



Administrative Appeals Tribunal Act 1975

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About this compilation

This compilation

This is a compilation of the *Administrative Appeals Tribunal Act 1975* that shows the text of the law as amended and in force on 1 July 2023 (the *compilation date*).

The notes at the end of this compilation (the *endnotes*) include information about amending laws and the amendment history of provisions of the compiled law.

Uncommenced amendments

The effect of uncommenced amendments is not shown in the text of the compiled law. Any uncommenced amendments affecting the law are accessible on the Register (www.legislation.gov.au). The details of amendments made up to, but not commenced at, the compilation date are underlined in the endnotes. For more information on any uncommenced amendments, see the Register for the compiled law.

Application, saving and transitional provisions for provisions and amendments

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

Editorial changes

For more information about any editorial changes made in this compilation, see the endnotes.

Modifications

If the compiled law is modified by another law, the compiled law operates as modified but the modification does not amend the text of the law. Accordingly, this compilation does not show the text of the compiled law as modified. For more information on any modifications, see the Register for the compiled law.

Self-repealing provisions

If a provision of the compiled law has been repealed in accordance with a provision of the law, details are included in the endnotes.

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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:

- (a) is accessible; and
- (b) is fair, just, economical, informal and quick; and
- (c) is proportionate to the importance and complexity of the matter; and
- (d) promotes public trust and confidence in the decision-making of the Tribunal.

3 Interpretation

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

adduce includes give.

agency party means a party who is:

- (a) the Secretary of a Department; or
- (b) the Chief Executive Medicare; or
- (c) the Chief Executive Centrelink; or

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(d) the Child Support Registrar.

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.

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

ASIO affiliate has the same meaning as in the *Australian Security Intelligence Organisation Act 1979*.

ASIO employee has the same meaning as in the *Australian Security Intelligence Organisation Act 1979*.

ASIO Minister means the Minister administering the *Australian Security Intelligence Organisation Act 1979*.

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.

authorised officer means an officer of the Tribunal who has been authorised by the President under section 59B 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.

Chief Executive Centrelink has the same meaning as in the *Human Services (Centrelink) Act 1997*.

Chief Executive Medicare has the same meaning as in the *Human Services (Medicare) Act 1973*.

child support first review means a proceeding that is or would be a proceeding in the Social Services and Child Support Division on application for AAT first review within the meaning of the *Child Support (Registration and Collection) Act 1988*.

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

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.

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).

engage in conduct has the same meaning as in the *Criminal Code*.

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

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immigration advisory service means a body that provides services in relation to the seeking by non-citizens (within the meaning of the *Migration Act 1958*) of permission to enter or remain in Australia.

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) the President; or
- (b) a Deputy President; or
- (c) a senior member; or
- (d) any other member (of any level referred to in subsection 6(3)).

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.

officer of the Tribunal means:

- (a) the Registrar; or
- (b) a person appointed as an officer of the Tribunal under section 24PA.

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

person who made the decision has a meaning affected by:

- (a) if a review of the decision is or would be an AAT first review within the meaning of the *A New Tax System (Family Assistance) (Administration) Act 1999*—section 111B of that Act; and
- (b) if a review of the decision is or would be an AAT first review within the meaning of the *Paid Parental Leave Act 2010*—section 224A of that Act; and
- (c) if a review of the decision is or would be an AAT first review within the meaning of the *Social Security (Administration) Act 1999*—section 142A of that Act; and
- (d) if a review of the decision is or would be an AAT first review within the meaning of the *Student Assistance Act 1973*—section 311A of that Act.

President means the President of the Tribunal.

presidential member means the President 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 taxing of costs; and
- (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.

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second review: a review by the Tribunal of a decision is or would be a **second review** if another enactment:

- (a) authorises an application to be made for review of the decision; and
- (b) designates the review as an **AAT second review**.

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

security clearance decision has the same meaning as in the *Australian Security Intelligence Organisation Act 1979*.

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

security vetting agency has the meaning given by section 82A of the *Australian Security Intelligence Organisation Act 1979*.

senior member means a senior member of the Tribunal (of either level referred to in subsection 6(3)).

sponsoring agency, in relation to a security clearance, has the meaning given by section 82A of the *Australian Security Intelligence Organisation Act 1979*.

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

Section 5

**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.

5A Membership

The Tribunal consists of the following members:

- (a) the President;
- (b) Deputy Presidents;
- (c) senior members;
- (d) other members.

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 of the Tribunal is to be appointed as the President or a Deputy President.
- (3) A person (other than a Judge) who is to be appointed as a member of the Tribunal is to be appointed as:
 - (a) a Deputy President; or
 - (b) a senior member (level 1); or
 - (c) a senior member (level 2); or
 - (d) a member (level 1); or
 - (e) a member (level 2); or
 - (f) a member (level 3).
- (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 the person is a Judge of the Federal Court of Australia.

Deputy President

- (2) A person must not be appointed as a Deputy President unless the person:
 - (a) is a Judge of the Federal Court of Australia or the Federal Circuit and Family Court of Australia (Division 1); or
 - (b) is enrolled as a legal practitioner (however described) of the High Court or the Supreme Court of a State or Territory and has been so enrolled for at least 5 years; or

Section 7A

- (c) in the opinion of the Governor-General, has special knowledge or skills relevant to the duties of a Deputy President.

Senior members and other members

- (3) A person must not be appointed as a senior member or other member unless the person:
 - (a) is enrolled as a legal practitioner (however described) of the High Court or the Supreme Court of a State or Territory and has been so enrolled for at least 5 years; or
 - (b) in the opinion of the Governor-General, has special knowledge or skills relevant to the duties of a senior member or member.

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 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 determined by the Minister in writing.

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 Minister may, by written instrument, appoint a Judge of the Federal Court of Australia to act as the President:
- (a) during a vacancy in the office of President (whether or not an appointment has previously been made to the office); or
 - (b) during any period, or during all periods, when the President:
 - (i) is absent from duty or from Australia; or
 - (ii) is, for any reason, unable to perform the duties of office.

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

Acting member (other than President)

- (2) The Minister may, by written instrument, appoint a person to act as a member (other than the President) during any period, or during all periods, when:
- (a) a full-time member is absent from duty or from Australia; or

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(b) a part-time member is unavailable to perform the duties of office.

Subject to this section, a person so appointed must not continue to act in that appointment for more than 12 months.

- (2A) The Minister may, by written instrument, appoint a person to act as a Deputy President during any period, or during all periods, when there are no Deputy Presidents. A person so appointed must not continue to act in that appointment for more than 12 months.

Qualification for acting appointment

- (3) A person must not be appointed to act in an office under subsection (2) or (2A) unless the person meets the requirements in section 7 for appointment to the office.

Extension of acting appointment

- (5) Where a person has been appointed under subsection (2), 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 of acting appointment

- (7) Subject to this Part, a person (other than a Judge) appointed to act in an office under subsection (2) or (2A) is to act on such terms and conditions as the Minister determines in writing.

10A Delegation

- (1) The Minister may, by signed instrument, delegate to the President any or all of the Minister's powers or functions under this Act.
- (2) The President may, by signed instrument, delegate to a member any or all of the President's powers or functions under this Act or another enactment.
- (3) The Registrar may, by signed instrument, delegate to an officer of the Tribunal or a member of the staff of the Tribunal any or all of the Registrar's powers or functions under this Act or another enactment.
- (4) In exercising powers or performing functions under a delegation, the delegate must comply with any directions of the delegator.

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) A full-time member must not engage in paid employment outside the duties of his or her office without the President's approval.

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- (2) A part-time member must not engage in any paid employment that, in the President's opinion, conflicts or may conflict with the proper performance of his or her duties.
- (3) This section does not apply in relation to the holding by a member of an office or appointment in the Defence Force.

12 Leave of absence

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

13 Termination of appointment (not Judges)

- (1) The Governor-General may terminate the appointment of a member if an address praying for the termination, on one of the following grounds, is presented to the Governor-General by each House of the Parliament in the same session:
 - (a) proved misbehaviour;
 - (b) the member is unable to perform the duties of his or her office because of physical or mental incapacity.
- (2) The Governor-General may terminate the appointment of a member if:
 - (a) the member:
 - (i) becomes bankrupt; or
 - (ii) takes steps to take the benefit of any law for the relief of bankrupt or insolvent debts; or
 - (iii) compounds with one or more of his or her creditors; or
 - (iv) makes an assignment of his or her remuneration for the benefit of one or more of his or her creditors; or

- (b) the member is a full-time member and is absent, except on leave of absence, for 14 consecutive days or for 28 days in any 12 months; or
 - (c) the member is a part-time member and is unavailable, except on leave of absence, to perform the duties of his or her office for more than 3 months; or
 - (d) the member contravenes section 11 (outside employment); or
 - (e) the member fails, without reasonable excuse, to comply with section 14 (disclosure of interests).
- (3) The Governor-General may terminate the appointment of a member assigned to the Migration and Refugee Division if the member has a direct or indirect pecuniary interest in an immigration advisory service.
- (4) The appointment of a member may not be terminated other than in accordance with this section.
- (5) This section does not apply in relation to a member who is a Judge.

14 Disclosure of interests by members

- (1) If a member who is, or is to be, a member of the Tribunal as constituted for the purposes of a proceeding before the Tribunal has a conflict of interest in relation to the proceeding, the member:
- (a) must disclose the matters giving rise to that conflict:
 - (i) to the parties; and
 - (ii) to the President (or, if the member is the President, the Minister); and
 - (b) must not take part in the proceeding or exercise any powers in relation to the proceeding unless the parties and the President (or, if the member is the President, the Minister) consent.
- (2) For the purposes of this section, a member has a conflict of interest in relation to a proceeding before the Tribunal if the member has any interest, pecuniary or otherwise, that could conflict with the

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proper performance of the member's functions in relation to the proceeding.

- (3) If the President becomes aware that a member who is, or is to be, a member of the Tribunal as constituted for the purposes of a proceeding before the Tribunal has a conflict of interest in relation to the proceeding, the President:
 - (a) may, if the President considers it appropriate, direct the member not to take part in the proceeding; and
 - (b) if the President does not give such a direction—must ensure that the member discloses the matters giving rise to the conflict to the parties.

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—Organisation of the Tribunal

Division 1—Divisions of the Tribunal

Subdivision A—Divisions of the Tribunal

17A Divisions of the Tribunal

The Tribunal is to exercise powers conferred on it in the following Divisions:

- (aa) Freedom of Information Division;
- (a) General Division;
- (b) Migration and Refugee Division;
- (c) National Disability Insurance Scheme Division;
- (d) Security Division;
- (e) Social Services and Child Support Division;
- (f) Taxation and Commercial Division;
- (g) any other prescribed Division.

17B Allocation of business to Divisions

- (1) The Tribunal's powers in relation to a proceeding before the Tribunal are to be exercised:
 - (a) in the Division prescribed for such a proceeding; or
 - (b) if no Division is prescribed for a proceeding—in the Division that the President directs.
- (2) Despite subsection (1), the following powers of the Tribunal may be exercised by the Tribunal only in the Security Division:
 - (a) the powers of review in respect of applications referred to in section 54 or 83B of the *Australian Security Intelligence Organisation Act 1979*;
 - (b) the power under the *Archives Act 1983* to review a decision of the Archives in respect of access to a record of the Australian Security Intelligence Organisation.

Subdivision B—Assignment of members to Divisions

17C Assignment of members to Divisions

- (1) The Minister must assign a non-presidential member to one or more Divisions of the Tribunal.
- (2) Before the Minister does so, the Minister must consult the President in relation to the proposed assignment.
- (3) An assignment may only be varied with the consent of the member concerned.
- (4) A non-presidential member may exercise, or participate in the exercise of, powers of the Tribunal only in a Division to which the member is assigned.
- (5) If the assignment is made in writing, the assignment is not a legislative instrument.

17CA Assignment to Freedom of Information Division

The Minister must not assign a member to the Freedom of Information Division unless the Minister is satisfied that the member:

- (a) has training, knowledge or experience relating to the *Freedom of Information Act 1982*; or
- (b) has other relevant knowledge or experience that will assist the member in considering matters relating to the operation of that Act.

17D Assignment to Migration and Refugee Division

Before assigning a member to the Migration and Refugee Division, the Minister must consult the Minister administering the *Migration Act 1958* in relation to the proposed assignment.

17E Assignment to National Disability Insurance Scheme Division

- (1) Before assigning a member to the National Disability Insurance Scheme Division, the Minister must consult the Minister administering the *National Disability Insurance Scheme Act 2013* in relation to the proposed assignment.
- (2) The Minister must not assign a member to the National Disability Insurance Scheme Division unless the Minister is satisfied that the member:
 - (a) has training, knowledge or experience relating to disability;
or
 - (b) has other relevant knowledge or experience that will assist the member in considering matters relating to the National Disability Insurance Scheme.

17F Assignment to Security Division

The Minister must not assign a member to the Security Division if the member is or has been:

- (a) the Director-General of Security; or
- (b) an ASIO employee or ASIO affiliate.

Note: See also subsections 19E(3) and 19F(3).

17G Assignment to Social Services and Child Support Division

Before assigning a member to the Social Services and Child Support Division, the Minister must consult the Minister administering the *Social Security (Administration) Act 1999* in relation to the proposed assignment.

17H Assignment to Taxation and Commercial Division

Before assigning a member to the Taxation and Commercial Division, the Minister must consult the Treasurer in relation to the proposed assignment.

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17J Validity

Sections 17A to 17H do not affect the validity of any exercise of powers by the Tribunal.

Subdivision C—Division heads and Deputy Division heads

17K Division heads

Assignment of Division heads

- (1) The Minister may assign a Deputy President to be the head of one or more Divisions of the Tribunal.
- (2) Before the Minister does so, the Minister must consult:
 - (a) the President; and
 - (b) any Minister required by sections 17D to 17H to be consulted in relation to the assignment of a member to the Division.
- (3) The Minister must not assign a person to be the head of a Division if the person could not be assigned to that Division because of section 17CA, subsection 17E(2) or section 17F.
- (4) If the assignment is made in writing, the assignment is not a legislative instrument.
- (5) An assignment under subsection (1):
 - (a) must be for the duration, or the remaining duration, of the person's appointment as a Deputy President; and
 - (b) may be varied, with the person's consent; and
 - (c) cannot be revoked.

