidence adduced by the applicant.

Security/defence certificate

- (8) The Minister administering the *Australian Security Intelligence Organisation Act 1979* (the **responsible Minister**) may, by signed writing, certify that evidence proposed to be adduced or submissions proposed to be made by or on behalf of the Director-General of Security or the Commonwealth agency to which the assessment was given are of such a nature that the disclosure of the evidence or submissions would be contrary to the public interest because it would prejudice security or the defence of Australia.
- (9) If such a certificate is given:
- (a) the applicant must not be present when the evidence is adduced or the submissions are made; and
 - (b) a person representing the applicant must not be present when the evidence is adduced or the submissions are made unless the responsible Minister consents.
- (10) If a person representing the applicant is present when evidence to which a certificate given under subsection (8) relates is adduced or submissions to which such a certificate relates are made, the representative must not disclose any such evidence or submission to the applicant or to any other person.

Penalty: Imprisonment for 2 years.

Note: Subsection 4B(2) of the *Crimes Act 1914* allows a court to impose an appropriate fine instead of, or in addition to, a term of imprisonment.

Protection of identity of person giving evidence

- (11) If the Director-General of Security so requests, the Tribunal must do all things necessary to ensure that the identity of a person giving evidence on behalf of the Director-General of Security is not revealed.

Section 39A

Evidence and submissions

- (12) The Tribunal must first hear evidence adduced, and submissions made, by or on behalf of the Director-General of Security and any evidence or submissions that the Commonwealth agency to which the assessment was given may wish to adduce or make.
- (13) The Tribunal must next permit the applicant, if he or she so desires, to adduce evidence before, and make submissions to, the Tribunal.
- (14) The Tribunal may, on its own initiative and at any stage of the proceedings, invite a person to give evidence, or cause a person to be summoned to give evidence.
- (15) If a person invited or summoned to give evidence under subsection (14) is an officer or employee of the Australian Security Intelligence Organisation or of the Commonwealth agency to which the assessment was given, subsection (8) applies as if any evidence to be given by the person were evidence proposed to be adduced by or on behalf of the Director-General of Security or that agency, as the case may be.
- (16) If:
 - (a) a party presents his or her case to the Tribunal; and
 - (b) after that case has been presented, the other party adduces evidence; and
 - (c) the Tribunal thinks that, because of evidence adduced by the other party, the first-mentioned party should be further heard;the Tribunal must give the first-mentioned party an opportunity of adducing further evidence but must not give to the applicant any particulars of any evidence to which a certificate given under subsection (8) relates.
- (17) A member of the Tribunal may ask questions of a witness before the Tribunal and the presidential member presiding may require a witness to answer any such question.

Dismissal of application

- (18) If the applicant fails within a reasonable time:
 - (a) to proceed with the application; or

Section 39B

- (b) to comply with a direction by the Tribunal in relation to the application;
a presidential member or senior member, on behalf of the Tribunal, may dismiss the application without proceeding to review the security assessment.

39B Certain documents and information not to be disclosed in proceedings before Security Appeals Division

Scope

- (1) This section applies to a proceeding in the Security Appeals Division to which section 39A applies.

Attorney-General may issue public interest certificate

- (2) If the Attorney-General certifies, by signed writing, that the disclosure of information with respect to a matter stated in the certificate, or the disclosure of the contents of a document, would be contrary to the public interest:
 - (a) because it would prejudice security or the defence or international relations of Australia; or
 - (b) because it would involve the disclosure of deliberations or decisions of the Cabinet or a Committee of the Cabinet or of the Executive Council; or
 - (c) for any other reason stated in the certificate that could form the basis for a claim by the Crown in right of the Commonwealth in a judicial proceeding that the information or the contents of the document should not be disclosed;the following provisions of this section have effect.

Protection of information etc.

- (3) A person who is required by or under this Act to disclose the information or to produce the document to the Tribunal for the purposes of a proceeding is not excused from the requirement, but the Tribunal must, subject to subsections (4), (5) and (7) and section 46, do all things necessary to ensure:
 - (a) that the information or the contents of the document are not disclosed to anyone other than a member of the Tribunal as constituted for the purposes of the proceeding; and

Section 39B

- (b) in respect of a document produced to the Tribunal—that the document is returned to the person by whom it was produced.
- (4) Subsection (3) does not apply in relation to disclosure to the Director-General of Security or his or her representative if the reason stated in the certificate is the reason referred to in paragraph (2)(a).

Disclosure of information etc.

- (5) If:
 - (a) the Attorney-General has certified in accordance with subsection (2) that the disclosure of information or of the contents of a document would be contrary to the public interest but the certificate does not state a reason referred to in paragraph (2)(a) or (b); and
 - (b) the presidential member presiding is satisfied that the interests of justice outweigh the reason stated by the Attorney-General;the presidential member may authorise the disclosure of the information, or of the contents of the document to, the applicant.

What presidential member must consider in deciding whether to authorise disclosure of information etc.

- (6) In considering whether information or the contents of a document should be disclosed as mentioned in subsection (5):
 - (a) the presidential member must take as the basis of his or her consideration the principle that it is desirable, in the interest of ensuring that the Tribunal performs its functions effectively, that the parties should be made aware of all relevant matters; but
 - (b) the presidential member must pay due regard to any reason stated by the Attorney-General in the certificate as a reason why the disclosure of the information or of the contents of the document, as the case may be, would be contrary to the public interest.

Disclosure of information etc. to staff of Tribunal

- (7) This section does not prevent the disclosure of information or of the contents of a document to a member of the Tribunal's staff in

Section 39B

the course of the performance of his or her duties as a member of the Tribunal's staff.

Public interest

- (8) This section excludes the operation, apart from this section, of any rules of law relating to the public interest that would otherwise apply in relation to the disclosure of information or of the contents of documents in a proceeding.

Copy of document

- (9) If the Attorney-General has given a certificate under subsection (2) in respect of a document, this section applies in relation to a document that is a copy of the first-mentioned document as if the copy were the original document.

Certificate lodged under subsection 38A(1)

- (10) For the purposes of this section, if the Director-General of Security, in accordance with subsection 38A(1), has lodged with the Tribunal a certificate of the Attorney-General given under subsection 38(2) of the *Australian Security Intelligence Organisation Act 1979*, the certificate is taken to be a certificate certifying to the Tribunal that the disclosure of the information to which the certificate relates would be contrary to the public interest because it would prejudice security.

Duty of Tribunal

- (11) It is the duty of the Tribunal, even though there may be no relevant certificate under this section, to ensure, so far as it is able to do so, that, in or in connection with a proceeding, information is not communicated or made available to a person contrary to the requirements of security.

Division 5—Procedural powers of Tribunal

40 Powers of Tribunal etc.

- (1) For the purpose of reviewing a decision, the Tribunal may:
 - (a) take evidence on oath or affirmation;
 - (b) proceed in the absence of a party who has had reasonable notice of the proceeding; and
 - (c) adjourn the proceeding from time to time.

Summons

- (1A) Subject to subsection (1B), for the purposes of the hearing of a proceeding before the Tribunal, the member presiding at the hearing, the Registrar, a District Registrar or a Deputy Registrar may summon a person to appear before the Tribunal at that hearing:
 - (a) to give evidence; or
 - (b) to give evidence and produce any books, documents or things in the possession, custody or control of the person or persons named in the summons that are mentioned in the summons; or
 - (c) to produce any books, documents or things in the possession, custody or control of the person or persons named in the summons that are mentioned in the summons.
- (1B) A summons under subsection (1A) may require a person to appear at a directions hearing to produce books, documents or things instead of at the hearing before the Tribunal.
- (1C) A person (other than a presidential member, a senior member or an authorised member) who, under subsection (1A), may summon a person to appear before the Tribunal must not refuse a request to do so unless the refusal is authorised by a presidential member, a senior member or an authorised member.
- (1D) A presidential member, a senior member or an authorised member may give a party to a proceeding leave to inspect a document produced under a summons.

- (1E) A person named in a summons for production of a book, document or thing may produce the book, document or thing at the Registry where the summons was issued before the date specified in the summons and, unless the Tribunal otherwise directs, is not required to attend the hearing concerned unless the person is also required to give evidence at the hearing concerned.

Oath or affirmation

- (2) The member who presides at the hearing of a proceeding before the Tribunal:
- (a) may require a person appearing before the Tribunal at that hearing to give evidence either to take an oath or to make an affirmation; and
 - (b) may administer an oath or affirmation to a person so appearing before the Tribunal; and
 - (c) if a person participates by a means allowed under section 35A, may make such arrangements as appear to the member to be appropriate in the circumstances in relation to administering an oath or affirmation to the person.
- (3) The oath or affirmation to be taken or made by a person for the purposes of this section is an oath or affirmation that the answers he or she will give to questions asked him or her will be true.

Representation

- (4) A person summoned to appear before the Tribunal may request that he or she be represented by counsel or a solicitor and upon such request being made the Tribunal may allow such person to be represented.

Tribunal's power to take evidence

- (5) The power of the Tribunal under paragraph (1)(a) to take evidence on oath or affirmation may be exercised on behalf of the Tribunal in relation to a particular proceeding before the Tribunal by the member who is to preside at the hearing of that proceeding or by another person (whether a member or not) authorized by the first-mentioned member and that power may be so exercised within or outside Australia but the Tribunal may direct that the power is to be exercised subject to limitations specified by the Tribunal.

Section 41

- (6) Where a person other than the member who is to preside at the hearing of a proceeding is authorized to take evidence in relation to the proceeding in accordance with subsection (5):
 - (a) the person has, for the purpose of taking that evidence, all the powers of the Tribunal under subsection (1) and all the powers under subsection (2) of the member who is to preside at the hearing of the proceeding; and
 - (b) for the purpose of the exercise of those powers by that person, this Act has effect (except where the context otherwise requires) as if a reference to the Tribunal or to the member who is to preside at the hearing of a proceeding included a reference to that person.

Incidental proceedings

- (7) The application of this section extends to a directions hearing under this Act or an alternative dispute resolution process under Division 3 (an ***incidental proceeding***) as if it were a proceeding before the Tribunal and a power that under this section is conferred on the Tribunal or a member of the Tribunal for the purpose of reviewing a decision may be exercised for the purposes of an incidental proceeding by the person holding the directions hearing or the person conducting the alternative dispute resolution process, as the case may be.

41 Operation and implementation of a decision that is subject to review

- (1) Subject to this section, the making of an application to the Tribunal for a review of a decision does not affect the operation of the decision or prevent the taking of action to implement the decision.
- (2) The Tribunal may, on request being made, as prescribed, by a party to a proceeding before the Tribunal (in this section referred to as the ***relevant proceeding***), if the Tribunal is of the opinion that it is desirable to do so after taking into account the interests of any persons who may be affected by the review, make such order or orders staying or otherwise affecting the operation or implementation of the decision to which the relevant proceeding relates or a part of that decision as the Tribunal considers appropriate for the purpose of securing the effectiveness of the hearing and determination of the application for review.

Section 41

- (3) Where an order is in force under subsection (2) (including an order that has previously been varied on one or more occasions under this subsection), the Tribunal may, on request being made, as prescribed, by a party to the relevant proceeding, make an order varying or revoking the first-mentioned order.
 - (4) Subject to subsection (5), the Tribunal shall not:
 - (a) make an order under subsection (2) unless the person who made the decision to which the relevant proceeding relates has been given a reasonable opportunity to make a submission to the Tribunal, as the case may be, in relation to the matter; or
 - (b) make an order varying or revoking an order in force under subsection (2) (including an order that has previously been varied on one or more occasions under subsection (3)) unless:
 - (i) the person who made the decision to which the relevant proceeding relates;
 - (ii) the person who requested the making of the order under subsection (2); and
 - (iii) if the order under subsection (2) has previously been varied by an order or orders under subsection (3)—the person or persons who requested the making of the last-mentioned order or orders;have been given a reasonable opportunity to make submissions to the Tribunal, as the case may be, in relation to the matter.
 - (5) Subsection (4) does not prohibit the Tribunal from making an order without giving to a person referred to in that subsection a reasonable opportunity to make a submission to the Tribunal in relation to a matter if the Tribunal is satisfied that, by reason of the urgency of the case or otherwise, it is not practicable to give that person such an opportunity but, where an order is so made without giving such an opportunity to the person who made the decision to which the relevant proceeding relates, the order does not come into operation until a notice setting out the terms of the order is given to that person.
 - (6) An order in force under subsection (2) (including an order that has previously been varied on one or more occasions under subsection (3)):
-

Section 42

- (a) is subject to such conditions as are specified in the order; and
- (b) has effect until:
 - (i) where a period for the operation of the order is specified in the order—the expiration of that period or, if the application for review is decided by the Tribunal before the expiration of that period, the decision of the Tribunal on the application for review comes into operation; or
 - (ii) if no period is so specified—the decision of the Tribunal on the application for review comes into operation.

42 Resolving disagreements

2 members

- (1) If:
 - (a) 2 members constitute the Tribunal for the purposes of a particular proceeding; and
 - (b) the members do not agree about any matter arising in the proceeding;the view of the presiding member prevails.

3 members

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

Question of law

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

42A Discontinuance, dismissal, reinstatement etc. of application

Dismissal if parties consent

- (1) Where all the parties to an application before the Tribunal for a review of a decision consent, the Tribunal may dismiss the application without proceeding to review the decision or, if the Tribunal has commenced to review the decision, without completing the review.

