

## **EXPLANATORY STATEMENT**

Issued by the authority of the President of the Administrative Appeals Tribunal

*Administrative Appeals Tribunal Act 1975*

### ***SSAT Child Support Review General Directions Repeal Instrument 2015***

#### **Legislative authority**

Item 15CC of Schedule 9 to the *Tribunals Amalgamation Act 2015* (Amalgamation Act) provides that on and from 1 July 2015 directions of general application made by the Principal Member of the Social Security Appeals Tribunal (SSAT) or the Principal Member of the Migration Review Tribunal and Refugee Review Tribunal (MRT-RRT) operate as if they were directions given by the President of the Administrative Appeals Tribunal (AAT) under subsection 18B(1) of the *Administrative Appeals Tribunal Act* (AAT Act). Section 18B of the AAT Act was inserted by item 27 of Schedule 1 to the Amalgamation Act.

Subsection 18B(1) of the AAT Act provides that the President may give written directions in relation to the operations, procedure, conduct of reviews, arrangement of business of the AAT and the places at which the AAT may sit.

Subsection 18B(1A) of the AAT Act requires the President to consult with the head of any Division to which the direction would apply.

Subsection 33(3) of the *Acts Interpretation Act 1901* (AIA) provides that where an Act confers a power to make, grant or issue any instrument of a legislative or administrative character, the power shall be construed as including a power to repeal, rescind, revoke, amend or vary any such instrument.

Subsection 5(3) of the *Legislative Instruments Act 2003* (LIA) provides that an instrument that is registered is taken, by virtue of that registration and despite anything else in the LIA, to be a legislative instrument for the purposes of the LIA.

#### **Purpose**

The purpose of the *SSAT Child Support Review General Directions Repeal Instrument 2015* (the Repeal Instrument) is to repeal the *SSAT Child Support Review General Directions 2012* (SSAT General Directions) as currently in force.

#### **Background**

The Amalgamation Act amalgamated the AAT, the MRT-RRT and the SSAT on 1 July 2015. The Amalgamation Act abolished the MRT-RRT and SSAT and transferred the tribunals' jurisdictions to the AAT. The Tribunal is called the AAT.

The amalgamation reflects key reform recommendations by the Administrative Review Council, the 2012 Strategic Review of Small and Medium Agencies in the Attorney-General's portfolio and the 2014 National Commission of Audit Report, *Towards Responsible Government*.

The SSAT General Directions provided for procedures to be followed in relation to child support reviews, including matters such as applications for extension of time, details required for an application for review, documents to be given to the SSAT, disclosure of information by the SSAT, hearing procedures, reinstatement applications, communication with the SSAT and production of documents by the SSAT.

The SSAT General Directions were made under paragraph 103ZA(1)(a) of the *Child Support (Registration and Collection) Act 1988* (CSRC Act) by the Principal Member of the SSAT. Section 103ZA of the CSRC Act was repealed by item 64 of Schedule 4 to the Amalgamation Act on 1 July 2015.

Item 15CC of Schedule 9 to the Amalgamation Act provides transitional arrangements that apply to the SSAT General Directions. The transitional arrangements provide that on and after 1 July 2015 the SSAT General Directions continue in effect as if they had been given by the President of the AAT under section 18B of the AAT Act as amended by the Amalgamation Act. Subsection 33(3) of the AIA empowers the President of the AAT to repeal, rescind, revoke, amend or vary the SSAT General Directions following amalgamation.

New directions given by the President under subsection 18B(1) of the AAT Act, the Child Support Review Directions, took effect on 1 July 2015 to provide for the unique requirements and procedures of the child support jurisdiction in the amalgamated tribunal. These directions mirror the purpose and scope of the existing SSAT General Directions.

There is no requirement for directions given by the President of the AAT under section 18B of the AAT Act to be registered on the Federal Register of Legislative Instruments (FRLI). In contrast, subsection 103ZA(8) of the CSRC Act provided that general directions made by the SSAT Principal Member were legislative instruments. Notwithstanding the operation of the transitional arrangements in item 15CC of Schedule 9 to the Amalgamation Act, an instrument registered on FRLI is required to repeal the SSAT General Directions to cease their effect and operation.

## **Consultation**

Subsection 18B(1A) of the Amalgamation Act provides that, before making directions that would apply to a particular Division, the President must consult with the head of that Division. Consistent with this requirement, the President consulted with the head of the Social Services and Child Support Division prior to repealing the SSAT General Directions.

The Office of Best Practice Regulation has advised that a regulatory impact statement is not required for the Repeal Instrument (OBPR Reference 19348).

## **Other details**

The Repeal Instrument is a legislative instrument for the purposes of the *Legislative Instruments Act 2003* and shall commence on the day after it is registered in the FRLI.

The Statement of Compatibility with Human Rights for this Repeal Instrument is set out in [Attachment 1](#).

Details of the accompanying Repeal Instrument are set out in Attachment 2.

