Administrative Review Tribunal Act 2024

No. 40, 2024

An Act to establish an Administrative Review Tribunal and an Administrative Review Council and provide for matters relating to information about administrative decisions, and for related purposes

Note: An electronic version of this Act is available on the Federal Register of Legislation (https://www.legislation.gov.au/)

Authorised Version C2024A00040 registered 03/06/2024

Authorised Version C2024A00040 registered 03/06/2024

Contents

Part 1—Preliminary 2

1 Short title 2
2 Commencement 2
3 Simplified outline of this Act 2
4 Definitions 4
5 Other Acts can change how some provisions in this Act apply 14
6 Extension to external Territories 15

Part 2—Establishment of Administrative Review Tribunal 16

Division 1—Preliminary 16

7 Simplified outline of this Part 16

Division 2—Establishment of Tribunal 17

8 Establishment 17
9 Objective 17
10 Members of Tribunal 17

Part 3—Starting a review 18

Division 1—Preliminary 18

11 Simplified outline of this Part 18

Division 2—Key concepts for review of decisions 19

12 Reviewable decisions 19
13 Instruments may provide for application to Tribunal for review 19
14 Decision-maker 19
15 Organisation or association whose interests are affected by a decision 21
16 Decision is taken to be made if timeframe expires 21

Division 3—Applying for review of decision 22

17 Who can apply 22
18 When to apply—general rule 22
19 Exception—Tribunal may extend period 23
20 Exception—no prescribed period applies 24

Division 4—After an application is made 25

Subdivision A—Parties to proceeding 25

21 Parties and potential parties to be notified of application 25
22 Parties to proceeding for review 25

Authorised Version C2024A00040 registered 03/06/2024

Subdivision B—Provision of reasons and documents 26
23 Decision-maker must give Tribunal reasons and documents—general rule 26
24 Decision-maker must give Tribunal additional statement if Tribunal requires—general rule 26
25 Decision-maker must give Tribunal additional documents within 28 days—general rule 27
26 Decision-maker must give Tribunal additional documents on request—general rule 27
27 Decision-maker must give copies of reasons and documents to other parties—general rule 28
28 Exceptions—Tribunal may adjust requirements 28
29 Exception—while resolving whether to restrict publication or disclosure of information 29
30 Privilege and public interest 30
Subdivision C—Effect of application for review on decision 30
31 Decision cannot be altered outside Tribunal process 30
32 Reviewable decision continues to operate unless Tribunal orders otherwise 31
Part 4—Proceedings 33
Division 1—Preliminary 33
33 Simplified outline of this Part 33
Division 2—Applications to Tribunal 35
34 How to apply 35
35 Applications may be made on behalf of a person 35
Division 3—Practice directions 36
36 President may make practice directions 36
Division 4—Constitution of Tribunal for a proceeding 38
Subdivision A—Constituting the Tribunal 38
37 President may constitute Tribunal for purposes of a proceeding 38
38 President must consult before including Judicial Deputy President 39
Subdivision B—Proceedings generally 39
39 General rules for constitution of Tribunal 39
Subdivision C—Guidance and appeals panel 40
40 Exception—President refers application for review that raises issue of significance 40

Authorised Version C2024A00040 registered 03/06/2024

41 Exception—President, on appeal, refers Tribunal decision that raises issue of significance 40
42 Exception—President, on appeal, refers Tribunal decision for material error 41

Subdivision D—Reconstitution 43

43 Reconstitution—before hearing starts 43
44 Reconstitution—after hearing starts if member unavailable etc. 43
45 Reconstitution—involvement in dispute resolution process 44
46 Reconstitution—after hearing starts for conflict of interest or bias 44
47 Reconstitution—as guidance and appeals panel after hearing starts 44
48 After Tribunal is reconstituted 45

Division 5—Tribunal procedure 46

Subdivision A—General principles 46

49 Tribunal has discretion in relation to procedure 46
50 Tribunal is to act informally etc. 46
51 Tribunal to be accessible 46
52 Tribunal is not bound by rules of evidence 46
53 Tribunal controls scope of review of decision 46
54 Tribunal can exercise powers of decision-maker 47
55 Right to present case 47
56 Parties and their representatives to assist Tribunal 48
57 Sittings of Tribunal 48
58 Resolving disagreements between Tribunal members 49

Subdivision B—Parties and representation 49

59 Attorney-General of the Commonwealth may become a party 49
60 Decision-makers may elect not to participate in kind of proceeding or Tribunal case event 50
61 Decision-maker who elects not to participate may be a non-participating party to proceeding or Tribunal case event 51
62 Tribunal may allow non-participating party to participate ..52
63 Non-participating party may give submissions or be required to participate 53
64 Rules may deal with elections in relation to participation ...53
65 Certain parties may seek to withdraw from being a party ...54
66 Representation before Tribunal 54
67 Tribunal may appoint litigation supporter 55

Authorised Version C2024A00040 registered 03/06/2024

68 Tribunal may appoint interpreter 58
Division 6—Tribunal powers 60
Subdivision A—Hearings and evidence 60
69 Hearings to be in public unless practice directions or Tribunal order requires otherwise 60
70 Tribunal may restrict publication or disclosure of information 60
71 Requirements for Tribunal orders about hearings, publication and disclosure 61
72 Tribunal must notify parties of Tribunal case event 62
73 How a party may appear at a Tribunal case event 62
74 Tribunal may summon person to give evidence or produce documents 63
75 Tribunal may take evidence 64
76 Taking evidence on oath or affirmation 64
77 Payment of witness fees and allowances 65
78 Inspection of documents produced under summons 65
Subdivision B—Management of proceedings 66
79 Tribunal may give directions in relation to procedure for proceeding 66
80 Tribunal may hold directions hearing 67
81 Tribunal may proceed without absent party 68
82 Tribunal may adjourn Tribunal case event 68
83 Tribunal may remove party from proceeding if party fails to appear or does not comply 68
84 If applicant dies or is bankrupt, wound up or in liquidation or administration 69
85 Tribunal may remit decision to decision-maker for reconsideration 70
86 Tribunal may vary or revoke Tribunal order 71
Subdivision C—Dispute resolution processes 72
87 Tribunal may refer to dispute resolution process 72
88 Evidence in dispute resolution process not admissible elsewhere 72
89 Eligibility of person conducting dispute resolution process to sit as a member 73
90 Engagement of persons to conduct dispute resolution processes 74
Division 7—Public interest certificates and interventions 75
91 Disclosure of information—public interest certificate 75

Authorised Version C2024A00040 registered 03/06/2024

92 Attorney-General may intervene for public interest reasons 77
93 Attorney-General is party to proceeding....78
94 Public interest decisions made by Tribunal 79
Division 8—Decision 81
Subdivision A—Withdrawing and dismissing applications 81
95 Applicant may withdraw application 81
96 Tribunal may dismiss application if parties consent....81
97 Tribunal must dismiss application if decision is not reviewable decision....81
98 Tribunal may dismiss application if fee is not paid 81
99 Tribunal may dismiss application if applicant does not appear....81
100 Tribunal may dismiss application if applicant fails to comply with order etc....82
101 Tribunal may dismiss application if frivolous, vexatious etc. 82
102 Reinstatement of application....83
Subdivision B—Decisions agreed by parties 84
103 If parties reach agreement—review of decisions only....84
Subdivision C—Decision on review of reviewable decision 86
104 When this Subdivision applies....86
105 Tribunal decision on review of reviewable decision....86
106 Circumstances in which Tribunal may reach decision without hearing—review of decisions only 86
107 When Tribunal's decision on review comes into operation.88
108 Effect of Tribunal decision to vary or substitute a reviewable decision 90
Division 9—Tribunal guidance decisions 92
109 Tribunal guidance decisions....92
110 Tribunal must have regard to Tribunal guidance decisions .93
Division 10—After proceeding ends 94
111 Notice of decision and statement of reasons—review of reviewable decision....94
112 Notice of decision and statement of reasons—other proceedings 95
113 Tribunal may publish decisions 96
114 Tribunal may correct error in decision or statement of reasons....97
115 Taxing costs 97

Authorised Version C2024A00040 registered 03/06/2024

Division 11—Offences 99
116 Offence—failure to comply with summons 99
117 Offence—failure to take oath, make affirmation or answer question 99
118 Offence—giving false or misleading evidence 99
119 Offence—breach of non-publication or non-disclosure order 100
120 Offence—contempt of Tribunal 100

Part 5—Guidance and appeals panel 101

Division 1—Preliminary 101
121 Simplified outline of this Part 101

Division 2—President may refer application on own initiative 103
122 President may refer application for review of decision to guidance and appeals panel 103

Division 3—Party may apply to refer Tribunal decision to guidance and appeals panel 104

Subdivision A—Application for referral to guidance and appeals panel 104
123 Application may be made to refer certain Tribunal decisions to guidance and appeals panel 104
124 How to apply 105
125 When to apply to refer Tribunal decision 105

Subdivision B—After application to refer decision is made 106
126 Parties to be notified of application 106
127 Tribunal decision continues to operate unless Tribunal orders otherwise 106
128 President decides whether to refer Tribunal decision to guidance and appeals panel 108
129 Notice of President's decision 109

Subdivision C—Review after Tribunal decision is referred to guidance and appeals panel 109
130 Application for review proceeds if President refers Tribunal decision to guidance and appeals panel 109
131 Tribunal may have regard to records and documents from earlier proceeding 111

Part 5A—Second review for certain social services decisions 112

Division 1—Preliminary 112
131A Simplified outline of this Part 112

Authorised Version C2024A00040 registered 03/06/2024

131B How this Part applies 112
131C Meaning of *eligible social services decision* 112
Division 2—General rules for second review 114
131D Who can apply....114
131E Operation of this Act and other laws....114
Division 3—Modifications for second review 116
131F References to the decision-maker 116
131G Giving reasons and documents to Tribunal....116
131H Who can apply—claimant decisions....116
131J When to apply 116
131K Parties to proceeding....117
131L Limits on applying to become a party to proceeding—claimant decisions 117
131M Decision cannot be altered outside Tribunal process....117
131N No automatic election notice for decision-maker 117
131P Tribunal may have regard to records and documents from earlier proceeding....118
131Q Care percentage determinations reviewed under other Acts 118
131R Date of effect provisions 119
131S Treating events as having occurred....120
131T Remitting decisions for reconsideration....120
131U Legal or financial assistance 120
131V Operation and implementation of decision on second review 121
131W Guidance and appeals panel....121
131X Time and manner for making appeals....121
Part 6—Proceedings in Intelligence and Security jurisdictional area 122
Division 1—Preliminary 122
132 Simplified outline of this Part 122
133 How this Part applies 123
134 Proceedings to be conducted in Intelligence and Security jurisdictional area 123
135 Operation in relation to decision-maker....124
136 Reasons for decisions....125
137 Meaning of *relevant body* 125
Division 2—Starting a review 127
Subdivision A—Applications and notice of applications 127

Authorised Version C2024A00040 registered 03/06/2024

138 Limits on who can apply for certain reviews 127
139 Additional persons to be notified of applications for review 127
140 Applications for decisions to be reviewed again 128
Subdivision B—Information to be provided by agency head 128
141 Information to be provided by agency head 128
Subdivision C—Provision of security clearance standards 130
142 When this Subdivision applies 130
143 Director-General of Security may provide standards 131
144 Disclosure of standards 131
Division 3—Proceedings 133
145 Constitution of Tribunal—general rule 133
146 Constitution of Tribunal—preventative detention decisions 134
147 Parties to proceedings 135
148 Certain hearings must be held in private 136
149 Persons entitled to be present at hearings 136
150 Relevant bodies may adduce evidence and make submissions 137
151 Order of evidence and submissions 138
152 Opportunity for further evidence and submissions 138
153 Tribunal may invite person to give evidence 139
154 Certain processes not available 139
155 Guidance and appeals panel 139
Division 4—Disclosure of information 141
156 Duty of Tribunal in relation to security and law enforcement information 141
157 Restricting publication or disclosure of information 141
158 Security certificates—responsible Minister 142
159 Sensitive information certificates—Director-General of Security 144
160 Protecting identities of persons giving evidence 145
161 Public interest certificates—responsible Minister 146
162 Non-disclosure certificates under other Acts 148
Division 5—Decisions on review 150
Subdivision A—Limits on certain decisions 150
163 Security clearance decisions 150
164 Preventative detention decisions 150
Subdivision B—Recording and communicating decisions 151

Authorised Version C2024A00040 registered 03/06/2024

165 When this Subdivision applies 151
166 Making and recording findings 151
167 Communicating decisions 152
168 Findings relating to procedures or practices of agency....153
169 Applicant may publish findings 153

Part 7—Appeals and references of questions of law to Federal Court 154

Division 1—Preliminary 154
170 Simplified outline of this Part 154
171 Part applies whether Tribunal's power is conferred by Commonwealth, State or Territory law....154

Division 2—Appeals on questions of law 156

Subdivision A—Appeals on questions of law 156
172 Party may appeal 156
173 Decisions about standing....156
174 Time and manner for making appeals 156
175 Constitution of Federal Court....157

Subdivision B—Jurisdiction and powers of Federal Court 158
176 Federal Court has jurisdiction 158
177 Court may make findings of fact....158
178 Operation and implementation of Tribunal's decision....159

Division 3—Transfer of appeals to Federal Circuit and Family Court of Australia (Division 2) 160
179 Transfer of appeals 160
180 No appeal from decision to transfer 161
181 Federal Court Rules....161

Division 4—Matters remitted to Tribunal 162
182 When this Division applies 162
183 Constitution of Tribunal 162
184 Tribunal may rely on previous proceedings....162

Division 5—Referring questions of law 163
185 Referring questions of law 163

Division 6—Sending and disclosing documents 164
186 When this Division applies 164
187 Sending documents 164
188 Returning documents 165
189 Disclosure contrary to public interest 165

Authorised Version C2024A00040 registered 03/06/2024

190 Disclosure of security clearance documents 166
191 Disclosure to officers of the court 167

Part 8—Members and staff of Tribunal 168

Division 1—Preliminary 168

192 Simplified outline of this Part 168

Division 2—Members of Tribunal 170

Subdivision A—Members and functions 170

193 Functions of President 170
194 Functions of Deputy Presidents 171
195 Functions of senior and general members 172

Subdivision B—Jurisdictional areas and lists 172

196 Jurisdictional areas and lists 172
197 Jurisdictional area leaders 173
198 Assignment of members to lead lists 175
199 Assignment of members to jurisdictional areas 176

Subdivision C—Performance and conduct of members 177

200 President may give directions to members 177
201 Code of conduct 177
202 Performance standard 178
203 President may investigate conduct of members 178
204 Protection of persons involved in investigating conduct of members etc. 179

Division 3—Member appointment provisions 181

Subdivision A—Appointment of members 181

205 Appointment of President 181
206 Appointment of Judicial Deputy Presidents 182
207 Appointment of Non-Judicial Deputy Presidents 183
208 Appointment of senior members and general members 185
209 Minister must establish assessment panel 187
210 Appointment of a Judge not to affect tenure etc. 187
211 Extension of appointment 187
212 Acting appointments 188
213 Oath or affirmation of office 190

Subdivision B—Members' terms and conditions 191

214 Remuneration 191
215 Leave 191
216 Other paid work 192
217 Appearances before Tribunal 192

Authorised Version C2024A00040 registered 03/06/2024

218 Disclosure of interests 192
219 Register of interests 193
220 Resignation 194
221 Termination of appointment 194
222 President must notify Minister about grounds for termination 195
223 Additional terms and conditions 195

Division 4—Management of Tribunal 196

Subdivision A—Management functions of President 196
224 Management of administrative affairs of Tribunal 196

Subdivision B—Appointment and functions of Principal Registrar 196
225 Principal Registrar 196
226 Functions of Principal Registrar 196
227 Appointment of Principal Registrar 197
228 Acting appointments 198
229 Remuneration 199
230 Leave 199
231 Other paid work 199
232 Disclosure of interests 199
233 Resignation 200
234 Termination of appointment 200
235 Additional terms and conditions 201

Subdivision C—Leadership of Tribunal 201
236 Tribunal Advisory Committee 201

Division 5—Staff and consultants 203
237 Appointment of registrars 203
238 Staff 203
239 APS employees and others made available 203
240 Consultants 204

Division 6—Application of finance law and reporting requirements 205
241 Application of finance law 205
242 Report by President 205

Division 7—Other matters concerning management 208
243 Registries 208
244 Proceedings arising out of management of Tribunal 208

Part 9—Administrative Review Council 209

Authorised Version C2024A00040 registered 03/06/2024

Division 1—Preliminary 209
245 Simplified outline of this Part 209
Division 2—Establishment 210
246 Administrative Review Council 210
247 Membership of Council 210
248 Application of finance law 210
Division 3—Council functions etc. 211
249 Functions and powers of Council 211
250 Reports by Council 212
251 Meetings of Council 212
Division 4—Appointment 214
252 Appointment of certain Council members 214
253 Appointment of Chair of Council 214
254 Qualification for appointment 214
255 Period of appointment 215
256 Acting appointments 216
257 Remuneration 216
258 Leave 216
259 Disclosure of interests 216
260 Resignation 217
261 Termination of appointment 217
262 Additional terms and conditions 218
Division 5—Staff to assist Council 219
263 Arrangements relating to staff of the Department 219
Division 6—Annual report 220
264 Annual report 220
Part 10—Notice and information about administrative decision 221
Division 1—Preliminary 221
265 Simplified outline of this Part 221
Division 2—Decision-makers to give notice of decisions 222
266 Decision-maker to give notice of decision and review rights 222
267 Decision-maker must have regard to rules when giving notice of decision 223
Division 3—Decision-makers to give reasons for decisions 225
268 Requesting reasons for reviewable decision from decision-maker 225

Authorised Version C2024A00040 registered 03/06/2024

269 Decision-maker to give statement of reasons....225
270 Applying to Tribunal to obtain reasons for reviewable decision....227
271 Applying to Tribunal to obtain adequate statement of reasons....228
272 Public interest certificate in relation to statement of reasons....229

Part 11—Miscellaneous 230

Division 1—Preliminary 230
273 Simplified outline of this Part....230

Division 2—Confidentiality 231
274 Protected information and documents....231
275 Evidence about Tribunal proceedings....231
276 Application of confidentiality provisions in other Acts and instruments....232

Division 3—Delegation 233
278 Delegation by Minister....233
279 Delegation by President....233
280 Delegation by Principal Registrar....235

Division 4—Performing and exercising functions and powers of Tribunal 236

Subdivision A—Performance and exercise of functions and powers 236
281 Who may perform or exercise functions or powers....236
282 How functions or powers must be performed or exercised237

Subdivision B—Authorisations to perform and exercise functions and powers of Tribunal 237
283 Authorisations for Principal Registrar....237
284 Authorisations for members....237
285 Authorisations for registrars....239
286 Authorisations for staff members....241
287 Authorisations are subject to conditions....242

Division 5—Other matters 243
288 Tribunal may give advisory opinion....243
289 Certain things required to be done in writing may be done electronically....243
290 Giving documents....244
291 Giving documents etc. to decision-maker....244
292 Calculation of short periods of time....245

Authorised Version C2024A00040 registered 03/06/2024

293 Protection and immunity 245
294 Legal or financial assistance 246
294A Review of operation of this Act 248
294B Minister and Commonwealth entities to inform Council of action on systemic issues 248

Division 6—Rules and regulations 250

295 Rules 250
296 Tribunal may charge fees 251
297 Regulations 252

Authorised Version C2024A00040 registered 03/06/2024

Administrative Review Tribunal Act 2024

No. 40, 2024

An Act to establish an Administrative Review Tribunal and an Administrative Review Council and provide for matters relating to information about administrative decisions, and for related purposes

[*Assented to 3 June 2024*]

The Parliament of Australia enacts:

Authorised Version C2024A00040 registered 03/06/2024

Part 1—Preliminary

1 Short title

This Act is the *Administrative Review Tribunal Act 2024*.

2 Commencement

(1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information

Column 1	Column 2	Column 3
Provisions	**Commencement**	**Date/Details**
1. The whole of this Act	A single day to be fixed by Proclamation. However, if the provisions do not commence within the period of 12 months beginning on the day this Act receives the Royal Assent, they commence on the first day of the first calendar month to start after the end of that period.	

Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

(2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

3 Simplified outline of this Act

A large number of Acts and legislative instruments allow people to apply to the Administrative Review Tribunal for review of decisions made under them. The Tribunal is established to review these decisions (known as reviewable decisions).

Authorised Version C2024A00040 registered 03/06/2024

The Tribunal has a President, Deputy Presidents, senior members and general members. There is also a Principal Registrar and staff. This Act deals with their appointment, functions and terms and conditions.

This Act contains the standard provisions applying to Tribunal processes. Other legislation can include provisions that apply in addition to, or instead of, these standard provisions.

Broadly, a Tribunal process for review of a reviewable decision includes the following stages:

(a) a person whose interests are affected by a reviewable decision applies to the Tribunal for review;

(b) the applicant, the decision-maker and potentially other persons become parties to the proceeding for the review;

(c) the President constitutes the Tribunal for the purposes of the proceeding by deciding which member or members will exercise the Tribunal's powers for the proceeding;

(d) the Tribunal conducts the proceeding, including obtaining evidence and holding hearings, directions hearings and dispute resolution processes;

(e) the Tribunal makes its decision.

Tribunal powers in relation to the proceeding are exercised by the Tribunal constituted for the purposes of the proceeding or, in some circumstances by the President or by members, the Principal Registrar, registrars and staff members authorised by the President.

The Tribunal reviews decisions on their merits. It may affirm, vary or set aside a decision-maker's decision. If the Tribunal sets aside a decision, it may make a substitute decision or remit the matter to the decision-maker to reconsider as ordered or recommended by the Tribunal.

After the Tribunal makes its decision:

(a) in some circumstances, a party may apply to refer the matter to the guidance and appeals panel for another review; and

Authorised Version C2024A00040 registered 03/06/2024

(b) a party may appeal to the Federal Court, on a question of law, from the Tribunal's decision.

Special rules apply when the Tribunal's powers in relation to a proceeding are exercised in the Intelligence and Security jurisdictional area. This occurs if the proceeding relates to an intelligence and security decision or the President otherwise directs (for example where the President is satisfied national security information would be involved).

There are requirements for decision-makers in relation to giving notice of decisions and review rights and providing statements of reasons. These apply whether or not an application has been made to the Tribunal for review of the decision.

This Act also establishes the Administrative Review Council, with functions relating to the Commonwealth administrative law system. The Council consists of the President, the Commonwealth Ombudsman, the Australian Information Commissioner and other members appointed by the Governor-General. This Act deals with the appointed members' appointment, functions and terms and conditions.

4 Definitions

In this Act:

accessible, in relation to the Tribunal, means enables persons to apply to the Tribunal and to participate effectively in proceedings in the Tribunal.

Note: Examples of areas where arrangements may be made in relation to accessibility include the following:

(a) premises, facilities and technology;

(b) ease of locating and understanding information about the Tribunal and documents relating to proceedings;

(c) adjustments that can reasonably be made to accommodate a person's needs, such as interpreter services for hearings.

adduce, in relation to evidence, includes give.

Authorised Version C2024A00040 registered 03/06/2024

administrative affairs, in relation to the Tribunal, has a meaning affected by subsection 224(2).

AFP Commissioner means the Commissioner of Police (within the meaning of the *Australian Federal Police Act 1979*).

agency head:

(a) in relation to a criminal intelligence assessment, means the Chief Executive Officer of the Australian Crime Commission; or

(b) in relation to an exempt security record decision that is a decision of a kind mentioned in subsection 57A(1) of the *Freedom of Information Act 1982* in respect of an exempt document (within the meaning of that Act), means the principal officer of the agency, or the Minister, to whom the request for access to the document concerned was made; or

(c) in relation to an exempt security record decision that is a decision of the National Archives of Australia, means the Director-General of the National Archives of Australia; or

(d) in relation to a foreign acquisitions and takeovers decision, means the Treasurer; or

(e) in relation to a preventative detention decision, means the AFP Commissioner; or

(f) in relation to a security assessment, means the Director-General of Security; or

(g) in relation to a security clearance decision, means the Director-General of Security; or

(h) in relation to a security clearance suitability assessment, means the Director-General of Security.

agency within the national intelligence community has the same meaning as in the *Office of National Intelligence Act 2018*.

appear, in relation to a Tribunal case event, has a meaning affected by section 73.

appointed member means a member of the Council mentioned in paragraph 247(1)(d).

ART social services decision: see subsection 131D(3).

Authorised Version C2024A00040 registered 03/06/2024

ASIO means the Australian Security Intelligence Organisation.

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

ASIO Minister means the Minister administering the ASIO Act.

authorised person, in relation to the performance or exercise of a function or power of the Tribunal, means a person authorised under Subdivision B of Division 4 of Part 11 to perform or exercise the function or power.

code of conduct means the code of conduct determined under section 201.

Commonwealth entity has the same meaning as in the *Public Governance, Performance and Accountability Act 2013*.

corporate and registry services, of the Tribunal: see subsection 226(2).

Council means the Administrative Review Council.

Council member means any member of the Council including the Chair of the Council.

criminal intelligence assessment means an adverse criminal intelligence assessment within the meaning of Division 2A of Part II of the *Australian Crime Commission Act 2002*.

decision includes the following:

(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;

(g) doing or refusing to do any other act or thing.

Authorised Version C2024A00040 registered 03/06/2024

decision-maker: see section 14.

Deputy President means a Judicial Deputy President or a Non-Judicial Deputy President.

dispute resolution process means a procedure or service for the voluntary resolution of disputes, and includes:

(a) conferencing; and

(b) mediation; and

(c) neutral evaluation; and

(d) conciliation; and

(e) a procedure or service specified in the practice directions;

but does not include:

(f) arbitration; or

(g) court procedures or services.

election notice: see subsection 60(1).

eligible social services decision: see section 131C.

engage in conduct means:

(a) do an act; or

(b) omit to perform an act.

entrusted person means a person who is or has been:

(a) a member; or

(b) the Principal Registrar; or

(c) a staff member; or

(d) a person engaged to provide services to the Tribunal.

exempt security record decision means:

(a) a decision of a kind mentioned in subsection 57A(1) of the *Freedom of Information Act 1982* in respect of a document that is an exempt document (within the meaning of that Act) because of section 33 of that Act; or

(b) a decision of the National Archives of Australia in respect of access to:

(i) a record claimed to be an exempt record under the *Archives Act 1983* because it contains information or

Authorised Version C2024A00040 registered 03/06/2024

matter of a kind mentioned in paragraph 33(1)(a) or (b) of that Act; or

(ii) a record of ASIO.