Function of Division heads

- (6) The head of a Division has the function of assisting the President in the performance of the President's functions by directing the business of the Tribunal in the Division.

Acting Division heads

- (7) The Minister may, by written instrument, assign a Deputy President or senior member to act as the head of a Division during any period, or during all periods, when the head of the Division is absent from duty or from Australia. Such an assignment is taken to be an appointment to act for the purposes of the *Acts Interpretation Act 1901*.

17L Deputy Division heads

Assignment of deputy Division heads

- (1) The Minister may assign a Deputy President or a senior member to be a deputy head of one or more Divisions of the Tribunal.
- (2) Before the Minister does so, the Minister must consult:
- (a) the President; and
 - (b) any Minister required by sections 17D to 17H to be consulted in relation to the assignment of a member to the Division.
- (3) The Minister must not assign a person to be a deputy head of a Division if the person could not be assigned to that Division because of section 17CA, subsection 17E(2) or section 17F.
- (4) If the assignment is made in writing, the assignment is not a legislative instrument.
- (5) An assignment under subsection (1):
- (a) must be for the duration, or the remaining duration, of the person's appointment as a Deputy President or senior member; and
 - (b) may be varied, with the person's consent; and
 - (c) cannot be revoked.

Part III Organisation of the Tribunal

Division 1 Divisions of the Tribunal

Section 17L

Function of deputy Division heads

- (6) A deputy head of a Division has the function of assisting the head of the Division in the performance of the head of the Division's functions.

Acting deputy Division heads

- (7) The Minister may, by written instrument, assign a member to act as a deputy head of a Division during any period, or during all periods, when a deputy head of the Division is absent from duty or from Australia or when there is no deputy head of the Division. Such an assignment is taken to be an appointment to act for the purposes of the *Acts Interpretation Act 1901*.

Division 2—Arrangement of business of Tribunal

18A Arrangement of business

Subject to this Act and the regulations, the President is responsible for ensuring:

- (a) the expeditious and efficient discharge of the business of the Tribunal; and
- (b) that the Tribunal pursues the objective in section 2A.

18B President's directions—arrangement of business

- (1) The President may give written directions in relation to any or all of the following:
 - (a) the operations of the Tribunal;
 - (b) the procedure of the Tribunal;
 - (c) the conduct of reviews by the Tribunal;
 - (d) the arrangement of the business of the Tribunal;
 - (e) the places at which the Tribunal may sit.
- (1A) Before the President does so, the President must consult the head of any Division to which the direction would apply.
- (2) A failure by the Tribunal to comply with a direction does not invalidate anything done by the Tribunal.
- (3) If the Tribunal deals with a proceeding in a way that complies with the directions given under this section, the Tribunal is not required to take any other action in dealing with the proceeding.
- (4) Without limiting subsection (1), directions may deal with matters relating to the provision of documents under sections 37 and 38AA, including any or all of the following matters:
 - (a) documents that are or are not required to be lodged under paragraph 37(1)(b) and subsection 38AA(1);
 - (b) documents that are or are not required to be lodged under subsection 37(1AAB) for the purposes of second reviews;

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- (c) lodgement of documents for the purposes of subsection 37(1AB);
- (d) lodgement of additional copies of documents;
- (e) documents that are to be given to other parties under subsection 37(1AE).

18C Sittings of Tribunal

Sittings of the Tribunal are to be held from time to time as required, in such places in Australia or an external Territory as are convenient.

Division 3—Constitution of Tribunal

Subdivision A—General

19A President’s directions—constitution

- (1) The President may give written directions in relation to:
 - (a) the members who are to constitute the Tribunal for the purposes of a proceeding; and
 - (b) if there is more than one such member—the member who is to preside.
- (2) Paragraph (1)(b) does not apply to a proceeding in the Security Division.

19B Constitution

- (1) The Tribunal as constituted for the purposes of a proceeding:
 - (a) must not have more than 3 members, unless another provision of this Act or another enactment provides otherwise in relation to the proceeding; and
 - (b) must not have more than one member who is a Judge, unless another provision of this Act or another enactment provides otherwise in relation to the proceeding.
- (2) At any time before the hearing of a proceeding commences, the powers of the Tribunal in relation to the proceeding may be exercised by the President or an authorised member.
- (3) Subsection (2) does not apply in relation to the following powers:
 - (a) the power under section 34J (circumstances in which hearing may be dispensed with);
 - (b) the power under section 43 (Tribunal’s decision on review);
 - (c) the power under section 59 (advisory opinions);
 - (d) a power that a provision of this Act (except this section) or another enactment requires or permits to be exercised by:

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- (i) one or more persons specified by the provision; or
- (ii) the Tribunal constituted in a way specified by the provision.

Note: Examples of powers covered by subparagraph (3)(d)(i) are the powers under sections 19A, 33 and 43AA. Examples of powers covered by subparagraph (3)(d)(ii) are the powers under section 19C.

- (4) This section does not apply in relation to a proceeding in the Security Division (see Subdivision B).

19C Constitution for review of taxing of costs

- (1) The Tribunal as constituted for the purposes of an application for review of a taxing of costs in another proceeding must be constituted by:
 - (a) the member who constituted the Tribunal for the purposes of the other proceeding; or
 - (b) if the Tribunal was constituted by more than one member for the purposes of the other proceeding—the member who presided for those purposes.
- (2) However, the Tribunal is to be constituted as directed by the President if the member referred to in subsection (1):
 - (a) has stopped being a member; or
 - (b) is for any reason unavailable; or
 - (c) has been directed by the President not to take part in the review.
- (3) The President must not give directions that would result in none of the members who constituted the Tribunal for the purposes of the other proceeding constituting the Tribunal for the purposes of the review, unless the President is satisfied that it is in the interests of justice to do so.

19D Reconstitution

Before hearing commences

- (1) At any time before the hearing of a proceeding commences, the President may revoke a direction under subsection 19A(1) in relation to the proceeding and give another such direction.

After hearing commences

- (2) At any time after the hearing of a proceeding commences and before the Tribunal determines the proceeding, the President may revoke a direction under subsection 19A(1) in relation to the proceeding and give another such direction, if:
 - (a) the member, or one of the members, who constitutes the Tribunal for the purposes of the proceeding:
 - (i) stops being a member; or
 - (ii) is for any reason unavailable; or
 - (iii) is directed by the President not to take part in the proceeding; or
 - (b) the President considers that doing so is in the interests of achieving the expeditious and efficient conduct of the proceeding.
- (3) Subsection (2) does not apply in relation to a proceeding in the Security Division.
- (4) The reconstituted Tribunal must continue the proceeding. For this purpose, it may have regard to any record of the proceeding before the Tribunal as previously constituted (including a record of any evidence taken in the proceeding).

President's directions

- (5) The President must not give a direction referred to in subparagraph (2)(a)(iii) unless the President:
 - (a) is satisfied that it is the interests of justice to do so; and

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- (b) where it is reasonably practicable to do so, has consulted the member concerned.
- (6) The President must not, for the purposes of subsection (2), revoke a direction under subsection 19A(1) in relation to a proceeding and give another such direction unless the President:
 - (a) is satisfied that it is in the interests of justice to do so; and
 - (b) where it is reasonably practicable to do so, has consulted each member who as a result ceases to be a member of the Tribunal as constituted for the purposes of the proceeding.
- (7) In giving directions for the purposes of this section, the President must have regard to the Tribunal's objective in section 2A.

Subdivision B—Security Division

19E Constitution of Security Division

Scope

- (1) This section applies to a proceeding in the Security Division other than a proceeding to which section 19F applies, but has effect subject to subsections 65(2) and 83F(6) of the *Australian Security Intelligence Organisation Act 1979*.

Constitution of Security Division

- (2) The Security Division is to be constituted by a presidential member and 2 other members.
- (3) The presidential member must not participate in the proceeding if the presidential member is or has been:
 - (a) the Director-General of Security; or
 - (b) an ASIO employee or ASIO affiliate.

Presiding member

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

Reconstitution

- (5) At any time after the hearing of a proceeding commences and before the Tribunal determines the proceeding, the President may revoke a direction under subsection 19A(1) in relation to the proceeding and give another such direction, in accordance with this section, if a member constituting the Tribunal for the purposes of the proceeding is for any reason unavailable.
- (6) The reconstituted Tribunal must continue the proceeding. For this purpose, it may have regard to any record of the proceeding before the Tribunal as previously constituted (including a record of any evidence taken in the proceeding).

19F Constitution of Security Division for proceedings to review certain Archives decisions

Scope

- (1) This section applies to a proceeding in the Security Division in relation to a review of a decision of the Archives under the *Archives Act 1983* relating to a record of the Australian Security Intelligence Organisation.

Constitution of Security Division

- (2) The Security Division is to be constituted by:
 - (a) 3 presidential members; or
 - (b) a presidential member alone.
- (3) A presidential member must not participate in the proceeding if the presidential member is or has been:
 - (a) the Director-General of Security; or
 - (b) an ASIO employee or ASIO affiliate.

Presiding member

- (4) If the Tribunal is constituted by 3 presidential members, the person who is to preside at a hearing of the proceeding is:

Part III Organisation of the Tribunal

Division 3 Constitution of Tribunal

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- (a) if the President is one of the members—the President; or
- (b) if the President is not one of the members but one or more Judges is—the most senior (or only) Judge; or
- (c) if paragraphs (a) and (b) do not apply—the Deputy President whom the President directs to preside.

Reconstitution

- (5) At any time after the hearing of a proceeding commences and before the Tribunal determines the proceeding, the President may revoke a direction under paragraph 19A(1)(a) in relation to the proceeding and give another such direction, in accordance with this section, if a member constituting the Tribunal for the purposes of the proceeding ceases to be available.
- (6) The reconstituted Tribunal must continue the proceeding. For this purpose, it may have regard to any record of the proceeding before the Tribunal as previously constituted (including a record of any evidence taken in the proceeding).

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) However, the President is not responsible under subsection (1) for matters relating to the Tribunal under:
 - (a) the *Public Governance, Performance and Accountability Act 2013*; or
 - (b) the *Public Service Act 1999*.
- (3) The Registrar is not subject to direction by the President in relation to the Registrar's performance of functions, or exercise of powers, under the Acts referred to in subsection (2).
- (4) However, the Registrar must consult with the President in relation to the Registrar's performance of those functions or exercise of those powers.

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 1A—Application of the finance law

24BA Application of the finance law

For the purposes of the finance law (within the meaning of the *Public Governance, Performance and Accountability Act 2013*):

- (a) the following group of persons is a listed entity:
 - (i) the Registrar;
 - (ii) the staff of the Tribunal referred to in subsection 24N(1); and
- (b) the listed entity is to be known as the Administrative Appeals Tribunal; and
- (c) the Registrar is the accountable authority of the listed entity; and
- (d) the persons referred to in paragraph (a) are officials of the listed entity; and
- (e) the purposes of the listed entity include the Registrar's function to assist the President in the management of the administrative affairs of the Tribunal (see section 24B).

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.

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 Minister.

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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 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:
 - (a) for misbehaviour; or
 - (b) if the Registrar is unable to perform the duties of his or her office because of physical or mental incapacity.
- (2) The Governor-General may terminate the appointment of the Registrar if:
 - (a) the Registrar:
 - (i) becomes bankrupt; or

- (ii) takes steps to take the benefit of any law for the relief of bankrupt or insolvent debts; or
 - (iii) compounds with one or more of his or her creditors; or
 - (iv) makes an assignment of his or her remuneration for the benefit of one or more of his or her creditors; or
 - (b) the Registrar is absent, except on leave of absence, for 14 consecutive days or for 28 days in any 12 months; or
 - (c) the Registrar engages in paid employment outside the duties of his or her office without the President's consent under section 24J; or
 - (d) the Registrar fails, without reasonable excuse, to comply with section 24L (disclosure of interests).
- (3) The appointment of the Registrar may not be terminated other than in accordance with this section.

24L Disclosure of interests by Registrar

- (1) 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.
- (2) The Registrar must give written notice to the President of all material personal interests that the Registrar has that relate to the affairs of the Tribunal.
- (3) Section 29 of the *Public Governance, Performance and Accountability Act 2013* (which deals with the duty to disclose interests) does not apply to the Registrar.

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

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- (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 Staff

- (1) The staff of the Tribunal must be persons engaged under the *Public Service Act 1999*.
- (2) For the purposes of the *Public Service Act 1999*:
 - (a) the following persons together constitute a Statutory Agency:
 - (i) the Registrar;
 - (ii) the staff of the Tribunal referred to in subsection (1);
 - (iii) the Senior Reviewer and the other Reviewers of the Immigration Assessment Authority; and
 - (b) the Registrar is the head of that Statutory Agency.

24P Functions of officers and staff members of the Tribunal

The officers of the Tribunal and members of the staff of the Tribunal have the functions and powers conferred on them:

- (a) by this Act and any other enactment; and
- (b) by the President.

24PA Officers of the Tribunal

- (1) The Registrar may, by writing, appoint a person to be an officer of the Tribunal if the person is:
 - (a) a member of the staff of the Tribunal referred to in subsection 24N(1); or
 - (b) an APS employee made available to the Tribunal; or
 - (c) an officer of the Supreme Court of Norfolk Island.
- (2) An appointment under subsection (1) may be expressed to be limited to specified decisions or proceedings or to specified functions or powers.

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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 a report of the management of the administrative affairs, including the operation of the Divisions, of the Tribunal during the year.

Note: The annual report prepared by the Registrar and given to the Minister under section 46 of the *Public Governance, Performance and Accountability Act 2013* may be included in the report prepared under this section.

- (2) A report prepared after 30 June in a year must be given to the Minister by 15 October of that year.
- (3) The Minister must cause a copy of the report to be tabled in each House of the Parliament as soon as practicable.

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 1A Scope of operation of this Part

Section 24Z

Part IV—Reviews by the Tribunal of decisions

Division 1A—Scope of operation of this Part

24Z Scope of operation of this Part

- (1) Except for the provisions specified in subsection (2), this Part does not apply in relation to a proceeding in the Migration and Refugee Division.

Note 1: For the conduct of proceedings in the Migration and Refugee Division, see Parts 5 and 7 of the *Migration Act 1958*.

Note 2: Enactments that authorise the making of applications for review to the Tribunal can add to, exclude or modify the operation of this Part.

- (2) The following provisions of this Part apply in relation to a proceeding in the Migration and Refugee Division:

- (a) section 25;
- (b) section 42.

