

# Tribunals Legislation Amendment (Amalgamation) Regulation 2015

## EXPLANATORY STATEMENT

### Select Legislative Instrument No. 95, 2015

Issued under the Authority of the Attorney-General  
in compliance with section 26 of the *Legislative Instruments Act 2003*

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## INTRODUCTION

1. This regulation is made under section 79 of the *Australian Sports Anti-Doping Authority Act 2006*, section 164 of the *Child Support (Assessment) Act 1989*, section 6 of the *Child Support Legislation Amendment (Reform of the Child Support Scheme – New Formula and Other Measures) Act 2006*, section 125 of the *Child Support (Registration and Collection) Act 1988*, section 359 of the *Fair Work (Registered Organisations) Act 2009*, section 120 of the *Federal Circuit Court of Australia Act 1999*, section 60 of the *Federal Court of Australia Act 1976*, section 15 of the *Maternity Leave (Commonwealth Employees) Act 1973*, section 38 of the *Ombudsman Act 1976*, section 100 of the *Privacy Act 1988*, section 79 of the *Public Service Act 1999*, section 216 of the *Veterans' Entitlements Act 1986* and, as a regulation, is a legislative instrument under paragraph 6(a) of that *Legislative Instruments Act 2003* (LIA).

## OUTLINE

2. The *Tribunals Amalgamation Act 2015* (Amalgamation Act) will amalgamate the Administrative Appeals Tribunal (AAT), the Migration Review Tribunal and Refugee Review Tribunal (MRT-RRT) and the Social Security Appeals Tribunal (SSAT) on 1 July 2015. The Amalgamation Act will abolish the MRT-RRT and SSAT and transfer the tribunals' jurisdiction to the AAT. The Tribunal will be called the AAT.
3. The amalgamation reflects key reform recommendations by the Administrative Review Council (ARC), the 2012 *Strategic Review of Small and Medium Agencies in the Attorney-General's portfolio* (the Skehill Review) and the 2014 National Commission of Audit Report, *Towards Responsible Government*.
4. This regulation makes amendments consequential to the Amalgamation Act to 11 legislative instruments administered by the Attorney-General, the Minister for Employment, the Minister for Health, the Prime Minister, the Minister for Social Services and the Minister for Veterans' Affairs.
5. The regulation:
  - removes and amends references to the abolished MRT, RRT and SSAT
  - repeals references to other abolished tribunals, including the Security Appeals Tribunal
  - repeals redundant provisions

- updates references to provisions amended by the Amalgamation Act, and
- updates instruments to ensure consistency with existing policy.

## **PROCESS BEFORE REGULATION WAS MADE**

### **Regulatory impact analysis**

6. Before this regulation was made, its expected impact was assessed using the Preliminary Assessment tool approved by the Office of Best Practice Regulation (OBPR). That assessment indicated that the regulation would have no or low impact on business, individuals and the economy. This assessment has been confirmed by the Office of Best Practice Regulation (OBPR) (OBPR reference 19086).

### **Statement of compatibility with human rights obligations**

7. This regulation makes minor and technical consequential amendments to 11 legislative instruments as a result of the Amalgamation Act. The amendments remove references to abolished tribunals, repeal redundant provisions and preserve existing policies.
8. Due to the minor and technical nature of this regulation, this regulation does not engage any of the applicable rights or freedoms.

### **Consultation before making**

9. Before this regulation was made, the Attorney-General considered the general obligation to consult imposed by section 17 of the LIA, and the specific circumstances in which consultation may be unnecessary or inappropriate set out in section 18 of the LIA. The Attorney-General consulted the Minister for Employment, the Minister for Health, the Prime Minister, the Minister for Social Services and the Minister for Veterans' Affairs. The AAT, MRT-RRT and SSAT were consulted.

### **Statutory preconditions and Parliamentary undertakings relevant to this regulation**

10. There are no statutory preconditions or Parliamentary undertakings relevant to the making of this regulation.

## **PROCESSES FOR REVIEW OF THIS REGULATION**

11. This regulation is subject to tabling and disallowance under Part 5 of the LIA, and will cease as if repealed on the day after the last of its provisions commence.

## **OTHER ISSUES**

### **Matter incorporated by reference**

12. This regulation does not apply, adopt or incorporate other matter by reference.

### **More information**

13. A provision by provision explanation of the regulation is provided in [Attachment A](#).

14. Copies of each instrument to be repealed, and information about its history, are available on the whole-of-government ComLaw website (<http://www.comlaw.gov.au>).
15. Further information about an instrument may be requested from the administering department or its relevant agencies.

**Section 1 Name of regulation**

16. This section provides a name by which the regulation may be cited (the *Tribunals Legislation Amendment (Amalgamation) Regulation 2015*).