Deemed dismissal—applicant discontinues or withdraws application

- (1A) A person who has made an application to the Tribunal for a review of a decision may, in writing lodged with the Tribunal, at any time notify the Tribunal to the effect that the application is discontinued or withdrawn.
- (1B) If notification is so given, the Tribunal is taken to have dismissed the application without proceeding to review the decision.

Dismissal if party fails to appear

- (2) If a party to a proceeding before the Tribunal in respect of an application for the review of a decision (not being the person who made the decision) fails either to appear in person or to appear by a representative at a directions hearing, or an alternative dispute resolution process under Division 3, held in relation to the application, or at the hearing of the proceeding, the Tribunal may:
- (a) if the person who failed to appear is the applicant—dismiss the application without proceeding to review the decision; or
 - (b) in any other case—direct that the person who failed to appear shall cease to be a party to the proceeding.
- (3) For the purposes of subsection (2), a person is taken to appear in person or by a representative at a directions hearing or hearing of a proceeding if the person or the person's representative, as the case may be, participates in it by a means allowed under section 35A.

Section 42A

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

Dismissal if decision not reviewable

- (4) If:
- (a) a person makes an application to the Tribunal for a review of a decision; and
 - (b) the person is unable to show, within such time as is prescribed after being notified in writing by the Registrar or a Deputy Registrar that the decision does not appear to be reviewable by the Tribunal, that the decision is so reviewable;
- the Tribunal may dismiss the application without proceeding to review the decision.

Dismissal if applicant fails to proceed or fails to comply with Tribunal's direction

- (5) If an applicant for a review of a decision fails within a reasonable time:
- (a) to proceed with the application; or
 - (b) to comply with a direction by the Tribunal in relation to the application;
- the Tribunal may dismiss the application without proceeding to review the decision.

Dismissed application taken to be concluded

- (6) If, under this Act, the Tribunal dismisses an application or an application is dismissed on its behalf, the proceeding to which the application relates, unless it is reinstated under subsection (9) or (10), is taken to be concluded.

Dismissal if party fails to appear—giving of appropriate notice

- (7) Before exercising its powers under subsection (2), the Tribunal must be satisfied that appropriate notice was given to the person who failed to appear of the time and place of the directions hearing, conference, mediation or hearing, as the case may be.

Section 42B

Reinstatement of application

- (8) If the Tribunal, under subsection (2), has dismissed an application (other than an application in respect of a proceeding in which an order has been made under subsection 41(2)), the person who made the application may, within 28 days after receiving notification that the application has been dismissed, apply to the Tribunal for reinstatement of the application.
- (9) If it considers it appropriate to do so, the Tribunal may reinstate the application and give such directions as appear to it to be appropriate in the circumstances.
- (10) If it appears to the Tribunal that an application has been dismissed in error, the Tribunal may, on the application of a party to the proceeding or on its own initiative, reinstate the application and give such directions as appear to it to be appropriate in the circumstances.

42B Power of Tribunal where a proceeding is frivolous or vexatious

- (1) Where an application is made to the Tribunal for the review of a decision, the Tribunal may, at any stage of the proceeding, if it is satisfied that the application is frivolous or vexatious:
 - (a) dismiss the application; and
 - (b) if the Tribunal considers it appropriate, on the application of a party to the proceedings, direct that the person who made the application must not, without leave of the Tribunal, make a subsequent application to the Tribunal of a kind or kinds specified in the direction.
- (2) A direction given by the Tribunal under paragraph (1)(b) has effect despite any other provision of this Act or a provision of any other Act.
- (3) The Tribunal may discharge or vary such a direction.

42C Power of Tribunal if parties reach agreement

- (1) If, at any stage of a proceeding for a review of a decision:
 - (a) agreement is reached between the parties or their representatives as to the terms of a decision of the Tribunal in the proceeding or in relation to a part of the proceeding or a

Section 42D

matter arising out of the proceeding that would be acceptable to the parties (other than an agreement reached in the course of an alternative dispute resolution process under Division 3); and

- (b) the terms of the agreement are reduced to writing, signed by or on behalf of the parties and lodged with the Tribunal; and
- (c) the Tribunal is satisfied that a decision in those terms or consistent with those terms would be within the powers of the Tribunal;

the Tribunal may, if it appears to it to be appropriate to do so, act in accordance with whichever of subsection (2) or (3) is relevant in the particular case.

- (2) If the agreement reached is an agreement as to the terms of a decision of the Tribunal in the proceeding, the Tribunal may make a decision in accordance with those terms without holding a hearing of the proceeding or, if a hearing has commenced, without completing the hearing.
- (3) If the agreement relates to a part of the proceeding or a matter arising out of the proceeding, the Tribunal may in its decision in the proceeding give effect to the terms of the agreement without, if it has not already done so, dealing at the hearing of the proceeding with the part of the proceeding or the matter arising out of the proceeding, as the case may be, to which the agreement relates.

42D Power to remit matters to decision-maker for further consideration

- (1) At any stage of a proceeding for review of a decision, the Tribunal may remit the decision to the person who made it for reconsideration of the decision by the person.

Powers of person to whom a decision is remitted

- (2) If a decision is so remitted to a person, the person may reconsider the decision and may:
 - (a) affirm the decision; or
 - (b) vary the decision; or
 - (c) set aside the decision and make a new decision in substitution for the decision set aside.

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

- (3) If the person varies the decision:
 - (a) the application is taken to be an application for review of the decision as varied; and
 - (b) the person who made the application may either:
 - (i) proceed with the application for review of the decision as varied; or
 - (ii) withdraw the application.
- (4) If the person sets the decision aside and makes a new decision in substitution for the decision set aside:
 - (a) the application is taken to be an application for review of the new decision; and
 - (b) the person who made the application may either:
 - (i) proceed with the application for review of the new decision; or
 - (ii) withdraw the application.

Time limits

- (5) The person must reconsider the decision, and do one of the things mentioned in paragraphs (2)(a), (b) and (c), within whichever of the following periods is applicable:
 - (a) if the Tribunal, when remitting the decision, specified a period within which the person was to reconsider the decision—that period;
 - (b) in any other case—the period of 28 days beginning on the day on which the decision was remitted to the person.
- (6) The Tribunal may, on the application of the person, extend the period applicable under subsection (5).
- (7) If the person has not reconsidered the decision, and done one of the things mentioned in paragraphs (2)(a), (b) and (c), within the period applicable under subsection (5), the person is taken to have affirmed the decision.
- (8) If the person affirms the decision, the proceeding resumes.

Division 6—Tribunal's decision on review

43 Tribunal's decision on review

- (1A) This section has effect subject to section 43AAA and to subsection 65(3) of the *Australian Security Intelligence Organisation Act 1979*.

Tribunal's decision on review

- (1) For the purpose of reviewing a decision, the Tribunal may exercise all the powers and discretions that are conferred by any relevant enactment on the person who made the decision and shall make a decision in writing:
- (a) affirming the decision under review;
 - (b) varying the decision under review; or
 - (c) setting aside the decision under review and:
 - (i) making a decision in substitution for the decision so set aside; or
 - (ii) remitting the matter for reconsideration in accordance with any directions or recommendations of the Tribunal.

Tribunal must give reasons for its decision

- (2) Subject to this section and to sections 35 and 36D, the Tribunal shall give reasons either orally or in writing for its decision.
- (2A) Where the Tribunal does not give reasons in writing for its decision, a party to the proceeding may, within 28 days after the day on which a copy of the decision of the Tribunal is given to that party, request the Tribunal to give to that party a statement in writing of the reasons of the Tribunal for its decision, and the Tribunal shall, within 28 days after receiving the request, give to that party such a statement.
- (2B) Where the Tribunal gives in writing the reasons for its decision, those reasons shall include its findings on material questions of fact and a reference to the evidence or other material on which those findings were based.

Tribunal must give copies of its decision to parties

- (3) The Tribunal shall cause a copy of its decision to be given to each party to the proceeding.

Evidence of Tribunal's decision or order

- (4) Without prejudice to any other method available by law for the proof of decisions or orders of the Tribunal, a document purporting to be a copy of such a decision or order, and to be certified by the Registrar, a District Registrar or a Deputy Registrar to be a true copy of the decision or order, is, in any proceeding, *prima facie* evidence of the decision or order.
- (5) Subsections (3) and (4) apply in relation to reasons given in writing by the Tribunal for its decision as they apply in relation to the decision.

When Tribunal's decision comes into operation

- (5A) Subject to subsection (5B), a decision of the Tribunal comes into operation forthwith upon the giving of the decision.
- (5B) The Tribunal may specify in a decision that the decision is not to come into operation until a later date specified in the decision and, where a later date is so specified, the decision comes into operation on that date.
- (5C) Despite subsections (5A) and (5B), if:
- (a) the Tribunal has made an order under subsection 41(2) staying the operation or implementation of the decision under review; and
 - (b) the order was in force immediately before the decision given by the Tribunal on the review;
- then, unless the Tribunal, the Federal Court of Australia or the Federal Circuit Court of Australia otherwise orders, the operation or implementation of the Tribunal's decision is stayed until:
- (c) subject to paragraph (d), the end of the period within which a party to the proceeding before the Tribunal may appeal from the decision to the Federal Court of Australia under subsection 44(1) (including any further time for bringing the appeal that is allowed by the Federal Court before the end of that period); or

Section 43

(d) if such an appeal is brought—the appeal is determined.

Tribunal's decision taken to be decision of decision-maker

- (6) A decision of a person as varied by the Tribunal, or a decision made by the Tribunal in substitution for the decision of a person, shall, for all purposes (other than the purposes of applications to the Tribunal for a review or of appeals in accordance with section 44), be deemed to be a decision of that person and, upon the coming into operation of the decision of the Tribunal, unless the Tribunal otherwise orders, has effect, or shall be deemed to have had effect, on and from the day on which the decision under review has or had effect.

Division 7—Miscellaneous

43AAA Findings of Tribunal in certain proceedings before Security Appeals Division

Scope

- (1) This section applies to a review conducted by the Security Appeals Division.

Findings

- (2) Upon the conclusion of a review, the Tribunal must make and record its findings in relation to the security assessment, and those findings may state the opinion of the Tribunal as to the correctness of, or justification for, any opinion, advice or information contained in the assessment.
- (3) The Tribunal must not make findings in relation to an assessment that would, under section 61 of the *Australian Security Intelligence Organisation Act 1979*, have the effect of superseding any information that is, under subsection 37(2) of that Act, taken to be part of the assessment unless those findings state that, in the Tribunal's opinion, the information is incorrect, is incorrectly represented or could not reasonably be relevant to the requirements of security.

Copies of findings to be given to parties etc.

- (4) Subject to subsection (5), the Tribunal must cause copies of its findings to be given to the applicant, the Director-General of Security, the Commonwealth agency to which the assessment was given and the Attorney-General.
- (5) The Tribunal may direct that the whole or a particular part of its findings, so far as they relate to a matter that has not already been disclosed to the applicant, is not to be given to the applicant or is not to be given to the Commonwealth agency to which the assessment was given.

Section 43AA

Applicant may publish findings

- (6) Subject to any direction by the Tribunal, the applicant is entitled to publish, in any manner that he or she thinks fit, the findings of the Tribunal so far as they have been given to him or her.

Tribunal may attach comments to findings

- (7) The Tribunal may attach to a copy of findings to be given to the Director-General under this section, any comments the Tribunal wishes to make on matters relating to procedures or practices of the Australian Security Intelligence Organisation that have come to the Tribunal's attention as a result of a review.
- (8) The Tribunal must give the Minister a copy of any comments attached as mentioned in subsection (7).

43AA Correction of errors in decisions or statement of reasons

Correction of errors

- (1) If, after the making of a decision by the Tribunal, the Tribunal is satisfied that there is an obvious error in the text of the decision or in a written statement of reasons for the decision, the Tribunal may direct the Registrar to alter the text of the decision or statement in accordance with the directions of the Tribunal.
- (2) If the text of a decision or statement is so altered, the altered text is taken to be the decision of the Tribunal or the reasons for the decision, as the case may be.

Examples of obvious errors

- (3) Examples of obvious errors in the text of a decision or statement of reasons are where:
- (a) there is an obvious clerical or typographical error in the text of the decision or statement of reasons; or
 - (b) there is an inconsistency between the decision and the statement of reasons.

Exercise of powers

- (4) The powers of the Tribunal under this section may be exercised by the President or by the member who presided at the proceeding to which the decision relates.

43A Return of documents etc. at completion of proceeding

- (1) Where:
- (a) a proceeding before the Tribunal has concluded; and
 - (b) the time within which an appeal from the decision of the Tribunal in the proceeding may be instituted, or, if that time has been extended, the period of the extension, has expired but no such appeal has been instituted;
- the President may cause a document or any other object given to the Tribunal for the purposes of the proceeding to be returned to the person by whom it was given.
- (2) Where the Federal Court of Australia or the Federal Circuit Court of Australia causes a document sent to the court in accordance with paragraph 46(1)(a) or (c) in connexion with a proceeding before the court to be returned to the Tribunal, the President may cause the document to be returned to the person by whom it was given to the Tribunal.

Section 43B

Part IVA—Appeals and references of questions of law to the Federal Court of Australia

43B Part applies whether Tribunal’s power conferred by an enactment or by a law of a State

- (1) This Part applies in relation to a proceeding that was before the Tribunal before the commencement of this section, or that is before the Tribunal after that commencement, under power conferred on it by or under:
 - (a) an enactment; or
 - (b) a law of a State.