Federal Court means the Federal Court of Australia.

foreign acquisitions and takeovers decision means a decision under section 79A of the *Foreign Acquisitions and Takeovers Act 1975* that a national security risk exists in relation to an action.

general member means a person appointed as a general member under section 208.

guidance and appeals panel: the Tribunal is constituted for the purposes of a proceeding by the ***guidance and appeals panel*** if the Tribunal is constituted for the purposes of the proceeding in accordance with Subdivision C of Division 4 of Part 4.

guidance and appeals panel application means an application taken to be made under subsection 130(2).

guidance and appeals panel proceeding: a proceeding in the Tribunal in relation to an application is a ***guidance and appeals panel proceeding*** if:

(a) the application is a guidance and appeals panel application; or

(b) the President refers the application to the guidance and appeals panel.

hearing of a proceeding: the ***hearing of a proceeding*** in the Tribunal does not include a directions hearing in relation to the proceeding.

intelligence and security decision means:

(a) a criminal intelligence assessment; or

(b) an exempt security record decision; or

(c) a foreign acquisitions and takeovers decision; or

(d) a preventative detention decision; or

(e) a security assessment; or

(f) a security clearance decision; or

Authorised Version C2024A00040 registered 03/06/2024

(g) a security clearance suitability assessment.

Judge means a Judge of a court created by the Parliament.

Judicial Deputy President means a person appointed as a Judicial Deputy President under section 206.

jurisdictional area means a jurisdictional area of the Tribunal established by subsection 196(1).

jurisdictional area leader:

(a) in relation to a jurisdictional area—means a person assigned under subsection 197(1) to be a leader of the jurisdictional area; and

(b) in relation to a list—means the jurisdictional area leader of the jurisdictional area within which the list is established.

law enforcement interests has the same meaning as in Division 2A of Part II of the *Australian Crime Commission Act 2002*.

legal practitioner means a barrister, a solicitor, a barrister and solicitor or a legal practitioner of the High Court or of the Supreme Court of a State or Territory.

list means a list established within a jurisdictional area by the President under subsection 196(2).

litigation supporter, in relation to a party to a proceeding, means a person appointed to be a litigation supporter for the party under section 67.

made under an Act: an instrument is ***made under an Act*** if it is made under a provision of an Act or made under a provision of an instrument that is made under an Act.

member means any of the following members of the Tribunal:

(a) the President;

(b) a Deputy President;

(c) a senior member;

(d) a general member.

Authorised Version C2024A00040 registered 03/06/2024

merit-based: an assessment process for an appointment to an office is ***merit-based*** only if:

(a) an assessment is made of the comparative suitability of the candidates for the duties of the office, using a competitive selection process; and

(b) the assessment is based on the relationship between the candidates' skills, expertise, experience and knowledge and the skills, expertise, experience and knowledge required for the duties of the office; and

(c) the assessment takes into account the need for a diversity of skills, expertise, lived experience and knowledge within the Tribunal.

national security information has the same meaning as in the *National Security Information (Criminal and Civil Proceedings) Act 2004*.

Non-Judicial Deputy President means a person appointed as a Non-Judicial Deputy President under section 207.

non-judicial member means a member who is not a Judge.

non-participating party: see section 61.

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.

official has the same meaning as in the *Public Governance, Performance and Accountability Act 2013*.

paid work means work for financial gain or reward (whether as an employee, a self-employed person or otherwise), other than service in the Australian Defence Force.

parliament means:

Authorised Version C2024A00040 registered 03/06/2024

(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.

participation notice: see section 62.

performance standard means the performance standard determined under section 202.

person whose interests are affected by a decision has a meaning affected by section 15.

practice directions means practice directions made under section 36.

President means the person appointed as the President under section 205.

presiding member, in relation to a proceeding, means the member the President directs under subsection 37(2) is to preside for the purposes of the proceeding.

preventative detention decision means:
(a) a decision by an issuing authority under section 105.8 or 105.12 of the *Criminal Code* to make a preventative detention order; or
(b) a decision by an issuing authority under section 105.10 or 105.14 of the *Criminal Code* to extend or further extend the period for which a preventative detention order is in force.

Principal Registrar means the person appointed as the Chief Executive Officer and Principal Registrar under section 227.

proceeding, in relation to the Tribunal, includes a proceeding in the Tribunal in relation to any of the following:
(a) an application for review of a reviewable decision;
(b) an application under subsection 270(2) (applying to Tribunal to obtain reasons for reviewable decision);
(c) an application under subsection 271(2) (applying to Tribunal to obtain adequate statement of reasons);

Authorised Version C2024A00040 registered 03/06/2024

(d) any other application to the Tribunal under this Act, any other Act or any instrument made under an Act;

(e) any matter referred to the Tribunal for inquiry or review under this Act, any other Act or any instrument made under an Act;

(f) an incidental application to the Tribunal made in the course of, or in connection with, an application or proposed application, or a matter, mentioned in a preceding paragraph.

produce includes permit access to.

protected document: see subsection 274(3).

protected information: see subsection 274(4).

reconstitute the Tribunal, in relation to a proceeding, means revoke the direction made under subsection 37(1) in relation to the proceeding and make another direction under that subsection in relation to the proceeding.

registrar means a person appointed as a registrar under section 237.

relevant body: see subsection 137(2).

responsible Minister, in relation to an intelligence and security decision, means the Minister, or any of the Ministers, administering the provision under which the decision is made.

reviewable decision: see section 12.

review pathway: see subsection 266(3).

rules means the rules made under section 295.

salaried member means a member who is appointed on a salaried basis.

second review: see subsection 131D(1).

security assessment means:

(a) an adverse security assessment within the meaning of Part IV of the ASIO Act; or

Authorised Version C2024A00040 registered 03/06/2024

(b) a qualified security assessment within the meaning of Part IV of the ASIO Act.

security clearance decision has the same meaning as in the ASIO Act.

security clearance suitability assessment has the same meaning as in the ASIO Act.

security vetting agency has the same meaning as in Part IVA of the ASIO Act.

senior member means a person appointed as a senior member under section 208.

serious misconduct includes, but is not limited to, the following:

(a) conduct that constitutes unlawful discrimination (within the meaning of the *Australian Human Rights Commission Act 1986*);

(b) serious or repeated bullying or harassment of a person.

sessional member means a member who is appointed on a sessional basis.

sponsoring agency has the same meaning as in Part IVA of the ASIO Act.

staff member means:

(a) a member of the staff of the Tribunal; or

(b) a person whose services are made available to the Tribunal under section 239.

statement of reasons, for a decision, means a written statement in relation to the decision that:

(a) sets out the findings on material questions of fact; and

(b) refers to the evidence or other material on which the findings are based; and

(c) explains the reasons for the decision.

State or Territory government entity means:

(a) a Department of a State or Territory; or

Authorised Version C2024A00040 registered 03/06/2024

(b) a body (whether incorporated or not) established for a public purpose by or under a law of a State or Territory.

Tribunal means the Administrative Review Tribunal established by section 8.

Tribunal Advisory Committee means the Tribunal Advisory Committee established by section 236.

Tribunal case event, in relation to a proceeding in the Tribunal, means:

(a) the hearing, or part of the hearing, of the proceeding; or

(b) a directions hearing, or part of a directions hearing, in relation to the proceeding; or

(c) a dispute resolution process, or part of a dispute resolution process, under Subdivision C of Division 6 of Part 4 in relation to the proceeding.

Tribunal guidance decision: see subsection 109(1).

5 Other Acts can change how some provisions in this Act apply

General rules

(1) The application of a provision of this Act is subject to a contrary intention in another Act.

Note: For example, the Act under which a reviewable decision is made may contain provisions that apply to review of the decision in addition to, or instead of, provisions in this Act.

(2) If an Act provides that an instrument made under that Act can contain provisions that apply:

(a) in addition to; or

(b) instead of; or

(c) contrary to;

this Act, the application of a provision of this Act is subject to a contrary intention in the instrument.

Note: Instruments may contain provisions that apply to review of a reviewable decision in addition to, or instead of, provisions in this Act if that is permitted by the Act under which the instrument is made.

Authorised Version C2024A00040 registered 03/06/2024

Exceptions

(3) However, subsections (1) and (2) do not apply in relation to:
  (a) Part 2 (establishment of Administrative Review Tribunal); or
  (b) Part 8 (members and staff of Tribunal); or
  (c) Part 9 (Administrative Review Council).

6 Extension to external Territories

This Act extends to the external Territories.

Authorised Version C2024A00040 registered 03/06/2024

Part 2—Establishment of Administrative Review Tribunal

Division 1—Preliminary

7 Simplified outline of this Part

The Administrative Review Tribunal is established with the objective of providing an independent mechanism of review.

The Tribunal consists of the President, Deputy Presidents, senior members and general members. The President and Judicial Deputy Presidents are Judges. For detail relating to appointments and roles, see Divisions 2 and 3 of Part 8.

The Tribunal also has a Principal Registrar and staff. For detail regarding management of the Tribunal, see Part 8.

Authorised Version C2024A00040 registered 03/06/2024

Division 2—Establishment of Tribunal

8 Establishment

The Administrative Review Tribunal is established by this section.

9 Objective

The Tribunal must pursue the objective of providing an independent mechanism of review that:

(a) is fair and just; and

(b) ensures that applications to the Tribunal are resolved as quickly, and with as little formality and expense, as a proper consideration of the matters before the Tribunal permits; and

(c) is accessible and responsive to the diverse needs of parties to proceedings; and

(d) improves the transparency and quality of government decision-making; and

(e) promotes public trust and confidence in the Tribunal.

10 Members of Tribunal

(1) The Tribunal consists of the following members:

(a) the President;

(b) Deputy Presidents;

(c) senior members;

(d) general members.

(2) A Judge who is to be appointed as a member must be appointed as the President or as a Judicial Deputy President.

Authorised Version C2024A00040 registered 03/06/2024

Part 3—Starting a review

Division 1—Preliminary

11 Simplified outline of this Part

A large number of Acts and legislative instruments allow people to apply to the Tribunal for review of decisions made under them.

A person whose interests are affected by a reviewable decision may apply to the Tribunal for review of the decision. Timeframes apply to applications, but may be extended in some circumstances.

If a person applies for review of a decision, the person and the decision-maker are parties to the proceeding for the review. Other people whose interests are affected by the decision may apply to the Tribunal to become a party.

For the purposes of the review of a decision, the decision-maker must generally give copies of a statement of reasons for the decision and relevant documents to the Tribunal and the other parties to the proceeding for the review.

An application for review of a decision does not affect the operation of the decision unless the Tribunal orders otherwise.

This Part contains the standard provisions for these matters. Other legislation can include provisions that apply in addition to, or instead of, these standard provisions.

Part 10 contains other provisions assisting persons affected by decisions. These deal with when decision-makers are required to give notice of decisions and review rights and provide statements of reasons.

Authorised Version C2024A00040 registered 03/06/2024

Division 2—Key concepts for review of decisions

12 Reviewable decisions

(1) A decision is a ***reviewable decision*** if an Act or a legislative instrument provides for an application to be made to the Tribunal for review of the decision.

Note: To find out whether a decision is a reviewable decision, start by looking at the Act or legislative instrument under which the decision is made.

(2) In addition, if an Act or a legislative instrument provides for an application to be made to the Tribunal for review of a decision of a person under a power, a decision under the power is a ***reviewable decision***, whether or not it is made by the person.

Note: Under subsection (2), the decision is a reviewable decision even if made by a person who is not authorised to make the decision.

13 Instruments may provide for application to Tribunal for review

(1) A legislative instrument may provide for an application to be made to the Tribunal for review of a decision made under the instrument.

(2) Subsection (1) does not limit any other Act or instrument made under an Act.

14 Decision-maker

General rule

(1) The ***decision-maker*** for a decision is the person who makes the decision.

Note: For when Tribunal decisions are taken to be made by the decision-maker, see subsection 108(2).

Exception—person ceases to hold office, appointment or position

(2) Despite subsection (1), if:

(a) a person makes a decision as the holder or occupier of an office, appointment or position; and

Authorised Version C2024A00040 registered 03/06/2024

(b) the person ceases to hold or occupy the office, appointment or position;

the ***decision-maker*** for the decision is:

(c) the person who holds or occupies the office, appointment or position; or

(d) if there is no person who holds or occupies the office, appointment or position—the person specified by the President.

Exception—any other circumstance

(3) If subsections (1) and (2) do not apply in relation to a decision, the ***decision-maker*** for the decision is the person specified by the President.

Specifying a decision-maker

(4) The President must not specify a person under paragraph (2)(d) or subsection (3) unless the President considers that the person is the person most able to satisfy the requirements imposed by this Act on decision-makers of reviewable decisions.

(5) If the President specifies the person in writing, the specification is not a legislative instrument.

Extension—unincorporated decision-maker is treated as if it were a person

(6) If a board, committee or other unincorporated body constituted by 2 or more persons is empowered by an Act or an instrument made under an Act to make a decision, this Act applies as if that board, committee or other body were a person empowered to make the decision.

Clarification—decisions made by delegates

(7) Subject to this Act, if an Act or an instrument made under an Act confers power on a person or body (the ***authority***) to delegate a function or power in relation to a decision, a function or power so delegated, when performed or exercised by the delegate, is, for the

Authorised Version C2024A00040 registered 03/06/2024

purposes of this Act, taken to have been performed or exercised by the authority.

15 Organisation or association whose interests are affected by a decision

An organisation or association of persons, whether incorporated or not, is taken to be a person whose interests are affected by a decision if:

(a) the decision relates to a matter included in the objects or purposes of the organisation or association at the time the decision is made; and

(b) the matter has not been removed from the objects or purposes of the organisation or association.

16 Decision is taken to be made if timeframe expires

If:

(a) a decision of a person not to do a thing is a reviewable decision; and

(b) an Act or an instrument made under an Act provides for a quantified period within which the person is required or permitted to do the thing; and

(c) the person does not do the thing within the period;

the person is taken, for the purposes of this Act and the Act or instrument that provides for an application to be made to the Tribunal for review of the decision, to have made a decision at the end of the period not to do the thing.

Note: If there is no quantified period within which the person is required or permitted to do the thing, see section 10 of the *Ombudsman Act 1976*.

Authorised Version C2024A00040 registered 03/06/2024

Division 3—Applying for review of decision

17 Who can apply

(1) A person whose interests are affected by a reviewable decision may apply to the Tribunal for review of the decision.

Note 1: For which decisions are reviewable decisions, see section 12.

Note 2: For when an organisation's or association's interests are taken to be affected, see section 15.

Note 3: Section 173 provides a right of appeal to the Federal Court if the Tribunal decides that a person's interests are not affected by a reviewable decision.

(2) To avoid doubt, a person may apply even if the person is the Commonwealth or an authority, tribunal or other body (whether incorporated or not) that is established by an Act or an instrument made under an Act.

18 When to apply—general rule

(1) An application to the Tribunal for review of a decision must be made within the period prescribed by the rules.

Note: The legislation under which a reviewable decision is made may specify a different period for applying for review of that type of decision.

(2) Subsection (1) is subject to section 19 (exception—Tribunal may extend period).

(3) Rules made for the purposes of subsection (1) must not prescribe a period ending before the day that is 28 days after the day the decision is made.

(4) Rules made for the purposes of subsection (1) may prescribe different periods for different classes of application.

Authorised Version C2024A00040 registered 03/06/2024

19 Exception—Tribunal may extend period

Application to extend period

(1) A person (the ***applicant***) may apply to the Tribunal to extend the period during which the applicant may apply to the Tribunal for review of a decision.

(2) The Tribunal may, by order, extend the period if the Tribunal considers that it is reasonable in all the circumstances to do so.

(3) The Tribunal may extend the period even if it has expired.

Exception—where reinstatement is available or has been refused

(4) The Tribunal must not extend the period if:
   (a) section 102 permits the applicant to apply to the Tribunal to reinstate an application by the applicant for review of the decision; or
   (b) the Tribunal refuses an application by the applicant under section 102 to reinstate an application for review of the decision.

Notice to affected persons may be required

(5) The Tribunal may:
   (a) give notice of the application to extend the period (the ***extension application***); or
   (b) require the applicant to give notice of the extension application;

to any other person the Tribunal considers is affected by the extension application.

Affected persons may oppose extension application

(6) A person notified under subsection (5) may notify the Tribunal within 14 days that the person wishes to oppose the extension application.

(7) If a person notifies the Tribunal under subsection (6), the Tribunal must not extend the period unless the Tribunal has given the

Authorised Version C2024A00040 registered 03/06/2024

applicant and any person who notified the Tribunal under subsection (6) a reasonable opportunity to adduce evidence and make submissions to the Tribunal in relation to the extension.

20 Exception—no prescribed period applies

(1) If:

(a) an application for review of a decision is made to the Tribunal; and

(b) the application is not required by law to be made within any particular period; and

(c) the Tribunal considers that the application was not made within a reasonable time after the making of the decision;

the Tribunal must dismiss the application.

(2) However, subsection (1) does not apply if the Tribunal considers that there are special circumstances that justify the Tribunal reviewing the decision.

(3) In considering the matter in paragraph (1)(c):

(a) the Tribunal must have regard to the following:

(i) the time at which the applicant became aware of the making of the decision;

(ii) if the application would have been required by law to be made within a particular period if the application had been made by someone other than the applicant—that period; and

(b) the Tribunal may have regard to any other matters that it considers relevant.

Authorised Version C2024A00040 registered 03/06/2024

Division 4—After an application is made

Subdivision A—Parties to proceeding

21 Parties and potential parties to be notified of application

(1) This section applies if an application is made to the Tribunal for review of a decision.

(2) The Tribunal must give written notice of the application to:
  (a) the applicant; and
  (b) the decision-maker; and
  (c) any other person who is made a party to the proceeding for the review by an Act or an instrument made under an Act.

(3) If the Tribunal considers that another person's interests may be affected by the decision, the Tribunal may:
  (a) give to the person; or
  (b) require the applicant to give to the person;

written notice of the application and the person's right to apply to become a party to the proceeding for the review.

22 Parties to proceeding for review

Parties to proceeding

(1) Each of the following are parties to a proceeding for review by the Tribunal of a decision:
  (a) the applicant for the review;
  (b) the decision-maker;
  (c) any other person, if:
    (i) the person applies to the Tribunal to become a party to the proceeding; and
    (ii) the Tribunal is satisfied that the person's interests are affected by the decision; and
    (iii) the Tribunal considers it appropriate that the person become a party to the proceeding.

Authorised Version C2024A00040 registered 03/06/2024

Note: In addition, the Attorney-General of the Commonwealth or of a State or Territory is a party to a proceeding in certain circumstances (see sections 59 and 93).

(2) This section is subject to sections 65 (certain parties may seek to withdraw from being a party) and 83 (Tribunal may remove party from proceeding if party fails to appear or does not comply).

Notice to other parties

(3) If a person becomes a party to a proceeding under paragraph (1)(c), the Tribunal must give written notice to the other parties to the proceeding.

Subdivision B—Provision of reasons and documents

23 Decision-maker must give Tribunal reasons and documents—general rule

Within 28 days after the Tribunal notifies the decision-maker for a decision of an application for review of the decision, the decision-maker must give the Tribunal:

(a) a statement of reasons for the decision; and

(b) a copy of every other document that is:

(i) in the possession or under the control of the decision-maker; and

(ii) relevant to the Tribunal's review of the decision.

Note: A decision-maker may, but is not required to, give the Tribunal the same statement of reasons given to an applicant (whether under section 269 or 270 or otherwise).

24 Decision-maker must give Tribunal additional statement if Tribunal requires—general rule

(1) This section applies if a decision-maker for a decision has given the Tribunal a statement of reasons for the decision under section 23.

Authorised Version C2024A00040 registered 03/06/2024

(2) The Tribunal may order the decision-maker to give the Tribunal, within the period specified in the order, a statement containing further information in relation to any one or more of the following:

(a) findings on material questions of fact in relation to the decision;

(b) evidence or other material on which the findings were based;

(c) reasons for the decision.

25 Decision-maker must give Tribunal additional documents within 28 days—general rule

If:

(a) at any time during the Tribunal's review of a decision, a document that is relevant to the review comes into the possession or under the control of the decision-maker; and

(b) the document has not been given to the Tribunal for the purposes of the review;

the decision-maker must give a copy of the document to the Tribunal within 28 days after the day on which the document came into the possession or under the control of the decision-maker.

26 Decision-maker must give Tribunal additional documents on request—general rule

(1) If, at any time during the Tribunal's review of a decision, the Tribunal is satisfied that a document that may be relevant to the review is in the possession or under the control of the decision-maker, the Tribunal may request the decision-maker to give a copy of the document to the Tribunal within a specified period.

(2) The request may relate to a particular document or documents in a class of documents.

(3) If the document is in the possession or under the control of the decision-maker, the decision-maker must give the Tribunal a copy of the document within the specified period.

Authorised Version C2024A00040 registered 03/06/2024

27 Decision-maker must give copies of reasons and documents to other parties—general rule

(1) If a decision-maker for a decision is required to give the Tribunal a statement or copy of a document under this Subdivision within a period, the decision-maker must give a copy of the statement or document to each other party to the proceeding for review of the decision within the same period.

(2) Subsection (1) does not apply if there is a certificate under section 91 (disclosure of information—public interest certificate) that relates to the disclosure of the statement or document in the proceeding.

28 Exceptions—Tribunal may adjust requirements

When this section applies

(1) This section applies if the decision-maker for a decision is required to give the Tribunal or a party to a proceeding a statement or copy of a document under this Subdivision within a period.

(2) This section applies despite any other provision in this Subdivision (other than section 29).

Shorten period to comply

(3) A party to the proceeding for review of the decision may apply to the Tribunal to shorten the period within which the decision-maker must give the statement or copy.

(4) On application under subsection (3) or on the Tribunal's own initiative, the Tribunal may, by order, shorten the period within which the decision-maker must give the statement or copy if it appears to the Tribunal that a party to the proceeding for review of the decision could suffer hardship if the period is not shortened.

Extend period to comply

(5) The decision-maker may apply to the Tribunal to extend the period within which the decision-maker must give the statement or copy.

Authorised Version C2024A00040 registered 03/06/2024

(6) On application under subsection (5) or on the Tribunal's own initiative, the Tribunal may, by order, extend the period within which the decision-maker must give the statement or copy.

(7) The Tribunal may extend the period even if it has expired.

Tribunal orders otherwise

(8) The decision-maker does not need to give the statement or copy if the Tribunal orders the decision-maker not to give the statement or copy.

Practice directions provide otherwise

(9) The decision-maker does not need to give the statement or copy in the circumstances specified in the practice directions.

Number of copies

(10) The Tribunal may, by order, require the decision-maker to give a specified number of copies of the statement or document.

29 Exception—while resolving whether to restrict publication or disclosure of information

(1) This section applies if the decision-maker for a decision is required to give the Tribunal or a party to a proceeding a statement or copy of a document under this Subdivision.

(2) This section applies despite subsection 27(1) and section 28.

(3) If:

(a) a person applies to the Tribunal for an order under section 70 prohibiting or restricting the publication or other disclosure of information in the statement or copy; and

(b) the person gives the Tribunal the statement or copy; and

(c) the person gives a copy of the application for the order to each party to the proceeding for review of the decision (other than the person);

Authorised Version C2024A00040 registered 03/06/2024

the decision-maker does not need to give the statement or copy unless the Tribunal, after making its decision on the application for the order, orders the decision-maker to do so.

30 Privilege and public interest

This Subdivision (other than section 25) has effect despite any rule of law relating to legal professional privilege, without prejudice privilege or the public interest in relation to the production of documents.

Subdivision C—Effect of application for review on decision

31 Decision cannot be altered outside Tribunal process

General rule

(1) After an application is made to the Tribunal for review of a reviewable decision, the decision may not be altered otherwise than by the Tribunal.

Exceptions

(2) However, the decision may be altered if:
  (a) both of the following apply:
    (i) the parties to the proceeding for the review consent to the alteration;
    (ii) the Tribunal, by order, consents to the alteration; or
  (b) the decision is remitted to the decision-maker under section 85.

Definitions

(3) In this section:

alter a decision means:
  (a) vary the decision; or
  (b) set the decision aside; or
  (c) set the decision aside and make a decision in substitution for the decision.

Authorised Version C2024A00040 registered 03/06/2024

32 Reviewable decision continues to operate unless Tribunal orders otherwise

General rule

(1) The making of an application to the Tribunal for review of a reviewable decision does not affect the operation of the decision or prevent the taking of action to implement the decision.

Exception—Tribunal may stay operation or implementation

(2) However, on application by a party to a proceeding for review of a reviewable decision, the Tribunal may make an order staying or otherwise affecting the operation or implementation of the decision if the Tribunal considers that it is desirable to do so for the purpose of ensuring the effectiveness of the review.

(3) The order is subject to any conditions specified in the order.

(4) The order has effect until the decision of the Tribunal on the application for review comes into operation.

(5) Despite subsection (4), if:

(a) the order states that it applies for a period; and

(b) the period ends before the decision of the Tribunal on the application for review comes into operation;

the order has effect until the end of the period.

(6) On application by a party to the proceeding, the Tribunal may, by order, vary or revoke the order.

Preconditions to making, varying or revoking an order

(7) The Tribunal must not make, vary or revoke an order staying or otherwise affecting the operation or implementation of a reviewable decision unless:

(a) the Tribunal has given the parties to the proceeding for review of the decision a reasonable opportunity to make submissions to the Tribunal in relation to the making, variation or revocation of the order; and

Authorised Version C2024A00040 registered 03/06/2024

(b) the Tribunal has taken into account the interests of any person who may be affected by the review of the decision.

(8) However, paragraph (7)(a) does not prevent the Tribunal making, varying or revoking an order without giving a party an opportunity to make a submission to the Tribunal if the Tribunal is satisfied that it is not practicable to give the party the opportunity.

(9) If the Tribunal makes, varies or revokes an order without giving a party an opportunity to make a submission as mentioned in subsection (8), the order, variation or revocation does not take effect until a notice setting out the terms of the order, variation or revocation is given to the party.

Authorised Version C2024A00040 registered 03/06/2024

Part 4—Proceedings

Division 1—Preliminary

33 Simplified outline of this Part

This Part deals with the process the Tribunal follows when an application is made. It contains the standard provisions for Tribunal proceedings. Other legislation can include provisions that apply in addition to, or instead of, these standard provisions. For example, standard requirements apply to applications to the Tribunal, but other legislation may specify additional or alternative requirements.

Practice directions made by the President also deal with various matters relating to Tribunal proceedings and operations. Practice directions must be published.

The President decides which member or members will exercise the Tribunal's powers for a specific proceeding. This is referred to as constituting the Tribunal for the purposes of the proceeding. There are different requirements for constituting the Tribunal for different kinds of proceedings. For other ways the Tribunal's powers can be exercised, see Division 4 of Part 11.