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

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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 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.

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

- (6) If an Act provides for applications to the Tribunal:
- (a) that Act may also include provisions adding to, excluding or modifying the operation of any of the provisions of this Act in relation to such applications; and
 - (b) those provisions have effect subject to any provisions so included.
- (6A) If an enactment (other than an Act) 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, 29AB, 29AC, 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.

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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) paragraph 19B(1)(a); 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.

(1A) Paragraph (1)(b) does not apply in relation to a proceeding that is a child support first review.

(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 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.

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**27AA Applications to Tribunal under Australian Security
Intelligence Organisation Act**

*Applications under Part IV of the Australian Security Intelligence
Organisation Act 1979*

- (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.

*Applications under Part IVA of the Australian Security Intelligence
Organisation Act 1979*

- (4) An application under subsection 83B(1) of the *Australian Security Intelligence Organisation Act 1979* for review of a security clearance decision or security clearance suitability assessment may be made by a person in respect of whom the decision or suitability assessment was made and who has, in accordance with Part IVA of that Act, been given notice of the decision or suitability assessment.
- (5) An application under subsection 83B(2) of the *Australian Security Intelligence Organisation Act 1979* for review of the findings of the Tribunal on a review of a security clearance decision or security clearance suitability assessment may be made by the

person who applied for the review in which the findings were made.

- (6) If the Tribunal is satisfied that an application referred to in subsection (5) 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 a security clearance decision or security clearance suitability 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:
- (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;

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- 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.

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.

Exceptions

- (1AAA) Subsection (1) does not apply in relation to:
- (a) a decision that is reviewable in the Security Division; or
 - (b) a decision that is a decision on AAT first review within the meaning of any of the following:
 - (i) the *A New Tax System (Family Assistance) (Administration) Act 1999*;
 - (ii) the *Child Support (Registration and Collection) Act 1988*;
 - (iii) the *Social Security (Administration) Act 1999*;
 - (iv) the *Student Assistance Act 1973*;
 - (v) the *Paid Parental Leave Act 2010*.

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

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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) On application by an applicant who has received a notice under subsection (1AA), the Tribunal must decide whether the applicant was or was not entitled to be given the statement concerned.

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.

- (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.

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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) An applicant who has been given a statement under subsection (1) may apply to the Tribunal for a declaration that the statement does not contain one or more of the following:
- (a) adequate particulars of findings on material questions of fact;
 - (b) an adequate reference to the evidence or other material on which those findings were based;
 - (c) adequate particulars of the reasons for the decision.
- (6) If the Tribunal makes the declaration, the person to whom the request for the statement was made must, as soon as practicable and no later than 28 days after the day the declaration was made, give the applicant an additional statement containing further and better particulars in relation to the matters specified in the declaration.

29 Manner of applying for review

- (1) An application to the Tribunal for a review of a decision:
- (a) must be made:
 - (i) in writing; or
 - (ii) if the decision is reviewable in the Social Services and Child Support Division—in writing or by making an

oral application in person at, or by telephone to, a
Registry of the Tribunal; and

Note: For oral applications, see also section 29AA.

- (b) must be accompanied by any prescribed fee; and
- (c) unless paragraph (ca) or (cb) applies or the application was oral—must contain a statement of the reasons for the application; and
- (ca) in respect of an application made under subsection 54(1) or 83B(1) of the *Australian Security Intelligence Organisation Act 1979* for review of a security assessment or a security clearance suitability assessment—must be accompanied by:
 - (i) a copy of the assessment or suitability assessment as given to the applicant; and
 - (ii) a statement indicating any part or parts of the assessment or suitability 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) or 83B(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

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taken to be an address provided by the person at which such documents may be given.

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.

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:

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- (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 the Tribunal determines an application for an extension of time, the Tribunal or an officer of the Tribunal may:
 - (a) give notice of the application to any persons the Tribunal or officer considers to be affected by the application; or
 - (b) require the applicant to give notice to those persons.
- (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 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.

29AA Oral applications

- (1) If a person makes an oral application as referred to in subparagraph 29(1)(a)(ii), the person receiving the application must:
 - (a) make a written record of the details of the application; and
 - (b) note on the record the day on which the application is made.
- (2) If a person makes a written record of an oral application in accordance with subsection (1), this Part has effect as if the written record were an application in writing made on the day on which the oral application was made.

29AB Insufficient statement of reasons for application

If the Tribunal considers that an applicant's statement under paragraph 29(1)(c) does not clearly 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 appropriately, within the period specified in the notice.

29AC Notice of application

- (1) If an application is made to the Tribunal for a review of a decision, the Registrar must give the following persons written notice of receipt of the application:
 - (a) the applicant;
 - (b) the person who made the decision;
 - (c) any other person who is made a party to the review by the enactment that authorised the application.
- (2) The Tribunal or an officer of the Tribunal may, if satisfied that another person's interests may be affected by the decision:
 - (a) give the other person written notice of the application and of the person's right to apply to be made a party to the proceeding under subsection 30(1A); or
 - (b) require the applicant to give the other person such a notice.

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**29B Notice of application under Australian Security Intelligence
Organisation Act**

- (1) 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, State or authority of a State to which the assessment was given.
- (2) If an application is made to the Tribunal for a review of a security clearance decision or security clearance suitability assessment, the Registrar must give a copy of the application, and a copy of the statement lodged with the application, to:
 - (a) the Director-General of Security; and
 - (b) for an application for review of a security clearance decision—the sponsoring agency for the security clearance in relation to which the security clearance decision was made; and
 - (c) for an application for review of a security clearance suitability assessment—the security vetting agency to which the suitability assessment was given.
- (3) If subsection (2) applies, the Registrar must also give the applicant written notice of receipt of the application.

Division 2—Parties and procedure

30 Parties to proceeding before Tribunal

Scope

- (1AA) This section does not apply to a proceeding in the Security Division to which section 39A or 39BA 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:

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- (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.

30A Intervention by Attorney-General

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

32 Representation before Tribunal

Parties

- (1) At the hearing of a proceeding before the Tribunal, the following parties may appear in person or be represented by another person:

- (a) a party to a proceeding in a Division other than the Social Services and Child Support Division;
 - (b) the agency party to a proceeding in the Social Services and Child Support Division.
- (2) At the hearing of a proceeding before the Tribunal in the Social Services and Child Support Division, a party to the proceeding (other than the agency party) may appear in person or, with the Tribunal's permission, may be represented by another person.
- (3) In deciding whether to grant permission for the purposes of subsection (2), the Tribunal must have regard to:
- (a) the Tribunal's objective in section 2A; and
 - (b) the wishes of the parties and the need to protect their privacy.

Persons required to appear

- (4) A person who is required to appear in a proceeding before the Tribunal may, with the permission of the Tribunal, be represented by another 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.

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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.

Parties etc. must assist Tribunal

- (1AB) A party to a proceeding before the Tribunal, and any person representing such a party, must use his or her best endeavours to assist the Tribunal to fulfil the objective in section 2A.

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 officer; 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
- (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; or
- (d) limit the number of witnesses who may be called to give evidence (either generally or on a specified matter); or
- (e) require witnesses to give evidence at the same time; or
- (f) limit the time for giving evidence or making oral submissions; or
- (g) limit the length of written submissions.

33A Participation by telephone etc.

- (1) The Tribunal for the purposes of a hearing, or the person conducting a directions hearing or alternative dispute resolution process, may allow or require a person to participate by telephone or by means of other electronic communications equipment.
- (2) Subsection (1) does not apply to a proceeding in the Security Division to which section 39A or 39BA applies.

Division 3—Alternative dispute resolution processes

34 Scope of Division

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

34A Referral for alternative dispute resolution process

- (1) If an application is made to the Tribunal, the President may direct that the proceeding, or any part of it or matter arising out of the proceeding, be referred to an alternative dispute resolution process.
- (1A) However, in relation to a proceeding in the Social Services and Child Support Division:
 - (a) the President must not give a direction under subsection (1) unless the alternative dispute resolution process is conferencing; and
 - (b) the agency party to the proceeding is not required to participate in the conferencing.
- (2) The President may give written directions in relation to persons who are to conduct an alternative dispute resolution process. Any such person must be:
 - (a) a member; or
 - (b) an officer of the Tribunal; or
 - (c) a person engaged under section 34H.
- (3) The parties to a proceeding referred to an alternative dispute resolution process must act in good faith in relation to the conduct of the alternative dispute resolution process.
- (4) However, subsection (3) does not apply to the agency party to a proceeding in the Social Services and Child Support Division if:
 - (a) the President gives a direction under subsection (1) that the proceeding, or any part of it or matter arising out of the proceeding, be referred to conferencing; and

- (b) the agency party is not participating in the conferencing.

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 (including the agency party to a proceeding in the Social Services and Child Support Division who did not participate in the alternative dispute resolution process) or their representatives as to the terms of a decision of the Tribunal:
 - (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

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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.

Variation or revocation of decision

- (4) The Tribunal may vary or revoke so much of a decision as it made in accordance with subsection (2) or (3) if:
- (a) the parties, or their representatives, reach agreement on the variation or revocation; 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 variation or revocation appears appropriate to the Tribunal; and
 - (d) in the case of a variation—the Tribunal is satisfied that it would have been within the powers of the Tribunal to have made the decision as varied.

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.

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.

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

- (1) 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.
- (2) For the purposes of subsection (1), the consent of the agency party to a proceeding in the Social Services and Child Support Division is not required.

35 Public hearings and orders for private hearings, non-publication and non-disclosure

Public hearing

- (1) Subject to this section, the hearing of a proceeding before the Tribunal must be in public.

Private hearing

- (2) The Tribunal may, by order:
 - (a) direct that a hearing or part of a hearing is to take place in private; and
 - (b) give directions in relation to the persons who may be present.

Orders for non-publication or non-disclosure

- (3) The Tribunal may, by order, give directions prohibiting or restricting the publication or other disclosure of:

- (a) information tending to reveal the identity of:
 - (i) a party to or witness in a proceeding before the Tribunal; or
 - (ii) any person related to or otherwise associated with any party to or witness in a proceeding before the Tribunal; or
 - (b) information otherwise concerning a person referred to in paragraph (a).
- (4) The Tribunal may, by order, give directions prohibiting or restricting the publication or other disclosure, including to some or all of the parties, of information that:
- (a) relates to a proceeding; and
 - (b) is any of the following:
 - (i) information that comprises evidence or information about evidence;
 - (ii) information lodged with or otherwise given to the Tribunal.
- (5) In considering whether to give directions under subsection (2), (3) or (4), the Tribunal is to take as the basis of its consideration the principle that it is desirable:
- (a) that hearings of proceedings before the Tribunal should be held in public; and
 - (b) that evidence given before the Tribunal and the contents of documents received in evidence by the Tribunal should be made available to the public and to all the parties; and
 - (c) that the contents of documents lodged with the Tribunal should be made available to all the parties.

However (and without being required to seek the views of the parties), the Tribunal is to pay due regard to any reasons in favour of giving such a direction, including, for the purposes of subsection (3) or (4), the confidential nature (if applicable) of the information.

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Not applicable to Security Division review of security assessment

- (6) This section does not apply in relation to a proceeding in the Security Division to which section 39A or 39BA applies.

Note: See section 35AA.

35AA Orders for non-publication and non-disclosure—certain Security Division proceedings

- (1) This section applies in relation to a proceeding in the Security Division to which section 39A or 39BA applies.
- (2) The Tribunal may, by order, give directions prohibiting or restricting the publication or other disclosure of:
- (a) information tending to reveal the identity of:
 - (i) a party to or witness in the proceeding; or
 - (ii) any person related to or otherwise associated with any party to or witness in the proceeding; or
 - (b) information otherwise concerning a person referred to in paragraph (a); or
 - (c) information that relates to the proceeding and is any of the following:
 - (i) information that comprises evidence or information about evidence;
 - (ii) information lodged with or otherwise given to the Tribunal; or
 - (d) the whole or any part of its findings on the review.

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

Scope

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

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

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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 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 Division to which section 39A or 39BA 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.

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.

36AA Interpretation of sections 36B, 36C and 36D

In sections 36B, 36C and 36D, unless the contrary intention appears:

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Attorney-General includes the Minister administering the *ACT Civil and Administrative Tribunal Act 2008* of the Australian Capital Territory.

Cabinet includes the Australian Capital Territory Executive.

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

Scope

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

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information, or of the matter contained in the document, as the case may be, would be contrary to the public interest.

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 Division to which section 39A or 39BA 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.

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.

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

Scope

- (1AA) This section does not apply to a proceeding in the Security Division to which section 39A or 39BA 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
 - (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 member who is a Judge of the Federal Court of Australia.

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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 an officer of the Tribunal in the course of the performance of his or her duties as a member of the staff of the Tribunal or an officer of the Tribunal.

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.

37 Lodging of material documents with Tribunal

Scope

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

Decision-maker must lodge material documents

- (1) Subject to this section, a person who has made a decision that is the subject of an application for review (other than second 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 a copy 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) subject to any directions given under section 18B, every other 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.
- (1AAB) Subject to this section, if the Tribunal has made a decision that is the subject of an application for second review:
- (a) the person who made the decision that was reviewed by the Tribunal; or
 - (b) for an application referred to in paragraph 96A(a) or (c) of the *Child Support (Registration and Collection) Act 1988*—the Registrar within the meaning of that Act;
- must, within 28 days after receiving notice of the application (or within such further period as the Tribunal allows), lodge with the Tribunal a copy of any document of a kind referred to in paragraph (1)(b) that is required to be lodged by a direction given under section 18B.
- (1AA) The Tribunal may direct a person who is required to lodge a copy of a statement or document under subsection (1) or (1AAB) to

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lodge a specified number of additional copies with the Tribunal, within the specified period. The person must comply with the direction.

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

- (1AB) The Tribunal may direct a person who is required to lodge a copy of a statement under paragraph (1)(a) to lodge instead of that statement a copy of a document setting out the reasons for the relevant decision, within the specified period. The person must comply with the direction.
- (1AC) If a person has, in accordance with a direction given under subsection (1AB), lodged with the Tribunal a copy 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 parties

- (1AE) A person who is required under subsection (1), (1AAB) or (1AB) to lodge a copy of a statement or document with the Tribunal within a particular period must, unless the Tribunal directs otherwise, also give a copy of the statement or document to each other party to the proceeding, within the same period.