Note: The enactment may be regulations made for the purposes of subsection 25(2) (review of decisions made in the exercise of powers conferred by a Norfolk Island enactment).

- (2) This Part has effect in relation to a proceeding before the Tribunal under power conferred on it by a law of a State as if a reference in this Part to a provision of this Act that is not in this Part were a reference to that provision as applying as a law of the State.

44 Appeals to Federal Court of Australia from decisions of the Tribunal

Appeal on question of law

- (1) A party to a proceeding before the Tribunal may appeal to the Federal Court of Australia, on a question of law, from any decision of the Tribunal in that proceeding.

Appeal about standing

- (2) Where a person has applied to the Tribunal for a review of a decision, or has applied to be made a party to a proceeding before the Tribunal for a review of a decision, and the Tribunal decides that the interests of the person are not affected by the decision, the person may appeal to the Federal Court of Australia from the decision of the Tribunal.

When and how appeal instituted

- (2A) An appeal by a person under subsection (1) or (2) shall be instituted:
- (a) not later than the twenty-eighth day after the day on which a document setting out the terms of the decision of the Tribunal is given to the person or within such further time as the Federal Court of Australia (whether before or after the expiration of that day) allows; and
 - (b) in such manner as is prescribed by rules of court made under the *Federal Court of Australia Act 1976*.
- (2B) In the interest of justice, the grounds on which the Federal Court of Australia may allow further time under paragraph (2A)(a) include, but are not limited to, the following grounds:
- (a) if the Tribunal made an oral statement as to the reasons for the decision and afterwards gave a written statement of reasons for the decision—the written statement contains reasons that were not mentioned in the oral statement;
 - (b) the text of the decision or a statement of reasons for the decision has been altered under section 43AA.

Jurisdiction

- (3) The Federal Court of Australia has jurisdiction to hear and determine appeals instituted in that Court in accordance with subsections (1) and (2) and that jurisdiction:
- (a) may be exercised by that Court constituted as a Full Court;
 - (b) shall be so exercised if:
 - (i) the Tribunal's decision was given by the Tribunal constituted by a member who was, or by members at least one of whom was, a presidential member; and
 - (ii) after consulting the President, the Chief Justice of that Court considers that it is appropriate for the appeal from the decision to be heard and determined by that Court constituted as a Full Court; and
 - (c) shall be so exercised if the Tribunal's decision was given by the Tribunal constituted by a member who was, or by members at least one of whom was, a Judge.

Section 44

Powers of Federal Court

- (4) The Federal Court of Australia shall hear and determine the appeal and may make such order as it thinks appropriate by reason of its decision.
- (5) Without limiting by implication the generality of subsection (4), the orders that may be made by the Federal Court of Australia on an appeal include an order affirming or setting aside the decision of the Tribunal and an order remitting the case to be heard and decided again, either with or without the hearing of further evidence, by the Tribunal in accordance with the directions of the Court.

Constitution of Tribunal if Federal Court remits case etc.

- (6) If the Federal Court of Australia makes an order remitting a case to be heard and decided again by the Tribunal:
 - (a) the Tribunal need not be constituted for the hearing by the person or persons who made the decision to which the appeal relates; and
 - (b) whether or not the Tribunal is reconstituted for the hearing—the Tribunal may, for the purposes of the proceeding, have regard to any record of the proceeding before the Tribunal prior to the appeal (including a record of any evidence taken in the proceeding), so long as doing so is not inconsistent with the directions of the Court.

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

44AA Transfer of appeals from Federal Court to Federal Circuit Court

Transfer of appeals

- (1) If an appeal under subsection 44(1) or (2) is pending in the Federal Court of Australia, the Federal Court of Australia may, by order, transfer the appeal from the Federal Court of Australia to the Federal Circuit Court of Australia.
- (2) However, the Federal Court of Australia must not transfer an appeal to the Federal Circuit Court of Australia if the appeal:
 - (a) relates to a decision given by the Tribunal constituted by a member who was, or by members at least one of whom was, a presidential member; or

Section 44AA

- (c) is of a kind specified in the regulations.
- (3) The Federal Court of Australia may transfer an appeal under subsection (1):
 - (a) on the application of a party to the appeal; or
 - (b) on its own initiative.

Federal Court Rules

- (4) Rules of Court made under the *Federal Court of Australia Act 1976* may make provision in relation to transfers of appeals to the Federal Circuit Court of Australia under subsection (1).
- (5) In particular, Rules of Court made under the *Federal Court of Australia Act 1976* may set out factors that are to be taken into account by the Federal Court of Australia in deciding whether to transfer appeals to the Federal Circuit Court of Australia under subsection (1).
- (6) Before Rules of Court are made for the purposes of subsection (4) or (5), the Federal Court of Australia must consult the Federal Circuit Court of Australia.

Matters to which the Federal Court must have regard in transferring appeal

- (7) In deciding whether to transfer an appeal to the Federal Circuit Court of Australia under subsection (1), the Federal Court of Australia must have regard to:
 - (a) any Rules of Court made for the purposes of subsection (5); and
 - (b) whether proceedings in respect of an associated matter are pending in the Federal Circuit Court of Australia; and
 - (c) whether the resources of the Federal Circuit Court of Australia are sufficient to hear and determine the appeal; and
 - (d) the interests of the administration of justice.

Jurisdiction

- (8) The Federal Circuit Court of Australia has jurisdiction to hear and determine appeals transferred to it under subsection (1).

Powers etc.

- (9) Subsections 44(4), (5) and (6) apply in relation to the hearing and determination of an appeal transferred to the Federal Circuit Court of Australia under subsection (1) of this section in a corresponding way to the way in which they apply to the hearing and determination of an appeal by the Federal Court of Australia.

No appeal from decision of Federal Court

- (10) An appeal does not lie from a decision of the Federal Court of Australia in relation to the transfer of an appeal under subsection (1).

Federal Circuit Court may make findings of fact

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

44A Operation and implementation of a decision that is subject to appeal

Appeal does not affect operation of Tribunal's decision

- (1) Subject to this section, the institution of an appeal to the Federal Court of Australia from a decision of the Tribunal does not affect the operation of the decision or prevent the taking of action to implement the decision.

Stay orders

- (2) Where an appeal is instituted in the Federal Court of Australia from a decision of the Tribunal, that Court or a Judge of that Court may make such order or orders staying or otherwise affecting the operation or implementation of either or both of the following:

Section 44A

- (a) the decision of the Tribunal or a part of that decision; and
 - (b) the decision to which the proceeding before the Tribunal related or a part of that decision;as that Court or Judge considers appropriate for the purpose of securing the effectiveness of the hearing and determination of the appeal.
- (2A) If an appeal from a decision of the Tribunal is transferred from the Federal Court of Australia to the Federal Circuit Court of Australia, the Federal Circuit Court of Australia or a Judge of the Federal Circuit Court of Australia may make such order or orders staying or otherwise affecting the operation or implementation of either or both of the following:
 - (a) the decision of the Tribunal or a part of that decision;
 - (b) the decision to which the proceeding before the Tribunal related or a part of that decision;as the Federal Circuit Court of Australia or Judge of the Federal Circuit Court of Australia considers appropriate for the purpose of securing the effectiveness of the hearing and determination of the appeal.
- (3) If an order is in force under subsection (2) or (2A) (including an order that has previously been varied on one or more occasions under this subsection):
 - (a) the Federal Court of Australia or a Judge of that Court; or
 - (b) the Federal Circuit Court of Australia or a Judge of that Court;may make an order varying or revoking the first-mentioned order.
- (4) An order in force under subsection (2) or (2A) (including an order that has previously been varied on one or more occasions under subsection (3)):
 - (a) is subject to such conditions as are specified in the order; and
 - (b) has effect until:
 - (i) where a period for the operation of the order is specified in the order—the expiration of that period or, if a decision is given on the appeal before the expiration of that period, the giving of the decision; or
 - (ii) where no period is so specified—the giving of a decision on the appeal.

45 Reference of questions of law to Federal Court of Australia

- (1) The Tribunal may, of its own motion or at the request of a party, refer a question of law arising in a proceeding before the Tribunal to the Federal Court of Australia for decision but:
 - (a) a question must not be so referred without the concurrence of the President; and
 - (c) in respect of a proceeding before the Small Taxation Claims Tribunal—in so referring a question, the interests of the applicant seeking review of a relevant taxation decision must be taken into account.
- (2) The Federal Court of Australia has jurisdiction to hear and determine a question of law referred to it under this section and that jurisdiction shall be exercised by that Court constituted as a Full Court.
- (3) Where a question of law arising in any proceeding has been referred to the Federal Court of Australia under this section, the Tribunal shall not, in that proceeding:
 - (a) give a decision to which the question is relevant while the reference is pending; or
 - (b) proceed in a manner, or make a decision, that is inconsistent with the opinion of the Federal Court of Australia on the question.

46 Sending of documents to, and disclosure of documents by, the Federal Court and the Federal Circuit Court

Sending of documents to courts

- (1) When an appeal is instituted in the Federal Court of Australia in accordance with section 44 or a question of law is referred to that Court in accordance with section 45:
 - (a) the Tribunal shall, despite subsections 36(2), 36B(2) and 39B(3), cause to be sent to the Court all documents that were before the Tribunal in connexion with the proceeding to which the appeal or reference relates; and
 - (b) except in the case of an appeal that is transferred to the Federal Circuit Court of Australia—at the conclusion of the proceeding before the Federal Court of Australia in relation

Section 46

to the appeal or reference, the Court shall cause the documents to be returned to the Tribunal; and

- (c) in the case of an appeal that is transferred to the Federal Circuit Court of Australia:
 - (i) the Federal Court of Australia must cause the documents to be sent to the Federal Circuit Court of Australia; and
 - (ii) at the conclusion of the proceedings before the Federal Circuit Court of Australia in relation to the appeal, the Federal Circuit Court of Australia must cause the documents to be returned to the Tribunal.

Disclosure of documents by courts

- (2) If there is in force in respect of any of the documents a certificate in accordance with subsection 28(2), 36(1), 36B(1) or 39B(2) certifying that the disclosure of matter contained in the document would be contrary to the public interest, the Federal Court of Australia or the Federal Circuit Court of Australia shall, subject to subsection (3), do all things necessary to ensure that the matter is not disclosed to any person other than a member of the court as constituted for the purposes of the proceeding. However, this subsection does not prevent the Federal Court of Australia from causing the document to be sent to the Federal Circuit Court of Australia as mentioned in subparagraph (1)(c)(i).
- (3) If:
 - (a) the certificate referred to in subsection (2) relating to matter contained in the document does not specify a reason referred to in paragraph 28(2)(a) or (b), 36(1)(a) or (b), 36B(1)(a), or 39B(2)(a), as the case may be;
 - (b) a question for decision by the Federal Court of Australia or the Federal Circuit Court of Australia is whether the matter should be disclosed to some or all of the parties to the proceeding before the Tribunal in respect of which the appeal was instituted or the reference was made; and
 - (c) the court decides that the matter should be so disclosed;the court shall permit the part of the document in which the matter is contained to be inspected accordingly.
- (4) Nothing in this section prevents the disclosure of information or of matter contained in a document to an officer of the court in the

course of the performance of his or her duties as an officer of the court.

Part V—Administrative Review Council

47 Interpretation

- (1) In this Part, unless the contrary intention appears:

appointed member means a member referred to in paragraph 49(1)(d).

Council means the Administrative Review Council.

member means a member of the Council.

- (2) A reference in this Part to an administrative decision or an administrative discretion includes a reference to an administrative decision made, or administrative discretion exercised, otherwise than under an enactment.

48 Establishment of Council

There is hereby established a Council by the name of the Administrative Review Council.

49 Composition of Council

- (1) The Council shall consist of:

- (a) the President; and
- (b) the Commonwealth Ombudsman holding office under the *Ombudsman Act 1976*; and
- (ba) the President of the Australian Human Rights Commission established by the *Australian Human Rights Commission Act 1986*; and
- (c) the President of the Australian Law Reform Commission established by the *Australian Law Reform Commission Act 1996*; and
- (ca) the Australian Information Commissioner holding office under the *Australian Information Commissioner Act 2010*; and
- (d) not fewer than 3 other members or more than:
 - (i) unless subparagraph (ii) applies, 10 other members; or

- (ii) if a higher number than 10 is prescribed by the regulations for the purposes of this subparagraph—that higher number of members.
- (2) The members referred to in paragraph (1)(d) shall be appointed by the Governor-General and shall be appointed as part-time members.
- (2A) The Governor-General shall appoint one of the members to be the President of the Council.
- (3) The performance of the functions or the exercise of the powers of the Council is not affected by a vacancy in the office of a member referred to in paragraph (1)(a), (b), (ba), (c) or (ca) or by reason of the number of appointed members falling below 3 for not more than 3 months.

50 Qualifications for appointment

A person is not to be appointed as a member referred to in paragraph 49(1)(d) unless he or she:

- (a) has had extensive experience at a high level in industry, commerce, public administration, industrial relations, the practice of a profession or the service of a government or of an authority of a government; or
- (b) has an extensive knowledge of administrative law or public administration; or
- (c) has had direct experience, and has direct knowledge, of the needs of people, or groups of people, significantly affected by government decisions.