General principles (for example in relation to accessibility and informality) apply to how the Tribunal runs proceedings. Specific requirements also apply to the Tribunal, applicants, decision-makers and other parties to proceedings. There are provisions dealing with the following:

(a) participating in proceedings, including representation;
(b) ways for parties to stop participating;
(c) hearings, directions hearings and dispute resolution processes (together known as Tribunal case events);
(d) obtaining and managing evidence and information, including public interest certificates;
(e) orders the Tribunal may make in relation to proceedings.

Authorised Version C2024A00040 registered 03/06/2024

The Tribunal may dismiss an application without making a decision in some circumstances. Otherwise, in a review of a reviewable decision, the Tribunal must affirm, vary or set aside the decision. If the Tribunal sets aside the decision, it may make a substitute decision or remit the matter to the decision-maker to reconsider as ordered or recommended by the Tribunal.

The timing and effect of some Tribunal decisions is set out. Once decisions are made, requirements apply to the Tribunal in relation to giving notice, giving statements of reasons and publishing decisions.

Some guidance and appeals panel decisions are specified to be Tribunal guidance decisions. The Tribunal must have regard to these decisions in some future proceedings.

There are a number of offences applying to giving evidence, non-publication and non-disclosure orders and contempt.

Authorised Version C2024A00040 registered 03/06/2024

Division 2—Applications to Tribunal

34 How to apply

Manner of applying

(1) An application to the Tribunal may be made in writing or in any other manner specified for the application in the practice directions.

Information to include

(2) An application to the Tribunal must include the information specified for the application in the practice directions.

Note 1: A fee may be payable in respect of the application (see rules made for the purposes of section 296). An application may be dismissed if the fee is not paid within the time prescribed by the rules (see section 98).

Note 2: The legislation under which a reviewable decision is made may contain other requirements for applications for review of that type of decision.

(3) A failure to comply with subsection (2) does not affect the validity of the application.

35 Applications may be made on behalf of a person

To avoid doubt, if this Act, another Act or an instrument made under this Act or another Act allows a person to make an application to the Tribunal, the application may be made on the person's behalf by someone else.

Authorised Version C2024A00040 registered 03/06/2024

Division 3—Practice directions

36 President may make practice directions

President may make practice directions

(1) The President may make practice 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 proceedings by the Tribunal;

(d) the arrangement of the business of the Tribunal;

(e) the places at which the Tribunal may sit;

(f) the use of technology that allows a person to participate in a proceeding, or part of a proceeding, in the Tribunal without being physically present;

(g) giving information or producing or giving documents or things to the Tribunal for any purpose, including:

(i) the form and manner in which information, documents or things may be produced or given; and

(ii) producing or giving additional copies of documents;

(h) giving information or producing or giving documents or things to persons for the purposes of a proceeding in the Tribunal, including:

(i) the form and manner in which information, documents or things may be produced or given; and

(ii) producing or giving additional copies of documents;

(i) dispute resolution processes under Subdivision C of Division 6;

(j) the sorting, prioritisation, allocation and treatment of applications for review and related matters;

(k) the accessibility of the Tribunal and the responsiveness of the Tribunal to the diverse needs of parties to proceedings;

(l) any other matter that is required or permitted by this Act to be specified in the practice directions.

(2) Practice directions must be made in writing.

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Consultation before practice directions are made

(3) Before making a practice direction, the President must consult the Tribunal Advisory Committee.

Regulations and rules prevail over practice directions

(4) Practice directions that are inconsistent with the regulations or rules have no effect to the extent of the inconsistency, but practice directions are taken to be consistent with the regulations and rules to the extent that the practice directions are capable of operating concurrently with the regulations and rules.

Failure to comply does not invalidate

(5) A failure by the Tribunal to comply with the practice directions does not affect the validity of anything done by the Tribunal.

Compliance is sufficient

(6) If the Tribunal deals with a proceeding in a way that complies with the practice directions, the Tribunal is not required to take any other action in dealing with the proceeding.

Publishing

(7) The Tribunal must publish practice directions.

Practice directions not legislative instruments

(8) A practice direction made under subsection (1) is not a legislative instrument.

Authorised Version C2024A00040 registered 03/06/2024

Division 4—Constitution of Tribunal for a proceeding

Subdivision A—Constituting the Tribunal

37 President may constitute Tribunal for purposes of a proceeding

President directs how Tribunal is constituted

(1) The President may direct that a member or members constitute the Tribunal for the purposes of a proceeding in the Tribunal.

President directs which member presides

(2) If the Tribunal is constituted by more than one member for the purposes of a proceeding, the President must direct which member is to preside for the purposes of the proceeding.

Requirements for directions

(3) In making a direction under subsection (1) or (2), the President must comply with:
  (a) the requirements specified in this Act; and
  (b) any other requirements specified in the practice directions.

(4) If a direction under subsection (1) or (2) is made in writing, the direction is not a legislative instrument.

President must notify parties to proceeding

(5) If the President makes a direction under subsection (1) or (2) in relation to a proceeding, the President must give written notice to each party to the proceeding (other than a non-participating party to the proceeding).

(6) The notice does not need to specify:
  (a) the member or members constituting the Tribunal; or
  (b) the member who is to preside.

(7) If the Tribunal is constituted for the purposes of the proceeding by the guidance and appeals panel, the notice must state this.

Authorised Version C2024A00040 registered 03/06/2024

38 President must consult before including Judicial Deputy President

Before the President directs that a Judicial Deputy President constitutes, or members at least one of whom is a Judicial Deputy President constitute, the Tribunal for the purposes of a proceeding, the President must consult the Chief Justice of the court of which the Judicial Deputy President is a Judge.

Subdivision B—Proceedings generally

39 General rules for constitution of Tribunal

General rules

(1) The Tribunal must be constituted for the purposes of a proceeding by a single member, 2 members or 3 members.

(2) The Tribunal may be constituted by 2 or 3 members only if the President considers that it is appropriate to do so:
  (a) because the proceeding raises a complex issue; or
  (b) because one or more of the members have particular expertise relevant to the proceeding; or
  (c) in the interests of justice.

(3) The Tribunal constituted must have no more than one member who is a Judge.

Exceptions

(4) This section is subject to Subdivision C (guidance and appeals panel).

Authorised Version C2024A00040 registered 03/06/2024

Subdivision C—Guidance and appeals panel

40 Exception—President refers application for review that raises issue of significance

When this section applies

(1) This section applies instead of section 39 in relation to a proceeding in the Tribunal in relation to an application referred to the guidance and appeals panel by the President under section 122.

Note: The President may refer an application for review of a decision to the guidance and appeals panel if the President is satisfied that the application raises an issue of significance to administrative decision-making (see section 122).

General rules

(2) The Tribunal must be constituted for the purposes of the proceeding by 2 or 3 members.

(3) One of the members must be the President or a Deputy President.

41 Exception—President, on appeal, refers Tribunal decision that raises issue of significance

When this section applies

(1) If:

(a) a proceeding relates to a guidance and appeals panel application taken to be made because the President refers a decision of the Tribunal (the ***Tribunal decision***) to the guidance and appeals panel; and

(b) the President is satisfied that the Tribunal decision raises an issue of significance to administrative decision-making;

the President must constitute the Tribunal for the purposes of the proceeding in accordance with this section instead of section 39.

Note: Under section 128, the President may refer a decision of the Tribunal to the guidance and appeals panel if the President is satisfied of either or both of the following:

Authorised Version C2024A00040 registered 03/06/2024

(a) the decision raises an issue of significance to administrative decision-making;
(b) the decision may contain an error of fact or law materially affecting the decision.

General rules

(2) The Tribunal must be constituted for the purposes of the proceeding by 2 or 3 members.

(3) One of the members must be the President or a Deputy President.

(4) Unless the parties to the proceeding agree otherwise, none of the members can be a person who constituted, or was one of the persons who constituted, the Tribunal for the purposes of the proceeding in which the Tribunal decision was made.

42 Exception—President, on appeal, refers Tribunal decision for material error

When this section applies

(1) If:
(a) a proceeding relates to a guidance and appeals panel application taken to be made because the President refers a decision of the Tribunal (the ***Tribunal decision***) to the guidance and appeals panel; and
(b) the President is not satisfied that the Tribunal decision raises an issue of significance to administrative decision-making;

the President must constitute the Tribunal for the purposes of the proceeding in accordance with this section instead of section 39.

Note: Under section 128, the President may refer a decision of the Tribunal to the guidance and appeals panel if the President is satisfied of either or both of the following:
(a) the decision raises an issue of significance to administrative decision-making;
(b) the decision may contain an error of fact or law materially affecting the decision.

Authorised Version C2024A00040 registered 03/06/2024

General rules

(2) The Tribunal must be constituted for the purposes of the proceeding by a single member, 2 members or 3 members.

(3) Unless the parties to the proceeding agree otherwise, none of the members can be a person who constituted, or was one of the persons who constituted, the Tribunal for the purposes of the proceeding in which the Tribunal decision was made.

(4) If the Tribunal is constituted for the purposes of the proceeding by a single member, the member must be more senior than the most senior person involved in making the Tribunal decision (see subsections (6) and (7)).

(5) If the Tribunal is constituted for the purposes of the proceeding by 2 or 3 members, the presiding member must be:

(a) if a Non-Judicial Deputy President constituted, or was one of the persons who constituted, the Tribunal for the purposes of the proceeding in which the Tribunal decision was made—equal in seniority to, or more senior than, the most senior person involved in making the Tribunal decision (see subsections (6) and (7)); or

(b) in any other case—more senior than the most senior person involved in making the Tribunal decision (see subsections (6) and (7)).

(6) For the purposes of subsections (4) and (5), the most senior person involved in making the Tribunal decision is:

(a) if the Tribunal decision was made by the Tribunal constituted for the purposes of a proceeding by a single member—that member; or

(b) if the Tribunal decision was made by the Tribunal constituted for the purposes of a proceeding by 2 or more members—the most senior of those members.

(7) For the purposes of subsections (4), (5) and (6), the order of seniority of members is as follows:

(a) the President;

(b) Judicial Deputy Presidents;

Authorised Version C2024A00040 registered 03/06/2024

(c) Non-Judicial Deputy Presidents;
(d) senior members;
(e) general members.

Subdivision D—Reconstitution

43 Reconstitution—before hearing starts

At any time before the start of the hearing of a proceeding in the Tribunal, the President may reconstitute the Tribunal.

44 Reconstitution—after hearing starts if member unavailable etc.

President may reconstitute Tribunal

(1) At any time after the start of the hearing of a proceeding in the Tribunal, the President may reconstitute the Tribunal 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 reconstituting the Tribunal is in the interests of achieving the quick and efficient conduct of the proceeding.

(2) However, the President must not reconstitute the Tribunal under this section unless the President:
  (a) considers that it is in the interests of justice to do so; and
  (b) consults each member who would cease to be a member of the Tribunal as constituted for the purposes of the proceeding if it is reasonably practicable to do so.

President may direct member not to take part

(3) The President may direct that a member not take part in a proceeding in the Tribunal if:

Authorised Version C2024A00040 registered 03/06/2024

(a) the President considers that it is in the interests of justice to do so; and
(b) the President has consulted the member if it is reasonably practicable to do so.

45 Reconstitution—involvement in dispute resolution process

At any time after the start of the hearing of a proceeding in the Tribunal, the President may reconstitute the Tribunal if section 89 (eligibility of person conducting dispute resolution process to sit as a member) applies in relation to the member, or one of the members, who constitutes the Tribunal for the purposes of the proceeding.

46 Reconstitution—after hearing starts for conflict of interest or bias

At any time after the start of the hearing of a proceeding in the Tribunal, the President may reconstitute the Tribunal if the President is satisfied that the member, or one of the members, who constitutes the Tribunal for the purposes of the proceeding:

(a) has a conflict of interest in relation to the proceeding; or
(b) has an actual or apprehended bias in relation to the proceeding.

47 Reconstitution—as guidance and appeals panel after hearing starts

The President must reconstitute the Tribunal for the purposes of a proceeding if, at any time after the start of the hearing of the proceeding, the application to which the proceeding relates is referred to the guidance and appeals panel by the President under section 122.

Note: The President may refer an application for review of a decision to the guidance and appeals panel if the President is satisfied that the application raises an issue of significance to administrative decision-making (see section 122).

Authorised Version C2024A00040 registered 03/06/2024

48 After Tribunal is reconstituted

If the President reconstitutes the Tribunal for the purposes of a proceeding, the Tribunal as reconstituted:

(a) must continue the proceeding; and

(b) may have regard to:

(i) any record of the proceeding before the Tribunal as previously constituted (including a record of any evidence taken in the proceeding); and

(ii) any document or thing relating to the proceeding given to the Tribunal as previously constituted.

Authorised Version C2024A00040 registered 03/06/2024

Division 5—Tribunal procedure

Subdivision A—General principles

49 Tribunal has discretion in relation to procedure

(1) The procedure of the Tribunal in a proceeding is within the discretion of the Tribunal.

(2) In exercising its discretion, the Tribunal must have regard to the circumstances of the proceeding.

(3) Subsections (1) and (2) are subject to this Act and the rules.

50 Tribunal is to act informally etc.

(1) In a proceeding, the Tribunal must act with as little formality and technicality as a proper consideration of the matters before the Tribunal permits.

(2) Subsection (1) is subject to this Act and the rules.

51 Tribunal to be accessible

(1) As far as practicable, the Tribunal must conduct each proceeding in the Tribunal in a way that is accessible for the parties to the proceeding, taking into account the needs of the parties.

(2) Subsection (1) is subject to this Act and the rules.

52 Tribunal is not bound by rules of evidence

The Tribunal is not bound by the rules of evidence, but may inform itself on any matter in such manner as it considers appropriate.

53 Tribunal controls scope of review of decision

In a proceeding for review of a decision, the Tribunal may determine the scope of the review by limiting the questions of fact, the evidence and the issues that it considers.

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54 Tribunal can exercise powers of decision-maker

For the purposes of reviewing a reviewable decision, the Tribunal may exercise all the powers and discretions that are conferred on the decision-maker by an Act or an instrument made under an Act.

55 Right to present case

General rule

(1) The Tribunal must ensure that each party to a proceeding in the Tribunal is given a reasonable opportunity to:
  (a) present the party's case; and
  (b) access any information or documents to which the Tribunal proposes to have regard in reaching a decision in the proceeding; and
  (c) make submissions and adduce evidence.

Exceptions

(2) Subsection (1) does not apply in relation to a non-participating party to the proceeding.

(2A) If a party to the proceeding is a non-participating party to a Tribunal case event in relation to the proceeding, subsection (1) does not apply in relation to that party in relation to that Tribunal case event.

(3) Subsection (1) is subject to:
  (a) section 69 (hearings to be in public unless practice directions or Tribunal order requires otherwise); and
  (b) section 70 (Tribunal may restrict publication or disclosure of information); and
  (c) section 78 (inspection of documents produced under summons); and
  (d) section 91 (disclosure of information—public interest certificate); and
  (e) Part 6 (proceedings in Intelligence and Security jurisdictional area).

Authorised Version C2024A00040 registered 03/06/2024

(4) This section does not limit section 53 (Tribunal controls scope of review of decision).

56 Parties and their representatives to assist Tribunal

Decision-makers and their representatives

(1) In a proceeding for review of a decision, the decision-maker and any person representing the decision-maker must use their best endeavours to assist the Tribunal to:

(a) make the correct or preferable decision in relation to the proceeding; and

(b) achieve the objective in section 9.

Other parties and their representatives

(2) A party to a proceeding in the Tribunal (other than the decision-maker in a proceeding for review of a decision) and any person representing the party must use their best endeavours to assist the Tribunal to achieve the objective in section 9.

Obligation is limited for non-participating party

(3) The obligation of a non-participating party to a proceeding or a Tribunal case event in relation to a proceeding, and any person representing the party, to use best endeavours to assist the Tribunal in relation to the proceeding only applies in relation to action the party is required to take by this Act or the Tribunal in relation to the proceeding.

57 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 or in the interests of justice.

Authorised Version C2024A00040 registered 03/06/2024

58 Resolving disagreements between Tribunal members

2 members

(1) If 2 members constitute the Tribunal for the purposes of a proceeding and they do not agree about any matter, the view of the presiding member prevails.

3 members

(2) If 3 members constitute the Tribunal for the purposes of a proceeding and they do not agree about any matter:
  (a) if the majority agree—the view of the majority prevails; or
  (b) in any other case—the view of the presiding member prevails.

Subdivision B—Parties and representation

59 Attorney-General of the Commonwealth may become a party

Becoming a party

(1) If the Attorney-General of the Commonwealth gives written notice to the Tribunal that the Attorney-General wishes to be a party to a proceeding in the Tribunal, the Attorney-General is a party to the proceeding.

Ceasing to be a party

(2) If:
  (a) the Attorney-General of the Commonwealth is a party to a proceeding because of a notice under subsection (1); and
  (b) the Attorney-General gives written notice to the Tribunal that the Attorney-General wishes to cease being a party to the proceeding;

the Attorney-General ceases being a party to the proceeding.

Authorised Version C2024A00040 registered 03/06/2024

Costs

(3) If the Attorney-General of the Commonwealth is a party to a proceeding because of a notice under subsection (1), the Attorney-General may authorise the Commonwealth to pay another party to the proceeding any costs that the Attorney-General considers the party reasonably incurred as a result of the Attorney-General being a party to the proceeding.

(4) To avoid doubt, the power of the Commonwealth to make a payment, or to make, vary or administer an arrangement or grant, under this section must be disregarded for the purpose of paragraph 32B(1)(a) of the *Financial Framework (Supplementary Powers) Act 1997*.

Note: The effect of this subsection is to make clear that this section does not effectively limit the operation of section 32B of the *Financial Framework (Supplementary Powers) Act 1997*. The Commonwealth has the power to make, vary or administer an arrangement or grant under that section whether the Commonwealth also has the power to do so under this section.

60 Decision-makers may elect not to participate in kind of proceeding or Tribunal case event

(1) A person who is the decision-maker for a reviewable decision may give the Tribunal written notice (an ***election notice***) that the person does not wish to participate in:

(a) a kind of proceeding in the Tribunal; or

(b) a kind of Tribunal case event (other than a directions hearing or part of a directions hearing) in relation to a kind of proceeding in the Tribunal.

(2) However, subsection (1) does not apply in relation to a kind of proceeding or Tribunal case event prescribed by the rules.

(3) An election notice is not a legislative instrument.

Authorised Version C2024A00040 registered 03/06/2024

61 Decision-maker who elects not to participate may be a non-participating party to proceeding or Tribunal case event

Person who has given election notice

(1) A person is a ***non-participating party*** to a proceeding if:

(a) the person is a party to the proceeding (other than the applicant); and

(b) the proceeding relates to a decision for which the person is the decision-maker; and

(c) the proceeding is of a kind for which the person has given an election notice under paragraph 60(1)(a); and

(d) the proceeding is not a guidance and appeals panel proceeding; and

(e) any conditions prescribed by the rules for the purposes of this paragraph are satisfied; and

(f) the Tribunal has not decided under section 62 that the person is to participate in the proceeding; and

(g) the Tribunal has not ordered the person to participate in the proceeding under section 63.

(1A) A person is a ***non-participating party*** to a Tribunal case event in relation to a proceeding if:

(a) the person is a party to the proceeding (other than the applicant); and

(b) the proceeding relates to a decision for which the person is the decision-maker; and

(c) the Tribunal case event and proceeding are of a kind for which the person has given an election notice under paragraph 60(1)(b); and

(d) the proceeding is not a guidance and appeals panel proceeding; and

(e) any conditions prescribed by the rules for the purposes of this paragraph are satisfied; and

(f) the Tribunal has not decided under section 62 that the person is to participate in the Tribunal case event; and

Authorised Version C2024A00040 registered 03/06/2024

(g) the Tribunal has not ordered the person to participate in the Tribunal case event under section 63.

Note: A non-participating party remains a party to the proceeding and still needs to comply with this Act and orders of the Tribunal in relation to the proceeding. However, certain requirements do not apply to the party (see, for example, section 83 which deals with removal of a party for failure to appear or non-compliance).

(2) To avoid doubt, once the Tribunal decides under section 62 that a person is to participate in a proceeding or Tribunal case event, or orders the person to participate in a proceeding or Tribunal case event under section 63, the person is no longer a non-participating party to the proceeding or Tribunal case event and a new election notice does not affect this.

Prescribed circumstances

(3) A person is also a ***non-participating party*** to a proceeding or Tribunal case event in the circumstances prescribed by the rules.

62 Tribunal may allow non-participating party to participate

(1) If a non-participating party to a proceeding gives the Tribunal written notice (a ***participation notice***) that the party wishes to participate in the proceeding, the Tribunal must decide whether or not the party is to participate in the proceeding.

Note: An election notice relates to a kind of proceeding. A participation notice relates to a particular proceeding of that kind. The election notice continues to apply to other proceedings of that kind.

(1A) If a non-participating party to a Tribunal case event gives the Tribunal written notice (a ***participation notice***) that the party wishes to participate in the Tribunal case event, the Tribunal must decide whether or not the party is to participate in the Tribunal case event.

Note: An election notice relates to a kind of Tribunal case event in relation to a kind of proceeding. A participation notice relates to a particular Tribunal case event of that kind. The election notice continues to apply to other Tribunal case events of that kind in relation to proceedings of that kind.

(2) A participation notice is not a legislative instrument.

Authorised Version C2024A00040 registered 03/06/2024

63 Non-participating party may give submissions or be required to participate

Written submissions may be provided

(1) A non-participating party to a proceeding may give the Tribunal written submissions in relation to the proceeding.

(1A) A non-participating party to a Tribunal case event may give the Tribunal written submissions in relation to the Tribunal case event.

Tribunal may order non-participating party to participate, appear or provide written submissions

(2) The Tribunal may order a non-participating party to a proceeding or Tribunal case event in relation to a proceeding to do any one or more of the following, if the Tribunal considers it would assist in progressing the proceeding or in making the correct or preferable decision:

(a) appear before the Tribunal at a Tribunal case event in relation to the proceeding;

(b) give the Tribunal written submissions in relation to the proceeding or a Tribunal case event in relation to the proceeding;

(c) participate in the proceeding.

64 Rules may deal with elections in relation to participation

(1) The rules may provide for or in relation to:

(a) the operation of sections 60 to 63; and

(b) the operation of this Part in relation to parties who are or who have been non-participating parties to proceedings or Tribunal case events.

(2) Without limiting the scope of rules that may be made for the purposes of subsection (1), the rules may provide for the following:

(a) requirements for giving election notices or participation notices;

(b) publication of election notices or participation notices;

Authorised Version C2024A00040 registered 03/06/2024

(c) matters relating to steps in a proceeding taken while a person is a non-participating party to the proceeding or a Tribunal case event in relation to the proceeding.

65 Certain parties may seek to withdraw from being a party

General rule

(1) The Tribunal may order that a party to a proceeding in the Tribunal ceases to be a party to the proceeding if the party gives written notice to the Tribunal that the party wishes to cease being a party to the proceeding.

Exceptions—applicant and decision-maker

(2) However, subsection (1) does not apply in relation to the following parties:
(a) in any case—the applicant;
(b) if the proceeding relates to a decision—the decision-maker.

Note: The applicant may withdraw the application (see section 95).

66 Representation before Tribunal

General rules

(1) A party to a proceeding in the Tribunal may choose another person to represent the party in the proceeding.

(2) A person who is required or permitted to appear before the Tribunal may, with the permission of the Tribunal, choose another person to represent the person before the Tribunal.

Exception

(3) However, the Tribunal may order that a person is not to be represented by the person's representative if the Tribunal considers that:
(a) the representative has a conflict of interest in representing the person; or

Authorised Version C2024A00040 registered 03/06/2024

(b) the representative is not acting in the best interests of the person; or

(c) representation of the person by the representative presents a safety risk to any person; or

(d) representation of the person by the representative presents an unacceptable privacy risk to any person; or

(e) the representative is otherwise impeding the Tribunal.

Note: A party to the proceeding can choose another representative. A person required or permitted to appear before the Tribunal can seek the Tribunal's permission to choose another representative.

67 Tribunal may appoint litigation supporter

Appointment of litigation supporter

(1) The Tribunal may, by order, appoint a person to be a litigation supporter for a party to a proceeding in the Tribunal if the Tribunal considers that:

(a) the party does not have decision-making ability; and

(b) the appointment is necessary, taking into account the availability and suitability of other measures that would allow the party to participate in the proceeding.

(1A) In considering whether to make an order under subsection (1), it is to be presumed that a party to a proceeding has decision-making ability.

(1B) The presumption is not rebutted solely on the basis that a party has a disability.

(2) In appointing a person to be a litigation supporter for a party to a proceeding, the Tribunal must take into account:

(a) the party's will and preferences, or likely will and preferences, in relation to:

(i) whether the Tribunal should appoint a person to be a litigation supporter; and

(ii) who the Tribunal should appoint to be a litigation supporter; or

Authorised Version C2024A00040 registered 03/06/2024

(b) if the party's will and preferences, or likely will and preferences, cannot be ascertained—the personal and social wellbeing of the party.

(3) The Tribunal may appoint a person to be a litigation supporter for a party to a proceeding only if:
(a) the person is at least 18 years old; and
(b) the person has no conflict of interest in representing the party; and
(c) the person consents to the appointment; and
(d) the Tribunal considers that the person is able to meet the requirements in subsections (6) to (8); and
(e) any conditions prescribed by the rules for the purposes of this paragraph are satisfied.

(4) The Tribunal may appoint a person to be a litigation supporter for a party whether or not the party has a guardian or representative appointed under another law.

Role of litigation supporter

(5) If a party to a proceeding in the Tribunal has a litigation supporter:
(a) the party may participate in the proceeding:
(i) wherever possible—with the support of the litigation supporter; or
(ii) otherwise—by the litigation supporter; and
(b) the litigation supporter must do anything required to be done by the party in relation to the proceeding by an Act or an instrument under an Act; and
(c) the litigation supporter may do anything permitted to be done by the party in relation to the proceeding by an Act or an instrument under an Act.

Duty of litigation supporter

(6) If a party to a proceeding in the Tribunal has a litigation supporter, the litigation supporter must give effect to the party's will and preferences, or likely will and preferences, in relation to the proceeding.

Authorised Version C2024A00040 registered 03/06/2024

(7) However, if to do so would pose a serious risk to the party's personal and social wellbeing, the litigation supporter must instead act in a manner that promotes the personal and social wellbeing of the party.

(8) If the party's will and preferences, or likely will and preferences, cannot be ascertained, the litigation supporter must act in a manner that promotes the personal and social wellbeing of the party.

Resignation and removal of litigation supporter

(9) A litigation supporter may resign by giving the Tribunal a written resignation.