**Section 2 Commencement**

17. This section provides for commencement of the Regulation on 1 July 2015.

**Section 3 Authority**

18. This section identifies the Acts that authorise the making of the regulation.

**Section 4 Schedules**

19. This section provides that the instruments specified in the Schedule are amended or repealed as set out in the Schedule.

**Schedule 1 Amendments**

20. This Schedule makes minor and technical amendments to various legislative instruments. The Schedule sets out the amendments by the relevant portfolio agency and legislative instrument to aid the reader.

## **Part 1 of Schedule 1—Attorney-General’s Department**

### ***Federal Court and Federal Circuit Court Regulation 2012 (FCFCC Regulation)***

#### **Item 1**

21. Item 1 preserves the policy of an existing general fee exemption for proceedings under the *Child Support (Registration and Collection Act) Act 1988* (CSRC Act). The *Tribunals Amalgamation Act 2015* expands the Federal Court’s jurisdiction by allowing appeals on a question of law from the AAT for a child support first review to be made to the Federal Court. This amendment ensures that the policy of the existing fee exemption extends to this new area of jurisdiction and aligns with the exemption for such appeals to the Federal Circuit Court.

#### **Item 2**

22. Item 2 updates the reference to the ‘Taxation Appeals Division’ in the AAT in paragraph 2.08(3)(b) of the FCFCC Regulation to reflect the Amalgamation Act’s renaming of the Division to ‘Taxation and Commercial Division’.

#### **Item 3**

23. Item 3 preserves an existing Federal Circuit Court fee exemption for proceedings under the *Child Support (Registration and Collection Act) Act 1988* (CSRC Act) by ensuring that appeals on a question of law from the AAT to the Federal Circuit Court for a child support first review proceeding per section 44AAA(1) of the AAT Act are exempt from fees.

24. The Amalgamation Act repeals Division 3 of Part VIII of the CSRC Act which provides for appeals and references of questions of law from the SSAT to the Family Court, the Federal Circuit Court and certain State and Territory courts. The Amalgamation Act inserts section 44AAA into the AAT Act which confers jurisdiction on the Federal Circuit Court for AAT first reviews of child support matters. Section 44AAA preserves the jurisdiction of the Federal Circuit Court in accordance with the policy in Division 3 of Part VIII of the CSRC Act. The amendment ensures that the existing fee exemption in the Federal Circuit Court for child support matters continues to apply.

### ***Privacy Regulation 2013***

#### **Item 4**

25. Item 4 repeals item 82 of Schedule 1 to the Privacy Regulation. Item 82 lists the SSAT as a specified agency for the purposes of regulation 5 of the Privacy Regulation. The Amalgamation Act abolishes the SSAT and transfers its jurisdiction to the AAT. As such, the reference to the SAAT is no longer necessary.

26. There will be no change in the use of government-related identifiers as a result of this amendment.

## **Part 2 of Schedule 1—Department of Employment**

### ***Workplace Relations Regulations 2006***

#### **Item 5**

27. Item 5 repeals regulation 3.2 of Chapter 2 of the Workplace Relations Regulations, which is redundant.
28. Regulation 3.2 prescribes various tribunals for the purposes of subsections 69(1), 69(2) and 79(5) of the *Workplace Relations Act 1996*, including the Administrative Appeals Tribunal. The Workplace Relations Act has been superseded and the new equivalent provision in the *Fair Work Act 2009* has an equivalent regulation.

## **Part 3 of Schedule 1—Department of Health**

### ***Australian Sports Anti-Doping Authority Regulations 2006***

#### **Items 6 and 7**

29. Items 6 and 7 ensure that the amendment to subsection 35(2) of the AAT Act by the Amalgamation Act does not disturb the policy of regulation 4.22 of the ASADA Regulations.
30. The Amalgamation Act simplifies the drafting of subsection 35(2) of the AAT Act, which specifies circumstances where the tribunal can make orders for private hearings or the non-publication or non-disclosure of information, by splitting up the provision into subsections 35(2), 35(3) and 35(4).
31. The amendment ensures that the previous operation of subsection 35(2), of which the relevant parts are now split across subsections 35(3) and (4), is appropriately referred to in regulation 4.22.

## **Part 4 of Schedule 1—Department of Prime Minister and Cabinet**

### ***Maternity Leave (Commonwealth Employees) Regulations 1982***

#### **Item 8**

32. Item 8 repeals table item 29 of Schedule 3 to the *Maternity Leave (Commonwealth Employees) Regulations 1982*. Schedule 3 lists prescribed persons for the purposes of the *Maternity Leave (Commonwealth Employees) Act 1973* and includes, at item 29, a member of the Immigration Review Tribunal (IRT). The IRT no longer exists and its jurisdiction was transferred to the MRT-RRT in July 1999.