51 Functions and powers of Council

- (1) The functions of the Council are:
 - (aa) to keep the Commonwealth administrative law system under review, monitor developments in administrative law and recommend to the Minister improvements that might be made to the system; and
 - (ab) to inquire into the adequacy of the procedures used by authorities of the Commonwealth and other persons who exercise administrative discretions or make administrative decisions, and consult with and advise them about those

Section 51

procedures, for the purpose of ensuring that the discretions are exercised, or the decisions are made, in a just and equitable manner; and

- (a) to ascertain, and keep under review, the classes of administrative decisions that are not the subject of review by a court, tribunal or other body; and
- (b) to make recommendations to the Minister as to whether any of those classes of decisions should be the subject of review by a court, tribunal or other body and, if so, as to the appropriate court, tribunal or other body to make that review; and
- (c) to inquire into the adequacy of the law and practice relating to the review by courts of administrative decisions and to make recommendations to the Minister as to any improvements that might be made in that law or practice; and
- (d) to inquire into:
 - (i) the qualification required for membership of authorities of the Commonwealth, and the qualifications required by other persons, engaged in the review of administrative decisions; and
 - (ii) the extent of the jurisdiction to review administrative decisions that is conferred on those authorities and other persons; and
 - (iii) the adequacy of the procedures used by those authorities and other persons in the exercise of that jurisdiction; and to consult with and advise those authorities and other persons about the procedures used by them as mentioned in subparagraph (iii) and recommend to the Minister any improvements that might be made in respect of any of the matters referred to in subparagraphs (i), (ii) and (iii); and
- (e) to make recommendations to the Minister as to the manner in which tribunals engaged in the review of administrative decisions should be constituted; and
- (f) to make recommendations to the Minister as to the desirability of administrative decisions that are the subject of review by tribunals other than the Administrative Appeals Tribunal being made the subject of review by the Administrative Appeals Tribunal; and and

- (g) to facilitate the training of members of authorities of the Commonwealth and other persons in exercising administrative discretions or making administrative decisions; and
 - (h) to promote knowledge about the Commonwealth administrative law system; and
 - (i) to consider, and report to the Minister on, matters referred to the Council by the Minister.
- (2) The Council may do all things necessary or convenient to be done for or in connexion with the performance of its functions.
- (3) If the Council holds an inquiry, or gives any advice, referred to in paragraph (1)(ab), the Council must give the Minister a copy of any findings made by the Council in the inquiry or a copy of the advice, as the case may be.

51A Minister may give directions to the Council

The Minister may, by writing given to the President of the Council, give directions to the Council in respect of the performance of its functions or the exercise of its powers and the Council must comply with any such directions.

51B Minister may refer matters to the Council

The Minister may, by writing given to the President of the Council, refer matters to the Council for inquiry and report.

51C Reports by the Council

- (1) When the Council concludes its consideration of:
 - (a) a matter relating to a project in respect of which the Council has determined that a report is to be prepared; or
 - (b) a matter referred by the Minister to the Council for inquiry and report;the Council is to prepare a report on the matter and give the report to the Minister.
- (2) The Minister must cause a copy of a report so given to be laid before each House of the Parliament within 15 sitting days of that House after the report is received by the Minister.

Section 52

52 Period of appointment

General rule

- (1) Subject to this section, an appointed member shall be appointed for such period, not exceeding 3 years, as the Governor-General specifies in the instrument of his or her appointment, but is eligible for re-appointment.

Special rule—appointment for a particular project

- (2) An instrument of appointment of a person as an appointed member may state that the person is appointed for the purposes of a particular project specified in the instrument that is being, or is to be, undertaken by the Council.
- (3) If an instrument of appointment of a person contains a statement as mentioned in subsection (2), subsection (1) does not apply to the appointment but:
 - (a) the person is to be appointed for such period, not exceeding 3 years, as is specified in the instrument of appointment; and
 - (b) the person is to take part in the project and has the rights of a member only for the purposes of taking part in the project; and
 - (c) the Governor-General may at any time, by writing, terminate the appointment; and
 - (d) if the appointment has not previously ended under paragraph (a) or under section 54 or 55 or been terminated under paragraph (c), it ends when the President of the Council certifies in writing that the Council has finished the project; and
 - (e) when the appointment ends or is terminated, the person is eligible for reappointment, whether for the purpose of taking part in the same project or another project or otherwise.

53 Remuneration and allowances

- (1) An appointed member shall be paid such remuneration as is determined by the Remuneration Tribunal but, if no determination of that remuneration by that Tribunal is in operation, he or she shall be paid such remuneration as is prescribed.

- (2) An appointed member shall be paid such allowances as are prescribed.
- (3) This section has effect subject to the *Remuneration Tribunal Act 1973-1974*.

54 Resignation

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

55 Removal from office

- (1) The Governor-General may remove an appointed member from office for misbehaviour or incapacity.
- (2) If an appointed member is absent, except by leave of the Minister, from 3 consecutive meetings of the Council, the Governor-General may remove him or her from office.

56 Meetings

- (1) The Council shall hold such meetings as are necessary for the performance of its functions.

Convening meeting

- (2) The President of the Council may at any time convene a meeting of the Council.
- (3) The President of the Council shall, on receipt of a request in writing signed by 3 members, convene a meeting of the Council.

Quorum

- (4) At a meeting of the Council, 5 members constitute a quorum.

Section 57

Who is to preside

- (5) The President of the Council shall preside at all meetings of the Council at which he or she is present.
- (6) If the President of the Council is not present at a meeting of the Council, the members present shall elect one of their number to preside at that meeting and the person so elected shall preside accordingly.

Questions to be determined by majority

- (7) Questions arising at a meeting of the Council shall be determined by a majority of the votes of the members present and voting.

Presiding member has deliberative vote etc.

- (8) The member presiding at a meeting of the Council has a deliberative vote and, in the event of an equality of votes, also has a casting vote.

Council may regulate meetings

- (9) The Council may regulate the conduct of proceedings at its meetings as it thinks fit and shall keep minutes of those proceedings.

Acting ombudsman may attend meetings

- (10) A person acting in the office of the Commonwealth Ombudsman may attend a meeting of the Council and, in relation to a meeting of the Council that he or she attends in pursuance with this subsection, shall be deemed to be the Commonwealth Ombudsman.

57 Staff of Council

The staff of the Council shall be persons engaged under the *Public Service Act 1999*.

58 Annual Report

- (1) The Council shall, as soon as practicable after 30 June in each year, prepare and give to the Minister a report of the operations of the Council during that year.
- (2) The Minister shall cause the report of the Council to be laid before each House of the Parliament within 15 sitting days of that House after the receipt of the report by the Minister.
- (3) The first report by the Council shall relate to the period commencing on the date of commencement of this Act and ending on 30 June 1977.

Part VI—Miscellaneous

59 Advisory opinions

- (1) If an enactment so provides, the Tribunal may give an advisory opinion on a matter or question referred to it in accordance with the enactment and, for the purpose of giving such an opinion, the Tribunal may hold such hearings and inform itself in such manner as it thinks appropriate.
- (2) If the regulations so provide, the Tribunal may give an advisory opinion on a matter or question:
 - (a) arising under a Norfolk Island enactment; and
 - (b) referred to the Tribunal in accordance with the regulations;and, for the purpose of giving such an opinion, the Tribunal may hold such hearings and inform itself in such manner as it thinks appropriate.

59A Authorised members

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

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

60 Protection of members, alternative dispute resolution practitioners, Registrars, District Registrars, Deputy Registrars, Conference Registrars, barristers and witnesses

Members

- (1) A member has, in the performance of his or her duties as a member, the same protection and immunity as a Justice of the High Court.

Alternative dispute resolution practitioners

- (1A) An alternative dispute resolution practitioner has, in the performance of his or her duties as an alternative dispute resolution practitioner under this Act, the same protection and immunity as a Justice of the High Court.

Registrars, District Registrars or Deputy Registrars

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

Conference Registrars

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

Barristers etc.

- (2) A barrister, solicitor or other person appearing before the Tribunal on behalf of a party has the same protection and immunity as a barrister has in appearing for a party in proceedings in the High Court.

Section 61

Witnesses

- (3) Subject to this Act, a person summoned to attend or appearing before the Tribunal as a witness has the same protection, and is, in addition to the penalties provided by this Act, subject to the same liabilities, as a witness in proceedings in the High Court.

- (4) In this section:

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

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.

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

62 Refusal to be sworn or to answer questions

Oath or affirmation

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

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*).

Questions

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

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

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

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

Books, documents or things

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

Section 62A

- (c) the person fails to produce the book, document or thing.

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

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

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

62A False or misleading evidence

A person is guilty of an offence if:

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

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

62B Extended operation of certain provisions

Sections 61, 62 and 62A apply in relation to a directions hearing or an alternative dispute resolution process under Division 3 as if it were a proceeding before the Tribunal.

63 Contempt of Tribunal

Insulting a member

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

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

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

Interrupting proceedings of the Tribunal

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

- (a) the person engages in conduct; and
- (b) the person's conduct interrupts the proceedings of the Tribunal.

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

Creating a disturbance

- (3) A person is guilty of an offence if:
- (a) the person engages in conduct; and
 - (b) the person's conduct creates a disturbance in or near a place where the Tribunal is sitting.

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

Taking part in creating or continuing a disturbance

- (4) A person is guilty of an offence if:
- (a) the person takes part in creating or continuing a disturbance; and
 - (b) the disturbance is in or near a place where the Tribunal is sitting.

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

Contempt of Tribunal

- (5) A person is guilty of an offence if:
- (a) the person engages in conduct; and
 - (b) the person's conduct would, if the Tribunal were a court of record, constitute a contempt of that court.

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

64 Registries

- (1) The Governor-General shall cause such Registries of the Tribunal to be established as he or she thinks fit, but so that at least one Registry shall be established in each State.
- (2) The Governor-General shall designate one of the Registries as the Principal Registry.

Section 65

65 Officers of Tribunal

In relation to a proceeding, the officers of the Tribunal have such respective duties, powers and functions as are given by this Act or by the President.

66 Confidential information not to be disclosed

Protected information

- (1) A person who is, or has been, a member or an officer of the Tribunal is not competent, and shall not be required, to give evidence to a court relating to a matter if:
 - (a) the giving of the evidence would be contrary to an order of the Tribunal in force under subsection 35(2) or under a similar provision of an enactment other than this Act;
 - (b) an application has been made to the Tribunal for an order under that subsection, or under such a similar provision, concerning the matter to which the evidence would relate and the Tribunal has not determined that application; or
 - (c) a certificate under section 36 or 36B is in force certifying that the disclosure of information concerning the matter to which the evidence would relate would be contrary to the public interest for a reason referred to in subsection 36(1) or 36B(1) and, where the certificate does not specify a reason referred to in paragraph 36(1)(a) or (b), or 36B(1)(a), as the case may be, the Tribunal has not made information concerning that matter available to the parties to a proceeding before the Tribunal and, in the case of information contained in a document, has not permitted the parties to such a proceeding to inspect the document.

Protected documents

- (2) A person who is, or has been, a member or an officer of the Tribunal shall not be required to produce in a court a document given to the Tribunal in connexion with a proceeding if:
 - (a) the production of the document would be contrary to an order of the Tribunal in force under subsection 35(2) or under a similar provision of an enactment other than this Act;
 - (b) an application has been made to the Tribunal for an order under that subsection, or under such a similar provision, in

Section 66A

relation to the document and the Tribunal has not determined that application; or

- (c) a certificate under section 36 or 36B is in force certifying that the disclosure of matter contained in the document would be contrary to the public interest for a reason referred to in subsection 36(1) or 36B(1) and, where the certificate does not specify a reason referred to in paragraph 36(1)(a) or (b), or 36B(1)(a), as the case may be, the Tribunal has not permitted the parties to a proceeding before the Tribunal to inspect the document.

Tribunal proceedings

- (3) A person who is, or has been, a member of the Tribunal shall not be required to give evidence to a court in relation to any proceedings before the Tribunal.

Definitions

- (4) In this section:

court includes any tribunal, authority or person having power to require the production of documents or the answering of questions.

enactment includes a Norfolk Island enactment.

produce includes permit access to.

Note: Section 81 of the *Australian Security Intelligence Organisation Act 1979* contains additional provisions relating to secrecy that apply to members and officers of the Tribunal.

66A Application of confidentiality provisions in other Acts

- (1) If:
 - (a) a provision of an enactment (other than this Act) prohibits the disclosure, whether absolutely, in certain circumstances only or subject to conditions, of information by persons who:
 - (i) are included in a particular class of persons; and
 - (ii) acquired the information in the course of their duties under the enactment; and
 - (b) a person who is or has been a member, an officer of the Tribunal or a member of the staff of the Tribunal has acquired or acquires any such information in the course of his

Section 67

or her duties as such a member, officer or member of the staff;

that provision applies to the person as if he or she were included in the particular class of persons and acquired the information in the course of duties under the enactment.

(2) In this section:

enactment includes a Norfolk Island enactment.

67 Fees for compliance with summons

- (1) A person summoned under this Act is entitled to be paid fees, and allowances for expenses, fixed by or in accordance with the regulations in respect of his or her compliance with the summons.
- (2) Subject to subsection (3), the fees and allowance shall be paid:
 - (a) in a case where the person was summoned at the request of a party—by that party; and
 - (b) in any other case—by the Commonwealth.
- (3) The Tribunal may, in its discretion, order that the fees and allowances of a person referred to in paragraph (2)(a) shall be paid, in whole or in part, by the Commonwealth.