(10) The Tribunal may, by order, remove a party's litigation supporter if:

(a) the party requests a different person be appointed to be a litigation supporter for the party; or

(b) the Tribunal considers that the party has decision-making ability; or

(c) the Tribunal considers that:

(i) the litigation supporter has a conflict of interest in representing the party; or

(ii) the litigation supporter has not complied with subsections (6) to (8); or

(iii) representation of the party by the litigation supporter presents a safety risk to any person; or

(iv) representation of the party by the litigation supporter presents an unacceptable privacy risk to any person; or

(v) the litigation supporter is otherwise impeding the Tribunal.

Rules

(11) The rules may provide for matters relating to litigation supporters.

(12) Without limiting the scope of rules that may be made for the purposes of subsection (11), the rules may provide for or in relation to the following:

(a) costs relating to litigation supporters;

Authorised Version C2024A00040 registered 03/06/2024

(b) giving documents to a litigation supporter or a party who has a litigation supporter.

68 Tribunal may appoint interpreter

Tribunal may appoint interpreter on request

(1) A person appearing at a Tribunal case event may request the Tribunal to appoint an interpreter for the person.

(2) The Tribunal must comply with the request unless the Tribunal considers that the person does not require an interpreter for the purposes of:
   (a) communication with the Tribunal; or
   (b) understanding evidence and submissions given to the Tribunal.

Tribunal must appoint interpreter in certain circumstances

(3) If:
   (a) the Tribunal considers that a person appearing at a Tribunal case event requires an interpreter for the purposes of:
      (i) communication with the Tribunal; or
      (ii) understanding evidence and submissions given to the Tribunal; and
   (b) the person does not request the Tribunal to appoint an interpreter;

   the Tribunal must, on its own initiative, appoint an interpreter for the purposes of communication between the person and the Tribunal.

Conflict of interest

(4) The Tribunal may appoint a person to be an interpreter for another person only if the person has no conflict of interest in acting as an interpreter for the other person.

Authorised Version C2024A00040 registered 03/06/2024

Tribunal may appoint interpreters in other situations

(5) Subsections (2) and (3) do not limit the power of the Tribunal to appoint an interpreter.

Oath or affirmation for interpreter

(6) The Tribunal may require an interpreter appointed by the Tribunal to take an oath or make an affirmation. A member or a staff member may administer an oath or affirmation to the interpreter.

(7) The oath or affirmation is an oath or affirmation that the interpretation the interpreter will give will be true.

Authorised Version C2024A00040 registered 03/06/2024

Division 6—Tribunal powers

Subdivision A—Hearings and evidence

69 Hearings to be in public unless practice directions or Tribunal order requires otherwise

General rule

(1) The hearing of a proceeding in the Tribunal must be in public.

Note: The hearing of a proceeding is the substantive hearing of the matter before the Tribunal. Directions hearings do not need to be in public (see the definition of ***hearing of a proceeding*** in section 4).

Exception—practice directions may require private hearing

(2) Despite subsection (1), in the circumstances specified in the practice directions:
  (a) the hearing or part of the hearing is to take place in private; and
  (b) only the persons specified in the practice directions may be present.

Exception—Tribunal may require private hearing

(3) Despite subsection (1), the Tribunal may, by order:
  (a) direct that the hearing or part of the hearing is to take place in private; and
  (b) give directions in relation to the persons who may be present.

Note: The power must be exercised in accordance with section 71.

70 Tribunal may restrict publication or disclosure of information

Information about parties, witnesses and others

(1) 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 in the Tribunal; or

Authorised Version C2024A00040 registered 03/06/2024

(ii) any person related to or otherwise associated with any party to or witness in a proceeding in the Tribunal; or

(b) information otherwise concerning a party, witness or other person mentioned in paragraph (a).

Note 1: The power must be exercised in accordance with section 71.

Note 2: Breach of a non-publication or non-disclosure order is an offence (see section 119).

Information relating to proceeding

(2) The Tribunal may, by order, give directions prohibiting or restricting the publication or other disclosure of information that:

(a) relates to a proceeding in the Tribunal; and

(b) is any of the following:

(i) information that comprises evidence or information about evidence;

(ii) information given to the Tribunal.

Note 1: The power must be exercised in accordance with section 71.

Note 2: Breach of a non-publication or non-disclosure order is an offence (see section 119).

(3) Without limiting subsection (2), the order may prohibit or restrict the publication or other disclosure to some or all of the parties to the proceeding.

Order can be made on application or on Tribunal's initiative

(4) The Tribunal may make an order under this section on application by a person or on its own initiative.

71 Requirements for Tribunal orders about hearings, publication and disclosure

Practice directions

(1) In making an order under subsection 69(3) or section 70, the Tribunal must comply with the requirements (if any) specified in the practice directions.

Authorised Version C2024A00040 registered 03/06/2024

Considerations

(2) In considering whether to make an order under subsection 69(3) or section 70 in relation to a proceeding, the Tribunal must have regard to the following:

(a) the principle that it is desirable that hearings of proceedings in the Tribunal are held in public;

(b) the principle that it is desirable that evidence given before the Tribunal is made available to the public;

(c) the principle that it is desirable that evidence given before the Tribunal and the contents of documents given to the Tribunal are made available to all the parties to the proceeding;

(d) any reasons in favour of making an order, including the following:

(i) in any case—the circumstances of the parties to the proceeding and other persons connected to the proceeding;

(ii) in any case—the harm (if any) that is likely to occur to a person if the order is not made;

(iii) in relation to an order under section 70—the confidential nature (if any) of the information;

(e) any other matters that the Tribunal considers relevant.

72 Tribunal must notify parties of Tribunal case event

General rule

(1) Before a Tribunal case event in relation to a proceeding, the Tribunal must give written notice to the parties to the proceeding of the date, time and place of the Tribunal case event.

Exception—non-participating party

(2) Subsection (1) does not apply in relation to a non-participating party to the proceeding or Tribunal case event.

73 How a party may appear at a Tribunal case event

(1) Parties to proceedings may appear at Tribunal case events:

Authorised Version C2024A00040 registered 03/06/2024

(a) themselves; or
(b) unless subsection (2) applies—through a representative.

(2) The Tribunal may order a party to a proceeding to appear at a Tribunal case event in relation to the proceeding personally, whether or not the party's representative also appears.

(3) Subsection (2) does not apply in relation to the decision-maker in a proceeding that relates to a decision.

74 Tribunal may summon person to give evidence or produce documents

Power to issue summons

(1) If the Tribunal has reasonable grounds to believe that a person has information, or a document or thing, relevant to a proceeding in the Tribunal, the Tribunal may, in writing, summon the 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 thing specified in the summons.

(2) Except with the consent of the person being summoned, the day specified in the summons must be at least 14 days after the day the summons is given to the person.

(3) The Tribunal may summon the person:
(a) at the request of a party to the proceeding; or
(b) on its own initiative.

(4) The Tribunal may refuse a request for a person to be summoned.

Early compliance with summons

(5) A person may comply with a summons to produce a document or thing by producing the document or thing to the Tribunal before the day specified in the summons.

(6) If the person does so, the person is not required to appear before the Tribunal unless:

Authorised Version C2024A00040 registered 03/06/2024

(a) the summons or another summons requires the person to appear before the Tribunal; or

(b) the Tribunal orders the person to appear before the Tribunal.

Note 1: A person might commit an offence by failing to comply with a summons (see section 116).

Note 2: A person summoned under this section may be entitled to be paid fees or allowances under section 77. However, the person is not excused from complying with a summons only because the person thinks that an amount paid to the person under that section is not sufficient.

75 Tribunal may take evidence

The Tribunal may take evidence, including on oath or by affirmation, inside or outside Australia.

76 Taking evidence on oath or affirmation

(1) At the hearing of a proceeding or a directions hearing in relation to a proceeding:

(a) the Tribunal may require a person appearing before the Tribunal to give evidence to take an oath or make an affirmation; and

(b) a member or a staff member may administer an oath or affirmation to the person.

Note 1: Failure to take an oath or make an affirmation is an offence (see section 117).

Note 2: The hearing is a ***judicial proceeding*** for the purposes of Part III of the *Crimes Act 1914*, which creates various offences in relation to such proceedings.

(2) The oath or affirmation is an oath or affirmation that the evidence the person will give will be true.

(3) The Tribunal may allow a person appearing before the Tribunal at the hearing of a proceeding, or a directions hearing in relation to a proceeding, who has taken an oath or made an affirmation, to give evidence by tendering a written statement and verifying it by oath or affirmation.

Note: A person might commit an offence if the person provides false or misleading evidence (see section 118).

Authorised Version C2024A00040 registered 03/06/2024

77 Payment of witness fees and allowances

Entitlement to fees and allowances

(1) A person required by this Act, another Act or an instrument made under an Act to give information or produce or give a document or thing to the Tribunal is to be paid, in accordance with the rules, any fees, and any allowances for expenses, prescribed by the rules for compliance with the requirement.

Rules concerning fees and allowances

(2) Without limiting the scope of rules that may be made for the purposes of subsection (1), those rules may prescribe, or prescribe matters relating to, any or all of the following:
  (a) the circumstances in which a person is to be paid;
  (b) the circumstances in which a person is not to be paid;
  (c) who must pay;
  (d) the time when payment is required.

(3) Rules made for the purposes of subsection (1) may do any or all of the following:
  (a) prescribe the amount of, or a method for working out the amount of, a fee or allowance;
  (b) make provision in relation to the whole or a part of a fee or allowance;
  (c) provide for the Tribunal to make orders relating to the payment of a fee or allowance in relation to a proceeding.

78 Inspection of documents produced under summons

General rule

(1) A party to a proceeding may inspect or take a copy of a document or thing produced under a summons under section 74 in relation to the proceeding:
  (a) in the circumstances specified in the practice directions; or
  (b) if the Tribunal permits.

Authorised Version C2024A00040 registered 03/06/2024

Exception—public interest certificate applies

(2) This section does not apply if there is a certificate under section 91 that relates to disclosure of the document or thing in the proceeding.

Exception—disclosure prohibited by law

(3) Subsection (1) does not apply if the inspection or copying of the document or thing would result in a disclosure of information which is prohibited or restricted by or under this Act, another Act or an instrument made under an Act.

Note: The disclosure of information may be prohibited or restricted by Tribunal order under section 70.

Exception—person objects

(4) The person required to produce the document or thing, or any party to the proceeding, may give the Tribunal notice that the person or party objects to the document or thing being inspected or copied.

(5) A notice under subsection (4):
(a) may be made in writing or in any other manner specified in the practice directions; and
(b) must contain reasons for the objection.

(6) If a notice is given under subsection (4), the Tribunal must decide whether the document or thing may be inspected or copied by a party to the proceeding.

Subdivision B—Management of proceedings

79 Tribunal may give directions in relation to procedure for proceeding

(1) The Tribunal may, by order, give directions in relation to the procedure to be followed for a proceeding in the Tribunal.

(2) The order may do any of the following:

Authorised Version C2024A00040 registered 03/06/2024

(a) require a party to the proceeding to give information or documents to the Tribunal or another party to the proceeding for the purposes of the proceeding;

(b) require a party to the proceeding to give a statement of matters or contentions on which the party intends to rely in the proceeding to the Tribunal or another party to the proceeding;

(c) limit the issues on which expert evidence may be given;

(d) limit the number of experts to report on an issue;

(e) require parties to the proceeding to appoint a single person to provide expert evidence;

(f) limit the number of persons to be called to give evidence (either generally or on a specified matter);

(g) limit the number of persons to appear at a dispute resolution process in relation to the proceeding;

(h) require expert witnesses to give evidence at the same time;

(i) limit the time for giving evidence or making oral submissions;

(j) limit the length of written submissions;

(k) limit the ability of a party to the proceeding to give information or documents to the Tribunal and any other party to the proceeding for the purposes of the proceeding within a period before the start of the hearing of the proceeding.

(3) If the proceeding is for review of a decision, the order may require the decision-maker to give the Tribunal or another party to the proceeding a statement setting out the grounds the decision-maker considers support the decision-maker's position in relation to the review.

(4) Subsections (2) and (3) do not limit this section.

(5) Section 55 (right to present case) does not prevent the Tribunal making an order under this section.

80 Tribunal may hold directions hearing

The Tribunal may hold a directions hearing in relation to a proceeding in the Tribunal.

Authorised Version C2024A00040 registered 03/06/2024

81 Tribunal may proceed without absent party

The Tribunal may proceed with a Tribunal case event that relates to a proceeding in the absence of a party to the proceeding if the Tribunal is satisfied that the party received appropriate notice of the date, time and place of the Tribunal case event.

82 Tribunal may adjourn Tribunal case event

The Tribunal may adjourn a Tribunal case event that relates to a proceeding in the Tribunal from time to time.

83 Tribunal may remove party from proceeding if party fails to appear or does not comply

Tribunal may remove party who fails to appear

(1) If:

(a) a party to a proceeding in the Tribunal fails to appear at a Tribunal case event that relates to the proceeding; and

(b) the Tribunal is satisfied that the party received appropriate notice of the date, time and place of the Tribunal case event;

the Tribunal may order that the party ceases to be a party to the proceeding.

Note 1: Tribunal case events include hearings, directions hearings and dispute resolution processes (see the definition of ***Tribunal case event*** in section 4).

Note 2: For how to appear at a Tribunal case event, see section 73.

(2) However, subsection (1) does not apply if the party is:

(a) the applicant; or

(b) a non-participating party to the proceeding or Tribunal case event.

Tribunal may remove party who fails to comply with Act or order

(3) If a party to a proceeding in the Tribunal fails to comply with this Act or an order of the Tribunal in relation to the proceeding within

Authorised Version C2024A00040 registered 03/06/2024

a reasonable time, the Tribunal may order that the party ceases to be a party to the proceeding.

(4) However, subsection (3) does not apply if the party is the applicant.

Reinstatement

(5) If a person ceases to be a party to a proceeding under subsection (1) or (3), the person is a party to the proceeding again if the Tribunal, on application by the person or on its own initiative, orders that the person is a party to the proceeding.

84 If applicant dies or is bankrupt, wound up or in liquidation or administration

When this section applies

(1) This section applies in relation to a proceeding in the Tribunal in relation to an application (the ***substantive application***) for review of a decision if:

(a) the applicant:

(i) dies; or

(ii) becomes bankrupt; or

(iii) is wound up or otherwise ceases to exist; or

(iv) becomes subject to any form of liquidation or administration (however described); and

(b) the Tribunal considers that the applicant cannot continue with the substantive application because of the event mentioned in paragraph (a).

Another person may apply to continue with substantive application

(2) The following persons may apply to the Tribunal to continue with the substantive application:

(a) a legal personal representative, executor, administrator, liquidator or trustee of the applicant for the substantive application;

(b) a person whose interests are affected by the decision.

Authorised Version C2024A00040 registered 03/06/2024

(3) If a person applies to continue with the substantive application, the Tribunal may, on request or on its own initiative, give such orders as appear to the Tribunal to be appropriate in the circumstances.

Tribunal may dismiss substantive application

(4) The Tribunal may dismiss the substantive application if:
  (a) the Tribunal considers that there is no person mentioned in subsection (2) who can continue with the substantive application; or
  (b) no application to continue with the substantive application is made within 3 months after the Tribunal becomes aware of the event mentioned in paragraph (1)(a).

85 Tribunal may remit decision to decision-maker for reconsideration

Tribunal may remit decision to decision-maker

(1) At any time during a proceeding for review of a reviewable decision, the Tribunal may remit the decision to the decision-maker and ask the decision-maker to reconsider the decision.

Decision-maker must reconsider decision

(2) If the Tribunal remits the decision to the decision-maker, the decision-maker must reconsider the decision and do one of the following:
  (a) affirm the decision;
  (b) vary the decision;
  (c) set aside the decision and make a new decision in substitution for the decision set aside.

After reconsideration

(3) After the decision-maker complies with subsection (2), the proceeding resumes.

(4) The applicant may:
  (a) proceed with the application; or

Authorised Version C2024A00040 registered 03/06/2024

(b) withdraw the application under section 95.

Review continues in relation to decision as updated by decision-maker

(5) If the decision-maker varies the decision, the application for review of the decision is taken to be an application for review of the decision as varied instead.

(6) If the decision-maker sets aside the decision and makes a new decision in substitution for the decision set aside, the application for review of the decision is taken to be an application for review of the new decision instead.

Timeframes for reconsideration

(7) The decision-maker must comply with subsection (2) within the period specified by the Tribunal when remitting the decision to the decision-maker.

(8) However, the Tribunal may, on the application of the decision-maker, extend the period within which the decision-maker must comply with subsection (2).

(9) The decision-maker is taken to have affirmed the decision if the decision-maker does not comply with subsection (2) within the period specified by the Tribunal.

(10) For the purposes of subsection (9), take into account any extension under subsection (8) of the period that occurs before the period would otherwise expire.

86 Tribunal may vary or revoke Tribunal order

Subject to this Act, a power of the Tribunal to make an order includes the power to revoke or vary the order.

Authorised Version C2024A00040 registered 03/06/2024

Subdivision C—Dispute resolution processes

87 Tribunal may refer to dispute resolution process

General rules

(1) At any time during a proceeding, the Tribunal may, by order:
  (a) direct that the proceeding, or any part of or matter arising out of the proceeding, be referred to a dispute resolution process; and
  (b) direct any of the following persons to conduct the dispute resolution process:
    (i) a member;
    (ii) a registrar;
    (iii) a person engaged under subsection 90(1).

Note: A non-participating party to the proceeding or a Tribunal case event of that kind is not required to appear at the dispute resolution process unless the Tribunal orders the party to do so under section 63.

(2) The parties to the proceeding appearing at the dispute resolution process must act in good faith in relation to the conduct of the dispute resolution process.

Exception—guidance and appeals panel proceedings

(3) Despite subsection (1), the Tribunal must not direct that a guidance and appeals panel proceeding, or any part of or matter arising out of a guidance and appeals panel proceeding, be referred to a dispute resolution process other than conferencing.

88 Evidence in dispute resolution process not admissible elsewhere

General rule

(1) Evidence of anything said, any act done or any information disclosed at or for the sole purpose of a dispute resolution process is not admissible:
  (a) in a proceeding in the Tribunal; or
  (b) in any court; or

Authorised Version C2024A00040 registered 03/06/2024

(c) in any proceedings before a person authorised by a law of the Commonwealth or of a State or Territory to hear evidence; or

(d) in any proceedings before a person authorised by the consent of the parties to hear evidence.

Exception—agreement of parties

(2) Subsection (1) does not prevent the admission, at a proceeding in the Tribunal, of particular evidence if each party to the proceeding to which the dispute resolution process relates (other than a non-participating party to that dispute resolution process or that proceeding) agrees to the evidence being admitted.

Exception—certain reports admissible

(3) Subsection (1) does not prevent the admission, at a proceeding in the Tribunal, of a report prepared by a person conducting a dispute resolution process in the form of a neutral evaluation.

(4) However, subsection (3) does not apply if, before the start of the hearing of the proceeding, a party to the proceeding to which the dispute resolution process relates notifies the Tribunal that the party objects to the report being admitted.

89 Eligibility of person conducting dispute resolution process to sit as a member

A member of the Tribunal as constituted for the purposes of a proceeding must no longer take part in the proceeding if:

(a) the member conducts a dispute resolution process in relation to the proceeding; and

(b) a party to the proceeding notifies the Tribunal as soon as practicable after the dispute resolution process that the party objects to the member participating in the proceeding.

Note: The President may reconstitute the Tribunal for the purposes of the proceeding (see sections 43 and 45).

Authorised Version C2024A00040 registered 03/06/2024

90 Engagement of persons to conduct dispute resolution processes

(1) The Principal Registrar may, on behalf of the Commonwealth, engage a person to conduct a kind of dispute resolution process.

(2) The Principal Registrar must not engage a person under subsection (1) unless the Principal Registrar is satisfied, having regard to the person's qualifications and experience, that the person is a suitable person to conduct the relevant kind of dispute resolution process.

Authorised Version C2024A00040 registered 03/06/2024

Division 7—Public interest certificates and interventions

91 Disclosure of information—public interest certificate

Public interest certificate—Attorney-General of the Commonwealth

(1) The Attorney-General of the Commonwealth may certify, in writing, that the disclosure of specified information, or the content of a specified document, in a proceeding in the Tribunal would be contrary to the public interest for one or more of the following reasons:

(a) the disclosure would prejudice the security, defence or international relations of the Commonwealth;

(b) the disclosure would involve the disclosure of deliberations or decisions of the Cabinet or of a Committee of the Cabinet;

(c) any other reason 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.

Public interest certificate—Attorney-General of State, Australian Capital Territory or Northern Territory

(2) The Attorney-General of a State, the Australian Capital Territory or the Northern Territory may certify, in writing, that the disclosure of specified information, or of the content of a specified document, in a proceeding in the Tribunal would be contrary to the public interest for one or more of the following reasons:

(a) the disclosure would involve the disclosure of deliberations or decisions of the Cabinet, or of a Committee of the Cabinet, of the State or Territory;

(b) any other reason that could form the basis for a claim by the Crown in right of the State or Territory in a judicial proceeding that the information or the matter contained in the document should not be disclosed.

Authorised Version C2024A00040 registered 03/06/2024

Effect of certificate

(3) If a certificate is given under this section in relation to information or a document in relation to a proceeding, a person is not excused from disclosing the information, or giving the document, to the Tribunal for the purposes of the proceeding if the person is required by or under this Act to do so.

(4) However, the Tribunal must do all things necessary to ensure that:

(a) subject to subsection (6), the information or document is not disclosed or given to any person other than:

(i) a member in the course of the performance of the member's duties; or

(ii) the Principal Registrar in the course of the performance of the Principal Registrar's duties; or

(iii) a staff member in the course of the performance of the staff member's duties; and

(b) in the case of a document given to the Tribunal—the document is returned, to the person who gave it to the Tribunal, as soon as practicable after the Tribunal has finished considering the document.

(5) A certificate under subsection (1) or (2) is not a legislative instrument.

Tribunal may allow disclosure in limited cases

(6) The Tribunal may decide to make the information or document available to any or all of the parties to the proceeding if either of the following applies:

(a) the certificate was given by the Attorney-General of the Commonwealth other than for the reason set out in paragraph (1)(a) or (b);

(b) the certificate was given by the Attorney-General of a State or Territory other than for the reason set out in paragraph (2)(a).

(7) In deciding whether to make the information or document available, the Tribunal must:

Authorised Version C2024A00040 registered 03/06/2024

(a) take into account as a primary consideration the principle that it is desirable, in the interest of ensuring the effective performance of the Tribunal's functions, for the parties to the proceeding to be made aware of all relevant matters; and
(b) have regard to any reason specified in the certificate.

(8) For the purposes of making a decision under subsection (6), the Tribunal must be constituted:
(a) as if the making of the decision were a separate proceeding; and
(b) by a member who is, or by members at least one of whom is, a Judge or a Deputy President.

Exclusion of other laws

(9) This section excludes the operation of any law that relates to the public interest and would otherwise apply in relation to the disclosure of information, or of the content of documents, in a proceeding in the Tribunal.

92 Attorney-General may intervene for public interest reasons

Attorney-General may intervene

(1) If a person is asked a question in the course of giving evidence at the hearing of a proceeding in the Tribunal:
(a) the Attorney-General of the Commonwealth may inform the Tribunal that, in the opinion of the Attorney-General, the answering of the question would be contrary to the public interest for a reason mentioned in subsection 91(1); or
(b) the Attorney-General of a State, the Australian Capital Territory or the Northern Territory may inform the Tribunal that, in the opinion of the Attorney-General, the answering of the question would be contrary to the public interest for a reason mentioned in subsection 91(2).

General rule

(2) If an Attorney-General so informs the Tribunal, the person is excused from answering the question.

Authorised Version C2024A00040 registered 03/06/2024

Exceptions

(3) However, the person must answer the question if:
  (a) for a reason covered by paragraph 91(1)(c) or (2)(b)—the Tribunal decides that the answering of the question would not be contrary to the public interest; or
  (b) in any case—the Federal Court, on an appeal under section 172 or a reference under section 185, decides that answering the question would not be contrary to the public interest.

(4) For the purposes of making a decision under paragraph (3)(a), the Tribunal must be constituted:
  (a) as if the making of the decision were a separate proceeding; and
  (b) by a member who is, or by members at least one of whom is, a Judge or a Deputy President.

93 Attorney-General is party to proceeding

Public interest certificates

(1) The Attorney-General of the Commonwealth or of a State, the Australian Capital Territory or the Northern Territory is a party to a proceeding in the Tribunal if:
  (a) that Attorney-General gives a certificate under section 91 in relation to the proceeding; and
  (b) the certificate does not specify a reason set out in paragraph 91(1)(a) or (b) or (2)(a); and
  (c) that Attorney-General would not otherwise be a party to the proceeding.

Attorney-General intervening

(2) The Attorney-General of the Commonwealth or of a State, the Australian Capital Territory or the Northern Territory is taken to be a party to a proceeding in the Tribunal if that Attorney-General:
  (a) informs the Tribunal under subsection 92(1) that the answering of a question at the hearing of the proceeding would be contrary to the public interest; and

Authorised Version C2024A00040 registered 03/06/2024

(b) would not otherwise be a party to the proceeding.

94 Public interest decisions made by Tribunal

When this section applies

(1) This section applies if, in relation to a proceeding (the ***primary proceeding***):

(a) an Attorney-General certifies under section 91 that the disclosure of specified information, or the content of a specified document, would be contrary to the public interest; and

(b) the Tribunal makes a decision (the ***public interest decision***) under subsection 91(6) in relation to the information, or the content of the document.

(2) This section also applies if, in relation to a proceeding (the ***primary proceeding***):

(a) an Attorney-General informs the Tribunal under section 92 that the answering of a question would be contrary to the public interest; and

(b) the Tribunal makes a decision (the ***public interest decision***) under paragraph 92(3)(a) in relation to the answering of the question.

Tribunal must give reasons for decision

(3) The Tribunal must, as soon as practicable after making the public interest decision, give each party to the primary proceeding a statement of reasons for the decision.

Appeals to Federal Court

(4) For the purposes of section 172 (party may appeal), the public interest decision is to be treated as:

(a) the decision of the Tribunal in a separate proceeding; and

(b) made by the Tribunal constituted for the purposes of the public interest decision.

Authorised Version C2024A00040 registered 03/06/2024

Referral to Federal Court

(5) For the purposes of section 185 (referring questions of law), a question of law in relation to the public interest decision that is referred to the Federal Court is to be treated as:

(a) a question arising in the primary proceeding; but

(b) referred by the Tribunal constituted for the purposes of the public interest decision.

Authorised Version C2024A00040 registered 03/06/2024

Division 8—Decision

Subdivision A—Withdrawing and dismissing applications

95 Applicant may withdraw application

(1) The applicant may, at any time, by:
  (a) giving written notice to the Tribunal; or
  (b) notifying the Tribunal in any other manner specified for the application in the practice directions;
withdraw an application made to the Tribunal.