### ***Ombudsman Regulations 1977***

#### **Items 9 and 10**

33. Items 9 and 10 repeal references to the Security Appeals Tribunal (SAT) in Schedules 1 and 3 to the Ombudsman Regulations. The SAT was established in 1980 by the *Australian Security Intelligence Organisation Act 1979*. The SAT was abolished in 1995

and its jurisdiction was transferred to the Security Appeals Division of the AAT. The Ombudsman has no jurisdiction over the administrative actions of the AAT, except for the administrative actions of the Registrar of the AAT. As such, the references to the SAT are obsolete.

### ***Public Service Regulations 1999***

#### **Item 11**

34. Item 11 removes references to members of the MRT, RRT and SSAT by repealing subparagraphs 2.2(2)(c)(v), (vi) and (viii) of the Public Service Regulations. Subregulation 2.2(2) classifies which persons fall within the definition of ‘statutory office holder’ under subsection 14(3) of the *Public Services Act 1999* (PSA) and are therefore bound by the Code of Conduct. Paragraph 2.2(2)(c) specifically excludes nine appointments from the definition of ‘statutory office holder’ under the PSA, including members of the MRT, RRT, SSAT, and AAT.
35. The Amalgamation Act abolishes the SSAT and MRT-RRT and transfers their jurisdiction to the AAT. Members of the MRT, RRT and SSAT transferring to the AAT will be appropriately covered by the inclusion of AAT members in subparagraph 2.2(2)(c)(iv).

### **Part 5 of Schedule 1—Department of Social Services**

#### ***Child Support (Assessment) Regulations 1989 (CSA Regulations)***

#### **Item 12**

36. Item 12 substitutes a reference to the SSAT with a reference to the AAT in paragraph 4C(f) of the CSA Regulations, which prescribes actions which may be taken by an overseas authority of a reciprocating jurisdiction. The Amalgamation Act abolishes the SSAT and transfers its jurisdiction to the AAT.

#### **Item 13**

37. Item 13 repeals existing paragraph 4C(g) of the CSA Regulations and substitutes a new paragraph 4C(g). The existing paragraph refers to Part VIII of the CSRC Act and to appealing a decision of the SSAT on an error of law. Division 3 of Part VIII of the CSRC Act is repealed by the Amalgamation Act. The equivalent provision is contained in Part IVA of the AAT Act. Further, the SSAT is abolished by the Amalgamation Act and its jurisdiction is transferred to the AAT. New paragraph 4C(g) refers to Part IVA of the AAT Act, and amends the reference to the SSAT to the AAT.

#### ***Child Support Reform (New Formula and Other Measures) Regulations 2007 (CSR Regulations)***

38. The Regulation contains multiple references to the SSAT, which will be abolished by the Amalgamation Act.

#### **Item 14**

39. Item 14 removes the definition of the SSAT from Regulation 4 of the CSR Regulations.

## **Items 15-18**

40. Item 16 repeals Part 3 of the CSR Regulations. Part 3 deals with administrative assessments and departure determinations made before 1 July 2008 and contains references to the SSAT. Part 3 is time limited in its application and is spent. Regulations 6 and 36 and Schedule 2 are only required in conjunction with Part 3 and would accordingly be repealed by items 15, 17 and 18 as a consequence of the repeal of Part 3.

## ***Child Support (Registration and Collection) Regulations 1988 (CSRC Regulations)***

### **Item 19**

41. Item 19 repeals existing regulation 7A of the CSRC Regulations and substitutes a new regulation 7A. Existing regulation 7A specifies that subsection 103T(1) of the CSRC Act does not apply to certain provisions of the CSRC Act and the *Child Support (Assessment Act) 1989* (Assessment Act) as listed in Schedule 3 to the CSRC Regulations. The Amalgamation Act repeals existing section 103T and introduces new section 95E of the CSRC Act which preserves the effect of existing section 103T. New regulation 7A amends the reference to subsection 103T(1) of the CSRC Act in regulation 7A to section 95E of the CSRC Act. This amendment preserves existing policy.

### **Item 20**

42. Item 20 changes the heading to Schedule 3 from ‘Provisions to which subsection 103T (1) of the Act does not apply’ to ‘Powers of Registrar that AAT must not exercise’ to reflect the repeal of subsection 103T(1) by the Amalgamation Act.

## **Part 6 of Schedule 1—Department of Veterans’ Affairs**

### ***Veterans’ Entitlements Regulations 1986 (VE Regulations)***

### **Item 21**

43. Item 21 omits the words “the scale in Schedule 2 to the Administrative Appeals Tribunal Regulations as in force from time to time” from regulation 12 of the VE Regulations and substitutes “the Administrative Appeals Tribunal Regulations 2015”.
44. Regulation 12 provides that a witness summoned before the Veterans’ Review Board is entitled to the fees and allowances applicable in relation to witnesses under the *Administrative Appeals Tribunal Regulations 1976* (AAT Regulations). The AAT Regulations have been redrafted and the manner in which fees are prescribed has changed. The regulation has been changed to refer to the AAT Regulations generally. This preserves existing policy.