

# **Administrative Appeals Tribunal Regulations (Amendment) 1993 No. 64**

## **EXPLANATORY STATEMENT**

### **Statutory Rules 1993 No. 64**

Issued by the authority of the Attorney-General

*Administrative Appeals Tribunal Act 1975*

Administrative Appeals Tribunal Regulations (Amendment)

Regulation 1 provides that the proposed regulations amend the Administrative Appeals Tribunal Regulations (the Regulations).

Regulation 2 amends regulation 6 of the Regulations to provide that an application to be made a party to proceedings for review of a decision made by a person who is affected by the decision shall be in writing and may be in accordance with form 5.

Regulation 3 amends regulation 19, which deals with fees payable in respect of applications for review of decisions.

Subregulation 19(1) is omitted and substituted by a new subregulation 19(1) which provides that the fee payable for lodging an application shall be called an application fee. An application fee is payable for lodging:

- (a) an application for review of a decision; or
- (b) an application under subsection 28(1AC) of the *Administrative Appeals Tribunal Act 1975*; or
- (c) an application under subsection 62(2) of the *Freedom of Information Act 1982*;

other than an application for review of a prescribed decision.

New subregulation 19(4) requires the application fee to be paid before lodging an application. The new subregulation will overcome the effect of the decision of the Federal Court of Australia in *Angus Fire Armour Australia Pty Ltd -v- Collector of Customs* (1988) 83 ALR 449, in which the Court decided that an application for review did not have to be accompanied by the prescribed fee in order to be validly lodged.

New subregulation 19(5) provides that the Registrar or a Deputy Registrar may order that only one application fee is payable where two or more applications relate to the same applicant and the applications may conveniently be heard by the Tribunal at the same time.

New subregulation 19(6) provides that an application fee is not payable if the person liable to pay the fee is granted legal aid under a legal aid scheme or service established under Commonwealth, State or Territory law or approved by the Attorney-General. It also provides that an application fee is not payable if the person is:

- (i) the holder of a pensioner health benefit card, a health benefit card, a pharmaceutical benefits concession card or a health care card; or
- (ii) an inmate of a prison or is otherwise lawfully detained in a public institution; or

- (iii) a child under the age of 18 years; or
- (iv) in receipt of AUSTUDY within the meaning of the AUSTUDY Regulations.

New subregulation 19(6) also contains a residual discretion for the Registrar or a Deputy Registrar to waive payment of an application fee on the ground that payment of the fee would impose financial hardship on the applicant. The Registrar or a Deputy Registrar is to have regard to the income, day to day living expenses, liabilities and assets of the applicant in making his or her decision.

New subregulation 19(7) provides for the refund of an application fee in cases where the fee was not payable or where the proceedings terminate in a manner favourable to the applicant. This provision restates existing regulation 20, which is omitted by regulation 4 of the proposed regulations.

New regulation 20 provides that an application may be made to the Tribunal for review of a decision by the Registrar or a Deputy Registrar not to waive payment of an application fee. A fee is payable on such an application and is refundable if the application is successful. The fee may be waived by an officer of the Tribunal under subregulation 19(6).

Regulation 5 amends Schedule 3 of the Regulations to provide that an application for review of a decision made under Division 6 of Part 4A of the *Student Assistance Act 1973*, which makes provision for student loans known as the AUSTUDY/ABSTUDY Supplement, is subject to the payment of an application fee.

The AUSTUDY/ABSTUDY Supplement is essentially a loan. A debtor will be required to make repayments through the taxation system after five years and once their income reaches a specified level. Various decisions regarding the recovery of the supplement are reviewable by the Tribunal.

The taxation system is used to collect repayments of similar educational grants made under the *Higher Education Funding Act 1988*. A fee is payable on an application to the Tribunal for review of a decision regarding the recovery of grants under that Act. It is also appropriate for a fee to apply in relation to an application to the Tribunal for review of a decision regarding the recovery of the AUSTUDY/ABSTUDY Supplement.