(2) If the applicant withdraws the application, the Tribunal is taken to have dismissed the application.

96 Tribunal may dismiss application if parties consent

The Tribunal may, at any time, dismiss an application made to the Tribunal if the Tribunal has the consent of the parties to the proceeding in relation to the application (other than any non-participating party to the proceeding).

97 Tribunal must dismiss application if decision is not reviewable decision

The Tribunal must dismiss an application if:
  (a) the application is made for review of a decision; and
  (b) the Tribunal is satisfied that the decision is not reviewable by the Tribunal.

98 Tribunal may dismiss application if fee is not paid

The Tribunal may dismiss an application if a fee payable by the applicant to the Tribunal in respect of the application is not paid by the time prescribed by the rules.

99 Tribunal may dismiss application if applicant does not appear

If:

Authorised Version C2024A00040 registered 03/06/2024

(a) the applicant fails to appear at a Tribunal case event that relates to a proceeding in relation to an application; and

(b) the Tribunal is satisfied that the applicant received appropriate notice of the date, time and place of the Tribunal case event;

the Tribunal may dismiss the application.

Note 1: Tribunal case events include hearings, directions hearings and dispute resolution processes (see the definition of ***Tribunal case event*** in section 4).

Note 2: For how to appear at a Tribunal case event, see section 73.

100 Tribunal may dismiss application if applicant fails to comply with order etc.

The Tribunal may dismiss an application made to the Tribunal if the applicant fails to do either of the following within a reasonable time:

(a) proceed with the application;

(b) comply with this Act or an order of the Tribunal in relation to the proceeding in relation to the application.

101 Tribunal may dismiss application if frivolous, vexatious etc.

(1) The Tribunal may, at any time, dismiss an application made to the Tribunal if the Tribunal is satisfied that the application:

(a) is frivolous, vexatious, misconceived or lacking in substance; or

(b) has no reasonable prospects of success; or

(c) is otherwise an abuse of the process of the Tribunal.

(2) If the Tribunal dismisses an application (the ***substantive application***) under subsection (1), the Tribunal may, on application by a party to the proceeding in relation to the substantive application or on its own initiative, order that the applicant for the substantive application must not, without leave of the Tribunal, make a subsequent application to the Tribunal of a specified kind or kinds.

Authorised Version C2024A00040 registered 03/06/2024

(3) The order has effect despite any other provision of this Act or any other Act.

102 Reinstatement of application

When this section applies

(1) This section applies if the Tribunal dismisses an application.

Note: An application may be dismissed in specified circumstances (see sections 20, 84 and 96 to 101). In addition, an application is taken to have been dismissed if the applicant withdraws it (see section 95).

Tribunal may reinstate on own initiative

(2) If the Tribunal considers that the application was dismissed in error, the Tribunal may on its own initiative reinstate the application and make such orders as appear to the Tribunal to be appropriate in the circumstances.

(3) Despite subsection (2), the Tribunal must not reinstate an application under subsection (2) if the application was dismissed under section 96 (Tribunal may dismiss application if parties consent).

(4) Despite subsection (2), if more than 28 days have passed since an application was dismissed, the Tribunal must not reinstate the application under subsection (2) unless the Tribunal is satisfied that special circumstances justify reinstating the application.

Party may apply for reinstatement if application dismissed in error

(5) A party to the proceeding in relation to the application may apply to the Tribunal for reinstatement of the application on the grounds of error within 28 days after the party receives notice that the application is dismissed (or such longer period as the Tribunal, in special circumstances, allows).

(6) If a party applies under subsection (5) and the Tribunal considers that the application was dismissed in error, the Tribunal may reinstate the application and make such orders as appear to the Tribunal to be appropriate in the circumstances.

Authorised Version C2024A00040 registered 03/06/2024

Parties can apply for reinstatement in other specified circumstances

(7) If the application is dismissed under:

(a) section 95 (applicant may withdraw application); or

(b) section 99 (Tribunal may dismiss application if applicant does not appear); or

(c) section 100 (Tribunal may dismiss application if applicant fails to comply with order etc.);

a party to the proceeding in relation to the application may apply to the Tribunal for reinstatement of the application within 28 days after the party receives notice that the application is dismissed (or such longer period as the Tribunal, in special circumstances, allows).

(8) However, the applicant cannot apply if the application is dismissed under section 95 (applicant may withdraw application).

(9) If a party applies under subsection (7) and the Tribunal considers it appropriate to reinstate the application, the Tribunal may reinstate the application and make such orders as appear to the Tribunal to be appropriate in the circumstances.

Subdivision B—Decisions agreed by parties

103 If parties reach agreement—review of decisions only

Tribunal may make decision agreed by parties

(1) If, at any time:

(a) the parties to a proceeding for review of a decision agree on the terms of a decision of the Tribunal:

(i) in the proceeding; or

(ii) in relation to a part of the proceeding; or

(iii) in relation to a 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 given to the Tribunal; and

Authorised Version C2024A00040 registered 03/06/2024

(c) if the terms of the agreement are signed in a dispute resolution process under Subdivision C of Division 6—7 days pass after the terms of the agreement are given to the Tribunal and none of the parties has notified the Tribunal in writing that the party 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 act in accordance with subsection (2) or (3).

Decision agreed by parties

(2) If the agreement reached is an agreement on the terms of a decision of the Tribunal in the proceeding, the Tribunal may, without holding or completing the hearing of the proceeding, make a decision in accordance with those terms.

Tribunal does not need to deal with agreed part or matter

(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 (or further dealing) with that part or that matter at the hearing of the proceeding.

Variation or revocation of decision

(4) The Tribunal may vary or revoke a decision in relation to a proceeding, to the extent the decision is made in accordance with subsection (2) or (3), if:

(a) the parties to the proceeding 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 given to the Tribunal; and

(c) 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.

Authorised Version C2024A00040 registered 03/06/2024

Subdivision C—Decision on review of reviewable decision

104 When this Subdivision applies

This Subdivision applies in relation to an application for review of a reviewable decision.

105 Tribunal decision on review of reviewable decision

In relation to the reviewable decision, the Tribunal must make a decision:

(a) affirming the reviewable decision; or

(b) varying the reviewable decision; or

(c) setting aside the reviewable decision and:

(i) making a decision in substitution for the reviewable decision; or

(ii) remitting the matter to the decision-maker for reconsideration in accordance with any orders or recommendations of the Tribunal.

106 Circumstances in which Tribunal may reach decision without hearing—review of decisions only

Tribunal may make decision without hearing in certain circumstances

(1) The Tribunal may make its decision in the proceeding in relation to the application after considering the documents and things given to the Tribunal and without holding the hearing of the proceeding if any of subsections (2) to (5) applies.

Parties consent

(2) This subsection applies if:

(a) all of the parties to the proceeding consent to the proceeding being determined without the hearing of the proceeding; and

(b) it appears to the Tribunal that the issues for determination in the proceeding can be adequately determined in the absence of the parties to the proceeding.

Authorised Version C2024A00040 registered 03/06/2024

Where only parties are applicant and non-participating party to the proceeding or hearing

(3) This subsection applies if:

(a) the only parties to the proceeding are the applicant and a non-participating party to the proceeding or the hearing of the proceeding; and

(b) either:

(i) the decision is wholly in favour of the applicant; or

(ii) the applicant requests the Tribunal to make its decision without holding the hearing of the proceeding; and

(c) it appears to the Tribunal that the issues for determination in the proceeding can be adequately determined in the absence of the parties to the proceeding.

Party fails to comply

(4) This subsection applies if:

(a) a party to the proceeding fails to comply with this Act or an order of the Tribunal in relation to the proceeding within a reasonable time; and

(b) it appears to the Tribunal that the issues for determination in the proceeding can be adequately determined in the absence of the parties to the proceeding.

Party fails to appear

(5) This subsection applies if:

(a) a party to the proceeding fails to appear at a Tribunal case event that relates to the proceeding; and

(b) the party is not a non-participating party to the proceeding or Tribunal case event; and

(c) the Tribunal is satisfied that the party received appropriate notice of the date, time and place of the Tribunal case event; and

(d) it appears to the Tribunal that the issues for determination in the proceeding can be adequately determined in the absence of the parties to the proceeding.

Authorised Version C2024A00040 registered 03/06/2024

Note 1: Tribunal case events include hearings, directions hearings and dispute resolution processes (see the definition of ***Tribunal case event*** in section 4).

Note 2: For how to appear at a Tribunal case event, see section 73.

107 When Tribunal's decision on review comes into operation

General rule

(1) A decision of the Tribunal in the proceeding in relation to the application comes into operation when it is given to the parties to the proceeding.

Exception—Tribunal specifies a later date

(2) Despite subsection (1), if the Tribunal specifies in a decision that the decision comes into operation at a time after the decision is given to the parties, the decision comes into operation at the specified time.

Exception—Tribunal ordered stay of reviewable decision

(3) Despite subsections (1) and (2), if an order under section 32 staying or otherwise affecting the operation of:

(a) in any case—the reviewable decision; or

(b) if the application is a guidance and appeals panel application taken to be made because of the referral of a decision of the Tribunal—the decision affirmed, varied or set aside by the decision of the Tribunal;

is in force immediately before the Tribunal makes a decision under section 105 (Tribunal decision on review of reviewable decision) on the application, the operation of the Tribunal's decision is stayed until:

(c) if a relevant appeal is made—the later of the following:

(i) the end of the appeal period;

(ii) the completion of the relevant appeal; or

(d) in any other case—the end of the appeal period.

Authorised Version C2024A00040 registered 03/06/2024

(4) For the purposes of paragraph (3)(c), do not take into account any relevant appeal that is made after the end of the period within which the relevant appeal may be made.

(5) Subsection (3) does not apply if the Tribunal's decision is made in accordance with subsection 103(2) (decision agreed by parties).

Exception—Tribunal or court order

(6) Despite subsection (3):

(a) the Tribunal may order that a decision of the Tribunal comes into operation at a different time; and

(b) the Federal Court or the Federal Circuit and Family Court of Australia (Division 2) may order that a decision of the Tribunal comes into operation at a different time.

Definitions

(7) In this section:

completion:

(a) the ***completion*** of a court appeal occurs when:

(i) in any case—the court appeal is determined, discontinued, dismissed or disposed of; or

(ii) if a panel appeal is also made and the President refers the Tribunal's decision to the guidance and appeals panel—the decision of the Tribunal on the guidance and appeals panel application taken to be made because of the referral comes into operation; and

(b) the ***completion*** of a panel appeal occurs when:

(i) if the President refers the Tribunal's decision to the guidance and appeals panel—the decision of the Tribunal on the guidance and appeals panel application taken to be made because of the referral comes into operation; or

(ii) in any other case—the panel appeal is refused.

court appeal means an appeal from the Tribunal's decision to the Federal Court under Division 2 of Part 7 (appeals on questions of law).

Authorised Version C2024A00040 registered 03/06/2024

end of the appeal period means:

(a) if a panel appeal may be made—the later of the following:

(i) the end of the period within which court appeals may be made;

(ii) the end of the period within which panel appeals may be made; or

(b) in any other case—the end of the period within which court appeals may be made.

panel appeal means an application to refer the Tribunal's decision to the guidance and appeals panel under section 123.

relevant appeal means:

(a) if a panel appeal may be made—a court appeal or a panel appeal; or

(b) in any other case—a court appeal.

(8) For the purposes of subsection (4) and the definition of ***end of the appeal period*** in subsection (7), take into account:

(a) any extension under section 125 of the period within which panel appeals may be made that occurs before the period would otherwise expire; and

(b) any extension under subsection 174(2) of the period within which court appeals may be made that occurs before the period would otherwise expire.

108 Effect of Tribunal decision to vary or substitute a reviewable decision

When this section applies

(1) This section applies if the Tribunal:

(a) varies the reviewable decision; or

(b) sets aside the reviewable decision and makes a decision in substitution for the reviewable decision.

Authorised Version C2024A00040 registered 03/06/2024

Decision is taken to be decision of decision-maker

(2) The reviewable decision as varied, or the decision made in substitution for the reviewable decision, is taken be a decision of the decision-maker for all purposes other than:

(a) section 16 (decision is taken to be made if timeframe expires); or

(b) Division 3 of Part 3 (applying for review of decision); or

(c) Divisions 2 and 4 of Part 7 (appeals and references of questions of law to Federal Court); or

(d) Part 10 (notice and information about administrative decision).

No application for review of varied or substituted decision

(3) Application may not be made to the Tribunal for review of the reviewable decision as varied or the decision made in substitution for the reviewable decision.

Note 1: In some circumstances, application may be made to refer to the guidance and appeals panel a decision of the Tribunal to affirm, vary or set aside a decision (see section 123).

Note 2: This subsection does not apply in relation to ART social services decisions (see Part 5A).

Timing

(4) When the decision of the Tribunal to vary or set aside the reviewable decision comes into operation, the reviewable decision as varied, or the decision made in substitution for the reviewable decision, has effect, or is taken to have had effect, from the time at which the reviewable decision has or had effect.

(5) Subsection (4) does not apply if the Tribunal orders otherwise.

Authorised Version C2024A00040 registered 03/06/2024

Division 9—Tribunal guidance decisions

109 Tribunal guidance decisions

General rule

(1) A decision of the Tribunal is a ***Tribunal guidance decision*** if:

(a) the decision is made by the Tribunal constituted for the purposes of a proceeding in accordance with:

(i) section 40 (exception—President refers application for review that raises issue of significance); or

(ii) section 41 (exception—President, on appeal, refers Tribunal decision that raises issue of significance); and

(b) the decision is:

(i) made under section 105 (Tribunal decision on review of reviewable decision); and

(ii) not made in accordance with subsection 103(2) (decision agreed by parties); and

(c) the decision is not declared under subsection (2) of this section to be an excluded decision.

Exception—declared by President

(2) The President may, in writing, declare that a decision made under section 105 by the Tribunal constituted for the purposes of a proceeding in accordance with section 40 or 41 is an excluded decision.

(3) A declaration made under subsection (2) is not a legislative instrument.

(4) The President must publish declarations made under subsection (2).

Authorised Version C2024A00040 registered 03/06/2024

110 Tribunal must have regard to Tribunal guidance decisions

General rule

(1) When making a decision in a proceeding in the Tribunal, the Tribunal must have regard to Tribunal guidance decisions that the Tribunal considers raise:

(a) facts similar to the facts raised by the proceeding; or

(b) issues similar to the issues raised by the proceeding.

Exception—member who is a Judge

(2) Subsection (1) does not apply to:

(a) a member who is a Judge; or

(b) the Tribunal constituted for the purposes of a proceeding by a member who is, or members at least one of whom is, a Judge.

Effect of failure to comply

(3) A failure by the Tribunal to comply with subsection (1) does not affect the validity of the decision.

Authorised Version C2024A00040 registered 03/06/2024

Division 10—After proceeding ends

111 Notice of decision and statement of reasons—review of reviewable decision

When this section applies

(1) This section applies if the Tribunal makes a decision under section 105 in a proceeding for review of a reviewable decision, other than a decision made in accordance with subsection 103(2) (decision agreed by parties).

General rules—Tribunal must give decision and statement of reasons

(2) The Tribunal must give each party to the proceeding the following things in writing:
  (a) the Tribunal's decision;
  (b) a statement of reasons for the Tribunal's decision;
  (c) if the party has a right to apply to refer a decision of the Tribunal to the guidance and appeals panel under Division 3 of Part 5—notice of that right;
  (ca) if the party has a right to apply for second review of the Tribunal's decision under Part 5A—notice of that right;
  (d) notice of the right of the party to appeal to the Federal Court under Division 2 of Part 7.

(3) Each thing must be given by the time specified in the practice directions. If the practice directions do not specify a time, the thing must be given within 28 days after the day the Tribunal's decision is made.

(4) The Tribunal may give a decision and the reasons for the decision orally before giving them in writing.

(4A) A failure by the Tribunal to provide the things mentioned in paragraphs (2)(c) to (d) by the time required by subsection (3) does not affect the validity of the Tribunal's decision.

Authorised Version C2024A00040 registered 03/06/2024

Exceptions

(5) This section is subject to sections 70 (Tribunal may restrict publication or disclosure of information) and 91 (disclosure of information—public interest certificate).

112 Notice of decision and statement of reasons—other proceedings

When this section applies

(1) This section applies if the Tribunal makes a decision finalising a proceeding in the Tribunal, other than:

(a) a public interest decision mentioned in subsection 94(1) or (2) (public interest decisions made by Tribunal); or

(b) a decision under section 96 (Tribunal may dismiss application if parties consent); or

(c) a decision under subsection 103(2) (decision agreed by parties); or

(d) a decision under section 105 (Tribunal decision on review of reviewable decision).

(2) To avoid doubt, this section does not apply in relation to a decision under section 128 (President decides whether to refer Tribunal decision to guidance and appeals panel).

Notice of decision

(3) The Tribunal must give each party to the proceeding notice of the Tribunal's decision orally or in writing.

General rule—Tribunal must give statement of reasons on request

(4) The Tribunal may give reasons for the Tribunal's decision to the parties to the proceeding orally or by giving a statement of reasons for the decision.

(5) If the Tribunal has not given a party to the proceeding a statement of reasons for the Tribunal's decision, the party may, within 28 days after the day the Tribunal's decision is made, request the Tribunal to give the party a statement of reasons for the Tribunal's decision.

Authorised Version C2024A00040 registered 03/06/2024

(6) The request must be given to the Tribunal in writing.

(7) Within 28 days after receiving the request, the Tribunal must give the party a statement of reasons for the Tribunal's decision.

Exception

(8) This section is subject to sections 70 (Tribunal may restrict publication or disclosure of information) and 91 (disclosure of information—public interest certificate).

113 Tribunal may publish decisions

General rules

(1) The Tribunal may publish its decisions and the reasons for them.

(2) The Tribunal must publish a decision (and the reasons for it) if:
  (a) the President considers that the decision:
    (i) involves a significant conclusion of law; or
    (ii) has significant implications for Commonwealth policy or administration; or
  (b) the decision is:
    (i) made by the Tribunal constituted for the purposes of a proceeding by the guidance and appeals panel; and
    (ii) made under section 105 (Tribunal decision on review of reviewable decision); and
    (iii) not made in accordance with subsection 103(2) (decision agreed by parties).

(3) Publication of Tribunal decisions, and the reasons for them, must be in accordance with any requirements specified in the practice directions.

Exception—where disclosure prohibited or restricted by law

(4) However, this section does not authorise the Tribunal to publish information the disclosure of which is prohibited or restricted by or under this Act, another Act or an instrument made under an Act.

Authorised Version C2024A00040 registered 03/06/2024

Note: The disclosure of information may be prohibited or restricted by Tribunal order under section 70. For example, while the Tribunal can publish reasons for a decision in a proceeding that was not heard in public, the reasons cannot include information covered by a Tribunal order under section 70.

114 Tribunal may correct error in decision or statement of reasons

(1) If, after the Tribunal makes a decision, the Tribunal considers that there is an obvious error in the text of:

(a) the decision; or

(b) the statement of reasons for the decision;

the Tribunal may alter the text of the decision or statement.

Note: The following are examples of obvious errors in the text of a decision or statement:

(a) an obvious clerical or typographical error in the text of the decision or statement;

(b) an inconsistency between the decision and the statement of reasons for the decision.

(2) If the text of a decision is altered under subsection (1), the altered text is taken to be the decision. If the text of a statement is altered under subsection (1), the altered text is taken to be the statement.

115 Taxing costs

When this section applies

(1) This section applies if the Tribunal orders a party to a proceeding in the Tribunal to pay costs incurred by another party to the proceeding.

Note: The Tribunal's power to order a party to a proceeding to pay costs is set out in other legislation.

Party may apply for costs to be taxed

(2) If the parties cannot agree on the amount of the costs, the Tribunal may, on application by either party, tax the costs.

Authorised Version C2024A00040 registered 03/06/2024

Amounts are recoverable as debts

(3) An amount that a party (the ***first party***) is ordered by the Tribunal to pay to another party (the ***second party***) is recoverable by the second party as a debt due to the second party by the first party.

Authorised Version C2024A00040 registered 03/06/2024

Division 11—Offences

116 Offence—failure to comply with summons

(1) A person commits an offence if:

(a) the person is given a summons under section 74; and

(b) the person fails to comply with the summons.

Penalty: Imprisonment for 6 months or 30 penalty units, or both.

(2) Subsection (1) does not apply if it is not reasonably practicable for the person to comply with the summons by the time specified in the summons or within such further period as the Tribunal allows.

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

117 Offence—failure to take oath, make affirmation or answer question

A person appearing before the Tribunal to give evidence at the hearing of a proceeding or a directions hearing in relation to a proceeding commits an offence if the person:

(a) fails to take an oath or make an affirmation when required to do so (see section 76); or

(b) fails to answer a question that the Tribunal requires the person to answer.

Penalty: Imprisonment for 6 months or 30 penalty units, or both.

118 Offence—giving false or misleading evidence

(1) A person appearing before the Tribunal to give evidence commits an offence if the person:

(a) gives evidence; and

(b) does so knowing that the evidence:

(i) is false or misleading; or

(ii) omits any matter or thing without which the evidence is misleading.

Authorised Version C2024A00040 registered 03/06/2024

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

Note: Giving false testimony is also subject to the offence under section 35 of the *Crimes Act 1914*.

(2) Subsection (1) does not apply if the evidence is not false or misleading in a material particular.

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

119 Offence—breach of non-publication or non-disclosure order

A person commits an offence if:

(a) the person engages in conduct; and

(b) the conduct contravenes an order under section 70 (Tribunal may restrict publication or disclosure of information) or subsection 157(3) (orders restricting publication or disclosure of findings).

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

120 Offence—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 an authorised person 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.

Authorised Version C2024A00040 registered 03/06/2024

Part 5—Guidance and appeals panel

Division 1—Preliminary

121 Simplified outline of this Part

The guidance and appeals panel is a way of constituting the Tribunal at a more senior level to:

(a) review some decisions made by decision-makers; or

(b) re-review some decisions that have been reviewed by the Tribunal.

Broadly, the circumstances in which the Tribunal may be constituted as a guidance and appeals panel are as follows:

(a) there is an issue of significance to administrative decision-making;

(b) a Tribunal decision may contain an error of fact or law materially affecting the Tribunal decision.

The first way a guidance and appeals panel proceeding can start is that an application to the Tribunal may be referred to the guidance and appeals panel by the President.

The second way is that, after the Tribunal has affirmed, varied or set aside a decision made by a decision-maker, a party to the Tribunal proceeding may apply to the President to refer the matter to the guidance and appeals panel. Timeframes apply to applications, but may be extended in some circumstances. The application to refer the matter does not affect the operation of the Tribunal decision unless the Tribunal orders otherwise.

If the President decides to refer the matter to the guidance and appeals panel, the Tribunal constituted as the guidance and appeals panel reviews the decision of the decision-maker, as affected by the earlier Tribunal review. Some different Tribunal powers and procedures apply in relation to guidance and appeals panel proceedings.

Authorised Version C2024A00040 registered 03/06/2024

Only some kinds of Tribunal decisions can be referred to the guidance and appeals panel. For these decisions, a party to the proceeding in which the Tribunal decision is made can choose to apply to refer the matter to the guidance and appeals or to appeal on a question of law to the Federal Court under Part 7.

This Part contains the standard provisions for guidance and appeals panel proceedings. Other legislation can include provisions that apply in addition to, or instead of, these standard provisions.

Authorised Version C2024A00040 registered 03/06/2024

Division 2—President may refer application on own initiative

122 President may refer application for review of decision to guidance and appeals panel

(1) If:

(a) an application for review of a decision is made to the Tribunal (other than a guidance and appeals panel application); and

(b) the President is satisfied that:

(i) the application raises an issue of significance to administrative decision-making; and

(ii) it is appropriate in the interests of justice that the Tribunal be constituted by the guidance and appeals panel for the purposes of the proceeding in relation to the application;

the President may refer the application to the guidance and appeals panel.

Note 1: The Tribunal will be constituted by the guidance and appeals panel for the purposes of the proceeding (see section 40).

Note 2: If the Tribunal is already constituted for the purposes of the proceeding, it may be reconstituted (see sections 43 and 47).

(2) For the purposes of subparagraph (1)(b)(ii), the President must have regard to the circumstances of the parties to the proceeding.

Authorised Version C2024A00040 registered 03/06/2024

Division 3—Party may apply to refer Tribunal decision to guidance and appeals panel

Subdivision A—Application for referral to guidance and appeals panel

123 Application may be made to refer certain Tribunal decisions to guidance and appeals panel

General rule

(1) Application may be made to the President to refer a decision of the Tribunal under section 105 (Tribunal decision on review of reviewable decision) to the guidance and appeals panel.

Note: If the President refers a Tribunal decision to the guidance and appeals panel, the Tribunal will be constituted by the guidance and appeals panel for the purposes of the proceeding (see sections 41 and 42).

(2) An application may be made under subsection (1) by a person who was at any time a party to the proceeding in which the decision of the Tribunal is made.

(3) To avoid doubt, the decision of the Tribunal is not a reviewable decision.

Note: If the President refers a Tribunal decision to the guidance and appeals panel, the review relates to the decision affirmed, varied or set aside by the Tribunal decision (see subsection 130(2)).

Exception—Tribunal decision made by guidance and appeals panel or Judge

(4) Subsection (1) does not apply in relation to a decision made by the Tribunal constituted for the purposes of a proceeding by:
(a) the guidance and appeals panel; or
(b) a member who is, or members at least one of whom is, a Judge.

Authorised Version C2024A00040 registered 03/06/2024

Exception—decision by agreement of parties

(5) Subsection (1) does not apply if the decision is made in accordance with subsection 103(2) (decision agreed by parties).

Exception—decision of a kind prescribed by the rules

(6) Subsection (1) does not apply in relation to a decision of a kind prescribed by the rules.

124 How to apply

Manner of applying

(1) An application to refer a decision of the Tribunal to the guidance and appeals panel may be made in writing or in any other manner specified for the application in the practice directions.

Information to include

(2) An application by a person to refer a decision of the Tribunal to the guidance and appeals panel must:
  (a) include the information specified for the application in the practice directions; and
  (b) explain why the person considers that:
    (i) the decision raises an issue of significance to administrative decision-making; or
    (ii) the decision may contain an error of fact or law materially affecting the decision.

(3) A failure to comply with subsection (2) does not affect the validity of the application.

(4) Without limiting section 128, the President may refuse the application if the application does not comply with subsection (2) of this section.

125 When to apply to refer Tribunal decision

An application to refer a decision of the Tribunal to the guidance and appeals panel must be made within the period of 28 days after

Authorised Version C2024A00040 registered 03/06/2024

the Tribunal gives a statement of reasons for the decision to the parties to the proceeding in which the decision is made (or such longer period as the President, in special circumstances, allows).