67A Giving of notices

- (1) A notice that is required or permitted by this Act to be given to the person who made a decision (other than a decision under a Norfolk Island enactment) may be given to:
 - (a) the Secretary of the Department administered by the Minister who administers:
 - (i) the enactment under which the decision was given; or
 - (ii) if that enactment was made in pursuance of a power contained in another enactment—that other enactment; or
 - (b) if a provision of the regulations or of any other enactment prescribes the holder of a particular office as a person to whom notices may be given under this Act in relation to a class of decisions in which that decision is included—the holder of that office.

- (2) A notice that is required or permitted by this Act to be given to the person who made a decision under a Norfolk Island enactment may be given to the Chief Executive Officer (within the meaning of the *Public Sector Management Act 2000* of Norfolk Island).

68 Lodging of documents

- (1) Where a document is required by this Act to be lodged with the Tribunal, the document shall be lodged at a registry of the Tribunal.
- (2) Subject to such requirements (if any) as are prescribed, such documents may be lodged by means of electronic transfer.

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

- (1) For the purposes of this Act:
- (a) a document, statement, notice or other notification is taken to be given to a person if it is sent by post to whichever of the following addresses is applicable:
 - (i) if the document, statement, notice or other notification relates to a proceeding and the person has provided an address to which documents in relation to the proceeding may be sent—that address;
 - (ii) if subparagraph (i) does not apply and the person is not a company—the address of the place of residence or business of the person last known to the person posting the document, statement, notice or other notification;
 - (iii) if subparagraph (i) does not apply and the person is a company—the address of the registered office of the company; and
 - (b) a document, statement, notice or other notification so sent by post is taken to have been given, unless the contrary is proved, at the time when the document, statement, notice or other notification would have been delivered in the ordinary course of post.

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

Section 68A

Tribunal direction

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

Electronic communication

- (3) For the purposes of this Act, if a document, statement, notice or other notification is given to a person by means of an electronic communication (within the meaning of the *Electronic Transactions Act 1999*), the document, statement, notice or other notification is taken to have been given on the day on which the electronic communication is dispatched.
- (4) Subsection (3) of this section has effect despite subsections 14(3) and (4) of the *Electronic Transactions Act 1999*.

68A Calculation of short periods of time

If the period of time for doing anything under this Act or any other Act, or in accordance with a direction of the Tribunal, in relation to a proceeding is a period of less than 7 days, any day on which the Registry of the Tribunal in which the relevant application was lodged is not open to the public is not to be counted in working out whether the period has ended.

69 Legal assistance

- (1) A person who:
-

Section 69A

- (a) has made, or proposes to make, an application to the Tribunal for a review of a decision;
 - (b) is a party to a proceeding before the Tribunal instituted by another person; or
 - (c) proposes to institute a proceeding, or is a party to a proceeding instituted, before a court in respect of a matter arising under this Act;
- may apply to the Attorney-General for the provision of assistance under this section in respect of the proceeding.
- (2) Where an application is made by a person under subsection (1), the Attorney-General may, if he or she is satisfied that it would involve hardship to that person to refuse the application and that, in all the circumstances, it is reasonable that the application should be granted, authorize the provision by the Commonwealth to that person, either unconditionally or subject to such conditions as the Attorney-General determines, of such legal or financial assistance in relation to the proceeding as the Attorney-General determines.

69A Procedure for taxing costs

- (1) If:
- (a) the Tribunal has, under this Act or any other Act, ordered a party to a proceeding to pay to another party to the proceeding reasonable costs incurred by the other party; and
 - (b) the parties are unable to agree as to the amount of those costs;
- the President may give such directions as he or she thinks appropriate for the costs:
- (c) to be taxed or settled by the Tribunal; or
 - (d) to be taxed by the Registrar, a District Registrar or a Deputy Registrar.
- (2) If the Registrar, a District Registrar or a Deputy Registrar has taxed under paragraph (1)(d) the amount to be paid to a party to a proceeding by another party to the proceeding, either of those parties may apply to the Tribunal for review of the amount so taxed.
- (3) If such an application is made, the Tribunal must review the amount taxed and may:
- (a) affirm the amount; or

Section 69B

- (b) set aside the amount and substitute another amount; or
 - (c) set aside the amount and remit the matter to the Registrar, District Registrar or Deputy Registrar, as the case may be, to be taxed in accordance with the directions of the Tribunal.
- (4) An amount that a party to a proceeding is required under an order made by the Tribunal to pay to another party to the proceeding is recoverable by the other party as a debt due to the other party by the first-mentioned party.

69B Costs in certain proceedings in Security Appeals Division

- (1) If:
 - (a) a person makes an application under section 54 of the *Australian Security Intelligence Organisation Act 1979* to the Tribunal for a review of an adverse or qualified security assessment in respect of the person; and
 - (b) the applicant was, in the opinion of the Tribunal, successful, or substantially successful, in the application for review; and
 - (c) the Tribunal is satisfied that it is appropriate to do so in all the circumstances of the case;the Tribunal may order that the costs reasonably incurred by the applicant in connection with the application, or any part of those costs that is determined by the Tribunal, be paid by the Commonwealth.
- (2) For the purposes of section 69A, the Commonwealth is taken to be a party to the proceeding referred to in subsection (1) of this section.

69C Dismissal of application for non-payment of application fee

The Tribunal may dismiss an application to the Tribunal if:

- (a) regulations under section 70 prescribe a fee to be payable in respect of the application; and
- (b) the fee has not been paid by the time worked out under regulations under section 70.

70 Regulations

- (1) The Governor-General may make regulations, not inconsistent with this Act, prescribing all matters required or permitted by this Act to be prescribed or necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) Without limiting the generality of subsection (1):
 - (a) the regulations may make provision:
 - (i) prescribing fees to be payable in respect of applications to the Tribunal; and
 - (ia) prescribing fees to be payable in respect of the taxation of costs ordered by the Tribunal to be paid; and
 - (ii) for or in relation to the refund, in whole or in part, of fees so paid where the proceeding terminates in a manner favourable to the applicant; and
 - (b) regulations prescribing fees may:
 - (i) prescribe fees in respect of a particular class or classes of applications only; and
 - (ii) prescribe different fees in respect of different classes of applications.
- (3) Without limiting the generality of subsection (1), the regulations may make provision:
 - (a) prescribing fees to be payable in respect of proceedings before the Tribunal; and
 - (b) for, or in relation to, the waiver (in whole or in part) of such fees.

Schedule 2

Section 10B

OATH OR AFFIRMATION OF OFFICE

I, _____, do swear that I will be faithful and bear true allegiance to Her Majesty Queen Elizabeth the Second, her Heirs and Successors according to law, that I will truly serve Her in the office of *(insert name of office of member of Tribunal)* and that I will faithfully and impartially perform the duties of that office. So Help Me God!

Or

I, _____, do solemnly and sincerely promise and declare that *(as above, omitting the words “So Help Me God!”)*.

Endnotes

Endnote 1—About the endnotes

The endnotes provide details of the history of this compilation and its provisions. The following endnotes are included in each compilation:

Endnote 1—About the endnotes
Endnote 2—Abbreviation key
Endnote 3—Legislation history
Endnote 4—Amendment history
Endnote 5—Uncommenced amendments
Endnote 6—Modifications
Endnote 7—Misdescribed amendments
Endnote 8—Miscellaneous

If there is no information under a particular endnote, the word “none” will appear in square brackets after the endnote heading.

Abbreviation key—Endnote 2

The abbreviation key in this endnote sets out abbreviations that may be used in the endnotes.

Legislation history and amendment history—Endnotes 3 and 4

Amending laws are annotated in the legislation history and amendment history.

The legislation history in endnote 3 provides information about each law that has amended the compiled law. The information includes commencement information for amending laws and details of application, saving or transitional provisions that are not included in this compilation.

The amendment history in endnote 4 provides information about amendments at the provision level. It also includes information about any provisions that have expired or otherwise ceased to have effect in accordance with a provision of the compiled law.

Uncommenced amendments—Endnote 5

The effect of uncommenced amendments is not reflected in the text of the compiled law, but the text of the amendments is included in endnote 5.

Endnotes

Endnote 1—About the endnotes

Modifications—Endnote 6

If the compiled law is affected by a modification that is in force, details of the modification are included in endnote 6.

Misdescribed amendments—Endnote 7

An amendment is a misdescribed amendment if the effect of the amendment cannot be incorporated into the text of the compilation. Any misdescribed amendment is included in endnote 7.

Miscellaneous—Endnote 8

Endnote 8 includes any additional information that may be helpful for a reader of the compilation.

Endnote 2—Abbreviation key

Endnote 2—Abbreviation key

ad = added or inserted	pres = present
am = amended	prev = previous
c = clause(s)	(prev) = previously
Ch = Chapter(s)	Pt = Part(s)
def = definition(s)	r = regulation(s)/rule(s)
Dict = Dictionary	Reg = Regulation/Regulations
disallowed = disallowed by Parliament	reloc = relocated
Div = Division(s)	renum = renumbered
exp = expired or ceased to have effect	rep = repealed
hdg = heading(s)	rs = repealed and substituted
LI = Legislative Instrument	s = section(s)
LIA = <i>Legislative Instruments Act 2003</i>	Sch = Schedule(s)
mod = modified/modification	Sdiv = Subdivision(s)
No. = Number(s)	SLI = Select Legislative Instrument
o = order(s)	SR = Statutory Rules
Ord = Ordinance	Sub-Ch = Sub-Chapter(s)
orig = original	SubPt = Subpart(s)
par = paragraph(s)/subparagraph(s) /sub subparagraph(s)	

Endnotes

Endnote 3—Legislation history

Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Administrative Appeals Tribunal Act 1975	91, 1975	28 Aug 1975	1 July 1976 (<i>see Gazette</i> 1976, No. S94)	
National Health Amendment Act 1976	60, 1976	5 June 1976	ss. 1, 2, 28, 31, 41 and 42: Royal Assent Remainder: 1 Oct 1976	—
Broadcasting and Television Amendment Act 1976	89, 1976	31 Aug 1976	ss. 5 and 6: 1 Sept 1976 ss. 4, 15 and 18: 1 July 1976 Remainder: Royal Assent	—
Administrative Changes (Consequential Provisions) Act 1976	91, 1976	20 Sept 1976	s. 3: (a)	s. 4
Federal Court of Australia (Consequential Provisions) Act 1976	157, 1976	9 Dec 1976	1 Feb 1977 (<i>see</i> s. 2 and <i>Gazette</i> 1977, No. S3)	s. 4
Patents Amendment Act 1976	162, 1976	9 Dec 1976	ss. 3, 4, 6, 7 and 10: 1 Feb 1977 (<i>see Gazette</i> 1977, No. S3, p. 2) Remainder: Royal Assent	s. 11(2)
Trade Marks Amendment Act 1976	163, 1976	9 Dec 1976	ss. 3, 4, 7 and 10: 1 Feb 1977 (<i>see Gazette</i> 1977, No. S3, p. 3) Remainder: Royal Assent	s. 12(2)

Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Marriage Amendment Act 1976	209, 1976	20 Dec 1976	ss. 1, 2 and 30: Royal Assent ss. 14 and 31: 1 July 1976 Remainder: 20 June 1977 (<i>see Gazette</i> 1977, No. S93)	—
Agricultural Tractors Bounty Amendment Act 1977	30, 1977	16 May 1977	ss. 3, 4, 6, 7 and 12: 1 Jan 1977 Remainder: Royal Assent	s. 13(2)
Income Tax Assessment Amendment Act 1977	57, 1977	16 June 1977	ss. 16 and 17: 1 July 1976 Remainder: Royal Assent	—
Administrative Appeals Tribunal Amendment Act 1977	58, 1977	16 June 1977	16 June 1977	s. 29(2)
Remuneration and Allowances Amendment Act 1977	111, 1977	28 Oct 1977	ss. 1, 2, 5, 9(2), 13, 16, 18 and 19(2): Royal Assent Remainder: 1 June 1977	—
Administrative Appeals Tribunal Amendment Act 1978	65, 1978	22 June 1978	1 July 1978	s. 6
Bounty (Books) Amendment Act 1978	109, 1978	19 Sept 1978	19 Sept 1978	s. 9(2)
Jurisdiction of Courts (Miscellaneous Amendments) Act 1979	19, 1979	28 Mar 1979	Parts II–XVII (ss. 3–123): 15 May 1979 (<i>see Gazette</i> 1979, No. S86) Remainder: Royal Assent	ss. 9 and 124
Administrative Appeals Tribunal Amendment Act 1979	143, 1979	27 Nov 1979	27 Nov 1979	—

Endnotes

Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Customs Amendment Act (No. 3) 1980	110, 1980	6 June 1980	ss. 3(b), 4 and 5: 1 July 1980 (<i>see Gazette</i> 1980, No. S146) Remainder: Royal Assent	s. 28(3)
Coal Excise Amendment Act 1981	19, 1981	25 Mar 1981	s. 4: 22 Apr 1981 Remainder: Royal Assent	s. 4(4)
Statute Law Revision Act 1981	61, 1981	12 June 1981	ss. 3, 4 and 115: Royal Assent	s. 4(2)
Statute Law (Miscellaneous Amendments) Act (No. 1) 1982	26, 1982	7 May 1982	Part III (ss. 5–40): 4 June 1982	ss. 7(2), 39 and 40
Statute Law (Miscellaneous Amendments) Act (No. 2) 1982	80, 1982	22 Sept 1982	s. 280: Royal Assent	—
Statute Law (Miscellaneous Provisions) Act (No. 2) 1983	91, 1983	22 Nov 1983	s. 3: (b)	—
Public Service Reform Act 1984	63, 1984	25 June 1984	s. 151(1) and (9): 1 July 1984 (<i>see Gazette</i> 1984, No. S245)	s. 151(9)
Statute Law (Miscellaneous Provisions) Act (No. 1) 1984	72, 1984	25 June 1984	ss. 3 and 5(1): 23 July 1984	s. 5(1)
Statute Law (Miscellaneous Provisions) Act (No. 1) 1985	65, 1985	5 June 1985	s. 3: 3 July 1985	—

Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Statute Law (Miscellaneous Provisions) Act (No. 2) 1985	193, 1985	16 Dec 1985	ss. 3 and 16: Royal Assent	s. 16
Taxation Boards of Review (Transfer of Jurisdiction) Act 1986	48, 1986	24 June 1986	s.4: 1 July 1986	—
Statute Law (Miscellaneous Provisions) Act 1988	38, 1988	3 June 1988	ss. 3 and 5(1): Royal Assent	s. 5(1)
Civil Aviation Act 1988	63, 1988	15 June 1988	Part III (ss. 17–32), s. 98, Parts IX and X (ss. 99–103): 1 July 1988 (see <i>Gazette</i> 1988, No. S189) Remainder: Royal Assent	—
A.C.T. Self-Government (Consequential Provisions) Act 1988	109, 1988	6 Dec 1988	s. 32: 11 May 1989 (see <i>Gazette</i> 1989, No. S164)	—
Law and Justice Legislation Amendment Act 1988	120, 1988	14 Dec 1988	Part III (ss. 6–16): Royal Assent	ss. 8(2) and 9(2)
Courts and Tribunals Administration Amendment Act 1989	157, 1989	5 Dec 1989	Part 1 (ss. 1, 2) and Part 6 (ss. 17, 18): Royal Assent Remainder: 1 Jan 1990 (see <i>Gazette</i> 1989, No. S398)	s. 22
Customs and Excise Legislation Amendment Act 1990	111, 1990	21 Dec 1990	s. 48: Royal Assent	—

Endnotes

Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Industrial Relations Legislation Amendment Act 1991	122, 1991	27 June 1991	ss. 4(1), 10(b) and 15–20: 1 Dec 1988 ss. 28(b)–(e), 30 and 31: 10 Dec 1991 (<i>see Gazette</i> 1991, No. S332) Remainder: Royal Assent	s. 31(2)
Law and Justice Legislation Amendment Act 1991	136, 1991	12 Sept 1991	Schedule: 10 Oct 1991	—
Superannuation Legislation (Consequential Amendments and Transitional Provisions) Act 1992	94, 1992	30 June 1992	s. 3: 1 July 1990 Remainder: Royal Assent	—
Law and Justice Legislation Amendment Act (No. 3) 1992	165, 1992	11 Dec 1992	s. 4 (Schedule [Part 1]): 11 June 1993 (<i>c</i>)	—
Administrative Appeals Tribunal Amendment Act 1993	31, 1993	16 June 1993	16 June 1993	s. 4(2)
Law and Justice Legislation Amendment Act 1994	84, 1994	23 June 1994	Part 3 (ss. 6–8): 3 July 1994 (<i>see Gazette</i> 1994, No. S242)	—
Corporations Legislation Amendment Act 1994	104, 1994	5 July 1994	s. 8: Royal Assent	—
Law and Justice Legislation Amendment Act (No. 1) 1995	175, 1995	16 Dec 1995	16 Dec 1995	Sch. 1 (item 44)
Australian Law Reform Commission (Repeal, Transitional and Miscellaneous) Act 1996	38, 1996	9 Oct 1996	Schedule 2 (items 1, 2): 11 Nov 1996 (<i>see Gazette</i> 1996, No. GN43)	—

Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Statute Law Revision Act 1996	43, 1996	25 Oct 1996	Schedule 2 (items 6, 7): (d) Schedule 4 (items 4, 5) and Schedule 5 (items 4–6): Royal Assent (d)	—
Workplace Relations and Other Legislation Amendment Act 1996	60, 1996	25 Nov 1996	Schedule 16 (item 1): 25 May 1997 Schedule 19 (item 2): Royal Assent	s. 2(2) and (6) (am. by 77, 1996, Sch. 3 [items 1, 2])
as amended by Workplace Relations and Other Legislation Amendment Act (No. 2) 1996	77, 1996	19 Dec 1996	Schedule 3 (items 1, 2): (e)	—
Law and Justice Legislation Amendment Act 1997	34, 1997	17 Apr 1997	Schedule 1 (items 1, 3–6): 1 July 1997 (<i>see Gazette</i> 1997, No. S244) Schedule 1 (item 2): Royal Assent	—
Audit (Transitional and Miscellaneous) Amendment Act 1997	152, 1997	24 Oct 1997	Schedule 2 (items 139, 140): 1 Jan 1998 (<i>see s. 2(2) and Gazette</i> 1997, No. GN49)	—
Law and Justice Legislation Amendment Act 1999	125, 1999	13 Oct 1999	Schedule 1: Royal Assent	—
Public Employment (Consequential and Transitional) Amendment Act 1999	146, 1999	11 Nov 1999	Schedule 1 (items 41–47): 5 Dec 1999 (<i>see Gazette</i> 1999, No. S584)	—
Corporate Law Economic Reform Program Act 1999	156, 1999	24 Nov 1999	Schedule 12 (items 1, 3): 24 Nov 2000	—

Endnotes

Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Australian Security Intelligence Organisation Legislation Amendment Act 1999	161, 1999	10 Dec 1999	Schedule 3 (items 1, 3–15): (f)	—
Federal Magistrates (Consequential Amendments) Act 1999	194, 1999	23 Dec 1999	Schedule 3: 23 Dec 1999	—
Jurisdiction of Courts Legislation Amendment Act 2000	57, 2000	30 May 2000	Schedule 1 (items 1, 2): 1 July 2000 (<i>see Gazette</i> 2000, No. GN25)	Sch. 1 (item 2)
Corporations (Repeals, Consequential and Transitionals) Act 2001	55, 2001	28 June 2001	ss. 4–14 and Schedule 3 (items 11, 12): 15 July 2001 (<i>see</i> s. 2 (3) and <i>Gazette</i> 2001, No. S285)	ss. 4–14
Jurisdiction of the Federal Magistrates Service Legislation Amendment Act 2001	157, 2001	1 Oct 2001	Schedule 2 (items 1, 6(1)): Royal Assent	Sch. 2 (item 6(1))
Abolition of Compulsory Age Retirement (Statutory Officeholders) Act 2001	159, 2001	1 Oct 2001	29 Oct 2001	Sch. 1 (item 97)
Superannuation Legislation (Commonwealth Employment) Repeal and Amendment Act (No. 1) 2003	64, 2003	30 June 2003	Schedule 5 (item 1): 1 July 2003	—
Taxation Laws Amendment Act (No. 6) 2003	67, 2003	30 June 2003	Schedule 9 (items 3, 4): 1 Sept 2003	—
Australian Passports (Transitionals and Consequential) Act 2005	7, 2005	18 Feb 2005	ss. 4–11 and Schedule 1: 1 July 2005 (<i>see</i> s. 2(1)) Remainder: Royal Assent	s. 7(2)

Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Administrative Appeals Tribunal Amendment Act 2005	38, 2005	1 Apr 2005	Schedule 1 (items 1–110): 16 May 2005 (<i>see</i> F2005L01029) Schedule 1 (items 112–180, 182–236): 16 May 2005 Remainder: Royal Assent	Sch. 1 (items 11, 22, 28, 31, 34, 37, 41, 42, 45, 51, 54, 56, 59, 65, 67–69, 100, 111, 113–120, 125, 129, 138, 144, 152, 161, 175, 177, 181, 184, 197, 201, 202)
Australian Citizenship (Transitional and Consequentials) Act 2007	21, 2007	15 Mar 2007	Schedule 1 (item 1) and Schedule 3 (items 14, 15): 1 July 2007 (<i>see</i> s. 2(1) and F2007L01653)	Sch. 3 (items 14, 15)
Superannuation Legislation Amendment (Trustee Board and Other Measures) (Consequential Amendments) Act 2008	26, 2008	23 June 2008	Schedule 1 (items 1–8): Royal Assent	—
Freedom of Information (Removal of Conclusive Certificates and Other Measures) Act 2009	99, 2009	6 Oct 2009	Schedule 3: 7 Oct 2009	—
Federal Justice System Amendment (Efficiency Measures) Act (No. 1) 2009	122, 2009	7 Dec 2009	Schedule 3 (items 1, 5): Royal Assent	Sch. 3 (item 5) [in part]
Freedom of Information Amendment (Reform) Act 2010	51, 2010	31 May 2010	Schedule 6 (items 41A, 41B): (<i>g</i>)	—
Territories Law Reform Act 2010	139, 2010	10 Dec 2010	Schedule 1 (items 126–154): 1 Jan 2011	—

Endnotes

Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Acts Interpretation Amendment Act 2011	46, 2011	27 June 2011	Schedule 2 (items 32–34) and Schedule 3 (items 10, 11): 27 Dec 2011	Sch. 3 (items 10, 11)
Superannuation Legislation (Consequential Amendments and Transitional Provisions) Act 2011	58, 2011	28 June 2011	Schedule 1 (items 1–3): <i>(h)</i>	—
Human Rights (Parliamentary Scrutiny) (Consequential Provisions) Act 2011	187, 2011	7 Dec 2011	Schedule 1 (items 1–3): Royal Assent	—
Access to Justice (Federal Jurisdiction) Amendment Act 2012	186, 2012	11 Dec 2012	Schedule 5: 11 June 2013	Sch. 5 (item 4)
Federal Circuit Court of Australia (Consequential Amendments) Act 2013	13, 2013	14 Mar 2013	Schedule 1 (items 3–7): 12 Apr 2013 (<i>see s. 2(1)</i>) Schedule 2 (item 2): <i>(i)</i>	—
National Disability Insurance Scheme Legislation Amendment Act 2013	44, 2013	28 May 2013	Schedule 2 (items 1–3): 29 May 2013	—
Statute Law Revision Act 2013	103, 2013	29 June 2013	Schedule 3 (items 21, 22, 343): Royal Assent	Sch. 3 (item 343)
Number and year	Gazettal or FRLI registration date	Commencement date	Application, saving and transitional provisions	
1980 No. 62	26 Mar 1980	1 Apr 1980	—	
as amended by				
1980 No. 335	27 Nov 1980	27 Nov 1980	—	

Endnote 3—Legislation history

Number and year	Gazettal or FRLI registration date	Commencement date	Application, saving and transitional provisions
1987 No. 49	2 Apr 1987	2 Apr 1987	—

- (a) The *Administrative Appeals Tribunal Act 1975* was amended by section 3 only of the *Administrative Changes (Consequential Provisions) Act 1976*, subsection 2(2) of which provides as follows:
- (2) The amendments of the *Administrative Appeals Tribunal Act 1975* made by this Act shall be deemed to have come into operation on the date of commencement of that Act.
- (b) The *Administrative Appeals Tribunal Act 1975* was amended by section 3 only of the *Statute Law (Miscellaneous Provisions) Act (No. 2) 1983*, subsection 2(3) of which provides as follows:
- (3) The amendment of the *Administrative Appeals Tribunal Act 1975* made by this Act shall come into operation on the day on which this Act receives the Royal Assent.
- (c) The *Administrative Appeals Tribunal Act 1975* was amended by Schedule (Part 1) only of the *Law and Justice Legislation Amendment Act (No. 3) 1992*, subsections 2(2) and (3) of which provide as follows:
- (2) Subject to subsection (3), the amendment of the *Administrative Appeals Tribunal Act 1975* made by this Act commences on a day to be fixed by Proclamation.
- (3) If the amendment mentioned in subsection (2) does not commence under that subsection within the period of 6 months commencing on the day on which this Act receives the Royal Assent, it commences on the first day after the end of that period.
- (d) The *Administrative Appeals Tribunal Act 1975* was amended by Schedule 2 (items 6 and 7), Schedule 4 (items 4 and 5) and Schedule 5 (items 4–6) only of the *Statute Law Revision Act 1996*, subsections 2(1) and (2) of which provide as follows:
- (1) Subject to subsections (2) and (3), this Act commences on the day on which it receives the Royal Assent.
- (2) Each item in Schedule 2 commences or is taken to have commenced (as the case requires) at the time specified in the note at the end of the item.
- Items 6 and 7 are taken to have commenced immediately after the commencement of section 48 of the *Customs and Excise Legislation Amendment Act 1990*.
- Section 48 commenced on 21 December 1990.