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) or subsection (1AAB) to lodge a copy 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(3) or (4) in relation to the document and lodges with the Tribunal, together with the application for the direction, a copy 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) or subsection (1AAB) in relation to 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) or subsection (1AAB) in relation to 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) or (1AAB) for lodging with the Tribunal for the purposes of the review the copy of the documents mentioned in that subsection is not shortened, the Tribunal may, upon request being made by that party, make an order directing that the copy 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.

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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) or (1AAB) to the period of 28 days after the person who made 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 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) The Tribunal may order a person who has lodged a statement with the Tribunal in accordance with paragraph 37(1)(a) to lodge an additional statement with the Tribunal, within the time specified in the order, containing further and better particulars in relation to any one or more of the following:
- (a) particulars of findings on material questions of fact;
 - (b) reference to the evidence or other material on which those findings were based;
 - (c) particulars of the reasons for the decision.
- (2) Subsection (1) does not apply to a proceeding in the Security Division to which section 39A or 39BA applies.

38AA Ongoing requirement for lodging material documents with Tribunal

- (1) If:
- (a) subsection 37(1) or (1AAB) applies to a person in relation to an application for review of a decision; and
 - (b) at any time after the end of the applicable period under the subsection and before the Tribunal determines the review:
 - (i) the person obtains possession of a document; and
 - (ii) the document is relevant to the review; and
 - (iii) a copy of the document has not been lodged with the Tribunal in accordance with the subsection;
- the person must, subject to any directions given under section 18B, lodge a copy of the document with the Tribunal as soon as practicable after obtaining possession.

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- (2) Subsections 37(1AA), (1AE), (1AF) and (1AG) apply in relation to the requirement in subsection (1) of this section as if:
- (a) that requirement were the requirement referred to in those subsections; and
 - (b) the references in subsections 37(1AE) and (1AF) to lodging or giving within a period were references to lodging or giving as soon as practicable.

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 ASIO Minister 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.
- (1A) If an application for review of a security clearance suitability assessment is made in a case in which the ASIO Minister has given a certificate certifying in accordance with paragraph 83A(4)(b) of the *Australian Security Intelligence Organisation Act 1979*, the Director-General of Security must, as soon as practicable after receiving notice of the application, lodge with the Tribunal:
- (a) a copy of the certificate; and
 - (b) a copy of the whole of the suitability assessment (including a copy of the statement of grounds prepared for the security clearance suitability assessment under section 82G of that Act).
- Note: The statement of grounds for a security clearance suitability assessment is taken to be part of the assessment (see subsection 82G(3) of the *Australian Security Intelligence Organisation Act 1979*).
- (1B) If an application for review of a security clearance decision is made, the Director-General of Security must, as soon as practicable after receiving notice of the application, lodge with the Tribunal:

- (a) a copy of the statement of grounds prepared for the security clearance decision under section 83C of the *Australian Security Intelligence Organisation Act 1979*; and
 - (b) in a case in which the ASIO Minister has given a certificate certifying in accordance with subsection 83C(6) of that Act—a copy of the certificate.
- (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 ASIO Minister referred to in subsection (1), (1A) or (1B) or any matter to which the certificate relates.

39 Rights of parties to present case—Divisions other than Security Division

- (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) a proceeding in the Security Division to which section 39A or 39BA applies; or
 - (b) the agency party to a proceeding in the Social Services and Child Support Division.
- Note: Section 39AA deals with the rights of the agency party to a proceeding in the Social Services and Child Support Division.
- (3) This section does not limit subsection 25(4A) (Tribunal may determine scope of review).

39AA Submissions by agency party in Social Services and Child Support Division

- (2) The agency party to a proceeding before the Tribunal in the Social Services and Child Support Division may make written submissions to the Tribunal.
- (3) The agency party may, by writing, request the Tribunal for permission to make:
 - (a) oral submissions to the Tribunal; or
 - (b) both oral and written submissions to the Tribunal.The request must explain how such submissions would assist the Tribunal.
- (4) The Tribunal may, by writing, grant the request if, in the opinion of the Tribunal, such submissions would assist the Tribunal.
- (5) The Tribunal may order the agency party to a proceeding in the Social Services and Child Support Division to make:
 - (a) oral submissions to the Tribunal; or
 - (b) written submissions to the Tribunal; or
 - (c) both oral and written submissions to the Tribunal;if, in the opinion of the Tribunal, such submissions would assist the Tribunal.

39A Procedure in Security Division review of security assessment

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, State or

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

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Security/defence certificate

- (8) The ASIO 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, State or authority of a State 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 ASIO 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.

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, State or

authority of a State 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:
- (a) an ASIO employee or ASIO affiliate; or
 - (b) an officer or employee of the Commonwealth agency, State or authority of a State 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, State or authority, 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 presiding member may require a witness to answer any such question.

Dismissal of application

- (18) If the applicant fails within a reasonable time:

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- (a) to proceed with the application; or
- (b) to comply with a direction by the Tribunal in relation to the application;

the President or an authorised member may dismiss the application without proceeding to review the security assessment.

39BA Procedure in Security Division review of security clearance decision or security clearance suitability assessment

Review of security clearance decision or security clearance suitability assessment

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

Parties

- (2) The parties to the proceeding are the Director-General of Security and the applicant, but each of the following bodies (the **relevant body**) is entitled to adduce evidence and make submissions:
 - (a) for a review of a security clearance decision—the sponsoring agency for the security clearance in relation to which the security clearance decision was made;
 - (b) for a review of a security clearance suitability assessment—the following:
 - (i) the security vetting agency to which the suitability assessment was given;
 - (ii) the sponsoring agency for the security clearance in relation to which the suitability assessment was given, if that agency was also given the suitability assessment by the Australian Security Intelligence Organisation.

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 information available to the Director-General (whether
-

favourable or unfavourable to the applicant) that is relevant to the findings made in the statement of grounds for the security clearance decision or security clearance suitability assessment.

- (4) Without limiting subsection (3), the Director-General of Security may present to the Tribunal:
- (a) a copy of any standard (or part thereof) certified in writing by the Director-General as a standard relating to the Commonwealth's highest level of security clearance that was used to make the security clearance decision or security clearance suitability assessment; or
 - (b) a copy of any standard (or part thereof) certified in writing by the Director-General as a current standard relating to the Commonwealth's highest level of security clearance.

Note: A standard relating to the Commonwealth's highest level of security clearance is part of the Australian Government's framework of protective security policy.

- (5) To avoid doubt, the Director-General of Security may present to the Tribunal both copies of a standard (or part thereof) referred to in paragraphs (4)(a) and (b).

Member may require parties to attend etc.

- (6) A member who is to participate, or who is participating, in 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

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

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Right of parties etc. to be present

- (8) Subject to subsections (9) and (12), 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 relevant body.
- (9) The applicant and any person representing the applicant must not be present when the Tribunal is hearing submissions made or evidence adduced in relation to any part of a copy of any standard presented to the Tribunal under subsection (4) that has not already been disclosed to the applicant.
- (10) The Director-General of Security or a person representing the Director-General, and a person representing the relevant body, may be present when the Tribunal is hearing submissions made or evidence adduced by the applicant.

Security or defence certificate

- (11) The ASIO 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 relevant body 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.
- (12) 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 ASIO Minister consents.
- (13) A person representing the applicant commits an offence if:
 - (a) the person is present when evidence to which a certificate given under subsection (11) relates is adduced or submissions to which such a certificate relates are made; and

- (b) the person discloses any such evidence or submission to the applicant or to any other person.

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.

Penalty: Imprisonment for 2 years.

Protection of identity of person giving evidence

- (14) 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.

Evidence and submissions

- (15) 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 relevant body may wish to adduce or make.
- (16) The Tribunal must next permit the applicant, if the applicant so desires, to adduce evidence before, and make submissions to, the Tribunal.
- (17) The Tribunal may, on its own initiative and at any stage of the proceeding, invite a person to give evidence or cause a person to be summoned to give evidence.
- (18) If a person invited or summoned to give evidence under subsection (17) is:
- (a) an ASIO employee or ASIO affiliate; or
 - (b) an officer or employee of the relevant body;
- subsection (11) 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 the relevant body, as the case may be.
- (19) If:

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- (a) a party presents the party's 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 and submissions related to that further evidence, but must not give to the applicant any particulars of any evidence to which a certificate given under subsection (11) relates.
- (20) A member of the Tribunal may ask questions of a witness before the Tribunal and the presiding member may require a witness to answer any such question.

Dismissal of application

- (21) If the applicant 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 President or an authorised member may dismiss the application without proceeding to review the security clearance decision or security clearance suitability assessment.

Delegation

- (22) The ASIO Minister may, by signed writing, delegate the ASIO Minister's power under subsection (11) to an ASIO employee, or an ASIO affiliate, who holds, or is acting in, a position in the Australian Security Intelligence Organisation that is equivalent to or higher than a position occupied by an SES employee.
- (23) In exercising a power under a delegation under subsection (22), the delegate must comply with any written directions of the ASIO Minister.

39B Certain documents and information not to be disclosed in certain Security Division reviews

Scope

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

ASIO Minister may issue public interest certificate

- (2) If the ASIO Minister 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
 - (b) in respect of a document produced to the Tribunal—that the document is returned to the person by whom it was produced.

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- (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 ASIO Minister 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 presiding member presiding is satisfied that the interests of justice outweigh the reason stated by the ASIO Minister;
- the presiding member may authorise the disclosure of the information, or of the contents of the document to, the applicant.

What presiding 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 presiding 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 presiding member must pay due regard to any reason stated by the ASIO Minister 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

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 ASIO Minister 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 section 38A

- (10) For the purposes of this section, if the Director-General of Security, in accordance with subsection 38A(1), (1A) or (1B), has lodged with the Tribunal a certificate of the ASIO Minister given under subsection 38(2), 83A(4) or 83C(6) of the *Australian Security Intelligence Organisation Act 1979*, the certificate is taken to be a certificate under subsection (2) of this section 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.
- (12) The ASIO Minister may, by signed writing, delegate the ASIO Minister's power under subsection (2), to the extent it applies in relation to review of a security clearance decision or security

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clearance suitability assessment, to an ASIO employee, or an ASIO affiliate, who holds, or is acting in, a position in the Australian Security Intelligence Organisation that is equivalent to or higher than a position occupied by an SES employee.

- (13) In exercising a power under a delegation under subsection (12), the delegate must comply with any written directions of the ASIO Minister.

39C Review of security clearance decisions and security clearance suitability assessments—consideration and disclosure of certain documents and information

- (1) This section applies to a proceeding in the Security Division for a review of a security clearance decision or a security clearance suitability assessment in respect of the Commonwealth's highest level of security clearance.

Application of standard relating to highest security clearance

- (2) If the Director-General of Security presents to the Tribunal a certified copy of a standard (or part thereof) under subsection 39BA(4):
- (a) if the Director-General has presented one certified copy of a standard (or part thereof)—the Tribunal must apply the standard (or part thereof) in its review of the decision or suitability assessment; or
 - (b) if the Director-General has presented more than one certified copy of a standard (or part thereof)—the Tribunal must, in its review of the decision or suitability assessment, apply the standard (or part thereof) certified by the Director-General as being a current standard.

Disclosure of documents or information

- (3) The Tribunal must, subject to this section and section 46, do all things necessary to ensure that a copy of any standard (or part thereof) presented to the Tribunal under subsection 39BA(4), or

any information contained in it, is not disclosed to the applicant or any person other than:

- (a) a member of the Tribunal as constituted for the purposes of the proceeding; or
 - (b) the Director-General of Security or the Director-General's representative.
- (4) Subsection (5) applies if the Tribunal is provided with a document containing information (the *sensitive information*) certified in writing by the Director-General of Security as being information that, in the opinion of the Director General or a person authorised by the Director-General under subsection (9):
- (a) would be contrary to the public interest:
 - (i) because it would prejudice security, the defence of the Commonwealth or the conduct of the Commonwealth's international affairs; or
 - (ii) because it would reveal information that has been disclosed to the Australian Security Intelligence Organisation in confidence; or
 - (iii) for a reason that could form the basis for a claim by the Crown in right of the Commonwealth in a judicial proceeding that the information should not be disclosed; or
 - (b) could reveal the methodology underlying a psychological assessment of the applicant.
- (5) The Tribunal must, subject to this section and section 46, do all things necessary to ensure that the sensitive information provided to the Tribunal is not disclosed to the applicant or any person other than:
- (a) a member of the Tribunal as constituted for the purposes of the proceeding; or
 - (b) the Director-General of Security or the Director-General's representative.

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- (6) However, subsections (3) and (5) do not apply in relation to disclosure to the applicant or a person representing the applicant to the extent that the information:
- (a) has already been lawfully disclosed to the applicant; or
 - (b) is disclosed to the applicant with the consent of the Director-General of Security.
- (7) This section does not prevent the disclosure of a copy of any standard (or part thereof) presented to the Tribunal under subsection 39BA(4), any information contained in it, or any sensitive information referred to in subsection (4) of this section to a member of the Tribunal's staff in the course of the performance of the staff member's duties.
- (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 in a proceeding of a copy of any standard (or part thereof) presented to the Tribunal under subsection 39BA(4), any information contained in it, or any sensitive information referred to in subsection (4) of this section.
- (9) The Director-General of Security may, in writing, authorise a person for the purposes of subsection (4) if the person is an ASIO employee, or an ASIO affiliate, who holds, or is acting in, a position in the Australian Security Intelligence Organisation that is equivalent to or higher than a position occupied by an SES employee.

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.

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.

Power to take evidence

- (3) The power (the **evidence power**) of the Tribunal under paragraph (1)(a) to take evidence on oath or affirmation in a particular proceeding may be exercised on behalf of the Tribunal by:
 - (a) the presiding member in relation to the review; or
 - (b) another person (whether or not a member) authorised in writing by that member.
- (4) The evidence power may be exercised:
 - (a) inside or outside Australia; and
 - (b) subject to any limitations or requirements specified by the Tribunal.
- (5) If a person other than the presiding member has the evidence power:

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- (a) the person has, for the purpose of taking the evidence, the powers of the Tribunal and the presiding member under subsections (1) and (2); and
- (b) this Act applies in relation to the person, for the purpose of taking the evidence in the exercise of those powers, as if the person were the Tribunal or the presiding member.

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.