Subdivision B—After application to refer decision is made

126 Parties to be notified of application

(1) This section applies if an application is made to refer a decision of the Tribunal (the ***Tribunal decision***) to the guidance and appeals panel.

(2) The Tribunal must give written notice of the application to the following:
  (a) the applicant;
  (b) the decision-maker for the decision affirmed, varied or set aside by the Tribunal decision;
  (c) any other party to the proceeding in which the Tribunal decision is made.

127 Tribunal decision continues to operate unless Tribunal orders otherwise

General rule

(1) The making of an application (the ***referral application***) to refer a decision of the Tribunal (the ***Tribunal decision***) to the guidance and appeals panel does not affect the operation of the Tribunal decision or prevent the taking of action to implement the Tribunal decision.

Exception—Tribunal may stay operation or implementation

(2) However, on application by a party to the proceeding in which the Tribunal decision is made, the Tribunal may make an order staying or otherwise affecting the operation or implementation of the Tribunal decision if the Tribunal considers that it is desirable to do so for the purpose of ensuring the effectiveness of the referral application.

Authorised Version C2024A00040 registered 03/06/2024

(3) The order is subject to any conditions specified in the order.

(4) The order has effect until:

(a) if the President refers the Tribunal decision—14 days after the President refers the Tribunal decision; or

(b) in any other case—the Tribunal refuses the referral application.

Note: If the President refers the Tribunal decision, an application is taken to be made for review of a reviewable decision (see subsection 130(2)). The Tribunal may stay the operation or implementation of the reviewable decision for the purpose of ensuring the effectiveness of the review (see section 32).

(5) Despite subsection (4), if:

(a) the order states that it applies for a period; and

(b) the period ends before the time the order would cease to have effect under subsection (4) if the period were not stated;

the order has effect until the end of the period.

(6) The Tribunal may, by order, vary or revoke the order on application by a party to the proceeding in which the Tribunal decision is made.

Preconditions to making, varying or revoking an order

(7) The Tribunal must not make, vary or revoke an order staying or otherwise affecting the operation or implementation of the Tribunal decision unless:

(a) the Tribunal has given the parties to the proceeding in which the Tribunal decision is made a reasonable opportunity to make submissions to the Tribunal in relation to the making, variation or revocation of the order; and

(b) the Tribunal has taken into account the interests of any person who may be affected by the decision affirmed, varied or set aside by the Tribunal decision.

(8) However, paragraph (7)(a) does not prevent the Tribunal making, varying or revoking an order without giving a party an opportunity to make a submission to the Tribunal if the Tribunal is satisfied that it is not practicable to give the party the opportunity.

Authorised Version C2024A00040 registered 03/06/2024

(9) If the Tribunal makes, varies or revokes an order without giving a party an opportunity to make a submission as mentioned in subsection (8), the order, variation or revocation does not take effect until a notice setting out the terms of the order, variation or revocation is given to the party.

128 President decides whether to refer Tribunal decision to guidance and appeals panel

President's decision

(1) If a person applies to refer a decision of the Tribunal (the ***Tribunal decision***) to the guidance and appeals panel, the President may refer the Tribunal decision to the guidance and appeals panel or refuse the application.

Requirements for decision

(2) The President may refer the Tribunal decision to the guidance and appeals panel if the President is satisfied that:
  (a) the Tribunal decision raises an issue of significance to administrative decision-making; or
  (b) the Tribunal decision may contain an error of fact or law materially affecting the Tribunal decision.

(3) However, the President must not refer the Tribunal decision to the guidance and appeals panel in any of the following circumstances:
  (a) a fee payable in relation to the application is not paid by the time prescribed by the rules;
  (b) a circumstance prescribed by the rules.

(4) In deciding whether to refer the Tribunal decision to the guidance and appeals panel or refuse the application under this section, the President must have regard to:
  (a) the circumstances of the parties to the proceeding in which the Tribunal decision is made; and
  (b) any other matters that the President considers relevant.

(5) To avoid doubt, the President is not required to refer any decision of the Tribunal to the guidance and appeals panel.

Authorised Version C2024A00040 registered 03/06/2024

129 Notice of President's decision

(1) This section applies if:

(a) a person applies to refer a decision of the Tribunal (the ***Tribunal decision***) to the guidance and appeals panel; and

(b) the President decides to refer the Tribunal decision to the guidance and appeals panel or refuse the application.

(2) The President must give notice of the President's decision orally or in writing to the following:

(a) the person;

(b) the decision-maker for the decision affirmed, varied or set aside by the Tribunal decision;

(c) any other party to the proceeding in which the Tribunal decision is made.

Subdivision C—Review after Tribunal decision is referred to guidance and appeals panel

130 Application for review proceeds if President refers Tribunal decision to guidance and appeals panel

When this section applies

(1) This section applies if the President refers to the guidance and appeals panel under section 128 a decision made by the Tribunal (the ***Tribunal decision***) to affirm, vary or set aside a decision (the ***original decision***).

Applicant is taken to have applied for review of decision

(2) The person who applied to refer the Tribunal decision to the guidance and appeals panel is taken to have applied to the Tribunal for review of the following decision:

(a) if the Tribunal decision is to affirm the original decision—the original decision;

(b) if the Tribunal decision is to vary the original decision—the original decision as varied (an ***updated decision***);

Authorised Version C2024A00040 registered 03/06/2024

(c) if the Tribunal decision is to set aside the original decision and make a new decision in substitution for it—the new decision (also an ***updated decision***);

(d) if the Tribunal decision is to set aside the original decision and remit the matter to the decision-maker for reconsideration—the original decision.

Note 1: The decision-maker for the original decision is the decision-maker for the purposes of the review (see section 108).

Note 2: The Tribunal will be constituted by the guidance and appeals panel for the purposes of the proceeding for the review (see sections 41 and 42).

Parties to Tribunal decision proceeding are parties to review proceeding

(3) In addition to the persons who are parties to the proceeding for the review under section 22, any other party to the proceeding in which the Tribunal decision is made is a party to the proceeding for the review.

(4) Subsection (3) is subject to section 65 (certain parties may seek to withdraw from being a party) and 83 (Tribunal may remove party from proceeding if party fails to appear or does not comply).

This Act applies differently in relation to the review

(5) The following provisions do not apply in relation to an updated decision:

(b) section 24 (decision-maker must give Tribunal additional statement if Tribunal requires—general rule);

(c) Part 10 (notice and information about administrative decision).

(6) The following provisions do not apply in relation to a guidance and appeals panel application:

(aa) Division 3 of Part 3 (applying for review of decision);

(a) section 21 (parties and potential parties to be notified of application);

(b) section 23 (decision-maker must give reasons and documents to Tribunal—general rule).

Authorised Version C2024A00040 registered 03/06/2024

(7) This Act applies in relation to an updated decision or a guidance and appeals panel application subject to any modifications prescribed by the regulations.

131 Tribunal may have regard to records and documents from earlier proceeding

In a proceeding in relation to a guidance and appeals panel application taken to be made because the President refers a decision of the Tribunal to the guidance and appeals panel, the Tribunal may have regard to:

(a) any record of the proceeding (the ***earlier proceeding***) in which the decision of the Tribunal is made (including a record of any evidence taken in the earlier proceeding); and

(b) any document or thing relating to the earlier proceeding given to the Tribunal; and

(c) any order or recommendation of the Tribunal in the earlier proceeding.

Authorised Version C2024A00040 registered 03/06/2024

Part 5A—Second review for certain social services decisions

Division 1—Preliminary

131A Simplified outline of this Part

A person may apply to the Tribunal for review of an ART social services decision.

Most ART social services decisions are decisions made by the Tribunal on review of social services decisions. However, some ART social services decisions are made originally by the Tribunal.

In general, the Tribunal must deal with an application for review of an ART social services decision in the same way as it would deal with a reviewable decision of that kind.

However, this general rule is modified by Division 3 of this Part, and may also be modified by regulations made under this Part.

An application cannot be made under section 123 to refer a decision of the Tribunal on review of a social services decision, or a decision of the Tribunal on second review, to the guidance and appeals panel.

131B How this Part applies

This Part applies despite subsection 108(3) (no application for review of varied or substituted decision).

131C Meaning of *eligible social services decision*

Each of the following is an ***eligible social services decision***:

(a) a reviewable decision made under the *A New Tax System (Family Assistance) Act 1999*;

Authorised Version C2024A00040 registered 03/06/2024

(b) a reviewable decision made under the *A New Tax System (Family Assistance) (Administration) Act 1999*, other than a child care provider decision (within the meaning of that Act);

(c) a decision under section 92 of the *Child Support (Registration and Collection) Act 1988* to refuse an extension application;

(d) a reviewable decision made under the *Child Support (Registration and Collection) Act 1988* that is a care percentage decision (within the meaning of that Act);

(e) a decision under subsection 95N(2) of the *Child Support (Registration and Collection) Act 1988* to make, or not to make, a determination;

(f) a reviewable decision made under the *Paid Parental Leave Act 2010* that is a claimant decision (within the meaning of that Act);

(g) a reviewable decision made under the *Social Security Act 1991*;

(h) a reviewable decision made under the *Social Security (Administration) Act 1999*;

(i) a reviewable decision made under the *Student Assistance Act 1973*.

Authorised Version C2024A00040 registered 03/06/2024

Division 2—General rules for second review

131D Who can apply

(1) A person whose interests are affected by an ART social services decision may apply to the Tribunal for review (the ***second review***) of the decision.

(2) However, an application cannot be made for second review if the ART social services decision was made in accordance with subsection 103(2) (decision agreed by parties).

(3) An ***ART social services decision*** is:

(a) for an eligible social services decision that has been affirmed by the Tribunal—the decision as affirmed; or

(b) for an eligible social services decision that has been varied by the Tribunal—the decision as varied; or

(c) for an eligible social services decision that has been set aside and remade by the Tribunal—the decision as remade; or

(d) for an eligible social services decision that has been set aside and remitted to the decision-maker by the Tribunal—the decision as set aside; or

(e) for an eligible social services decision made under section 92 or subsection 95N(2) of the *Child Support (Registration and Collection) Act 1988*—the decision as made.

131E Operation of this Act and other laws

(1) This Act applies in relation to an ART social services decision as if the decision were a reviewable decision.

(2) If the review of an eligible social services decision under this Act was subject to provisions with a contrary intention in another Act, any second review relating to the decision is subject to those provisions in the same way.

(3) This section has effect subject to:

(a) the modifications set out in Division 3; and

Authorised Version C2024A00040 registered 03/06/2024

(b) any modifications of this Act prescribed by the regulations for the purposes of second review.

Authorised Version C2024A00040 registered 03/06/2024

Division 3—Modifications for second review

131F References to the decision-maker

A reference in this Act, as it would apply for the purposes of second review, to the decision-maker for an ART social services decision is taken to be a reference to the decision-maker for the related eligible social services decision.

131G Giving reasons and documents to Tribunal

Section 23 (decision-maker must give reasons and documents to Tribunal—general rule) does not apply in relation to an application for second review.

131H Who can apply—claimant decisions

Despite section 17 (who can apply), an application for second review in relation to a claimant decision (within the meaning of the *Paid Parental Leave Act 2010*) may not be made by a person in the person's capacity as an employer.

131J When to apply

(1) Despite a contrary intention in any other law, an application for second review must be made within the time prescribed under section 18 (when to apply—general rule).

(2) However, an application for second review of a child care decision (within the meaning of the *A New Tax System (Family Assistance) (Administration) Act 1999*) about an individual's entitlement to be paid CCS for a week may also be made after the time prescribed under section 18 (when to apply—general rule) if the application is made:

(a) because of a review, by the Commissioner of Taxation, of a previous decision by the Commissioner about the taxable income of the individual or another person in relation to whom the individual has met the CCS reconciliation conditions for the income year in which the CCS fortnight that includes the week starts; and

Authorised Version C2024A00040 registered 03/06/2024

(b) within the time prescribed under that section after the individual or other person was notified by the Commissioner of the outcome of the review.

131K Parties to proceeding

(1) The parties to a proceeding for second review include the persons who were parties to the proceeding for review of the related eligible social services decision.

(2) However, subsection (1) has effect subject to:
(a) section 65 (certain parties may seek to withdraw from being a party); and
(b) section 83 (Tribunal may remove party from proceeding if party fails to appear or does not comply).

131L Limits on applying to become a party to proceeding—claimant decisions

(1) This section applies to a proceeding for a second review that relates to a claimant decision (within the meaning of the *Paid Parental Leave Act 2010*).

(2) Despite paragraph 22(1)(c), a person may not apply to be a party to the proceeding in the person's capacity as an employer.

131M Decision cannot be altered outside Tribunal process

Despite a contrary intention in any other law, section 31 (decision cannot be altered outside Tribunal process) has effect in relation to a second review.

131N No automatic election notice for decision-maker

Despite a contrary intention in any other law, a decision-maker is not taken to have given the Tribunal an election notice in relation to a second review.

Authorised Version C2024A00040 registered 03/06/2024

131P Tribunal may have regard to records and documents from earlier proceeding

In a proceeding for second review, the Tribunal may have regard to:

(a) any record of the proceeding (the ***earlier proceeding***) in which the ART social services decision was made (including a record of any evidence taken in the earlier proceeding); and

(b) any document or thing relating to the earlier proceeding given to the Tribunal; and

(c) any order or recommendation of the Tribunal in the earlier proceeding.

131Q Care percentage determinations reviewed under other Acts

Family assistance care percentage decisions

(1) Section 123 of the *A New Tax System (Family Assistance) (Administration) Act 1999* does not apply in relation to a second review of a family assistance care percentage decision.

(2) If:

(a) the Tribunal has reviewed an ART social services decision made on review of a decision on application referred to in section 89 of the *Child Support (Registration and Collection) Act 1988*; and

(b) the review of the ART social services decision involved (wholly or partly) a review of a determination to which a family assistance care percentage decision relates;

then, despite section 54 of this Act, the Tribunal must not, on second review of the family assistance care percentage decision, vary or substitute the decision in a way that would have the effect of varying or substituting the determination referred to in paragraph (b).

Authorised Version C2024A00040 registered 03/06/2024

Child support care percentage decisions

(3) Section 95M of the *Child Support (Registration and Collection) Act 1988* does not apply in relation to a second review of a child support care percentage decision.

(4) If:

(a) the Tribunal has reviewed an ART social services decision made on review of a decision on application referred to in section 111 of the *A New Tax System (Family Assistance) (Administration) Act 1999*; and

(b) the review of the ART social services decision involved (wholly or partly) a review of a determination to which a child support care percentage decision relates;

then, despite section 54 of this Act, the ART must not, on second review of the child support care percentage decision, vary or substitute the decision in a way that would have the effect of varying or substituting the determination referred to in paragraph (b).

Definitions

(5) In this section:

child support care percentage decision means a care percentage decision within the meaning of the *Child Support (Registration and Collection) Act 1988*.

family assistance care percentage decision means a care percentage decision within the meaning of the *A New Tax System (Family Assistance) (Administration) Act 1999*.

131R Date of effect provisions

The following provisions do not apply in relation to second review:

(a) section 125 of the *A New Tax System (Family Assistance) (Administration) Act 1999*;

(b) section 95N of the *Child Support (Registration and Collection) Act 1988*.

Authorised Version C2024A00040 registered 03/06/2024

131S Treating events as having occurred

(1) Paragraph 127(a) of the *A New Tax System (Family Assistance) (Administration) Act 1999* has effect as if the reference in that paragraph to ART review of a decision included a reference to second review of an ART social services decision made on ART review.

(2) Paragraph 183(a) of the *Social Security (Administration) Act 1999* has effect as if the reference in that paragraph to ART review of a decision included a reference to second review of an ART social services decision made on ART review.

(3) Paragraph 319(a) of the *Student Assistance Act 1973* has effect as if the reference in that paragraph to ART review of a decision included a reference to second review of an ART social services decision made on ART review.

131T Remitting decisions for reconsideration

Despite a contrary intention in any other law, section 85 (Tribunal may remit decision to decision-maker for reconsideration) applies in relation to a second review.

131U Legal or financial assistance

Despite a contrary intention in any other law (other than section 122 of the *A New Tax System (Family Assistance) (Administration) Act 1999*):

(a) subsection 294(1) (legal or financial assistance for applicants) applies in relation to a person who applies, or proposes to apply, to the Tribunal for second review; and

(b) subsection 294(3) (legal or financial assistance for other parties) applies in relation to a proceeding for second review; and

(c) subsection 294(4) (legal or financial assistance for court proceedings) applies in relation to a matter that relates to a proceeding for second review.

Authorised Version C2024A00040 registered 03/06/2024

131V Operation and implementation of decision on second review

Despite a contrary intention in any other law, subsection 32(2) (Tribunal may stay operation or implementation) applies in relation to a second review.

131W Guidance and appeals panel

An application cannot be made under section 123 to refer any of the following to the guidance and appeals panel:

(a) a decision of the Tribunal on review of an eligible social services decision;

(b) a decision of the Tribunal on second review.

Note: However, the President may, on the President's own initiative, refer an application for review of an eligible social services decision or for second review to the guidance and appeals panel under section 122.

131X Time and manner for making appeals

(1) This section applies:

(a) if a person applies for second review of an ART social services decision; and

(b) for the purposes of counting the 28 days mentioned in paragraph 174(1)(a), (b) or (c) within which an appeal to the Federal Court from the decision may be made.

(2) Do not take into account any day in the period between:

(a) the day the application for second review is made; and

(b) the day the person is given:

(i) notice under subsection 37(5) that the Tribunal has been constituted for the purposes of the second review; or

(ii) notice of a decision by the Tribunal that the person's interests are not affected by the ART social services decision.

Authorised Version C2024A00040 registered 03/06/2024

Part 6—Proceedings in Intelligence and Security jurisdictional area

Division 1—Preliminary

132 Simplified outline of this Part

Special rules apply when the Tribunal's powers in relation to a proceeding are exercised in the Intelligence and Security jurisdictional area. This occurs if the proceeding relates to an intelligence and security decision or the President otherwise directs (for example where the President is satisfied national security information would be involved).

The standard Tribunal process is adjusted, including in relation to applicants, decision-makers, parties, constitution of the Tribunal, dispute resolution processes and Tribunal decisions. Some adjustments apply to all intelligence and security decisions, others only apply to some kinds of decisions.

Referral to the guidance and appeals panel is not available in relation to intelligence and security decisions. However, for some kinds of intelligence and security decisions reviewed by the Tribunal, the applicant may apply to the Tribunal for the decision to be reviewed again.

Special rules are also in place to protect information. These deal with:

(a) whether statements of reasons can be given; and
(b) what information is to be provided to the Tribunal and parties to proceedings; and
(c) how the information is to be provided; and
(d) how the information is to be used and protected.

For example, different requirements apply to information covered by certificates issued on public interest grounds.

Authorised Version C2024A00040 registered 03/06/2024

133 How this Part applies

Interaction with other provisions

(1) This Part:

(a) applies despite any other provision of this Act, the regulations, the rules or the practice directions; but

(b) unless this Part provides otherwise—does not limit the operation of any such provision to the extent that the provision is capable of operating concurrently with this Part.

(2) To avoid doubt, this Part does not limit Division 6 of Part 7 (sending and disclosing documents).

Assessments to be treated as decisions

(3) To avoid doubt, this Act applies in relation to criminal intelligence assessments, security assessments and security clearance suitability assessments as if:

(a) those assessments were decisions; and

(b) the making of those assessments were the making of decisions.

134 Proceedings to be conducted in Intelligence and Security jurisdictional area

Reviews of intelligence and security decisions

(1) The Tribunal's powers in relation to a proceeding that relates to an intelligence and security decision are to be exercised in the Intelligence and Security jurisdictional area.

Other proceedings involving national security information

(2) If the President is satisfied that any other proceeding in the Tribunal would involve national security information, the President may direct that the Tribunal's powers in relation to the proceeding are to be exercised in the Intelligence and Security jurisdictional area.

Authorised Version C2024A00040 registered 03/06/2024

(3) The President may do so:
  (a) on application by a party to the proceeding; or
  (b) on the President's own initiative.

Other proceedings generally

(4) To avoid doubt, this section does not limit the President's power under subsection 196(4) to direct that the powers of the Tribunal in relation to any other proceeding are to be exercised in the Intelligence and Security jurisdictional area.

135 Operation in relation to decision-maker

When this section applies

(1) This section applies:
  (a) in relation to a proceeding for review of an intelligence and security decision, other than an exempt security record decision; and
  (b) for the purposes of the operation of this Act in relation to the decision.

Person taken to be decision-maker—general rule

(2) For a decision mentioned in column 1 of an item in the following table, the decision-maker is taken to be the person mentioned in column 2 of the item.

Who is taken to be the decision-maker

Item	Column 1 Decision	Column 2 Person taken to be decision-maker
1	Criminal intelligence assessment	The Chief Executive Officer of the Australian Crime Commission
2	Foreign acquisitions and takeovers decision	The Treasurer
3	Preventative detention decision	The AFP Commissioner
4	Security assessment	The Director-General of Security
5	Security clearance decision	The Director-General of Security

Authorised Version C2024A00040 registered 03/06/2024

Who is taken to be the decision-maker		
Item	**Column 1** **Decision**	**Column 2** **Person taken to be decision-maker**
6	Security clearance suitability assessment	The Director-General of Security

Exceptions

(3) Subsection (2) does not apply in relation to:
(a) section 54 (Tribunal can exercise powers of decision-maker); or
(b) section 85 (Tribunal may remit decision to decision-maker for reconsideration); or
(c) section 105 (Tribunal decision on review of reviewable decision); or
(d) section 108 (effect of Tribunal decision to vary or substitute a reviewable decision); or
(e) section 163 (security clearance decisions).

136 Reasons for decisions

When this section applies

(1) This section applies in relation to an intelligence and security decision.

Reasons for decisions

(2) Division 3 of Part 10 (decision-makers to give reasons for decisions) does not apply in relation to the decision.

137 Meaning of *relevant body*

When this section applies

(1) This section applies in relation to a proceeding in the Intelligence and Security jurisdictional area.

Authorised Version C2024A00040 registered 03/06/2024

*Meaning of **relevant body***

(2) The ***relevant body*** for a decision mentioned in column 1 of an item in the following table is the Commonwealth entity or the part of a Commonwealth entity, or the State or Territory government entity, mentioned in column 2 of the item.

Meaning of *relevant body*

Item	Column 1 Decision	Column 2 Relevant body
1	Criminal intelligence assessment	The entity to which the assessment was given
2	Foreign acquisitions and takeovers decision	The agency within the national intelligence community that provided advice to the Treasurer in relation to the decision
3	Preventative detention decision	The agency within the national intelligence community (if any) that provided advice to the Australian Federal Police in relation to the preventative detention order concerned
4	Security assessment	The entity to which the assessment was given
5	Security clearance decision	The sponsoring agency in relation to the security clearance
6	Security clearance suitability assessment	Both: (a) the security vetting agency to which the assessment was given; and (b) the sponsoring agency in relation to the security clearance concerned if that agency was given the assessment by ASIO

Authorised Version C2024A00040 registered 03/06/2024

Division 2—Starting a review

Subdivision A—Applications and notice of applications

138 Limits on who can apply for certain reviews

When this section applies

(1) This section applies in relation to an intelligence and security decision, other than:
  (a) an exempt security record decision; or
  (b) a preventative detention decision.

Persons who can apply for review

(2) Section 17 (who can apply) does not apply in relation to the decision.

Note: The persons who may apply for review of these decisions are specified in the Acts under which the decisions are made.

139 Additional persons to be notified of applications for review

When this section applies

(1) This section applies:
  (a) in relation to an intelligence and security decision; and
  (b) in addition to section 21 (parties and potential parties to be notified of application).

Notice of application

(2) If a person applies to the Tribunal for review of the decision:
  (a) the Tribunal must give the agency head written notice of the application; and
  (b) the agency head must then give written notice of the application to each relevant body.

Authorised Version C2024A00040 registered 03/06/2024

140 Applications for decisions to be reviewed again

When this section applies

(1) This section applies in relation to an intelligence and security decision, other than:
  (a) an exempt security record decision; or
  (b) a preventative detention decision.

Application for decision to be reviewed again

(2) If the Tribunal has reviewed the decision, the person who applied for the review may apply to the Tribunal for the decision to be reviewed again.

(3) The Tribunal must dismiss the application unless the Tribunal is satisfied that:
  (a) further evidence of material significance has become available; and
  (b) the further evidence was not available at the time of the initial review.

Subdivision B—Information to be provided by agency head

141 Information to be provided by agency head

When this section applies

(1) This section applies:
  (a) in relation to an intelligence and security decision, other than an exempt security record decision; and
  (b) instead of Subdivision B of Division 4 of Part 3 (provision of reasons and documents).

Information to be provided by agency head

(2) If the agency head is given notice of an application for review of the decision, the agency head must give the Tribunal:
  (a) in any case—all the relevant information that:
    (i) was used to make the decision; and

Authorised Version C2024A00040 registered 03/06/2024

(ii) is available to the agency head; and

(b) if the decision is a security clearance decision—a copy of the statement of grounds prepared for the decision under section 83C of the ASIO Act; and

(c) if the decision is a foreign acquisitions and takeovers decision:

(i) a copy of the notice given to the person concerned under subsection 79B(1) of the *Foreign Acquisitions and Takeovers Act 1975*; and

(ii) a copy of the whole of the notice (without redactions).

Non-disclosure certificates

(3) If the application is for review of a decision mentioned in column 1 of an item in the following table, and a certificate mentioned in column 2 of the item has been made in relation to the decision, the agency head must also give the Tribunal the documents mentioned in column 3 of the item.

Non-disclosure certificates—documents to be given to Tribunal

Item	Column 1 Decision	Column 2 Certificate	Column 3 Documents to be given
1	Criminal intelligence assessment	Certificate under subsection 36C(5) of the *Australian Crime Commission Act 2002*	The following: (a) a copy of the certificate; (b) a copy of the whole assessment (without redactions)
2	Security assessment	Certificate under paragraph 38(2)(b) of the ASIO Act	The following: (a) a copy of the certificate; (b) a copy of the whole assessment (without redactions)
3	Security clearance decision	Certificate under subsection 83C(6) of the ASIO Act	A copy of the certificate
4	Security clearance suitability assessment	Certificate under paragraph 83A(4)(b) of the ASIO Act	The following: (a) a copy of the certificate; (b) a copy of the whole assessment (without redactions), including a

Authorised Version C2024A00040 registered 03/06/2024

Non-disclosure certificates—documents to be given to Tribunal			
Item	**Column 1** **Decision**	**Column 2** **Certificate**	**Column 3** **Documents to be given**
			copy of the statement of grounds prepared for the assessment under section 82G of the ASIO Act

Prohibition on disclosure of subsection 79B(1) notices

(4) The Tribunal must not, at any time, permit an applicant to have access to:

(a) any copy or particulars of a notice (without redaction) given under subsection 79B(1) of the *Foreign Acquisitions and Takeovers Act 1975*; or

(b) any matter to which the notice (without redaction) relates.