Endnotes

Endnote 3—Legislation history

- (e) The *Workplace Relations and Other Legislation Amendment Act 1996* was amended by Schedule 3 (items 1 and 2) only of the *Workplace Relations and Other Legislation Amendment Act (No. 2) 1996*, subsection 2(4) of which provides as follows:
- (4) The items of Schedule 3 are taken to have commenced immediately after the *Workplace Relations and Other Legislation Amendment Act 1996* received the Royal Assent.
- The *Workplace Relations and Other Legislation Amendment Act 1996* received the Royal Assent on 25 November 1996.
- (f) The *Administrative Appeals Tribunal Act 1975* was amended by Schedule 3 (items 1 and 3–15) only of the *Australian Security Intelligence Organisation Legislation Amendment Act 1999*, subsection 2(2) of which provides as follows:
- (2) Subject to subsections (3) to (6), Schedule 3 commences immediately after the commencement of the other Schedules to this Act.
- The other Schedules commenced on 10 December 1999.
- (g) Subsection 2(1) (item 7) of the *Freedom of Information Amendment (Reform) Act 2010* provides as follows:
- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
7. Schedules 4 to 7	Immediately after the commencement of section 3 of the <i>Australian Information Commissioner Act 2010</i> . However, if section 3 of the <i>Australian Information Commissioner Act 2010</i> does not commence, the provision(s) do not commence at all.	1 November 2010

- (h) Subsection 2(1) (item 2) of the *Superannuation Legislation (Consequential Amendments and Transitional Provisions) Act 2011* provides as follows:
- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Endnote 3—Legislation history

Provision(s)	Commencement	Date/Details
2. Schedules 1 and 2	Immediately after the commencement of section 2 of the <i>Governance of Australian Government Superannuation Schemes Act 2011</i> .	1 July 2011

- (i) Subsection 2(1) (items 2 and 3) of the *Federal Circuit Court of Australia (Consequential Amendments) Act 2013* provides as follows:
- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Provision(s)	Commencement	Date/Details
2. Schedule 1	At the same time as item 1 of Schedule 1 to the <i>Federal Circuit Court of Australia Legislation Amendment Act 2012</i> commences.	12 April 2013
3. Schedule 2	Immediately after the commencement of the provision(s) covered by table item 2.	12 April 2013

Endnotes

Endnote 4—Amendment history

Endnote 4—Amendment history

Provision affected	How affected
Part I	
s. 2A.....	ad. No. 38, 2005
s. 3	am. No. 58, 1977; No. 65, 1978; No. 26, 1982; Nos. 109 and 120, 1988; No. 157, 1989; No. 31, 1993; No. 175, 1995; No. 34, 1997; No. 161, 1999; No. 38, 2005; No. 139, 2010; No. 58, 2011
ss. 3A, 3B	ad. No. 109, 1988 rep. No. 38, 2005
s. 4	am. No. 58, 1977
Part II	
Division 1	
Heading to Div. 1 of Part II....	ad. No. 38, 2005
s. 5	am. No. 26, 1982; No. 175, 1995
Division 2	
Heading to Div. 2 of Part II....	ad. No. 38, 2005
s. 6	am. No. 58, 1977 rs. No. 26, 1982
Subhead. to s. 7(1B)	ad. No. 38, 2005
Subhead. to s. 7(2)	ad. No. 38, 2005
s. 7	am. No. 26, 1982; No. 175, 1995; No. 43, 1996; No. 38, 2005
s. 7A	ad. No. 111, 1977 am. No. 175, 1995
s. 8	rs. No. 26, 1982; No. 120, 1988 am. No. 159, 2001; No. 38, 2005
s. 8A	ad. No. 84, 1994 am. No. 60, 1996 rep. No. 38, 2005
s. 9	rs. No. 58, 1977; No. 26, 1982 am. No. 175, 1995; No. 43, 1996
Subhead. to s. 10(1)	ad. No. 38, 2005
Subhead. to s. 10(3)	ad. No. 38, 2005

Endnote 4—Amendment history

Provision affected	How affected
Subhead. to s. 10(5)	ad. No. 38, 2005
Subhead. to s. 10(7)	ad. No. 38, 2005
Subheads. to s. 10(10), (11) ..	ad. No. 38, 2005
s. 10	rs. No. 58, 1977
	am. No. 26, 1982; No. 175, 1995; No. 43, 1996; No. 38, 2005
s. 10A	ad. No. 58, 1977
	am. No. 26, 1982; No. 175, 1995
s. 10B	ad. No. 26, 1982
	am. No. 175, 1995
s. 11	rs. No. 26, 1982
	am. No. 175, 1995
s. 12	rs. No. 122, 1991
	am. No. 146, 1999
Subheads. to s. 13(1), (2)	ad. No. 38, 2005
Subhead. to s. 13(7)	ad. No. 38, 2005
Subheads. to s. 13(9)–(11)	ad. No. 38, 2005
Subhead. to s. 13(12)	ad. No. 38, 2005
	rs. No. 26, 2008
Subhead. to s. 13(13)	ad. No. 38, 2005
s. 13	am. No. 58, 1977; No. 26, 1982; No. 94, 1992; No. 175, 1995; No. 38, 2005; No. 26, 2008; No. 58, 2011
s. 14	am. No. 175, 1995
s. 15	am. No. 175, 1995
	rs. No. 38, 2005
s. 16	am. No. 58, 1977
	rs. No. 72, 1984
	am. No. 65, 1985; Nos. 109 and 120, 1988; No. 94, 1992; No. 43, 1996; No. 64, 2003
	rep. No. 38, 2005
s. 17	rs. No. 58, 1977
	rep. No. 72, 1984
s. 18	am. No. 58, 1977; No. 91, 1983
	rep. No. 72, 1984

Endnotes

Endnote 4—Amendment history

Provision affected	How affected
Part III	
Division 1	
Heading to Div. 1 of Part III.....	ad. No. 38, 2005
Heading to s. 19.....	rs. No. 38, 2005
Subhead. to s. 19(2)	ad. No. 38, 2005
Subheads. to s. 19(3A), (3B)	ad. No. 38, 2005
Subheads. to s. 19(4)–(6)	ad. No. 38, 2005
s. 19	am. No. 48, 1986; No. 175, 1995; No. 161, 1999; No. 38, 2005; No. 44, 2013
Division 2	
Heading to Div. 2 of Part III.....	ad. No. 38, 2005
s. 20	am. No. 58, 1977; No. 31, 1993; No. 175, 1995; No. 38, 2005
s. 20A.....	ad. No. 38, 2005
Division 3	
Heading to Div. 3 of Part III.....	ad. No. 38, 2005
s. 20B.....	ad. No. 38, 2005
Subhead. to s. 21(1AAA)	ad. No. 38, 2005
Subhead. to s. 21(1)	ad. No. 38, 2005
s. 21	am. No. 58, 1977; No. 143, 1979; No. 26, 1982; No. 31, 1993; No. 175, 1995; No. 38, 2005
Heading to s. 21AA	am. No. 99, 2009
Subheads. to s. 21AA(1)–(6)	ad. No. 38, 2005
s. 21AA	ad. No. 175, 1995 am. No. 161, 1999; No. 7, 2005; No. 21, 2007; No. 99, 2009
s. 21AB.....	ad. No. 99, 2009
Heading to s. 21A	am. No. 38, 2005
Subhead. to s. 21A(1AA)	ad. No. 38, 2005
Subhead. to s. 21A(1)	ad. No. 38, 2005
s. 21A	ad. No. 58, 1977

Endnote 4—Amendment history

Provision affected	How affected
	am. No. 26, 1982; No. 31, 1993; No. 175, 1995; No. 34, 1997; No. 38, 2005
Note to s. 21A(4)	ad. No. 38, 2005
Subhead. to s. 22(1AA)	ad. No. 38, 2005
Subheads. to s. 22(1), (2)	ad. No. 38, 2005
s. 22	rs. No. 58, 1977
	am. No. 26, 1982; No. 31, 1993; No. 175, 1995; No. 38, 2005
s. 23	am. No. 58, 1977; No. 175, 1995
	rs. No. 38, 2005
s. 23A	ad. No. 175, 1995
	rs. No. 38, 2005
s. 23B	ad. No. 175, 1995
	rs. No. 38, 2005
s. 23C	ad. No. 38, 2005
s. 23D	ad. No. 38, 2005
Note 1 to s. 23D	am. No. 13, 2013
s. 23E	ad. No. 38, 2005
s. 23F	ad. No. 38, 2005
s. 24	am. No. 58, 1977
	rep. No. 38, 2005
Part IIIAA	
Part IIIAA	ad. No. 34, 1997
ss. 24AA, 24AB	ad. No. 34, 1997
s. 24AC	ad. No. 34, 1997
	am. No. 67, 2003
s. 24AD	ad. No. 34, 1997
Part IIIA	
Part IIIA	ad. No. 157, 1989
Division 1	
s. 24A	ad. No. 157, 1989
	am. No. 122, 2009
s. 24B	ad. No. 157, 1989
Division 2	

Endnotes

Endnote 4—Amendment history

Provision affected	How affected
ss. 24C–24E	ad. No. 157, 1989
s. 24F	ad. No. 157, 1989
	am. No. 159, 2001
s. 24G	ad. No. 157, 1989
	rs. No. 122, 1991
	am. No. 146, 1999
s. 24H	ad. No. 157, 1989
	rs. No. 38, 2005
s. 24J	ad. No. 157, 1989
s. 24K	ad. No. 157, 1989
	am. No. 94, 1992; No. 26, 2008; No. 58, 2011
s. 24L	ad. No. 157, 1989
s. 24M	ad. No. 157, 1989
	am. No. 46, 2011
Note to s. 24M	ad. No. 46, 2011
Division 3	
Heading to s. 24N	am. No. 175, 1995
s. 24N	ad. No. 157, 1989
	am. No. 175, 1995; No. 146, 1999
Heading to s. 24P	am. No. 175, 1995
	rs. No. 146, 1999
s. 24P	ad. No. 157, 1989
	am. No. 175, 1995
	rs. No. 146, 1999
s. 24Q	ad. No. 157, 1989
Division 4	
s. 24R	ad. No. 157, 1989
	rs. No. 152, 1997
ss. 24S, 24T	ad. No. 157, 1989
	rep. No. 152, 1997
s. 24U	ad. No. 157, 1989
	rep. No. 136, 1991

Endnote 4—Amendment history

Provision affected	How affected
ss. 24V, 24W	ad. No. 157, 1989
Part IV	
Division 1	
Heading to Div. 1 of Part IV	ad. No. 38, 2005
Subhead. to s. 25(1)	ad. No. 38, 2005
Subhead. to s. 25(3A)	ad. No. 38, 2005
Subhead. to s. 25(4)	ad. No. 38, 2005
Subhead. to s. 25(5)	ad. No. 38, 2005
Subhead. to s. 25(7)	ad. No. 38, 2005
s. 25	am. No. 58, 1977; No. 65, 1978; No. 26, 1982; No. 175, 1995; No. 43, 1996; No. 38, 2005; No. 139, 2010
s. 26	am. No. 58, 1977; No. 26, 1982 rep. No. 111, 1990 ad. No. 175, 1995 am. No. 139, 2010
s. 27	am. No. 58, 1977; No. 175, 1995; No. 161, 1999; No. 139, 2010
Note to s. 27(1)	ad. No. 139, 2010
Heading to s. 27AA	am. No. 161, 1999
s. 27AA	ad. No. 175, 1995 am. No. 161, 1999
s. 27A	ad. No. 165, 1992 am. No. 104, 1994; No. 156, 1999; No. 55, 2001; No. 139, 2010
s. 27B	ad. No. 165, 1992 am. No. 103, 2013
Subhead. to s. 28(1)	ad. No. 38, 2005
Subhead. to s. 28(1AAA)	ad. No. 38, 2005
Subhead. to s. 28(1AA)	ad. No. 38, 2005
Subhead. to s. 28(1A)	ad. No. 38, 2005
Subhead. to s. 28(2)	ad. No. 38, 2005
Subheads. to s. 28(4), (5)	ad. No. 38, 2005
s. 28	am. No. 58, 1977; No. 143, 1979; No. 26, 1982; No. 120, 1988; No. 175, 1995; No. 38, 2005

Endnotes

Endnote 4—Amendment history

Provision affected	How affected
Subhead. to s. 29(1A)	ad. No. 38, 2005
Subheads. to s. 29(2)–(4)	ad. No. 38, 2005
Subhead. to s. 29(7)	ad. No. 38, 2005
Subhead. to s. 29(11)	ad. No. 38, 2005
s. 29	rs. No. 58, 1977
	am. No. 26, 1982; No. 31, 1993; No. 175, 1995; No. 161, 1999; No. 38, 2005; No. 139, 2010
Note to s. 29(1)	ad. No. 38, 2005
s. 29A	ad. No. 31, 1993
	rep. No. 186, 2012
s. 29B	ad. No. 175, 1995
Division 2	
Heading to Div. 2 of Part IV	ad. No. 38, 2005
Subhead. to s. 30(1AA)	ad. No. 38, 2005
Subhead. to s. 30(1)	ad. No. 38, 2005
Subhead. to s. 30(1A)	ad. No. 38, 2005
Subhead. to s. 30(2)	ad. No. 38, 2005
s. 30	am. No. 58, 1977; No. 26, 1982; No. 175, 1995
Note to s. 30(1)	ad. No. 38, 2005
s. 30A	ad. No. 26, 1982
	am. No. 175, 1995
s. 31	am. No. 175, 1995
Subhead. to s. 33(2)	ad. No. 38, 2005
Subhead. to s. 33(2A)	ad. No. 38, 2005
Subhead. to s. 33(3)	ad. No. 38, 2005
s. 33	am. No. 26, 1982; No. 31, 1993; No. 38, 2005
Division 3	
Heading to Div. 3 of Part IV	ad. No. 38, 2005
s. 34	am. No. 58, 1977; No. 26, 1982; No. 31, 1993; No. 175, 1995
	rs. No. 38, 2005
s. 34A	ad. No. 31, 1993