**Attachment 1*****Statement of Compatibility with Human Rights***

*Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011*

***SSAT Child Support Review General Directions Repeal Instrument 2015***

The *SSAT Child Support Review General Directions Repeal Instrument 2015* (the Repeal Instrument) is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

**Overview of the Repeal Instrument**

The Repeal Instrument repeals the *SSAT Child Support Review General Directions 2012* (SSAT General Directions) which will be replaced by a new set of directions given by the President of the Administrative Appeals Tribunal (AAT) under section 18B of the *Administrative Appeals Tribunal Act 1975* (AAT Act).

On 1 July 2015, the Social Security Appeals Tribunal (SSAT) was amalgamated with the AAT and the Migration Review Tribunal and Refugee Review Tribunal (MRT-RRR) by the *Tribunals Amalgamation Act 2015* (Amalgamation Act).

The SSAT General Directions were made under paragraph 103ZA(1)(a) of the *Child Support (Registration and Collection) Act 1988* (CSRC Act) by the Principal Member of the SSAT. Section 103ZA of the CSRC Act was repealed by item 64 of Schedule 4 to the Amalgamation Act on 1 July 2015.

Item 15CC of Schedule 9 to the Amalgamation Act provides transitional arrangements that apply to the SSAT General Directions. The transitional arrangements provide that on and after 1 July 2015 the SSAT General Directions continue in effect as if they had been given by the President of the AAT under section 18B of the AAT Act as amended by the Amalgamation Act. Subsection 33(3) of the *Acts Interpretation Act 1901* empowers the President of the AAT to repeal, rescind, revoke, amend or vary the SSAT General Directions following amalgamation.

**Human rights implications**

The SSAT General Directions provided for procedures to be followed in relation to child support reviews before the Social Security Appeals Tribunal (SSAT). These procedures included matters such as applications for extension of time, details required for an application for review, documents to be given to the SSAT, disclosure of information by the SSAT, hearing procedures, reinstatement applications, communication with the SSAT and production of documents by the SSAT.

The human rights implications of the SSAT General Directions were set out in the statement of compatibility at the end of the explanatory statement for that instrument. In that statement of compatibility, it was identified that the SSAT General Directions engages the following human rights:

- the right to protection from exploitation, violence and abuse contained in articles of the *International Covenant on Civil and Political Rights* (ICCPR),

the *Convention on the Rights of the Child* and the *Convention on the Rights of Persons with Disabilities*

- the right to a fair hearing in Article 14 of the ICCPR, and
- the right to protection against unlawful interference with privacy in Article 17 of the ICCPR.

In the conclusion of the statement of compatibility, it was determined that the SSAT General Directions strengthen and protect all three identified rights.

The new directions given by the President under section 18B of the AAT Act, the Child Support Review Directions, mirror in substance the provisions of the SSAT General Directions. Broadly, the existing human rights protections offered by the SSAT General Directions will continue to be provided under the new directions.

Only one policy change in the new directions may appear to engage human rights. The new directions will no longer require that a lawyer representing a party be automatically issued with a non-disclosure order (section 13 of the SSAT General Directions). A lawyer was defined in the SSAT General Directions as a person who has been admitted to practise law in an Australian jurisdiction and who holds a current practising certificate.

Lifting the automatic requirement to issue non-disclosure orders to legal representatives may appear to engage the right to freedom from arbitrary and unlawful interferences with privacy in Article 17 of the International Covenant on Civil and Political Rights (ICCPR). However, the requirement is not considered necessary as Australian legal practitioners are subject to legal and ethical obligations to maintain the confidentiality of matters relating to their clients.

Additionally, the AAT will still have strong protections in place to protect personal information and other evidence. These include the capacity under section 35 of the AAT Act to prohibit the publication or disclosure of personal information, and protection of members and staff of the Tribunal from being required to produce personal information in certain circumstances under section 66 of the AAT Act. The general protections of the *Privacy Act 1988* will also apply to information collected, used and stored by the amalgamated Tribunal. This includes prohibiting the collection of personal information unless the information is reasonably necessary for, or directly related to, the functions of the Tribunal.

This policy change does not have any practical effect on an individual's right to privacy and is consistent with the provisions, aims and objectives of the ICCPR.

The Repeal Instrument itself will not diminish the human rights protections that will continue to be provided by the new directions for the child support jurisdiction.

## **Conclusion**

This Repeal Instrument is compatible with human rights as it does not affect the operation of directions that will continue to maintain and protect an individual's right to privacy and promote a person's right to protection from exploitation, violence and abuse.

Justice Duncan Kerr *Chev LH*  
President, Administrative Appeals Tribunal

**Attachment 2****Details of the *SSAT Child Support Review General Directions Repeal Instrument 2015*****Section 1—Name**

Section 1 provides that the title of the instrument is the *SSAT Child Support Review General Directions Repeal Instrument 2015*.

**Section 2—Commencement**

Section 2 provides that the instrument commences on the day after it is registered on the Federal Register of Legislative Instruments.

**Section 3—Repeal of directions**

Section 3 provides that the *SSAT Child Support Review General Directions 2012* (General Directions) are repealed.

**Section 4—Expiry**

Once the instrument comes into effect, it will have fulfilled its purpose (i.e. repealed the General Directions). Therefore, the instrument itself can be removed from the Federal Register of Legislative Instruments. Accordingly, a self-expiry provision has been included at clause 4.