General rules

(5) Information or a document required under this section must be given to the Tribunal within 28 days after the agency head is given notice of the application, or within such further period as the Tribunal allows.

(6) To avoid doubt, this section applies whether or not the information or documents are favourable or unfavourable to the applicant.

Subdivision C—Provision of security clearance standards

142 When this Subdivision applies

This Subdivision applies in relation to the review of:

(a) a security clearance decision; or

(b) a security clearance suitability assessment.

Authorised Version C2024A00040 registered 03/06/2024

143 Director-General of Security may provide standards

Providing standards

(1) The Director-General of Security may give the Tribunal either or both of the following:

(a) a copy of any standard (or a part of a standard) 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 the security clearance suitability assessment;

(b) a copy of any standard (or a part of a standard) 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.

Applying standards

(2) If a copy of only one standard (or part) is given, the Tribunal must apply the standard (or part) in its review of the decision.

(3) If copies of more than one standard (or part) are given, the Tribunal must, in its review of the decision, apply the standard (or part) certified by the Director-General as being a current standard.

144 Disclosure of standards

General rule

(1) The Tribunal must do all things necessary to ensure that a copy of a standard (or a part of a standard) given to the Tribunal under section 143, or any information contained in the copy, is not disclosed to the applicant or any person other than:

(a) the Director-General of Security or the Director-General's representative; or

(b) a member in the course of the performance of the member's duties; or

Authorised Version C2024A00040 registered 03/06/2024

(c) the Principal Registrar in the course of the performance of the Principal Registrar's duties; or

(d) a staff member in the course of the performance of the staff member's duties.

Exception

(2) However, subsection (1) does 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.

Authorised Version C2024A00040 registered 03/06/2024

Division 3—Proceedings

145 Constitution of Tribunal—general rule

When this section applies

(1) This section applies:

(a) in relation to a proceeding for review of a decision in the Intelligence and Security jurisdictional area, other than a proceeding for review of a preventative detention decision; and

(b) instead of section 39 (general rules for constitution of Tribunal).

Note: Section 39 continues to apply in relation to incidental and ancillary proceedings, such those dealing with costs and extensions of time.

Constitution of Tribunal—general rule

(2) The Tribunal must be constituted for the purposes of the proceeding by:

(a) the President; or

(b) a Deputy President; or

(c) 3 members, at least one of whom is the President or a Deputy President.

Note: For constitution of the Tribunal, see Division 4 of Part 4 (constitution of Tribunal for a proceeding), and for reconstitution of the Tribunal, see Subdivision D of that Division.

Presiding member

(3) If the Tribunal is constituted for the purposes of the proceeding by 3 members, the presiding member must be:

(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 are—the most senior (or only) Judge; or

(c) if paragraphs (a) and (b) do not apply—a Deputy President.

Authorised Version C2024A00040 registered 03/06/2024

Avoiding conflicts of interest—members who were agency heads

(4) However, none of the members can be a person who is, or was, the head of an agency within the national intelligence community if:
  (a) in any case—the agency is a party to the proceeding; or
  (b) if the review relates to an exempt security record decision—the document or record concerned originated with, or was received from, the agency.

Avoiding conflicts of interest—members who were certain Ministers

(5) In addition, none of the members can be a person who was:
  (a) in any case—the Treasurer; or
  (b) the Minister responsible for an agency within the national intelligence community if:
    (i) the agency is a party to the proceeding; or
    (ii) if the review relates to an exempt security record decision—the document or record concerned originated with, or was received from, the agency.

146 Constitution of Tribunal—preventative detention decisions

When this section applies

(1) This section applies:
  (a) in relation to a proceeding for review of a preventative detention decision; and
  (b) instead of section 39 (general rules for constitution of Tribunal).

Note: Section 39 continues to apply in relation to incidental and ancillary proceedings, such those dealing with costs and extensions of time.

Constitution of Tribunal—preventative detention decisions

(2) The Tribunal must be constituted for the purposes of the proceeding by a single member who must be:
  (a) the President; or
  (b) a Judicial Deputy President.

Authorised Version C2024A00040 registered 03/06/2024

Note: For constitution of the Tribunal, see Division 4 of Part 4 (constitution of Tribunal for a proceeding), and for reconstitution of the Tribunal, see Subdivision D of that Division.

147 Parties to proceedings

When this section applies

(1) This section applies:

(a) in relation to a proceeding for review of an intelligence and security decision; and

(b) instead of the following provisions:

(i) unless the decision is an exempt security record decision—section 22 (parties to proceeding for review);

(ii) section 60 (decision-makers may elect not to participate in kind of proceeding or Tribunal case event);

(iii) section 61 (decision-maker who elects not to participate may be a non-participating party to proceeding or Tribunal case event);

(iv) section 65 (certain parties may seek to withdraw from being a party);

(v) section 83 (Tribunal may remove party from proceeding if party fails to appear or does not comply).

Parties to proceedings

(2) The parties to a proceeding for review of a decision mentioned in column 1 of an item in the following table are the persons mentioned in column 2 of the item.

Parties to proceedings

Item	Column 1 Decision	Column 2 Parties to proceeding
1	Criminal intelligence assessment	The applicant The Chief Executive Officer of the Australian Crime Commission
2	Foreign acquisitions and takeovers decision	The applicant The Treasurer

Authorised Version C2024A00040 registered 03/06/2024

Parties to proceedings		
Item	**Column 1** **Decision**	**Column 2** **Parties to proceeding**
3	Preventative detention decision	The applicant The AFP Commissioner
4	Security assessment	The applicant The Director-General of Security
5	Security clearance decision	The applicant The Director-General of Security
6	Security clearance suitability assessment	The applicant The Director-General of Security

148 Certain hearings must be held in private

When this section applies

(1) This section applies in relation to a proceeding that relates to an intelligence and security decision, other than an exempt security record decision.

(2) This section applies subject to:
  (a) section 149 (persons entitled to be present at hearings); and
  (b) section 158 (security certificates—responsible Minister).

Hearings to be held in private

(3) The hearing of the proceeding must be held in private.

(4) The Tribunal may, by order, give directions in relation to the persons who may be present at the hearing.

149 Persons entitled to be present at hearings

When this section applies

(1) This section applies:

Authorised Version C2024A00040 registered 03/06/2024

(a) in relation to a proceeding for review of an intelligence and security decision; and
(b) subject to section 158 (security certificates—responsible Minister).

Persons entitled to be present

(2) The applicant, and the applicant's representative, are entitled to be present at the hearing of the proceeding when the Tribunal hears submissions made, or evidence adduced by:
(a) the agency head (or representative); or
(b) a relevant body.

(3) The following are entitled to be present at the hearing of the proceeding when the Tribunal hears submissions made, or evidence adduced by the applicant (or representative):
(a) the agency head (or representative);
(b) a relevant body.

150 Relevant bodies may adduce evidence and make submissions

When this section applies

(1) This section applies in relation to a proceeding for review of an intelligence and security decision.

Relevant bodies may adduce evidence and make submissions

(2) A relevant body:
(a) is entitled to adduce evidence and make submissions in the proceeding; and
(b) for the purposes of the following sections, is taken to be a party to the proceeding:
(i) section 56 (parties and their representatives to assist Tribunal);
(ii) section 66 (representation before Tribunal);
(iii) section 79 (Tribunal may give directions in relation to procedure for a proceeding);
(iv) section 151 (order of evidence and submissions);

Authorised Version C2024A00040 registered 03/06/2024

(v) section 152 (opportunity for further evidence and submissions).

151 Order of evidence and submissions

When this section applies

(1) This section applies in relation to a proceeding for review of an intelligence and security decision.

Order of presentation

(2) Unless it determines otherwise, the Tribunal must hear initial evidence and submissions from the parties to the proceeding in the following order:
   (a) first—evidence adduced and submissions made by the agency head;
   (b) second—evidence adduced and submissions made by relevant bodies;
   (c) third—evidence adduced and submissions made by the applicant.

152 Opportunity for further evidence and submissions

When this section applies

(1) This section applies in relation to a proceeding for review of an intelligence and security decision.

Further evidence and submissions

(2) The Tribunal must give a party to the proceeding an opportunity to adduce further evidence and make further submissions in relation to the further evidence if:
   (a) the party presents the party's case to the Tribunal; and
   (b) after that case is presented, another party adduces evidence; and
   (c) the Tribunal considers that, because of evidence adduced by the other party, the first-mentioned party should be further heard.

Authorised Version C2024A00040 registered 03/06/2024

(3) To avoid doubt, the Tribunal must not give the applicant particulars of evidence or a submission in contravention of another provision of this Act that prohibits or restricts the disclosure of those particulars.

153 Tribunal may invite person to give evidence

When this section applies

(1) This section applies in relation to a proceeding in the Intelligence and Security jurisdictional area.

Tribunal may invite person to give evidence

(2) The Tribunal may, on its own initiative and at any stage of the proceeding, invite a person to give evidence.

154 Certain processes not available

When this section applies

(1) This section applies in relation to an intelligence and security decision, other than an exempt security record decision.

Dispute resolution

(2) Subdivision C of Division 6 of Part 4 (dispute resolution processes) does not apply in relation to a proceeding for review of the decision.

155 Guidance and appeals panel

When this section applies

(1) This section applies in relation to an intelligence and security decision.

Guidance and appeals panel

(2) Part 5 (guidance and appeals panel) does not apply in relation to:
(a) an application for review of the decision; or

Authorised Version C2024A00040 registered 03/06/2024

(b) a decision of the Tribunal on review of the decision.

Authorised Version C2024A00040 registered 03/06/2024

Division 4—Disclosure of information

156 Duty of Tribunal in relation to security and law enforcement information

When this section applies

(1) This section applies in relation to a proceeding in the Intelligence and Security jurisdictional area.

Duty to protect security and law enforcement information

(2) It is the duty of the Tribunal, even though there may be no relevant certificate under this or any other Act, to ensure, so far as possible, that information is not communicated or made available to a person if that communication or availability would prejudice:
  (a) the security, defence or international relations of the Commonwealth; or
  (b) law enforcement interests.

157 Restricting publication or disclosure of information

When this section applies

(1) This section applies:
  (a) in relation to a proceeding in the Intelligence and Security jurisdictional area; and
  (b) in addition to:
    (i) section 70 (Tribunal may restrict publication or disclosure of information); and
    (ii) section 71 (requirements for Tribunal orders about hearings, publication and disclosure).

Orders restricting publication or disclosure of information

(2) In considering whether to make an order under section 70 restricting publication or other disclosure of information, the Tribunal must:

Authorised Version C2024A00040 registered 03/06/2024

(a) in any case—have regard to the necessity of avoiding the disclosure of national security information; and

(b) if the proceeding is for review of an intelligence and security decision—give particular weight to any submission made by, or on behalf of, the agency head.

Orders restricting publication or disclosure of findings

(3) The Tribunal may, by order, give directions prohibiting or restricting the publication or other disclosure of the whole or any part of its findings in the proceeding.

Note: Breach of a non-publication or non-disclosure order is an offence (see section 119).

158 Security certificates—responsible Minister

When this section applies

(1) This section applies in relation to a proceeding for review of an intelligence and security decision, other than an exempt security record decision.

(2) This section applies in relation to evidence to be adduced or a submission to be made by or on behalf of any of the following:

(a) the agency head;

(b) a relevant body;

(c) an officer or employee of the agency head's agency;

(d) an officer or employee of a relevant body;

(e) a person connected with the agency or a relevant body.

Security certificates by responsible Ministers

(3) The responsible Minister may certify, in writing, that disclosing the evidence or making the submission would be contrary to the public interest because it would prejudice:

(a) in any case—the security, defence or international relations of the Commonwealth; or

(b) in the case of a criminal intelligence assessment decision—law enforcement interests.

Authorised Version C2024A00040 registered 03/06/2024

(4) If the responsible Minister so certifies, when the evidence is adduced or the submission is made:
  (a) the applicant must not be present; and
  (b) the applicant's representative must not be present except with the consent of the responsible Minister.

(5) A certificate under this section is not a legislative instrument.

Delegation—security clearance decisions and security clearance suitability assessments

(6) The ASIO Minister may, in writing, delegate the ASIO Minister's power under subsection (3) in relation to a security clearance decision or a security clearance suitability assessment to:
  (a) the Director-General of Security; or
  (b) an ASIO employee (within the meaning of the ASIO Act), or an ASIO affiliate (within the meaning of that Act), who holds, or is acting in, a position in ASIO that is equivalent to or higher than a position occupied by an SES employee.

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

Offence

(8) An applicant's representative commits an offence if:
  (a) a certificate is given under subsection (3) in relation to evidence or a submission; and
  (b) the representative is present when the evidence is adduced or the submission is made; and
  (c) the representative discloses the evidence, or any information that was part of the submission, to the applicant or to any other person.

Penalty: Imprisonment for 2 years.

Authorised Version C2024A00040 registered 03/06/2024

159 Sensitive information certificates—Director-General of Security

When this section applies

(1) This section applies in relation to a proceeding for review of:
  (a) a security clearance decision; or
  (b) a security clearance suitability assessment.

Sensitive information certificates

(2) The Director-General of Security or a person authorised by the Director-General under this section may certify, in writing, that, in the opinion of the Director-General or authorised person, disclosure of information (the ***sensitive information***) contained in a document given to the Tribunal by the Director-General in relation to a proceeding:
  (a) would be contrary to the public interest for one or more of the following reasons:
    (i) the disclosure would prejudice the security, defence or international relations of the Commonwealth;
    (ii) the disclosure would reveal information that has been disclosed to the Australian Security Intelligence Organisation in confidence;
    (iii) any other reason that could form the basis for a claim by the Crown in right of the Commonwealth in a judicial proceeding that the sensitive information or the matter contained in the document should not be disclosed; or
  (b) could reveal the methodology underlying a psychological assessment of the person who applied for the decision or assessment.

(3) A certificate under subsection (2) is not a legislative instrument.

Effect of certificate

(4) If a certificate is given under subsection (2), the Tribunal must do all things necessary to ensure that the sensitive information is not disclosed to the applicant or any person other than:

Authorised Version C2024A00040 registered 03/06/2024

(a) the Director-General of Security or the Director-General's representative; or
(b) a member in the course of the performance of the member's duties; or
(c) the Principal Registrar in the course of the performance of the Principal Registrar's duties; or
(d) a staff member in the course of the performance of the staff member's duties.

(5) However, subsection (4) does 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.

Authorisations

(6) The Director-General of Security may, in writing, authorise a person for the purposes of this section if the person is an ASIO employee (within the meaning of the ASIO Act), or an ASIO affiliate (within the meaning of that Act), who holds, or is acting in, a position in ASIO that is equivalent to or higher than a position occupied by an SES employee.

160 Protecting identities of persons giving evidence

When this section applies

(1) This section applies in relation to a proceeding in the Intelligence and Security jurisdictional area.

Protecting identities

(2) The Tribunal must do all things necessary to ensure that the identity of a person is not revealed if:
(a) the person gives, or is to give, evidence on behalf of an agency within the national intelligence community; and
(b) the head of the agency requests that the identity of the person is not revealed.

Authorised Version C2024A00040 registered 03/06/2024

161 Public interest certificates—responsible Minister

When this section applies

(1) This section applies:

(a) in relation to a proceeding for review of an intelligence and security decision, other than an exempt security record decision; and

(b) instead of the following provisions:

(i) section 91 (disclosure of information—public interest certificate);

(ii) section 92 (Attorney-General may intervene for public interest reasons);

(iii) section 112 (notice of decision and statement of reasons—other proceedings) to the extent that it would apply in relation anything done under this section.

Public interest certificate

(2) The responsible Minister may certify, in writing, that the disclosure of specified information, or the content of a specified document, in the proceeding would be contrary to the public interest for one or more of the following reasons:

(a) the disclosure would prejudice the security, defence or international relations of the Commonwealth;

(b) the disclosure would involve the disclosure of deliberations or decisions of the Cabinet or of a Committee of the Cabinet;

(c) if the proceeding is for review of a criminal intelligence assessment—the disclosure would prejudice law enforcement interests;

(d) any other reason 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.

(3) A certificate under subsection (2) is not a legislative instrument.

Authorised Version C2024A00040 registered 03/06/2024

Effect of certificate

(4) If a certificate is given under subsection (2) in relation to information or a document, a person is not excused from disclosing the information, or giving the document, to the Tribunal for the purposes of the proceeding if the person is required by or under this Act to do so.

(5) However, the Tribunal must do all things necessary to ensure that:

(a) subject to subsection (6), the information or document is not disclosed or given to any person other than:

(i) a member in the course of the performance of the member's duties; or

(ii) the Principal Registrar in the course of the performance of the Principal Registrar's duties; or

(iii) a staff member in the course of the performance of the staff member's duties; and

(b) in the case of a document given to the Tribunal by an agency head—the document is returned, to the agency from which it came, as soon as practicable after the Tribunal has finished considering the document.

Tribunal may allow disclosure in limited cases

(6) The Tribunal may decide to make the information or document available to any or all of the parties to the proceeding if the certificate does not specify the reason set out in paragraph (2)(a), (b) or (c).

(7) In deciding whether to make the information or document available, the Tribunal must:

(a) take into account as a primary consideration the principle that it is desirable, in the interest of ensuring the effective performance of the Tribunal's functions, for the parties to the proceeding to be made aware of all relevant matters; and

(b) have regard to any reason specified in the certificate.

Responsible Minister is party to proceeding

(8) The responsible Minister is a party to the proceeding if:

Authorised Version C2024A00040 registered 03/06/2024

(a) the certificate does not specify a reason set out in paragraph (2)(a), (b) or (c); and
(b) the responsible Minister would not otherwise be a party to the proceeding.

Notice of public interest decisions

(9) If the Tribunal decides to make the information or document available under subsection (6), the Tribunal must, as soon as practicable, give each party to the proceeding reasons for the decision.

Exclusion of other laws

(10) This section excludes the operation of any other law that relates to the public interest and would otherwise apply in relation to the disclosure of information, or of the content of documents, in a proceeding in the Tribunal.

Delegation—security clearance decisions and security clearance suitability assessments

(11) The ASIO Minister may, in writing, delegate the ASIO Minister's power under subsection (2) in relation to a security clearance decision or a security clearance suitability assessment to:
(a) the Director-General of Security; or
(b) an ASIO employee (within the meaning of the ASIO Act), or an ASIO affiliate (within the meaning of that Act), who holds, or is acting in, a position in ASIO that is equivalent to or higher than a position occupied by an SES employee.

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

162 Non-disclosure certificates under other Acts

When this section applies

(1) This section applies in relation to a proceeding for review of a decision mentioned in column 1 of an item in the following table if

Authorised Version C2024A00040 registered 03/06/2024

a certificate made under the provision mentioned in column 2 of the item has been given in relation to the decision.

When this section applies		
Item	**Column 1** **Decision**	**Column 2** **Provision under which certificate is made**
1	a criminal intelligence assessment	subsection 36C(5) of the *Australian Crime Commission Act 2002*
2	a security assessment	paragraph 38(2)(b) of the ASIO Act
3	a security clearance decision	subsection 83C(6) of the ASIO Act
4	a security clearance suitability assessment	paragraph 83A(4)(b) of the ASIO Act

Effect of certificate

(2) The certificate does not excuse a person from disclosing information, or giving a document, to the Tribunal for the purposes of the proceeding if the person is required by or under this Act to do so.

(3) However, the Tribunal must do all things necessary to ensure that:

(a) the information or document is not disclosed or given to any person other than:

(i) a member in the course of the performance of the member's duties; or

(ii) the Principal Registrar in the course of the performance of the Principal Registrar's duties; or

(iii) a staff member in the course of the performance of the staff member's duties; and

(b) in the case of a document given to the Tribunal by an agency head—the document is returned, to the agency from which it came, as soon as practicable after the Tribunal has finished considering the document.

Authorised Version C2024A00040 registered 03/06/2024

Division 5—Decisions on review

Subdivision A—Limits on certain decisions

163 Security clearance decisions

When this section applies

(1) This section applies:
  (a) in relation to the review of a security clearance decision; and
  (b) instead of the following provisions:
    (i) section 105 (Tribunal decision on review of reviewable decision);
    (ii) section 112 (notice of decision and statement of reasons—other proceedings).

Possible decisions

(2) The Tribunal must make a decision:
  (a) affirming the security clearance decision; or
  (b) setting aside the security clearance decision and remitting the matter to the decision-maker for reconsideration in accordance with any orders or recommendations of the Tribunal.

When Tribunal's decision on review comes into operation

(3) However, section 107 (when Tribunal's decision on review comes into operation) applies as if the Tribunal's decision on the review were made under section 105.

164 Preventative detention decisions

When this section applies

(1) This section applies in relation to the review of a preventative detention decision.

Authorised Version C2024A00040 registered 03/06/2024

Decision on review

(2) The following sections do not apply in relation to the review:
  (a) section 105 (Tribunal decision on review of reviewable decision);
  (b) section 112 (notice of decision and statement of reasons—other proceedings).

Note: For the decisions the Tribunal can make on review of a preventative detention decision, see subsection 105.51(7) of the *Criminal Code*.

Notice of decision and statement of reasons

(3) However, section 111 (notice of decision and statement of reasons—review of reviewable decision) applies as if the Tribunal's decision on the review were made under section 105.

Subdivision B—Recording and communicating decisions

165 When this Subdivision applies

This Subdivision applies:
  (a) in relation to the review of an intelligence and security decision, other than:
    (i) an exempt security record decision; or
    (ii) a preventative detention decision; and
  (b) instead of section 111 (notice of decision and statement of reasons—review of reviewable decision).

166 Making and recording findings

(1) The Tribunal:
  (a) must make and record its findings in relation to the decision; and
  (b) in relation to 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 decision.

(2) The Tribunal must not make findings in relation to the decision that would have the effect of superseding any information that is

Authorised Version C2024A00040 registered 03/06/2024

(or is taken to be) part of the decision unless those findings state that, in the Tribunal's opinion, the information:

(a) is incorrect; or

(b) is incorrectly represented; or

(c) could not reasonably be relevant to the requirements of security; or

(d) could not reasonably be relevant for the purposes of having regard to whether there is intelligence or information that suggests that the person:

(i) may commit a serious and organised crime; or

(ii) may assist another person to commit a serious and organised crime.

167 Communicating decisions

Written notice of decisions and findings

(1) The Tribunal must give written notice of its decision on the review, and copies of its findings made under section 166, to:

(a) the applicant; and

(b) the agency head; and

(c) the responsible Minister.

(2) The notice must include notice of the right of the party to appeal to the Federal Court under Division 2 of Part 7.

(3) The agency head must give the notice and findings to each relevant body.

Oral notice of decisions and findings

(4) The Tribunal may give its decision and findings orally before giving them in writing.

Directions about disclosure

(5) The Tribunal may, by order, direct that the whole or a particular part of its findings, so far as they relate to a matter that has not

Authorised Version C2024A00040 registered 03/06/2024

already been disclosed to the applicant, is not to be given to the applicant or a relevant body.

Time for giving written notice and findings

(6) The written notice and findings must be given by the time specified in the practice directions. If the practice directions do not specify a time, the written notice and findings must be given within 28 days after the day the Tribunal's decision is made.

Effect of failure to comply

(7) A failure to comply with this section does not affect the validity of the Tribunal's decision.

Effect of non-disclosure provisions

(8) To avoid doubt, this section is subject to other provisions of this Part that prohibit or restrict the disclosure of information or documents.

168 Findings relating to procedures or practices of agency

The Tribunal may provide, with the findings given to the agency head and the responsible Minister, any comments the Tribunal wishes to make on matters relating to procedures or practices of the agency that have come to the Tribunal's attention as a result of the review.

169 Applicant may publish findings

Subject to any order of the Tribunal, the applicant is entitled to publish the following, in any manner the applicant thinks fit:

(a) the Tribunal's decision on the review;

(b) the findings of the Tribunal so far as they have been given to the applicant.

Authorised Version C2024A00040 registered 03/06/2024

Part 7—Appeals and references of questions of law to Federal Court

Division 1—Preliminary

170 Simplified outline of this Part

A party to a proceeding in the Tribunal may appeal to the Federal Court, on a question of law, from the decision of the Tribunal in the proceeding. A decision that a person's interests are not affected by a reviewable decision may also be appealed. Timeframes apply to making appeals, but may be extended. An appeal does not affect the operation of a Tribunal decision unless the Court orders otherwise.

This Part contains the standard provisions for how the Court operates when dealing with an appeal. Other legislation can include provisions that apply in addition to, or instead of, these provisions.

The Federal Court may transfer some kinds of appeal to the Federal Circuit and Family Court of Australia (Division 2).

There are provisions facilitating remittal of matters to the Tribunal to be decided again.

In some circumstances, the Tribunal may refer a question of law to the Federal Court.

There are requirements (including some non-disclosure obligations) relating to sending documents between the Tribunal and the courts.

171 Part applies whether Tribunal's power is conferred by Commonwealth, State or Territory law

(1) This Part applies in relation to a proceeding before the Tribunal under power conferred on it by or under:

Authorised Version C2024A00040 registered 03/06/2024

(a) an Act or an instrument made under an Act; or
(b) a law of a State, the Australian Capital Territory or the Northern Territory.

(2) This Part has effect in relation to a proceeding before the Tribunal under power conferred on it by or under a law of a State, the Australian Capital Territory or the Northern Territory 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 or Territory.

Authorised Version C2024A00040 registered 03/06/2024

Division 2—Appeals on questions of law

Subdivision A—Appeals on questions of law

172 Party may appeal

(1) A party to a proceeding in the Tribunal may appeal to the Federal Court, on a question of law, from the decision of the Tribunal in the proceeding.

Note 1: A party to a proceeding for review of a decision of the Child Support Registrar, or second review that relates to the decision, may in some instances appeal instead to the Federal Circuit and Family Court of Australia (Division 2) (see section 99 of the *Child Support (Registration and Collection) Act 1988* and section 131E of this Act).

Note 2: For when a party to a proceeding for review of a decision under the *Migration Act 1958* can make an application to the Federal Court or the Federal Circuit and Family Court of Australia (Division 2), see sections 476 and 476A of the *Migration Act 1958*).

(2) To avoid doubt, subsection (1) does not apply in relation to a decision under section 128 (President decides whether to refer Tribunal decision to guidance and appeals panel).

Note: A decision under section 128 is not a decision of the Tribunal.

173 Decisions about standing

A person may appeal to the Federal Court from a decision of the Tribunal that the person's interests are not affected by a reviewable decision.