Endnote 4—Amendment history

Provision affected	How affected
	am. No. 175, 1995; No. 34, 1997; No. 67, 2003
	rs. No. 38, 2005
ss. 34B–34H.....	ad. No. 38, 2005
Division 4	
Heading to Div. 4 of Part IV	ad. No. 38, 2005
s. 34B.....	ad. No. 175, 1995
Renumbered s. 34J.....	No. 38, 2005
Subhead. to s. 35(1AA)	ad. No. 38, 2005
Subhead. to s. 35(1)	ad. No. 38, 2005
Subhead. to s. 35(2)	ad. No. 38, 2005
s. 35	am. No. 58, 1977; No. 26, 1982; No. 31, 1993; No. 175, 1995
s. 35AA	ad. No. 175, 1995
s. 35A	ad. No. 31, 1993
	am. No. 175, 1995; No. 38, 2005
Subhead. to s. 36(1AA)	ad. No. 38, 2005
Subheads. to s. 36(1)–(3)	ad. No. 38, 2005
Subhead. to s. 36(3A)	ad. No. 38, 2005
Subhead. to s. 36(4)	ad. No. 38, 2005
s. 36	am. No. 58, 1977; No. 26, 1982; No. 120, 1988; No. 175, 1995
Subhead. to s. 36A(1AA)	ad. No. 38, 2005
Subheads. to s. 36A(1), (2) ...	ad. No. 38, 2005
Subhead. to s. 36A(2A)	ad. No. 38, 2005
s. 36A	ad. No. 58, 1977
	am. No. 26, 1982; No. 120, 1988; No. 175, 1995; No. 194, 1999
Subhead. to s. 36B(1AA)	ad. No. 38, 2005
Subheads. to s. 36B(1)–(5)	ad. No. 38, 2005
s. 36B	ad. No. 120, 1988
	am. No. 175, 1995; No. 139, 2010
Subhead. to s. 36C(1AA)	ad. No. 38, 2005
Subheads. to s. 36C(1)–(3)	ad. No. 38, 2005
s. 36C	ad. No. 120, 1988
	am. No. 175, 1995; No. 194, 1999; No. 139, 2010

Endnotes

Endnote 4—Amendment history

Provision affected	How affected
Subhead. to s. 36D(1AA)	ad. No. 38, 2005
Subheads. to s. 36D(1)–(7) ...	ad. No. 38, 2005
s. 36D	ad. No. 120, 1988
	am. No. 157, 1989; No. 175, 1995; No. 139, 2010
Subhead. to s. 37(1AAA)	ad. No. 38, 2005
Subhead. to s. 37(1)	ad. No. 38, 2005
Subhead. to s. 37(1AB)	ad. No. 38, 2005
Subhead. to s. 37(1AE)	ad. No. 38, 2005
Subhead. to s. 37(1AF)	ad. No. 38, 2005
Subheads. to s. 37(1A), (1B)	ad. No. 38, 2005
Subheads. to s. 37(2), (3)	ad. No. 38, 2005
s. 37	rs. No. 58, 1977
	am. No. 143, 1979; No. 26, 1982; No. 175, 1995; No. 38, 2005
s. 38	rs. No. 58, 1977
	am. No. 175, 1995
s. 38A	ad. No. 175, 1995
	am. No. 161, 1999
s. 39	am. No. 120, 1988; No. 175, 1995
Subheads. to s. 39A(1)–(6) ...	ad. No. 38, 2005
Subhead. to s. 39A(8)	ad. No. 38, 2005
Subheads. to s. 39A(11),	ad. No. 38, 2005
(12)	
Subhead. to s. 39A(18)	ad. No. 38, 2005
s. 39A	ad. No. 175, 1995
	am. No. 161, 1999
Subheads. to s. 39B(1)–(3)	ad. No. 38, 2005
Subheads. to s. 39B(5)–(11)	ad. No. 38, 2005
.....	
s. 39B.....	ad. No. 175, 1995
	am. No. 161, 1999

Division 5

Endnote 4—Amendment history

Provision affected	How affected
Heading to Div. 5 of Part IV	ad. No. 38, 2005
Subhead. to s. 40(1A)	ad. No. 38, 2005
Subhead. to s. 40(2)	ad. No. 38, 2005
Subheads. to s. 40(4), (5)	ad. No. 38, 2005
Subhead. to s. 40(7)	ad. No. 38, 2005
s. 40	am. No. 58, 1977; No. 31, 1993; No. 175, 1995; No. 38, 2005
s. 41	rs. No. 58, 1977; No. 143, 1979
	am. No. 26, 1982; No. 38, 2005
s. 42	rs. No. 38, 2005
Subhead. to s. 42A(1)	ad. No. 38, 2005
Subhead. to s. 42A(1A)	ad. No. 38, 2005
Subhead. to s. 42A(2)	ad. No. 38, 2005
Subheads. to s. 42A(4)–(8) ...	ad. No. 38, 2005
s. 42A	ad. No. 58, 1977
	am. No. 31, 1993; No. 38, 2005
s. 42B	ad. No. 31, 1993
s. 42C	ad. No. 31, 1993
	am. No. 38, 2005
Subhead. to s. 42D(2)	ad. No. 38, 2005
s. 42D	ad. No. 175, 1995
	am. No. 38, 2005
Note to s. 42D(2)	ad. No. 38, 2005
Division 6	
Heading to Div. 6 of Part IV	ad. No. 38, 2005
Heading to s. 43	rs. No. 38, 2005
Subheads. to s. 43(1), (2)	ad. No. 38, 2005
Subheads. to s. 43(3), (4)	ad. No. 38, 2005
Subhead. to s. 43(5A)	ad. No. 38, 2005
Subhead. to s. 43(6)	ad. No. 38, 2005

Endnotes

Endnote 4—Amendment history

Provision affected	How affected
s. 43	am. No. 157, 1976; No. 58, 1977; No. 65, 1978; No. 143, 1979; No. 26, 1982; No. 120, 1988; No. 175, 1995; No. 43, 1996; Nos. 161 and 194, 1999; No. 38, 2005; No. 13, 2013
Division 7	
Heading to Div. 7 of Part IV	ad. No. 38, 2005
Subheads. to s. 43AAA(1), (2)	ad. No. 38, 2005
Subhead. to s. 43AAA(4)	ad. No. 38, 2005
Subheads. to s. 43AAA(6), (7)	ad. No. 38, 2005
s. 43AAA	ad. No. 175, 1995 am. No. 161, 1999
Subhead. to s. 43AA(1)	ad. No. 38, 2005
Subheads. to s. 43AA(3), (4)	ad. No. 38, 2005
s. 43AA	ad. No. 175, 1995
s. 43A	ad. No. 58, 1977 am. No. 26, 1982; No. 194, 1999; No. 38, 2005; No. 13, 2013
Part IVA	
Heading to Part IVA	ad. No. 57, 2000
Heading to s. 43B.....	am. No. 38, 2005
s. 43B.....	ad. No. 57, 2000 am. No. 38, 2005
Note to s. 43B(1)	ad. No. 139, 2010
Subheads. to s. 44(1), (2)	ad. No. 38, 2005
Subhead. to s. 44(2A)	ad. No. 38, 2005
Subheads. to s. 44(3), (4)	ad. No. 38, 2005
Subhead. to s. 44(6)	ad. No. 38, 2005
s. 44	am. No. 157, 1976; No. 58, 1977; No. 143, 1979; No. 120, 1988; No. 31, 1993; No. 175, 1995; No. 60, 1996; No. 38, 2005
Heading to s. 44AA	rs. No. 13, 2013
Subhead. to s. 44AA(1)	ad. No. 38, 2005
Subhead. to s. 44AA(4)	ad. No. 38, 2005

Endnote 4—Amendment history

Provision affected	How affected
Subheads. to s. 44AA(7)–(10)	ad. No. 38, 2005
Subhead. to s. 44AA(11).....	rs. No. 13, 2013
s. 44AA.....	ad. No. 194, 1999 am. No. 157, 2001; No. 38, 2005; No. 13, 2013
Subheads. to s. 44A(1), (2) ...	ad. No. 38, 2005
s. 44A	ad. No. 143, 1979 am. No. 194, 1999; No. 13, 2013
s. 45	am. No. 157, 1976; No. 58, 1977; No. 34, 1997; No. 38, 2005
Heading to s. 46	am. No. 194, 1999 rs. No. 13, 2013
Subheads. to s. 46(1), (2)	ad. No. 38, 2005
s. 46	am. No. 157, 1976; No. 58, 1977; No. 26, 1982; No. 120, 1988; No. 175, 1995; No. 194, 1999; No. 13, 2013
Part V	
s. 49	am. No. 58, 1977; No. 143, 1979; No. 65, 1985; No. 38, 1988; No. 38, 1996; No. 125, 1999; No. 51, 2010; No. 187, 2011
s. 50	am. No. 143, 1979; No. 175, 1995 rs. No. 125, 1999
s. 51	am. No. 125, 1999
ss. 51A–51C	ad. No. 125, 1999
Subheads. to s. 52(1), (2)	ad. No. 38, 2005
s. 52	am. No. 175, 1995; No. 125, 1999
s. 53	am. No. 175, 1995; No. 43, 1996
s. 54	am. No. 175, 1995 rs. No. 38, 2005
s. 55	am. No. 175, 1995
Subhead. to s. 56(2)	ad. No. 38, 2005
Subheads. to s. 56(4), (5)	ad. No. 38, 2005
Subheads. to s. 56(7)–(10)	ad. No. 38, 2005
s. 56	am. No. 58, 1977; No. 143, 1979; No. 38, 1988; No. 175, 1995; No. 187, 2011
s. 57	am. No. 146, 1999

Endnotes

Endnote 4—Amendment history

Provision affected	How affected
s. 58	am. No. 58, 1977; No. 38, 2005
Part VI	
s. 59	am. No. 139, 2010
s. 59A.....	ad. No. 38, 2005
Heading to s. 60	am. No. 38, 2005
Subhead. to s. 60(1)	ad. No. 38, 2005
Subhead. to s. 60(1A)	ad. No. 38, 2005
Subheads. to s. 60(2), (3)	ad. No. 38, 2005
s. 60	am. No. 31, 1993; No. 175, 1995; No. 38, 2005
s. 61	am. No. 31, 1993; No. 175, 1995
	rs. No. 38, 2005
s. 62	am. No. 175, 1995
	rs. No. 38, 2005
s. 62A	ad. No. 26, 1982
	am. No. 175, 1995
	rs. No. 38, 2005
s. 62B	ad. No. 31, 1993
	am. No. 38, 2005
s. 63	am. No. 175, 1995
	rs. No. 38, 2005
s. 64	am. No. 175, 1995; No. 38, 2005
s. 65	am. No. 143, 1979
	rs. No. 157, 1989; No. 175, 1995
Subheads. to s. 66(1)–(4)	ad. No. 38, 2005
s. 66	rs. No. 58, 1977
	am. No. 193, 1985; No. 120, 1988; No. 175, 1995; No. 38, 2005; No. 139, 2010
Note to s. 66(4)	ad. No. 175, 1995
	am. No. 161, 1999
s. 66A	ad. No. 175, 1995
	am. No. 139, 2010
Heading to s. 67	am. No. 38, 2005
s. 67	am. No. 58, 1977; No. 175, 1995; No. 38, 2005

Endnote 4—Amendment history

Provision affected	How affected
s. 67A	ad. No. 58, 1977 am. No. 63, 1984; No. 38, 2005; No. 139, 2010
s. 68	am. No. 31, 1993; No. 175, 1995
s. 68AA.....	ad. No. 38, 2005
s. 68A	ad. No. 175, 1995
s. 69	am. No. 58, 1977; No. 175, 1995
s. 69A.....	ad. No. 175, 1995
s. 69B	ad. No. 175, 1995 am. No. 161, 1999
s. 69C.....	ad. No. 186, 2012
s. 70	am. No. 58, 1977; No. 175, 1995; No. 186, 2012
Heading to Schedule	rep. No. 26, 1982
Heading to Schedule 1	ad. No. 26, 1982 rep. No. 111, 1990
Schedule	am. Nos. 60, 89, 91, 162, 163 and 209, 1976; Nos. 30, 57 and 58, 1977; Nos. 19 and 143, 1979; No. 110, 1980; Statutory Rules 1980 No. 62 (as am. by 1980 No. 335); Nos. 19 and 61, 1981
Schedule 1	am. No. 80, 1982; Statutory Rules 1987 No. 49; No. 63, 1988 rep. No. 111, 1990
Schedule 2	
Schedule 2	ad. No. 26, 1982

Endnotes

Endnote 5—Uncommenced amendments [none]

Endnote 5—Uncommenced amendments [none]

Endnote 6—Modifications

[Safety, Rehabilitation and Compensation Act 1988](#)

[Social Security Act 1991](#)

[Taxation Laws Amendment Act \(No. 3\) 1991](#)

[Migration Reform Act 1992](#)

[A.C.T. Self-Government \(Consequential Provisions\) Regulations](#)

Endnotes

Endnote 7—Misdescribed amendments

Endnote 7—Misdescribed amendments

National Disability Insurance Scheme Legislation Amendment Act 2013
(No. 44, 2013)

Schedule 2

2 Paragraph 19(2)(c)

Omit “and”.

Endnote 8—Miscellaneous [none]

Endnote 8—Miscellaneous [none]