40A Power to summon person to give evidence or produce documents

- (1) For the purposes of a proceeding before the Tribunal, the President, an authorised member or an officer of the Tribunal may summon a person to do either or both of the following, on the day, and at the time and place, specified in the summons:
 - (a) appear before the Tribunal to give evidence;
 - (b) produce any document or other thing specified in the summons.
- (2) The President or an authorised member may refuse a request to summon a person.
- (3) A person may, before the day specified in the summons, comply with a summons to produce a document or thing by producing the document or thing at the Registry from which the summons was issued. If the person does so, the person is not required to appear before the Tribunal unless:

- (a) the summons or another summons requires the person to appear before the Tribunal; or
- (b) the Tribunal directs the person to appear before the Tribunal.

40B Inspection of documents produced under summons

- (1) Any of the following persons may give a party to a proceeding leave to inspect a document or other thing produced under a summons in relation to the proceeding:
 - (a) the President;
 - (b) an authorised member;
 - (c) an authorised officer.
- (2) However, an authorised officer must not make a decision about giving leave, and must instead arrange for the President or an authorised member of the Tribunal to make the decision, if:
 - (a) the officer considers that it is not appropriate for the officer to make the decision; or
 - (b) a party to the proceeding applies to the officer to have the decision made by a member of the Tribunal.
- (3) If an authorised officer decided whether to give a party to a proceeding leave to inspect a document produced under a summons:
 - (a) a party to the proceeding may apply to the Tribunal, within 7 days or an extended time allowed by the Tribunal, to reconsider the decision; and
 - (b) the Tribunal may reconsider the decision on such an application or its own initiative; and
 - (c) the Tribunal may make such order as it thinks fit in relation to the giving of leave to inspect the document.

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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 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.

Note: This section does not apply in relation to proceedings in the Social Services and Child Support Division, as a result of provisions in the enactments that authorise applications for reviews that will be heard in that Division.

- (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 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)):
- (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.

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42 Resolving disagreements

- (1) If the Tribunal is constituted for the purposes of a proceeding by 3 members, a disagreement between the members is to be settled according to the opinion of the majority of the members.
- (2) If the Tribunal is constituted for the purposes of a proceeding by 2 members, a disagreement between the members is to be settled according to the opinion of the presiding member.

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.
- (1AAA) For the purposes of subsection (1), the consent of the agency party to a proceeding in the Social Services and Child Support Division is not required.

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.
- (1AA) If a proceeding is in the Social Services and Child Support Division and is not a child support first review, the person may notify the Tribunal orally of the withdrawal or discontinuance. The person who receives the notification must make a written record of the day of receipt.

- (1B) If notification is given in accordance with subsection (1A) or (1AA), 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.

Dismissal if decision is not reviewable

- (4) The Tribunal may dismiss an application without proceeding to review the decision if the Tribunal is satisfied that the decision is not reviewable by the Tribunal.
- (4A) For a proceeding in the Social Services and Child Support Division, an authorised officer may dismiss an application without the Tribunal proceeding to review the decision if the officer is satisfied that the decision is not reviewable by the Tribunal.

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.

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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, alternative dispute resolution process or hearing, as the case may be.

Reinstatement of application

- (8) If the Tribunal is taken to have dismissed an application under subsection (1B), a party to the proceeding (other than the applicant) may, within the period referred to in subsection (11), apply to the Tribunal for reinstatement of the application.
- (8A) If the Tribunal dismisses an application under subsection (2) (other than an application in respect of a proceeding in which an order has been made under subsection 41(2)), a party to the proceeding may, within the period referred to in subsection (11), 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 made within the period referred to in subsection (11) or on its own initiative, reinstate the application and give such directions as appear to it to be appropriate in the circumstances.
- (11) For the purposes of subsections (8), (8A) and (10), the period is:
- (a) 28 days after the party receives notification that the application has been dismissed, unless paragraph (b) applies; or
 - (b) if the party requests an extension—such longer period as the Tribunal, in special circumstances, allows.

42B Power of Tribunal if a proceeding is frivolous, vexatious etc.

- (1) The Tribunal may dismiss an application for the review of a decision, at any stage of the proceeding, if the Tribunal is satisfied that the application:
 - (a) is frivolous, vexatious, misconceived or lacking in substance; or
 - (b) has no reasonable prospect of success; or
 - (c) is otherwise an abuse of the process of the Tribunal.
- (2) If the Tribunal dismisses an application under subsection (1), it may, on application by a party to the proceeding, give a written direction 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.
- (3) The direction has effect despite any other provision of this Act or any other Act.

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 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.

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- (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.

Limitation for administrative assessments of child support

- (4) The Tribunal must not act in accordance with subsection (2) or (3) to give effect to an agreement in relation to a departure from administrative assessment of child support in accordance with Part 6A of the *Child Support (Assessment) Act 1989*, unless it is satisfied that it is just and equitable and otherwise proper to do so, having regard to the matters set out in subsections 117(4) and (5) of that Act.

Variation or revocation of decisions other than on child support first reviews

- (5) The Tribunal may vary or revoke so much of a decision as it made in accordance with subsection (2) or (3) if:
 - (a) the parties, or their representatives, reach agreement on the variation or revocation; 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 variation or revocation appears appropriate to the Tribunal; and
 - (d) in the case of a variation—the Tribunal is satisfied that it would have been within the powers of the Tribunal to have made the decision as varied.

- (6) Subsection (5) does not apply to a decision made on child support first review.

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

- (1) At any stage of a proceeding for review of a decision other than a proceeding in the Social Services and Child Support Division, 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.

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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 sections 43AAA and 43AAB and subsections 65(3) and 83F(7) 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.
- (1AA) However, if the decision being reviewed is a security clearance decision, the only decisions that the Tribunal may make under subsection (1) are the following:
- (a) to affirm the decision under review;
 - (b) to set aside the decision under review and remit 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

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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, 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.

Tribunal must notify parties of further review rights

- (5AA) When the Tribunal gives a party to a proceeding a copy of its decision, the Tribunal must also give the party a written notice that includes a statement setting out the following, as applicable:
- (a) the party's right to apply for second review of the decision;
 - (b) the party's right to appeal to a court on a question of law.
- (5AB) Subsection (5AA) does not apply in relation to the agency party to a proceeding in the Social Services and Child Support Division.

- (5AC) A failure to comply with subsection (5AA) in relation to a decision of the Tribunal does not affect the validity of 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 and Family Court of Australia (Division 2) 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
 - (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

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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 Security Division review of security assessment

Scope

- (1) This section applies to a review in the Security Division of a security assessment.

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, State or authority of a State to which the assessment was given and the ASIO Minister.
- (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

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not to be given to the Commonwealth agency, State or authority of a State to which the assessment was given.

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).

43AAB Findings of Tribunal in Security Division review of security clearance decision or security clearance suitability assessment

Scope

- (1) This section applies to a review in the Security Division of a security clearance decision or security clearance suitability assessment.

Findings

- (2) Upon the conclusion of a review, the Tribunal must make and record its findings in relation to the security clearance decision or security clearance suitability assessment, and those findings may state the opinion of the Tribunal as to the correctness of, or justification for any recommendation, opinion, advice or information contained in the decision or suitability assessment.

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- (3) The Tribunal must not make findings in relation to a security clearance decision or security clearance suitability assessment that would, under subsection 83D(1) of the *Australian Security Intelligence Organisation Act 1979*, have the effect of superseding any information that is, under section 82G or 83C of that Act, taken to be part of the decision or suitability 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 ASIO Minister and the following body (the **relevant body**):
- (a) for findings in relation to a security clearance decision—the sponsoring agency for the security clearance in relation to which the security clearance decision was made;
 - (b) for findings in relation to a security clearance suitability assessment—the security vetting agency to which the suitability assessment was given.
- (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 relevant body.

Applicant may publish findings

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

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

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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:
- (a) either:
 - (i) the member who constituted the Tribunal for the purposes of the proceeding to which the decision relates; or
 - (ii) if the Tribunal was constituted by more than one member for the purposes of the proceeding to which the

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- decision relates—the member who presided at that proceeding; or
- (b) if that member has stopped being a member or is for any reason unavailable—the President or an authorised member.

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.

43C Part does not apply in relation to certain migration decisions

This Part does not apply to an application in relation to, or a proceeding for the review of, any of the following within the meaning of the *Migration Act 1958*:

- (a) a privative clause decision;
- (b) a purported privative clause decision;
- (c) an AAT Act migration decision.

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.

Note 1: This Part does not apply to certain migration proceedings (see section 43C).

Note 2: A party to a child support first review may in some instances appeal instead to the Federal Circuit and Family Court of Australia (Division 2) (see section 44AAA).

- (1A) Subsection (1) does not apply in relation to a proceeding in the Social Services and Child Support Division, other than a proceeding:
- (a) that is a child support first review; or
 - (b) for review of an AAT reviewable employer decision within the meaning of the *Paid Parental Leave Act 2010*.

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.

Note: This Part does not apply to applications in relation to certain migration decisions (see section 43C).

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

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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 Deputy President who is not a Judge; 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.

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:

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- (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).

44AAA Appeals to Federal Circuit and Family Court of Australia (Division 2) from decisions of the Tribunal in relation to child support first reviews

- (1) If the Tribunal as constituted for the purposes of a proceeding that is a child support first review does not consist of or include a presidential member, a party to the proceeding may appeal to the
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Federal Circuit and Family Court of Australia (Division 2), on a question of law, from any decision of the Tribunal in that proceeding.

- (2) The following provisions of this Part apply in relation to any such appeal as if the appeal were an appeal under subsection 44(1) and a reference in those provisions to the Federal Court of Australia were a reference to the Federal Circuit and Family Court of Australia (Division 2):
 - (a) subsections 44(2A) to (10) (other than paragraphs 44(3)(a) to (c));
 - (b) section 44A (other than subsection (2A));
 - (c) paragraphs 46(1)(a) and (b).
- (3) Paragraph 44(2A)(b) applies in relation to any such appeal as if the reference in that paragraph to rules of court made under the *Federal Court of Australia Act 1976* were a reference to rules of court made under Chapter 4 of the *Federal Circuit and Family Court of Australia Act 2021*.
- (4) Subsection (1) does not affect the operation of subsection 44(1) in relation to a proceeding that is a child support first review.

44AA Transfer of appeals from Federal Court to Federal Circuit and Family Court of Australia (Division 2)

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 and Family Court of Australia (Division 2).
- (2) However, the Federal Court of Australia must not transfer an appeal to the Federal Circuit and Family Court of Australia (Division 2) 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

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- (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 and Family Court of Australia (Division 2) 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 and Family Court of Australia (Division 2) 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 and Family Court of Australia (Division 2).

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

- (7) In deciding whether to transfer an appeal to the Federal Circuit and Family Court of Australia (Division 2) 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 and Family Court of Australia (Division 2); and
 - (c) whether the resources of the Federal Circuit and Family Court of Australia (Division 2) are sufficient to hear and determine the appeal; and
 - (d) the interests of the administration of justice.

Jurisdiction

- (8) The Federal Circuit and Family Court of Australia (Division 2) 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 and Family Court of Australia (Division 2) 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 and Family Court of Australia (Division 2) may make findings of fact

- (11) If an appeal under subsection 44(1) is transferred to the Federal Circuit and Family Court of Australia (Division 2) 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 and Family Court of Australia (Division 2) 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 and Family Court of Australia (Division 2) 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).

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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:
- (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 and Family Court of Australia (Division 2), the Federal Circuit and Family Court of Australia (Division 2) 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:

- (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 and Family Court of Australia (Division 2) or Judge of the Court 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 and Family Court of Australia (Division 2) 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, with the agreement of the President, refer a question of law arising in a proceeding before the Tribunal to the Federal Court of Australia for decision. The Tribunal may do so on its own initiative or at the request of a party to the proceeding.

Note: This Part does not apply to certain migration proceedings (see section 43C).

- (2) The Federal Court of Australia has jurisdiction to hear and determine a question of law referred to it under this section.
- (2A) If, after consulting the President, the Chief Justice of the Court considers it appropriate, that jurisdiction is to be exercised by the Court constituted as a Full Court.

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- (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 and Family Court of Australia (Division 2)

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) of this Act, and subsection 130H(3) of the *Foreign Acquisitions and Takeovers Act 1975*, and subsection 36L(4) of the *Australian Crime Commission Act 2002*, 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 are relevant to the appeal or reference; and
 - (b) except in the case of an appeal that is transferred to the Federal Circuit and Family Court of Australia (Division 2)—at the conclusion of the proceeding before the Federal Court of Australia in relation 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 and Family Court of Australia (Division 2):
 - (i) the Federal Court of Australia must cause the documents to be sent to the Federal Circuit and Family Court of Australia (Division 2); and

- (ii) at the conclusion of the proceedings before the Federal Circuit and Family Court of Australia (Division 2) in relation to the appeal, the Federal Circuit and Family Court of Australia (Division 2) 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) of this Act, or subsection 130H(3) of the *Foreign Acquisitions and Takeovers Act 1975*, or subsection 36L(2) of the *Australian Crime Commission Act 2002*, 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 and Family Court of Australia (Division 2) 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 and Family Court of Australia (Division 2) as mentioned in subparagraph (1)(c)(i).

Note: Subsection 39B(10) of this Act deems certain certificates referred to in that subsection to be certificates under subsection 39B(2).

- (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) of this Act or subsection 130H(3) of the *Foreign Acquisitions and Takeovers Act 1975*, or paragraph 36L(2)(a) or (b) of the *Australian Crime Commission Act 2002*, as the case may be;
 - (b) a question for decision by the Federal Court of Australia or the Federal Circuit and Family Court of Australia (Division 2) is whether the matter should be disclosed to some or all of the parties to the proceeding before the

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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.

(3A) If the Federal Court of Australia or the Federal Circuit and Family Court of Australia (Division 2) is sent:

- (a) a copy of any standard (or part thereof) referred to in subsection 39C(2) of this Act; or
- (b) a document containing any sensitive information referred to in subsection 39C(4);

the relevant court must, subject to this section, do all things necessary to ensure that the copy of any standard (or part thereof) or any information contained in it, or the sensitive information, is not disclosed to any person other than:

- (a) a member of the court as constituted for the purposes of the proceeding; or
- (b) the Director-General of Security or the Director-General's representative.

