

**ADMINISTRATIVE REVIEW TRIBUNAL (CONSEQUENTIAL AND TRANSITIONAL  
PROVISIONS NO. 1) AMENDMENT RULES (NO. 2) 2025**

**EXPLANATORY STATEMENT**

Issued by authority of the Attorney-General

in compliance with section 15J of the *Legislation Act 2003*

**PURPOSE AND OPERATION OF THE INSTRUMENT**

The *Administrative Review Tribunal (Consequential and Transitional Provisions No. 1) Rules 2024* (Transitional Rules) complement the transitional provisions in Schedule 16 to the *Administrative Review Tribunal (Consequential and Transitional Provisions No. 1) Act 2024* (Consequential and Transitional 1 Act) to ensure a smooth transition from the former Administrative Appeals Tribunal (AAT) to the Administrative Review Tribunal (ART). The ART commenced operations on 14 October 2024.

The Transitional Rules are made under item 51 of Schedule 16 to the Consequential and Transitional 1 Act, which enables the Minister to make rules prescribing matters required or permitted by the Act to be prescribed by the rules, or necessary or convenient to be prescribed for carrying out or giving effect to the Act. The rules may prescribe matters of a transitional nature relating to amendments or repeals made by the Act or the enactment of the *Administrative Review Tribunal Act 2024* (ART Act). Transitional rules may be made with retrospective effect.

The *Amendment Review Tribunal (Consequential and Transitional Provisions No. 1) Amendment Rules (No. 2) 2025* (Amendment Rules) amend the Transitional Rules to provide certainty about the appropriate salary to be used as a reference point for the calculation of pensions payable under the *Judges' Pensions Act 1968* to a cohort of individuals entitled to pensions because they were non-judicial Deputy Presidents of the AAT prior to 2005. To reflect that the AAT has been abolished and salaries are no longer set for AAT members, the Amendment Rules inserts a provision into the Transitional Rules which has the effect that the pensions are to be calculated by reference to the salaries for non-judicial Deputy Presidents of the ART, being the closest equivalent position in the ART.

## **CONSULTATION**

The Attorney-General's Department consulted the Department of Finance in drafting the Rules. As the instrument is technical in nature, further consultation was not required.

## **STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS**

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

### **Overview of the Rules**

The *Amendment Review Tribunal (Consequential and Transitional Provisions No.1) Amendment Rules (No.2) 2025* (Amendment Rules) amend the *Administrative Review Tribunal (Consequential and Transitional Provisions No.1) Rules 2024* (Transitional Rules) to provide certainty about the appropriate salary to be used as a reference point for the calculation of pensions payable under the *Judges' Pensions Act 1968* (Pensions Act) to a cohort of individuals entitled to pensions because they were non-judicial Deputy Presidents of the Administrative Appeals Tribunal (AAT) prior to 2005. To reflect that the AAT was abolished on 14 October 2024 and salaries are no longer set for AAT members, the Amendment Rules inserts a provision into the Transitional Rules which has the effect that the pensions are to be calculated by reference to the salaries for non-judicial Deputy Presidents of the Administrative Review Tribunal (ART), being the closest equivalent position in the ART.

### **Human Rights Implications**

The Rules do not engage any of the applicable rights or freedoms as they are technical in nature and provide certainty and continuity regarding the payment of certain pensions.

### **Conclusion**

The Rules are compatible with the human rights as they do not raise any human rights issues.

## **NOTES ON SECTIONS**

### **Section 1 – Name**

This section provides that the title of the instrument is the *Administrative Review Tribunal (Consequential and Transitional Provisions No. 1) Amendment Rules (No. 2) 2025*.

### **Section 2 – Commencement**

This section provides that the Rules commence on the day after the instrument is registered.

### **Section 3 – Authority**

This section provides that the Rules are made and given authority under item 51 of Schedule 16 to the *Administrative Review Tribunal (Consequential and Transitional Provisions No. 1) Act 2024*.

### **Section 4 – Schedules**

This section clarifies the interaction of amendments to instruments within the Schedules to the instrument. Where an instrument is amended in a Schedule in this instrument, that amendment have effect as is contained in the Schedule. Any other item in a Schedule has effect according to its terms.

## **SCHEDULE 1 – Amendments**

### *Administrative Review Tribunal (Consequential and Transitional Provisions No. 1) Rules 2024*

#### **Item 1 – Calculating pensions for certain former presidential members of the AAT**

This item inserts new section 13 into the *Administrative Review Tribunal (Consequential and Transitional Provisions No. 1) Rules 2024* (Transitional Rules). Section 13 deals with transitional arrangements relating to the calculation of certain pensions payable to former non-judicial Deputy Presidents of the Administrative Appeals Tribunal (AAT).

Until 16 May 2005, pursuant to section 16 of the *Administrative Appeals Tribunal Act 1975* (AAT Act), certain non-judicial presidential members of the AAT were treated as judges for the purposes of the *Judges' Pensions Act 1968* (Pensions Act) and thereby entitled to benefits under that Act. Section 16 of the AAT Act was repealed by the *Administrative Appeals Tribunal Amendment Act 2005* (AATAA) on 16 May 2005, but its effect was preserved by a transitional provision (section 34 of Schedule 1 to the AATAA) which had the effect that members appointed prior to the repeal of section 16 who were entitled to receive a pension under the Pensions Act continue to receive that pension.

Subsection 6A(2) of the Pensions Act provides that a judge's pension is to be calculated by reference to the 'appropriate current judicial salary'. This is defined in section 4 of that Act as the 'salary... that would be payable to a judge if he or she had not retired or died'. Until the abolition of the AAT, the 'appropriate current judicial salary' for this cohort was identifiable by reference to the salaries of non-judicial presidential members of the AAT as determined by the Remuneration Tribunal from time to time.

A consequence of the repeal of the AAT Act is that there is no longer a reference point which can be used to calculate the pensions, as those AAT positions no longer exist. New section 13 sets out transitional arrangements to address this practical gap and provide certainty about how pensions for this cohort are to be calculated.

Subsection 13(1) provides that this section is made for the purposes of subitem 51(2) of *Schedule 16 to Consequential and Transitional Provisions No. 1 Act*. Subitem 51(2) allow for rules to prescribe matters of a transitional nature.

Subsection 13(2) identifies the circumstances in which the transitional arrangements provided by this section apply. This section applies in relation to a person if:

- the person was, before 16 May 2005, appointed under the AAT Act as a presidential member of the AAT,

- at the time of that appointment, the person was not a Judge within the meaning of the Pensions Act, and
- subsection 16(1) of the AAT, as in force immediately before the start of 16 May 2005, continued to apply in relation to the person on and after that day under item 34 of Schedule 1 to the AATAA.

This captures the cohort of individuals who remain entitled to a pension under the Pensions Act because they were non-judicial Deputy Presidents before 16 May 2005.

Subsection 13(3) has the effect that the ‘appropriate current judicial salary’ for the purposes of calculating pensions under the Pensions Act for these individuals is the salary for the time being payable to a non-judicial Deputy President of the ART. This is appropriate because the role of non-judicial Deputy President of the ART is the closest equivalent role to those held by individuals who were non-judicial Deputy Presidents of the AAT.

Subsection 13(3) has the effect that this arrangement applies for the purposes of calculating pensions from 14 October 2024. This is appropriate because it ensures there is certainty about how pensions are to be calculated after the abolition of the AAT on that date.