(3B) However, subsection (3A) does not apply in relation to disclosure to the person who was the applicant, or a person representing the person who was the applicant, in the proceedings before the Tribunal to the extent that the information:

- (a) has already been lawfully disclosed to the person; or
- (b) is disclosed to the person with the consent of the Director-General of Security.

(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

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- (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 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;

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- 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
 - (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.

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:

Section 53

- (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.

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.

Section 57

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, in writing, authorise a member to be an authorised member for the purposes of one or more specified provisions of this Act or any other enactment.
- (2) The authorisation may be general or limited to specified decisions or proceedings or to specified functions or powers.

59B Authorised officers

- (1) The President may, in writing, authorise an officer of the Tribunal to be an authorised officer for the purposes of one or more specified provisions of this Act or any other enactment.
- (2) The authorisation may be general or limited to specified decisions or proceedings or to specified functions or powers.

Section 60

60 Protection and immunity

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.

Officers of the Tribunal

- (1B) An officer of the Tribunal has, in the performance of his or her duties as an officer of the Tribunal under subsections 29(9) and 29AC(2), paragraph 33(2)(a) and sections 40, 40A, 40B and 69A, 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.

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.

Definitions

- (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

- (1) A person commits an offence if:
- (a) the person is given, in accordance with any applicable regulations or directions, a summons referred to in section 40A; and
 - (b) the person fails to comply with the summons.

Penalty: Imprisonment for 12 months or 60 penalty units, or both.

- (2) Subsection (1) does not apply if complying with the summons might tend to incriminate the person.

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

62 Refusal to be sworn or to answer questions

Oath or affirmation

- (1) A person commits 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: Imprisonment for 12 months or 60 penalty units, or both.

Questions

- (3) A person commits 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.

Section 62A

Penalty: Imprisonment for 12 months or 60 penalty units, or both.

- (4) Subsection (3) does not apply if answering the question might tend to incriminate the person.

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

62A False or misleading evidence

A person commits 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: Imprisonment for 12 months or 60 penalty units, 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.

62C Breach of non-disclosure order

A person commits an offence if:

- (a) the person engages in conduct; and
- (b) the conduct contravenes an order under subsection 35(3) or (4) or 35AA(2).

Penalty: Imprisonment for 12 months or 60 penalty units, or both.

63 Contempt of Tribunal

- (1) A person commits an offence if:

- (a) the person engages in conduct; and
- (b) the conduct obstructs or hinders the Tribunal or a member in the performance of the functions of the Tribunal.

Penalty: Imprisonment for 12 months or 60 penalty units, or both.

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

Penalty: Imprisonment for 12 months or 60 penalty units, or both.

64 Registries

The Minister may establish such registries of the Tribunal as the Minister thinks fit.

66 Confidential information not to be disclosed

Protected documents and information

- (1) An entrusted person must not be required to produce a protected document, or disclose protected information, to a court except so far as necessary for the purposes of carrying into effect the provisions of this Act or another enactment conferring powers on the Tribunal.
- (2) An entrusted person must not be required to produce a protected document, or disclose protected information, to a parliament if:
- (a) the document or information relates to a Part 7-reviewable decision within the meaning of the *Migration Act 1958*; and
 - (b) the production or disclosure is not necessary for the purposes of carrying into effect the provisions of this Act or another enactment conferring powers on the Tribunal.

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.

Section 66A

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.

entrusted person means any of the following:

- (a) a person who is or has been a member of the Tribunal;
- (b) a person who is or has been an officer of the Tribunal;
- (c) a person who is or has been a member of the staff of the Tribunal;
- (d) a person who is or has been engaged by the Tribunal to provide services to the Tribunal during a proceeding before the Tribunal.

parliament means:

- (a) a House of the Parliament of the Commonwealth, of a State or of a Territory; or
- (b) a committee of a House or the Houses of the Parliament of the Commonwealth, of a State or of a Territory.

produce includes permit access to.

protected: a document or information is ***protected*** if it concerns a person and was obtained by an entrusted person in the course of the entrusted person's duties.

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:

Section 66B

- (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 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.

66B Publication of Tribunal decisions

- (1) The Tribunal may, by any means it considers appropriate, publish its decisions and the reasons for them.
- (2) Subsection (1) does not authorise the Tribunal to publish information the disclosure of which is prohibited or restricted by or under this Act or any other enactment conferring jurisdiction on the Tribunal.

67 Fees for compliance with summons

- (1) A person who, under a prescribed provision of this Act or another enactment, is required to give evidence, or produce a document or give information, for the purposes of a proceeding before the Tribunal is to be paid, in accordance with the regulations, any fee or allowance prescribed by the regulations in relation to compliance with the requirement.
- (2) Without limiting the matters that may be dealt with by regulations made for the purposes of subsection (1), the regulations may:
 - (a) prescribe circumstances in which a fee or allowance is not payable; or

Section 67A

- (b) provide that a fee or allowance is to be paid:
 - (i) if the requirement was made of the person at the request of a party to the proceeding—by the party; or
 - (ii) 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 Secretary of the Department administered by the Minister administering the *Norfolk Island Act 1979*.

68 Giving documents

- (1) A document or thing that is required or permitted by this Act or another enactment to be lodged with, or given to, the Tribunal must be lodged or given in accordance with:
 - (a) any direction under section 18B; or
 - (b) regulations made under this Act or the other enactment.
- (2) A document that is required or permitted by this Act or another enactment to be given to a person for the purposes of a proceeding

before the Tribunal must be given to the person in accordance with:

- (a) any direction under section 18B; or
 - (b) regulations made under this Act or the other enactment.
- (3) A direction given under section 18B for the purposes of paragraph (1)(a) or (2)(a) must not be inconsistent with regulations in force for the purposes of paragraph (1)(b) or (2)(b).
- (4) Subsections (1) and (2) do not apply to the extent to which this Act or another enactment specifies how a document or thing is to be lodged with or given to the Tribunal, or given to a person, for the purposes of a proceeding before the Tribunal.

68AA President's directions

If the President gives a direction that, under this Act, is to be a written direction, a failure to give the direction in writing does not invalidate anything done in accordance with or otherwise in relation to or as a consequence of the direction.

68A Calculation of short periods of time

- (1) 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.
- (2) Subsection (1) does not apply in relation to a proceeding in the Migration and Refugee Division.

69 Legal assistance

- (1) A person who:
- (a) has made, or proposes to make, an application to the Tribunal for a review of a decision;

Section 69A

- (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.
 - (3) This section does not apply if the powers of the Tribunal in relation to the application, proceeding or matter concerned are or would be exercisable in the Migration and Refugee Division or the Social Services and Child Support Division.

69A Procedure for taxing costs

- (1) If:
 - (a) the Tribunal has, under this Act or another enactment, ordered a party to a proceeding to pay costs incurred by another party; and
 - (b) the parties cannot agree on the amount of those costs;the Tribunal or an officer of the Tribunal may tax the costs.
- (2) If an officer of the Tribunal has taxed the costs in accordance with subsection (1), either party may apply to the Tribunal for review of the taxed amount.
- (3) If a party does so, the Tribunal must review the taxed amount and may:
 - (a) affirm the amount; or

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

69B Costs in certain Security Division reviews

- (1) If:
- (a) a person makes an application under section 54 or 83B of the *Australian Security Intelligence Organisation Act 1979* to the Tribunal for a review of a security assessment, security clearance decision or security clearance suitability 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.

69BA Termination of certain applications

- (1) Sections 42A and 42B, except subsections 42A(4) and (4A), apply in relation to an application described in paragraph (b), (c), (d), (e), (f) or (h) of the definition of *proceeding* in subsection 3(1) in the same way as those sections apply in relation to an application for a review of a decision.

Section 69C

- (2) Subsection 42A(1) applies under subsection (1) of this section as if it did not include the words “without proceeding to review the decision or, if the Tribunal has commenced to review the decision, without completing the review”.
- (3) Subsections 42A(1B) and (5) and paragraph 42A(2)(a) apply under subsection (1) of this section as if they did not include the words “without proceeding to review the decision”.
- (4) Subsection 42A(2) applies under subsection (1) of this section as if it did not include the words “(not being the person who made the decision)”.

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

- (1) 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.
- (2) Subsection (1) does not apply to an application for review of a decision that is reviewable in the Migration and Refugee Division.

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 information about this compilation and the compiled law.

The following endnotes are included in every compilation:

Endnote 1—About the endnotes

Endnote 2—Abbreviation key

Endnote 3—Legislation history

Endnote 4—Amendment history

Abbreviation key—Endnote 2

The abbreviation key 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 (or will amend) the compiled law. The information includes commencement details for amending laws and details of any 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 (generally section or equivalent) level. It also includes information about any provision of the compiled law that has been repealed in accordance with a provision of the law.

Editorial changes

The *Legislation Act 2003* authorises First Parliamentary Counsel to make editorial and presentational changes to a compiled law in preparing a compilation of the law for registration. The changes must not change the effect of the law. Editorial changes take effect from the compilation registration date.

If the compilation includes editorial changes, the endnotes include a brief outline of the changes in general terms. Full details of any changes can be obtained from the Office of Parliamentary Counsel.

Misdescribed amendments

A misdescribed amendment is an amendment that does not accurately describe how an amendment is to be made. If, despite the misdescription, the amendment

Endnotes

Endnote 1—About the endnotes

can be given effect as intended, then the misdescribed amendment can be incorporated through an editorial change made under section 15V of the *Legislation Act 2003*.

If a misdescribed amendment cannot be given effect as intended, the amendment is not incorporated and “(md not incorp)” is added to the amendment history.

Endnote 2—Abbreviation key

ad = added or inserted	o = order(s)
am = amended	Ord = Ordinance
amdt = amendment	orig = original
c = clause(s)	par = paragraph(s)/subparagraph(s) /sub-subparagraph(s)
C[x] = Compilation No. x	pres = present
Ch = Chapter(s)	prev = previous
def = definition(s)	(prev...) = previously
Dict = Dictionary	Pt = Part(s)
disallowed = disallowed by Parliament	r = regulation(s)/rule(s)
Div = Division(s)	reloc = relocated
ed = editorial change	renum = renumbered
exp = expires/expired or ceases/ceased to have effect	rep = repealed
F = Federal Register of Legislation	rs = repealed and substituted
gaz = gazette	s = section(s)/subsection(s)
LA = <i>Legislation Act 2003</i>	Sch = Schedule(s)
LIA = <i>Legislative Instruments Act 2003</i>	Sdiv = Subdivision(s)
(md) = misdescribed amendment can be given effect	SLI = Select Legislative Instrument
(md not incorp) = misdescribed amendment cannot be given effect	SR = Statutory Rules
mod = modified/modification	Sub-Ch = Sub-Chapter(s)
No. = Number(s)	SubPt = Subpart(s)
	<u>underlining</u> = whole or part not commenced or to be commenced

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 (s 2 and gaz 1976, No S94)	
National Health Amendment Act 1976	60, 1976	5 June 1976	s 1, 2, 28, 31, 41 and 42: 5 June 1976 Remainder: 1 Oct 1976	—
Broadcasting and Television Amendment Act 1976	89, 1976	31 Aug 1976	s 5 and 6: 1 Sept 1976 s 4, 15 and 18: 1 July 1976 Remainder: 31 Aug 1976	—
Administrative Changes (Consequential Provisions) Act 1976	91, 1976	20 Sept 1976	s 4: 20 Sept 1976 (s 2(1)) Sch: 1 July 1976 (s 2(2))	s 4
Federal Court of Australia (Consequential Provisions) Act 1976	157, 1976	9 Dec 1976	1 Feb 1977 (s 2 and gaz 1977, No S3)	s 4
Patents Amendment Act 1976	162, 1976	9 Dec 1976	s 3, 4, 6, 7 and 10: 1 Feb 1977 (gaz 1977, No S3, p 2) Remainder: 9 Dec 1976	s 11(2)
Trade Marks Amendment Act 1976	163, 1976	9 Dec 1976	s 3, 4, 7 and 10: 1 Feb 1977 (gaz 1977, No S3, p 3) Remainder: 9 Dec 1976	s 12(2)
Marriage Amendment Act 1976	209, 1976	20 Dec 1976	s 1, 2 and 30: 20 Dec 1976 s 14 and 31: 1 July 1976 Remainder: 20 June 1977 (gaz 1977, No S93)	—

Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Agricultural Tractors Bounty Amendment Act 1977	30, 1977	16 May 1977	ss. 3, 4, 6, 7 and 12: 1 Jan 1977 Remainder: 16 May 1977	s. 13(2)
Income Tax Assessment Amendment Act 1977	57, 1977	16 June 1977	ss. 16 and 17: 1 July 1976 Remainder: 16 June 1977	—
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): 28 Oct 1977 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 gaz 1979, No. S86</i>) Remainder: 28 Mar 1979	ss. 9 and 124
Administrative Appeals Tribunal Amendment Act 1979	143, 1979	27 Nov 1979	27 Nov 1979	—
Customs Amendment Act (No. 3) 1980	110, 1980	6 June 1980	ss. 3(b), 4 and 5: 1 July 1980 (<i>see gaz 1980, No. S146</i>) Remainder: 6 June 1980	s. 28(3)
Coal Excise Amendment Act 1981	19, 1981	25 Mar 1981	s. 4: 22 Apr 1981 Remainder: 25 Mar 1981	s. 4(4)

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Endnotes

Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Statute Law Revision Act 1981	61, 1981	12 June 1981	ss. 3, 4 and 115: 12 June 1981	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: 22 Sept 1982	—
Statute Law (Miscellaneous Provisions) Act (No. 2) 1983	91, 1983	22 Nov 1983	Sch 1: 22 Nov 1983 (s 2(3))	—
Public Service Reform Act 1984	63, 1984	25 June 1984	s. 151(1) and (9): 1 July 1984 (<i>see gaz</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	—
Statute Law (Miscellaneous Provisions) Act (No. 2) 1985	193, 1985	16 Dec 1985	ss. 3 and 16: 16 Dec 1985	s. 16
Taxation Boards of Review (Transfer of Jurisdiction) Act 1986	48, 1986	24 June 1986	s. 4: 1 July 1986	—

Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Statute Law (Miscellaneous Provisions) Act 1988	38, 1988	3 June 1988	ss. 3 and 5(1): 3 June 1988	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 (<i>see gaz</i> 1988, No. S189) Remainder: 15 June 1988	—
A.C.T. Self-Government (Consequential Provisions) Act 1988	109, 1988	6 Dec 1988	s. 32: 11 May 1989 (<i>see gaz</i> 1989, No. S164)	—
Law and Justice Legislation Amendment Act 1988	120, 1988	14 Dec 1988	Part III (ss. 6–16): 14 Dec 1988	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): 5 Dec 1989 Remainder: 1 Jan 1990 (<i>see gaz</i> 1989, No. S398)	s. 22
Customs and Excise Legislation Amendment Act 1990	111, 1990	21 Dec 1990	s. 48: 21 Dec 1990	—
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 gaz</i> 1991, No. S332) Remainder: 27 June 1991	s. 31(2)
Law and Justice Legislation Amendment Act 1991	136, 1991	12 Sept 1991	Schedule: 10 Oct 1991	—

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Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Superannuation Legislation (Consequential Amendments and Transitional Provisions) Act 1992	94, 1992	30 June 1992	s. 3: 1 July 1990 Remainder: 30 June 1992	—
Law and Justice Legislation Amendment Act (No. 3) 1992	165, 1992	11 Dec 1992	Sch (Pt 1): 11 June 1993 (s 2(2), (3))	—
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 gaz</i> 1994, No. S242)	—
Corporations Legislation Amendment Act 1994	104, 1994	5 July 1994	s. 8: 5 July 1994	—
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 gaz</i> 1996, No. GN43)	—
Statute Law Revision Act 1996	43, 1996	25 Oct 1996	Sch 2 (items 6, 7): 21 Dec 1990 (s 2(2)) Sch 4 (items 4, 5) and Sch 5 (items 4–6): 25 Oct 1996 (s 2(1))	—
Workplace Relations and Other Legislation Amendment Act 1996	60, 1996	25 Nov 1996	Schedule 16 (item 1): 25 May 1997 Schedule 19 (item 2): 25 Nov 1996	s. 2(2) and (6) (am. by 77, 1996, Sch. 3 [items 1, 2])

Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
as amended by				
Workplace Relations and Other Legislation Amendment Act (No. 2) 1996	77, 1996	19 Dec 1996	Sch 3 (items 1, 2): 25 Nov 1996 (s 2(4))	—
Law and Justice Legislation Amendment Act 1997	34, 1997	17 Apr 1997	Schedule 1 (items 1, 3–6): 1 July 1997 (<i>see gaz</i> 1997, No. S244) Schedule 1 (item 2): 17 Apr 1997	—
Audit (Transitional and Miscellaneous) Amendment Act 1997	152, 1997	24 Oct 1997	Schedule 2 (items 139, 140): 1 Jan 1998 (<i>see s.</i> 2(2) and <i>gaz</i> 1997, No. GN49)	—
Law and Justice Legislation Amendment Act 1999	125, 1999	13 Oct 1999	Schedule 1: 13 Oct 1999	—
Public Employment (Consequential and Transitional) Amendment Act 1999	146, 1999	11 Nov 1999	Schedule 1 (items 41–47): 5 Dec 1999 (<i>see gaz</i> 1999, No. S584)	—
Corporate Law Economic Reform Program Act 1999	156, 1999	24 Nov 1999	Schedule 12 (items 1, 3): 24 Nov 2000	—
Australian Security Intelligence Organisation Legislation Amendment Act 1999	161, 1999	10 Dec 1999	Sch 3 (items 1, 3–15): 10 Dec 1999 (s 2(2))	—
Federal Magistrates (Consequential Amendments) Act 1999	194, 1999	23 Dec 1999	Schedule 3: 23 Dec 1999	—

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Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Jurisdiction of Courts Legislation Amendment Act 2000	57, 2000	30 May 2000	Schedule 1 (items 1, 2): 1 July 2000 (<i>see gaz</i> 2000, No. GN25)	Sch. 1 (item 2)
Corporations (Repeals, Consequentials and Transitionals) Act 2001	55, 2001	28 June 2001	ss. 4–14 and Schedule 3 (items 11, 12): 15 July 2001 (<i>see s. 2 (3) and gaz</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)): 1 Oct 2001	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 Consequentials) Act 2005	7, 2005	18 Feb 2005	ss. 4–11 and Schedule 1: 1 July 2005 (<i>see s. 2(1)</i>) Remainder: 18 Feb 2005	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: 1 Apr 2005	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 (Transitionals and Consequentials) Act 2007	21, 2007	15 Mar 2007	Sch 1 (item 1) and Sch 3 (items 14, 15): 1 July 2007 (s 2(1) item 2)	Sch 3 (items 14, 15)
as amended by				
Tribunals Amalgamation Act 2015	60, 2015	26 May 2015	Sch 8 (item 9) and Sch 9: 1 July 2015 (s 2(1) items 19, 22)	Sch 9
Superannuation Legislation Amendment (Trustee Board and Other Measures) (Consequential Amendments) Act 2008	26, 2008	23 June 2008	Schedule 1 (items 1–8): 23 June 2008	—
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): 7 Dec 2009	Sch. 3 (item 5) [in part]

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Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Freedom of Information Amendment (Reform) Act 2010	51, 2010	31 May 2010	Sch 6 (items 41A, 41B): 1 Nov 2010 (s 2(1) item 7)	—
Territories Law Reform Act 2010	139, 2010	10 Dec 2010	Schedule 1 (items 126–154): 1 Jan 2011	—
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	Sch 1 (items 1–3): 1 July 2011 (s 2(1) item 2)	—
Human Rights (Parliamentary Scrutiny) (Consequential Provisions) Act 2011	187, 2011	7 Dec 2011	Schedule 1 (items 1–3): 7 Dec 2011	—
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	Sch 1 (items 3–7) and Sch 2 (item 2): 12 Apr 2013 (s 2(1) items 2, 3)	—
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): 29 June 2013	Sch. 3 (item 343)

Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Public Governance, Performance and Accountability (Consequential and Transitional Provisions) Act 2014	62, 2014	30 June 2014	Sch 6 (item 1), Sch 7 (items 70–75) and Sch 14: 1 July 2014 (s 2(1) items 6, 14)	Sch 14
as amended by				
Public Governance and Resources Legislation Amendment Act (No. 1) 2015	36, 2015	13 Apr 2015	Sch 2 (items 7–9) and Sch 7: 14 Apr 2015 (s 2)	Sch 7
as amended by				
Acts and Instruments (Framework Reform) (Consequential Provisions) Act 2015	126, 2015	10 Sept 2015	Sch 1 (item 486): 5 Mar 2016 (s 2(1) item 2)	—
Acts and Instruments (Framework Reform) (Consequential Provisions) Act 2015	126, 2015	10 Sept 2015	Sch 1 (item 495): 5 Mar 2016 (s 2(1) item 2)	—
National Security Legislation Amendment Act (No. 1) 2014	108, 2014	2 Oct 2014	Sch 1 (items 31–33, 78–87): 30 Oct 2014 (s 2(1) item 2)	Sch 1 (items 78–87)

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Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Norfolk Island Legislation Amendment Act 2015	59, 2015	26 May 2015	Sch 1 (items 86–89) and Sch 2 (items 356–396): 18 June 2015 (s 2(1) items 2, 6) Sch 1 (items 184–203): 27 May 2015 (s 2(1) item 3) Sch 2 (item 33): 1 July 2016 (s 2(1) item 5)	Sch 1 (items 184–203) and Sch 2 (items 356–396)
as amended by				
Territories Legislation Amendment Act 2016	33, 2016	23 Mar 2016	Sch 2: 24 Mar 2016 (s 2(1) item 2)	—
Tribunals Amalgamation Act 2015	60, 2015	26 May 2015	Sch 1, Sch 2 (items 146, 147) and Sch 9: 1 July 2015 (s 2(1) items 2, 7, 22)	Sch 9
Civil Law and Justice (Omnibus Amendments) Act 2015	132, 2015	13 Oct 2015	Sch 1 (items 1–6): 14 Oct 2015 (s 2(1) item 2)	Sch 1 (item 6)
Counter-Terrorism Legislation Amendment Act (No. 1) 2016	82, 2016	29 Nov 2016	Sch 12 (items 10–14): 30 Nov 2016 (s 2(1) item 2)	—
Statute Update (A.C.T. Self-Government (Consequential Provisions) Regulations) Act 2017	13, 2017	22 Feb 2017	Sch 1 (item 1): 22 Mar 2017 (s 2(1) item 2)	—
Home Affairs and Integrity Agencies Legislation Amendment Act 2018	31, 2018	9 May 2018	Sch 2 (items 1–10, 284): 11 May 2018 (s 2(1) items 3, 7)	Sch 2 (item 284)

Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Foreign Investment Reform (Protecting Australia's National Security) Act 2020	114, 2020	10 Dec 2020	Sch 1 (items 221–224): 1 Jan 2021 (s 2(1) item 2)	—
Federal Circuit and Family Court of Australia (Consequential Amendments and Transitional Provisions) Act 2021	13, 2021	1 Mar 2021	Sch 2 (items 1–15): 1 Sep 2021 (s 2(1) item 5)	—
Transport Security Amendment (Serious Crime) Act 2021	44, 2021	22 June 2021	Sch 2 (items 1–3): 22 June 2022 (s 2(1) item 3)	—
Courts and Tribunals Legislation Amendment (2021 Measures No. 1) Act 2022	3, 2022	17 Feb 2022	Sch 1 (items 1, 2): 17 Aug 2022 (s 2(1) item 2) Sch 1 (items 15–29, 32–44, 46–63, 65, 98–100): 18 Feb 2022 (s 2(1) item 3)	Sch 1 (items 23, 28, 32, 35, 42, 44, 60, 62, 100)
Australian Security Intelligence Organisation Amendment Act 2023	33, 2023	28 June 2023	Sch 1 (items 14–44): 1 July 2023 (s 2(1) item 1)	—

Number and year	FRLI registration or gazettal	Commencement	Application, saving and transitional provisions
62, 1980	26 Mar 1980	1 Apr 1980 (r 2)	—
as amended by			
335, 1980	27 Nov 1980	27 Nov 1980	—
49, 1987	2 Apr 1987	2 Apr 1987	r 2(2)

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Provision affected	How affected
Part I	
s 2A.....	ad No 38, 2005 rs No 60, 2015
s 3	am No 58, 1977; No 65, 1978; No 26, 1982; No 109, 1988; No 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; No 108, 2014; No 59, 2015; No 60, 2015; No 31, 2018; No 33, 2023
ss. 3A, 3B	ad. No. 109, 1988 rep. No. 38, 2005
s. 4	am. No. 58, 1977
Part II	
Division 1	
Division 1 heading	ad. No. 38, 2005
s 5	am No 26, 1982; No 175, 1995; No 60, 2015
Division 2	
Division 2 heading	ad. No. 38, 2005
s 5A.....	ad No 60, 2015
s 6	am. No. 58, 1977 rs. No. 26, 1982 am No 60, 2015
s 7	am No 26, 1982; No 175, 1995; No 43, 1996; No 38, 2005 rs No 60, 2015 am No 13, 2021
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; No 60, 2015
s. 8A.....	ad. No. 84, 1994 am. No. 60, 1996

Endnote 4—Amendment history

Provision affected	How affected
	rep. No. 38, 2005
s. 9	rs. No. 58, 1977; No. 26, 1982 am. No. 175, 1995; No. 43, 1996
s. 10	rs. No. 58, 1977 am. No. 26, 1982; No. 175, 1995; No. 43, 1996; No. 38, 2005; No. 60, 2015; No. 3, 2022
s. 10A.....	ad. No. 58, 1977 am. No. 26, 1982; No. 175, 1995 rs. No. 60, 2015
s. 10B.....	ad. No. 26, 1982 am. No. 175, 1995
s. 11	rs. No. 26, 1982 am. No. 175, 1995 rs. No. 60, 2015
s. 12	rs. No. 122, 1991 am. No. 146, 1999 rs. No. 60, 2015
s. 13	am. No. 58, 1977; No. 26, 1982; No. 94, 1992; No. 175, 1995; No. 38, 2005; No. 26, 2008; No. 58, 2011 rs. No. 60, 2015
s. 14	am. No. 175, 1995 rs. No. 60, 2015
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

Endnotes

Endnote 4—Amendment history

Provision affected	How affected
Part III	
Part III.....	rs No 60, 2015
Division 1	
Division 1 heading.....	ad No 38, 2005 rs No 60, 2015
Subdivision A	
s 17A.....	ad No 60, 2015
s 17B.....	ad No 60, 2015 am No 33, 2023
Subdivision B	
s 17C.....	ad No 60, 2015
s 17CA.....	ad No 60, 2015
s 17D.....	ad No 60, 2015
s 17E.....	ad No 60, 2015
s 17F.....	ad No 60, 2015
s 17G.....	ad No 60, 2015
s 17H.....	ad No 60, 2015
s 17J.....	ad No 60, 2015
Subdivision C	
s 17K.....	ad No 60, 2015
s 17L.....	ad No 60, 2015 am No 3, 2022
s 18.....	am No 58, 1977; No. 91, 1983 rep No 72, 1984
Division 2	
Division 2 heading.....	ad No 38, 2005 rs No 60, 2015
s 18A.....	ad No 60, 2015
s 18B.....	ad No 60, 2015
s 18C.....	ad No 60, 2015
Division 3	

Endnote 4—Amendment history

Provision affected	How affected
Division 3 heading	ad No 38, 2005 rs No 60, 2015
Subdivision A	
s 19	am No 48, 1986; No 175, 1995; No 161, 1999; No 38, 2005; No 44, 2013; No 108, 2014 rep No 60, 2015
s 19A.....	ad No 60, 2015
s 19B.....	ad No 60, 2015 am No 3, 2022
s 19C.....	ad No 60, 2015
s 19D.....	ad No 60, 2015 am No 3, 2022
Subdivision B	
s 19E.....	ad No 60, 2015 am No 33, 2023
s 19F.....	ad No 60, 2015
s 20	am No 58, 1977; No 31, 1993; No 175, 1995; No 38, 2005 rep No 60, 2015
s 20A.....	ad No 38, 2005 rep No 60, 2015
s 20B.....	ad No 38, 2005 rep No 60, 2015
s. 21	am. No. 58, 1977; No. 143, 1979; No. 26, 1982; No. 31, 1993; No. 175, 1995; No. 38, 2005 rep No 60, 2015
s 21AA.....	ad No 175, 1995 am No 161, 1999; No 7, 2005; No 38, 2005; No 21, 2007; No 99, 2009; No 108, 2014 rep No 60, 2015
s 21AB.....	ad No 99, 2009 am No 108, 2014

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Endnote 4—Amendment history

Provision affected	How affected
	rep No 60, 2015
s 21A.....	ad No 58, 1977
	am No 26, 1982; No 31, 1993; No 175, 1995; No 34, 1997; No 38, 2005
	rep No 60, 2015
s 22	rs No 58, 1977
	am No 26, 1982; No 31, 1993; No 175, 1995; No 38, 2005
	rep No 60, 2015
s 23	am No 58, 1977; No 175, 1995
	rs No 38, 2005
	rep No 60, 2015
s 23A.....	ad No 175, 1995
	rs No 38, 2005
	rep No 60, 2015
s 23B.....	ad No 175, 1995
	rs No 38, 2005
	rep No 60, 2015
s 23C.....	ad No 38, 2005
	rep No 60, 2015
s 23D.....	ad No 38, 2005
	am No 13, 2013
	rep No 60, 2015
s 23E.....	ad No 38, 2005
	rep No 60, 2015
s 23F	ad No 38, 2005
	rep No 60, 2015
s 24	am No 58, 1977
	rep No 38, 2005
Part IIIAA.....	ad No 34, 1997
	rep No 60, 2015
s 24AA.....	ad No 34, 1997
	rep No 60, 2015

Endnote 4—Amendment history

Provision affected	How affected
s 24AB	ad No 34, 1997 rep No 60, 2015
s 24AC	ad No 34, 1997 am No 67, 2003 rep No 60, 2015
s 24AD	ad No 34, 1997 rep No 60, 2015
Part IIIA	
Part IIIA	ad. No. 157, 1989
Division 1	
s 24A	ad No 157, 1989 am No 122, 2009 rs No 60, 2015
s. 24B	ad. No. 157, 1989
Division 1A	
Division 1A	ad No 62, 2014
s 24BA	ad No 62, 2014 am No 60, 2015
Division 2	
s 24C	ad No 157, 1989
s 24D	ad No 157, 1989 am No 62, 2014; No 60, 2015
s 24E	ad No 157, 1989 am No 60, 2015
s 24F	ad No 157, 1989 am No 159, 2001; No 60, 2015
s 24G	ad No 157, 1989 rs No 122, 1991 am No 146, 1999; No 60, 2015
s. 24H	ad. No. 157, 1989 rs. No. 38, 2005

Endnotes

Endnote 4—Amendment history

Provision affected	How affected
s. 24J.....	ad. No. 157, 1989
s 24K.....	ad No 157, 1989 am No 94, 1992; No 26, 2008; No 58, 2011 rs No 60, 2015
s. 24L.....	ad. No. 157, 1989 am No 62, 2014
s 24M.....	ad No 157, 1989 am No 46, 2011; No 60, 2015
Division 3	
s 24N.....	ad No 157, 1989 am No 175, 1995; No 146, 1999 rs No 60, 2015 am No 60, 2015
s 24P.....	ad No 157, 1989 am No 175, 1995 rs No 146, 1999; No 60, 2015 am No 3, 2022
s 24PA.....	ad No 60, 2015 rs No 3, 2022
s. 24Q.....	ad. No. 157, 1989
Division 4	
s 24R.....	ad No 157, 1989 rs No 152, 1997 am No 62, 2014; No 60, 2015
ss. 24S, 24T.....	ad. No. 157, 1989 rep. No. 152, 1997
s. 24U.....	ad. No. 157, 1989 rep. No. 136, 1991
s 24V.....	ad No 157, 1989 rep No 60, 2015
s 24W.....	ad No 157, 1989

Endnote 4—Amendment history

Provision affected	How affected
Part IV	
Division 1A	
Division 1A.....	ad No 60, 2015
s 24Z.....	ad No 60, 2015
Division 1	
Division 1 heading.....	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; No 60, 2015; No 114, 2020
s 26	am No 58, 1977; No 26, 1982 rep No 111, 1990 ad No 175, 1995 am No 139, 2010; No 60, 2015
s. 27	am. No. 58, 1977; No. 175, 1995; No. 161, 1999; No. 139, 2010
s 27AA.....	ad No 175, 1995 am No 161, 1999; No 33, 2023
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
s 28	am No 58, 1977; No 143, 1979; No 26, 1982; No 120, 1988; No 175, 1995; No 38, 2005; No 60, 2015
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; No 60, 2015; No 33, 2023
s 29AA.....	ad No 60, 2015
s 29AB.....	ad No 60, 2015
s 29AC.....	ad No 60, 2015 am No 132, 2015
s. 29A.....	ad. No. 31, 1993 rep. No. 186, 2012
s 29B.....	ad No 175, 1995

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Endnote 4—Amendment history

Provision affected	How affected
	am No 60, 2015; No 82, 2016; No 33, 2023
Division 2	
Division 2 heading	ad. No. 38, 2005
s 30	am No 58, 1977; No 26, 1982; No 175, 1995; No 38, 2005; No 60, 2015; No 33, 2023
s 30A.....	ad No 26, 1982
	am No 175, 1995; No 60, 2015; No 33, 2023
s 31	am No 175, 1995; No 60, 2015; No 33, 2023
s 32	rs No 60, 2015
s 33	am No 26, 1982; No 31, 1993; No 38, 2005; No 60, 2015
s 33A.....	ad No 60, 2015
	am No 33, 2023
Division 3	
Division 3 heading	ad. No. 38, 2005
s 34	am No 58, 1977; No 26, 1982; No 31, 1993; No 175, 1995
	rs No 38, 2005; No 60, 2015; No 3, 2022
	am No 33, 2023
s 34A.....	ad No 31, 1993
	am No 175, 1995; No 34, 1997; No 67, 2003
	rs No 38, 2005; No 60, 2015
	am No 3, 2022
s 34B.....	ad No 38, 2005
	rep No 60, 2015
s 34C.....	ad No 38, 2005
	rep No 60, 2015
s 34D.....	ad No 38, 2005
	am No 60, 2015; No 3, 2022
s 34E.....	ad No 38, 2005
s 34F	ad No 38, 2005
s 34G.....	ad No 38, 2005
	rep No 60, 2015

Endnote 4—Amendment history

Provision affected	How affected
s 34H.....	ad No 38, 2005
Division 4	
Division 4 heading.....	ad. No. 38, 2005
s 34B.....	ad No 175, 1995 renum No 38, 2005
s 34J (prev s 34B).....	am No 3, 2022
s 35	am No 58, 1977; No 26, 1982; No 31, 1993; No 175, 1995; No 38, 2005 rs No 60, 2015 am No 132, 2015; No 33, 2023
s 35AA.....	ad No 175, 1995 rs No 60, 2015 am No 33, 2023
s 35A.....	ad No 31, 1993 am No 175, 1995; No 38, 2005 rep No 60, 2015
s 36	am No 58, 1977; No 26, 1982; No 120, 1988; No 175, 1995; No 38, 2005; No 60, 2015; No 33, 2023
s 36A.....	ad No 58, 1977 am No 26, 1982; No 120, 1988; No 175, 1995; No 194, 1999; No 38, 2005; No 60, 2015; No 33, 2023
s 36AA.....	ad No 13, 2017
s 36B.....	ad No 120, 1988 am No 175, 1995; No 38, 2005; No 139, 2010; No 59, 2015; No 60, 2015; No 33, 2023
s 36C.....	ad No 120, 1988 am No 175, 1995; No 194, 1999; No 38, 2005; No 139, 2010; No 59, 2015; No 60, 2015; No 33, 2023
s 36D.....	ad No 120, 1988 am No 157, 1989; No 175, 1995; No 38, 2005; No 139, 2010; No 59, 2015; No 60, 2015; No 33, 2023
s 37	rs No 58, 1977

Endnotes

Endnote 4—Amendment history

Provision affected	How affected
	am No 143, 1979; No 26, 1982; No 175, 1995; No 38, 2005; No 60, 2015; No 33, 2023
s 38	rs No 58, 1977
	am No 175, 1995
	rs No 60, 2015
	am No 33, 2023
s 38AA.....	ad No 60, 2015
s 38A.....	ad No 175, 1995
	am No 161, 1999; No 31, 2018; No 33, 2023
s 39	am No 120, 1988; No 175, 1995; No 60, 2015; No 3, 2022; No 33, 2023
s 39AA.....	ad No 60, 2015
	am No 3, 2022
s 39A.....	ad No 175, 1995
	am No 161, 1999; No 38, 2005; No 108, 2014; No 60, 2015; No 132, 2015; No 82, 2016; No 31, 2018
s 39BA.....	ad No 33, 2023
s 39B.....	ad No 175, 1995
	am No 161, 1999; No 38, 2005; No 60, 2015; No 31, 2018; No 33, 2023
s 39C.....	ad No 33, 2023
Division 5	
Division 5 heading.....	ad. No. 38, 2005
s 40	am No 58, 1977; No 31, 1993; No 175, 1995; No 38, 2005; No 60, 2015
s 40A.....	ad No 60, 2015
	am No 3, 2022
s 40B.....	ad No 60, 2015
	am No 3, 2022
s 41	rs No 58, 1977; No 143, 1979
	am No 26, 1982; No 38, 2005; No 60, 2015
s 42	rs No 38, 2005; No 60, 2015
s 42A.....	ad No 58, 1977
	am No 31, 1993; No 38, 2005; No 60, 2015; No 132, 2015; No 3, 2022

Endnote 4—Amendment history

Provision affected	How affected
s 42B.....	ad No 31, 1993 rs No 60, 2015
s 42C.....	ad No 31, 1993 am No 38, 2005; No 60, 2015
s 42D.....	ad No 175, 1995 am No 38, 2005; No 60, 2015
Division 6	
Division 6 heading.....	ad. No. 38, 2005
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; No 161, 1999; No 194, 1999; No 38, 2005; No 13, 2013; No 60, 2015 ed C45 am No 13, 2021; No 33, 2023
Division 7	
Division 7 heading.....	ad. No. 38, 2005
s 43AAA.....	ad No 175, 1995 am No 161, 1999; No 38, 2005; No 60, 2015; No 82, 2016; No 31, 2018; No 33, 2023
s 43AAB.....	ad No 33, 2023
s 43AA.....	ad No 175, 1995 am No 38, 2005; No 3, 2022
s 43A.....	ad No 58, 1977 am No 26, 1982; No 194, 1999; No 38, 2005; No 13, 2013 rep No 60, 2015
Part IVA	
Part IVA heading.....	ad. No. 57, 2000
s. 43B.....	ad. No. 57, 2000 am. No. 38, 2005; No. 139, 2010
s 43C.....	ad No 60, 2015
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; No 60, 2015; No 13, 2021
s 44AAA.....	ad No 60, 2015

Endnotes

Endnote 4—Amendment history

Provision affected	How affected
	am No 13, 2021
s. 44AA.....	ad. No. 194, 1999
	am. No. 157, 2001; No. 38, 2005; No. 13, 2013; No 13, 2021
s. 44A.....	ad. No. 143, 1979
	am. No. 194, 1999; No. 38, 2005; No. 13, 2013; No 13, 2021
s. 45	am No 157, 1976; No 58, 1977; No 34, 1997; No 38, 2005; No 60, 2015
s. 46	am No 157, 1976; No 58, 1977; No 26, 1982; No 120, 1988; No 175, 1995; No 194, 1999; No 38, 2005; No 13, 2013; No 60, 2015; No 114, 2020; No 13, 2021; No 44, 2021; No 33, 2023
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
	ed C45
ss. 51A–51C.....	ad. No. 125, 1999
s. 52	am. No. 175, 1995; No. 125, 1999; No. 38, 2005
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
s. 56	am. No. 58, 1977; No. 143, 1979; No. 38, 1988; No. 175, 1995; No. 38, 2005; No. 187, 2011
s. 57	am. No. 146, 1999
s. 58	am. No. 58, 1977; No. 38, 2005
Part VI	
s. 59	am. No. 139, 2010
s. 59A.....	ad No 38, 2005
	rs No 60, 2015
	am No 3, 2022
s. 59B.....	ad No 60, 2015

Endnote 4—Amendment history

Provision affected	How affected
	am No 3, 2022
s 60	am No 31, 1993; No 175, 1995; No 38, 2005; No 60, 2015; No 3, 2022
s 61	am No 31, 1993; No 175, 1995
	rs No 38, 2005; No 60, 2015
s 62	am No 175, 1995
	rs No 38, 2005
	am No 60, 2015
s 62A.....	ad No 26, 1982
	am No 175, 1995
	rs No 38, 2005
	am No 60, 2015
s. 62B.....	ad. No. 31, 1993
	am. No. 38, 2005
s 62C.....	ad No 60, 2015
s 63	am No 175, 1995
	rs No 38, 2005; No 60, 2015
s 64	am No 175, 1995; No 38, 2005
	rs No 60, 2015
s 65	am No 143, 1979
	rs No 157, 1989; No 175, 1995
	rep No 60, 2015
s 66	rs No 58, 1977
	am No 193, 1985; No 120, 1988; No 175, 1995; No 161, 1999; No 38, 2005; No 139, 2010; No 60, 2015
s. 66A.....	ad. No. 175, 1995
	am. No. 139, 2010
s 66B.....	ad No 60, 2015
s 67	am No 58, 1977; No 175, 1995; No 38, 2005
	rs No 60, 2015
s 67A.....	ad No 58, 1977
	am No 63, 1984; No 38, 2005; No 139, 2010; No 59, 2015

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Endnote 4—Amendment history

Provision affected	How affected
s 68	am No 31, 1993; No 175, 1995 rs No 60, 2015; No 132, 2015
s 68AA.....	ad No 38, 2005 rs No 60, 2015
s 68A.....	ad No 175, 1995 am No 60, 2015
s 69	am No 58, 1977; No 175, 1995; No 60, 2015
s 69A.....	ad No 175, 1995 rs No 60, 2015 am No 3, 2022
s 69B.....	ad No 175, 1995 am No 161, 1999; No 60, 2015; No 33, 2023
s 69BA.....	ad No 60, 2015 am No 3, 2022
s 69C.....	ad No 186, 2012 am No 60, 2015
s. 70	am. No. 58, 1977; No. 175, 1995; No. 186, 2012
Schedule heading	rep. No. 26, 1982
Schedule 1 heading	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 Statutory Rules 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