174 Time and manner for making appeals

(1) The appeal must be made:

(a) if either of the following applies—no later than 28 days after the Tribunal gives the party or person its statement of reasons for the decision:

(i) the Tribunal is required to give a statement of reasons for the decision;

(ii) the party or person has a right to request a statement of reasons for the decision and exercises the right; or

Authorised Version C2024A00040 registered 03/06/2024

(b) if the party or person has a right to request a statement of reasons for the decision and does not exercise the right—no later than 28 days after the last day on which the party or person could have requested a statement of reasons for the decision; or

(c) in any other case—no later than 28 days after the party or person is given the decision.

(2) However, the Federal Court may extend the period within which the appeal must be made.

(3) If a person applies to refer the decision to the guidance and appeals panel, for the purposes of counting the 28 days mentioned in paragraph (1)(a), (b) or (c), do not take into account any day in the period between the day the application is made and the day the President refers the decision or refuses the application.

(4) The appeal must be made in the manner prescribed by the Rules of Court made under the *Federal Court of Australia Act 1976*.

175 Constitution of Federal Court

(1) The appeal must be heard by a Full Court if the decision is given by:

(a) a member who is a Judge; or

(b) the Tribunal constituted for the purposes of a proceeding by a member who is, or members at least one of whom is, a Judge.

(2) The appeal may be heard by a Full Court if:

(a) subsection (1) does not apply; and

(b) the decision is given by:

(i) a member who is a Non-Judicial Deputy President; or

(ii) the Tribunal constituted for the purposes of a proceeding by a member who is, or members at least one of whom is, a Non-Judicial Deputy President; or

(iii) the Tribunal constituted for the purposes of a proceeding by the guidance and appeals panel; and

(c) the Chief Justice of the Court, following consultation with the President, thinks it appropriate.

Authorised Version C2024A00040 registered 03/06/2024

Subdivision B—Jurisdiction and powers of Federal Court

176 Federal Court has jurisdiction

(1) If an appeal is made under Subdivision A, the Federal Court:
  (a) has jurisdiction to hear and determine the appeal; and
  (b) must hear and determine the appeal; and
  (c) may make any order it considers appropriate because of its decision.

(2) Without limiting the orders it may make, the Federal Court may:
  (a) affirm or set aside a decision of the Tribunal; or
  (b) remit a matter to be decided again by the Tribunal, either with or without the taking of further evidence, in accordance with the directions of the Court.

177 Court may make findings of fact

(1) In hearing the appeal, the Federal 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 to do so.

(2) In deciding whether it is convenient, the Court must have regard to:
  (a) the extent (if any) to which it is necessary to make findings of fact; and
  (b) the means by which those facts might be established; and
  (c) the quick and efficient resolution of the whole of the matter; and
  (d) the relative expense and delay (if any) to the parties if the Court, rather than the Tribunal, makes the findings of fact; and
  (e) whether any of the parties considers that it is appropriate for the Court, rather than the Tribunal, to make the findings of fact; and
  (f) any other matters that the Court considers relevant.

Authorised Version C2024A00040 registered 03/06/2024

(3) For the purposes of this section, the Court may:
  (a) have regard to the evidence given in the proceeding in the Tribunal; and
  (b) receive further evidence.

178 Operation and implementation of Tribunal's decision

General rule—operation or implementation not affected

(1) An appeal to the Federal Court from a decision of the Tribunal does not affect the operation of the decision or prevent the taking of action to implement the decision.

Exception—Court may stay operation or implementation

(2) However, for the purpose of ensuring the effectiveness of the hearing and determination of the appeal, the Court or a Judge of the Court may make an order 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 reviewable decision to which the decision of the Tribunal relates, or a part of that reviewable decision.

(3) The order is subject to any conditions specified in the order.

(4) The order remains in force until the decision on the appeal is given.

(5) Despite subsection (4), if:
  (a) the order states that it applies for a period; and
  (b) the period ends before the decision on the appeal is given;
the order has effect until the end of the period.

(6) The order may be varied or revoked by the Court or a Judge of the Court.

Authorised Version C2024A00040 registered 03/06/2024

Division 3—Transfer of appeals to Federal Circuit and Family Court of Australia (Division 2)

179 Transfer of appeals

General rule—Federal Court may transfer appeal

(1) If an appeal under Subdivision A of Division 2 is pending in the Federal Court, the Federal Court may, by order, transfer the appeal to the Federal Circuit and Family Court of Australia (Division 2).

(2) The Federal Court may do so:
  (a) on the application of a party to the appeal; or
  (b) on its own initiative.

Matters to which Federal Court must have regard

(3) In deciding whether to transfer the appeal, the Federal Court must have regard to the following:
  (a) any Rules of Court made for the purposes of section 181;
  (b) whether proceedings in respect of an associated matter are pending in the Federal Circuit and Family Court of Australia (Division 2);
  (c) whether the resources of the Federal Circuit and Family Court of Australia (Division 2) are sufficient to hear and determine the appeal;
  (d) the interests of the administration of justice.

Jurisdiction and powers of Federal Circuit and Family Court of Australia (Division 2)

(4) If the Federal Court transfers the appeal, Subdivision B of Division 2 (jurisdiction and powers of Federal Court) applies in relation to the Federal Circuit and Family Court of Australia (Division 2) in the same way as it applies in relation to the Federal Court.

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Exception—certain appeals must not be transferred

(5) However, the Federal Court must not transfer the appeal if it:

(a) relates to a decision given by the Tribunal constituted by a member who is, or by members at least one of whom is, a Judge or a Non-Judicial Deputy President; or

(b) is of a kind prescribed by the rules.

180 No appeal from decision to transfer

No appeal lies in relation to a decision of the Federal Court to transfer an appeal under this Division.

181 Federal Court Rules

(1) Rules of Court made under the *Federal Court of Australia Act 1976* may make provision in relation to the transfer of appeals under this Division.

(2) In particular, the Rules of Court may set out factors that are to be taken into account in deciding whether to transfer an appeal.

(3) Before Rules of Court are made for the purposes of this section, the Federal Court must consult the Federal Circuit and Family Court of Australia (Division 2).

Authorised Version C2024A00040 registered 03/06/2024

Division 4—Matters remitted to Tribunal

182 When this Division applies

This Division applies if:

(a) an appeal is made to the Federal Court from a decision of the Tribunal; and

(b) either:

(i) the Federal Court remits the matter to the Tribunal to be decided again; or

(ii) if the Federal Court transfers the appeal to the Federal Circuit and Family Court of Australia (Division 2)—that court remits the matter to the Tribunal to be decided again.

183 Constitution of Tribunal

(1) The Tribunal does not need to be constituted for the review by the person or persons who made the decision.

(2) To avoid doubt, constituting the Tribunal for the review is not a reconstitution for the purposes of Subdivision D of Division 4 of Part 4 (reconstitution).

184 Tribunal may rely on previous proceedings

The Tribunal may have regard to:

(a) any record of the proceeding in the Tribunal prior to the appeal (including a record of any evidence taken in the proceeding); and

(b) any document or thing relating to the proceeding given to the Tribunal prior to the appeal;

unless doing so would be inconsistent with the directions of the court.

Authorised Version C2024A00040 registered 03/06/2024

Division 5—Referring questions of law

185 Referring questions of law

(1) The Tribunal may, with the agreement of the President, refer a question of law arising in a proceeding in the Tribunal to the Federal Court for decision.

(2) The Tribunal may do so:
  (a) at the request of a party to the proceeding; or
  (b) on its own initiative.

(3) The Federal Court has jurisdiction to hear and determine a question of law referred to it under this section.

(4) 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.

(5) If a question of law arising in any proceeding has been referred to the Federal Court under this section, the Tribunal must 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 Court on the question.

Authorised Version C2024A00040 registered 03/06/2024

Division 6—Sending and disclosing documents

186 When this Division applies

This Division applies if:

(a) a party to a proceeding in the Tribunal appeals to the Federal Court from a decision of the Tribunal (see sections 172 and 173); or

(b) the Tribunal refers a question of law arising in a proceeding to the Federal Court (see section 185).

187 Sending documents

(1) The Tribunal must send to the Federal Court all documents that:

(a) were before the Tribunal in connection with the proceeding; and

(b) are relevant to the appeal or reference.

(2) If the Federal Court transfers an appeal to the Federal Circuit and Family Court of Australia (Division 2):

(a) the Federal Court must send the documents concerned to the Federal Circuit and Family Court of Australia (Division 2); and

(b) sections 189 (disclosure contrary to public interest) and 190 (disclosure of security clearance documents) apply in relation to that court in the same way as they apply in relation to the Federal Court.

(3) To avoid doubt, paragraph (2)(a) has effect despite:

(a) section 91 (disclosure of information—public interest certificate); and

(b) any provision of Part 6 (proceedings in Intelligence and Security jurisdictional area); or

(c) a certificate made under a provision mentioned in column 2 of the table in subsection 162(1) (non-disclosure certificates under other Acts); or

(d) section 272 (public interest certificate in relation to statement of reasons).

Authorised Version C2024A00040 registered 03/06/2024

188 Returning documents

(1) At the conclusion of the proceeding before the Federal Court in relation to the appeal or reference, the Court must return to the Tribunal the documents sent to the Court under this Division.

(2) However, if the Federal Court sends the documents to the Federal Circuit and Family Court of Australia (Division 2), the Federal Circuit and Family Court of Australia (Division 2) must return the documents to the Tribunal at the conclusion of the proceeding before the Federal Circuit and Family Court of Australia (Division 2) in relation to the appeal or reference.

189 Disclosure contrary to public interest

When this section applies

(1) This section applies if:
  (a) a document is sent to the Federal Court under this Division; and
  (b) a certificate in force under one of the following provisions certifies that disclosure of a matter contained in the document would be contrary to the public interest:
    (i) subsection 91(1) or (2) (disclosure of information—public interest certificate);
    (ii) subsection 161(2) (public interest certificates—responsible Minister);
    (iii) a provision mentioned in column 2 of the table in subsection 162(1) (non-disclosure certificates under other Acts);
    (iv) subsection 272(1) (public interest certificate in relation to statement of reasons).

General rule

(2) The Federal Court must 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 appeal or reference.

Authorised Version C2024A00040 registered 03/06/2024

Exception

(3) However, the Federal Court must permit the parties to the proceeding in the Tribunal to inspect the part of the document that contains the matter if:

(a) the document is covered by a certificate mentioned in paragraph (b); and

(b) a reason specified in the certificate in relation to the matter is not a reason mentioned in:

(i) for a certificate in force under subsection 91(1)—paragraph 91(1)(a) or (b); or

(ii) for a certificate in force under subsection 91(2)—paragraph 91(2)(a); or

(iii) for a certificate in force under subsection 161(2)—paragraph 161(2)(a), (b) or (c); or

(iv) for a certificate in force under subsection 272(1)—paragraph 272(1)(a) or (b); and

(c) a question for decision by the Court is whether the matter should be disclosed to some or all of the parties to the proceeding in the Tribunal; and

(d) the Court decides that the matter should be so disclosed.

190 Disclosure of security clearance documents

When this section applies

(1) This section applies if a document sent to the Federal Court under this Division:

(a) is a copy of a standard (or part of a standard) mentioned in subsection 143(1); or

(b) contains sensitive information as mentioned in subsection 159(2).

General rule

(2) The Federal Court must do all things necessary to ensure that the copy of the standard (or part) and any information contained in it, or the sensitive information, is not disclosed to any person other than:

Authorised Version C2024A00040 registered 03/06/2024

(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.

Exception

(3) However, subsection (2) does not apply in relation to a disclosure to the person who was the applicant, or a person representing the person who was the applicant, in the proceeding in 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.

191 Disclosure to officers of the court

Nothing in this Division prevents the disclosure of a document, information or a matter contained in a document to an officer of a court who is performing duties as such an officer.

Authorised Version C2024A00040 registered 03/06/2024

Part 8—Members and staff of Tribunal

Division 1—Preliminary

192 Simplified outline of this Part

The Tribunal has different jurisdictional areas. Lists may be established as sub-areas within jurisdictional areas. The President, or some Non-Judicial Deputy Presidents, may lead a jurisdictional area. A Deputy President or senior member may lead a list. Members may be assigned to one or more jurisdictional areas.

Members of the Tribunal have different functions and obligations. Generally, before a person is appointed as a member (other than a Judicial Deputy President) the Minister must be satisfied that the person was assessed as suitable for the appointment through a merit-based assessment process.

The President must determine a code of conduct and performance standard for non-judicial members. The President may investigate some conduct of non-judicial members, and must notify the Minister if the President reasonably believes there are grounds for termination of a non-judicial member.

One of the President's functions is to inform relevant Ministers, relevant Commonwealth entities and the Council of identified systemic issues. Jurisdictional area leaders are to inform the President of systemic issues identified in relation to their jurisdictional areas.

The President is responsible for managing the administrative affairs of the Tribunal.

The Principal Registrar's functions include:

(a) assisting the President in managing the administrative affairs of the Tribunal; and

(b) providing the corporate and registry services of the Tribunal.

Authorised Version C2024A00040 registered 03/06/2024

There are provisions related to the terms and conditions on which members and the Principal Registrar hold office.

The Tribunal Advisory Committee is established. The Committee consists of the President, the Principal Registrar, the jurisdictional area leaders and other nominated members.

The staff of the Tribunal must be persons engaged under the *Public Service Act 1999*. Staff members may be appointed as registrars.

Authorised Version C2024A00040 registered 03/06/2024

Division 2—Members of Tribunal

Subdivision A—Members and functions

193 Functions of President

The President has the following functions:

(a) to participate as a member of the Tribunal, particularly in proceedings involving complex, significant or sensitive matters;

(b) if assigned under section 197 to be a jurisdictional area leader—to perform the functions of a jurisdictional area leader;

(c) to manage the business of the Tribunal;

(d) to manage the performance and conduct of members;

(e) to ensure that the Tribunal operates efficiently and effectively and continually pursues the objective in section 9;

(f) to provide intellectual leadership to the Tribunal, including by promoting best practice in decision-making by the Tribunal;

(g) to provide leadership and guidance to, and engender cohesiveness and collaboration among, members and staff members;

(h) to promote the training, education and professional development of members;

(i) to inform relevant Ministers, relevant Commonwealth entities and the Council of any systemic issues related to the making of reviewable decisions that have been identified in the caseload of the Tribunal;

(j) any other functions conferred on the President by this Act or another Act;

(k) to engage with civil society in relation to the performance of any of the above functions;

(l) to do anything incidental or conducive to the performance of any of the above functions.

Authorised Version C2024A00040 registered 03/06/2024

194 Functions of Deputy Presidents

Judicial Deputy President

(1) A Judicial Deputy President has the following functions:

(a) to participate as a member of the Tribunal, particularly in proceedings involving complex, significant or sensitive matters;

(b) to ensure that the Tribunal continually pursues the objective in section 9;

(c) to provide intellectual leadership to the Tribunal, including by promoting best practice in decision-making by the Tribunal;

(d) any other functions conferred on a Judicial Deputy President by this Act or another Act;

(e) to do anything incidental or conducive to the performance of any of the above functions.

Non-Judicial Deputy President

(2) A Non-Judicial Deputy President has the following functions:

(a) to participate as a member of the Tribunal, particularly in proceedings involving complex, significant or sensitive matters;

(b) to ensure that the Tribunal continually pursues the objective in section 9;

(c) to provide intellectual leadership to the Tribunal, including by promoting best practice in decision-making by the Tribunal;

(d) to assist the President in the performance of the President's functions;

(e) if assigned under section 197 to be a jurisdictional area leader—to perform the functions of a jurisdictional area leader;

(f) any other functions conferred on a Non-Judicial Deputy President by this Act or another Act;

(g) to do anything incidental or conducive to the performance of any of the above functions.

Authorised Version C2024A00040 registered 03/06/2024

195 Functions of senior and general members

Senior members

(1) A senior member has the following functions:
  (a) to participate as a member of the Tribunal, particularly in proceedings involving more complex matters;
  (b) to assist each jurisdictional area leader of each jurisdictional area to which the senior member has been assigned in the performance of the jurisdictional area leader's functions;
  (c) to promote best practice in decision-making by the Tribunal;
  (d) any other functions conferred on a senior member by this Act or another Act;
  (e) to do anything incidental or conducive to the performance of any of the above functions.

General members

(2) A general member has the following functions:
  (a) to participate as a member of the Tribunal;
  (b) any other functions conferred on a general member by this Act or another Act;
  (c) to do anything incidental or conducive to the performance of any of the above functions.

Subdivision B—Jurisdictional areas and lists

196 Jurisdictional areas and lists

(1) The following jurisdictional areas of the Tribunal are established:
  (a) General;
  (b) Intelligence and Security;
  (c) Migration;
  (d) National Disability Insurance Scheme;
  (e) Protection;
  (f) Social Security;
  (g) Taxation and Business;
  (h) Veterans' and Workers' Compensation.

Authorised Version C2024A00040 registered 03/06/2024

(2) The President:
  (a) may establish one or more lists as subareas within a jurisdictional area; and
  (b) may abolish any such list.

(3) Before establishing or abolishing a list, the President must consult the Tribunal Advisory Committee.

(4) The Tribunal's powers in relation to a proceeding are to be exercised in the jurisdictional area or list that the President directs.

(5) If a direction is made in writing, the direction is not a legislative instrument.

197 Jurisdictional area leaders

Assignment of jurisdictional area leaders

(1) The Minister may, in consultation with the President, assign either or both of the following to be a leader of one or more jurisdictional areas:
  (a) the President;
  (b) a Non-Judicial Deputy President appointed on a salaried basis.

(2) The Minister may, on the recommendation of the President, vary or revoke an assignment under subsection (1).

(3) The President must not make a recommendation to the Minister to vary or revoke an assignment under subsection (1) unless:
  (a) the assignment has been in effect for more than 6 months; and
  (b) the President is satisfied that the variation or revocation would meet the operational needs of the Tribunal.

(4) If an assignment under subsection (1) is made in writing, the assignment is not a legislative instrument.

Functions of jurisdictional area leaders

(5) A jurisdictional area leader has the following functions:

Authorised Version C2024A00040 registered 03/06/2024

(a) to provide intellectual leadership to members assigned to the jurisdictional area, including by promoting best practice in decision-making by those members;

(b) to assist the President to ensure that the Tribunal operates efficiently and effectively and continually pursues the objective in section 9 across all jurisdictional areas;

(c) to oversee, and respond to issues and trends in, the caseload strategy of the jurisdictional area in consultation with the President;

(d) to assist the President to manage the performance and conduct of members assigned to the jurisdictional area;

(e) to provide training, education and professional development opportunities to members assigned to the jurisdictional area;

(f) to identify systemic issues related to the making of reviewable decisions arising in the caseload of the jurisdictional area and to inform the President of those issues.

Acting jurisdictional area leaders

(6) The Minister may, in consultation with the President, assign a Non-Judicial Deputy President appointed on a salaried basis or a senior member appointed on a salaried basis to act, for a period of no more than 3 months, as a jurisdictional area leader in relation to a jurisdictional area:

(a) during a vacancy in the position of a jurisdictional area leader in relation to the jurisdictional area (whether or not an assignment has previously been made to the position); or

(b) during any period, or during all periods, when a jurisdictional area leader in relation to the jurisdictional area:

(i) is absent from duty or from Australia; or

(ii) is, for any reason, unable to perform the duties of the position.

Note: For rules that apply to a person acting as a jurisdictional area leader, see section 33A of the *Acts Interpretation Act 1901*.

Authorised Version C2024A00040 registered 03/06/2024

198 Assignment of members to lead lists

Assignments

(1) The President may assign a Deputy President or senior member to lead one or more lists.

(2) Subject to subsection (4), the President may vary or revoke an assignment under subsection (1).

Acting assignments

(3) The President may assign a Deputy President or senior member to act as the leader of a list:

(a) during a vacancy in the position of leader of that list (whether or not an assignment has previously been made to the position); or

(b) during any period, or during all periods, when the leader of that list:

(i) is absent from duty or from Australia; or

(ii) is, for any reason, unable to perform the duties of the position.

Note: For rules that apply to a person acting as the leader of a list, see section 33A of the *Acts Interpretation Act 1901*.

Consultation

(4) The President must not make, vary or revoke an assignment under subsection (1) or (3) unless the President has consulted each jurisdictional area leader of each list affected by the making, variation or revocation.

Assignment not a legislative instrument

(5) If an assignment under subsection (1) or (3) is made in writing, the assignment is not a legislative instrument.

Authorised Version C2024A00040 registered 03/06/2024

199 Assignment of members to jurisdictional areas

Deputy Presidents

(1) A Deputy President is assigned to every jurisdictional area.

Senior member leading a list

(2) A senior member assigned to lead a list is assigned to the jurisdictional area within which the list is established.

Assignment by President

(3) The President may, in writing, assign a member (other than the President or a Deputy President) to one or more jurisdictional areas.

(4) However, the President must not do so if an assignment under subsection (8) in relation to the member has been made and has not been revoked.

(5) Before assigning a member to a jurisdictional area, the President must be satisfied that the member has the appropriate skills, qualifications and experience.

(6) The President may vary or revoke an assignment under subsection (3) at any time.

(7) An assignment under subsection (3) is not a legislative instrument.

Assignment by Governor-General

(8) The Governor-General may, on the recommendation of the Minister, assign a member (other than the President or a Deputy President) to one or more jurisdictional areas by specifying the assignment in the member's instrument of appointment.

(9) However, the Governor-General must not do so if an assignment under subsection (8) in relation to the member has been made and has been revoked.

(10) Before the Governor-General assigns a member to a jurisdictional area, the Minister must be satisfied that:

Authorised Version C2024A00040 registered 03/06/2024

(a) there are exceptional circumstances that justify the assignment; and
(b) the member has the appropriate skills, qualifications and experience.

(11) The Governor-General may at any time, by varying a member's instrument of appointment:
(a) assign the member to one or more additional jurisdictional areas; or
(b) revoke the member's assignment to each of the jurisdictional areas.

Subdivision C—Performance and conduct of members

200 President may give directions to members

(1) The President may give a written direction to a non-judicial member relating to the performance of the member's duties.

(2) The member must comply with the direction.

(3) A direction given under subsection (1):
(a) must be consistent with the President's functions; and
(b) must not relate to a particular proceeding in the Tribunal.

(4) A direction under subsection (1) is not a legislative instrument.

201 Code of conduct

(1) The President must, in writing, determine a code of conduct for non-judicial members.

Note: A serious breach of the code of conduct may lead to termination of a non-judicial member's appointment (see section 221).

(2) Without limiting subsection (1), the code of conduct must make provision for the taking of action by the President or a jurisdictional area leader in relation to non-judicial members upholding the code of conduct.

Authorised Version C2024A00040 registered 03/06/2024

(3) Subsection (1) does not limit section 36 (President may make practice directions).

(4) The President must publish the code of conduct.

(5) The code of conduct is not a legislative instrument.

202 Performance standard

(1) The President must, in writing, determine a performance standard for non-judicial members.

Note: A serious breach of the performance standard may lead to termination of a non-judicial member's appointment (see section 221).

(2) Without limiting subsection (1), the performance standard must make provision for the taking of action by the President or a jurisdictional area leader in relation to non-judicial members meeting the performance standard.

(3) Subsection (1) does not limit section 36 (President may make practice directions).

(4) The President must publish the performance standard.

(5) The performance standard is not a legislative instrument.

203 President may investigate conduct of members

(1) This section applies if the President forms the opinion that a non-judicial member may have engaged in conduct that:

(a) may constitute a breach of the code of conduct; or

(b) may constitute a breach of the performance standard; or

(c) may constitute a ground for terminating the appointment of the member in accordance with section 221; or

(d) may adversely affect, or may have adversely affected, the performance of official duties by the member; or

(e) may adversely affect, or may have adversely affected, public trust and confidence in the Tribunal.

Note: For example, the President may form the opinion because of a complaint made to the Tribunal in relation to the conduct.

Authorised Version C2024A00040 registered 03/06/2024

(2) The President may:

(a) do one or more of the following:

(i) investigate the conduct;

(ii) report on an investigation of the conduct;

(iii) deal with a report of an investigation of the conduct;

(iv) refer the conduct to a person or body;

(v) direct a person or body to investigate the conduct;

(vi) authorise, in writing, a person or body to do any of the above;

(vii) take any measures in relation to the member that the President believes are reasonably necessary to maintain public trust and confidence in the Tribunal; or

(b) take no action, or no further action, in relation to the conduct.

Note 1: The President is also required to notify the Minister if the President reasonably believes that there are grounds for terminating the member's appointment under section 221 (see section 222).

Note 2: For protections for persons involved in investigating conduct of members, see section 204.

(3) The President may, at any time after forming the opinion mentioned in subsection (1), temporarily restrict the member's duties if the President reasonably believes that doing so is in the public, or the Tribunal's, interest.

204 Protection of persons involved in investigating conduct of members etc.

(1) A person who is performing or exercising functions or powers under or for the purposes of section 203 in relation to conduct that was, or may have been, engaged in by a member, or assisting in performing or exercising those functions or powers, has the same protection and immunity as a Justice of the High Court.

(2) A person appearing before a person who is performing or exercising functions or powers under or for the purposes of section 203 in relation to conduct that was, or may have been, engaged in by a member has the same protection, and is subject to the same liabilities, as a witness in proceedings in the High Court.

Authorised Version C2024A00040 registered 03/06/2024

(3) A legal practitioner assisting, or appearing on behalf of a person before, a person who is performing or exercising functions or powers for the purposes of section 203 in relation to conduct that was, or may have been, engaged in by a member has the same protection and immunity as a barrister appearing for a party in proceedings in the High Court.

Authorised Version C2024A00040 registered 03/06/2024

Division 3—Member appointment provisions

Subdivision A—Appointment of members

205 Appointment of President

Appointment by Governor-General

(1) The President is to be appointed by the Governor-General, by written instrument, on the recommendation of the Minister.

(2) Before the Minister makes a recommendation to the Governor-General, the Minister must:
  (a) consult the Chief Justice of the Federal Court; and
  (b) be satisfied that the person was assessed, by a panel established under section 209, as suitable for the appointment through an assessment process that:
    (i) was merit-based; and
    (ii) included public advertising of the position; and
    (iii) complied with the requirements (if any) prescribed by the regulations.

Qualification for appointment

(3) A person must not be appointed as the President unless the person is a Judge of the Federal Court.

Period of appointment

(4) The President holds office for a period of 5 years unless a shorter period is specified in the instrument of appointment.

(5) If the instrument of appointment specifies a shorter period, the instrument must state the reasons why the shorter period is specified.

Basis of appointment

(6) The President must be appointed on a salaried basis.

Authorised Version C2024A00040 registered 03/06/2024

Reappointment

(7) A person may be reappointed as the President by written instrument made within 6 months before the end of the period specified in the person's instrument of appointment.

(8) Paragraph (2)(b) does not apply in relation to the reappointment of a person who, immediately before the start of the period of reappointment, holds office as the President under a previous appointment under subsection (1).

206 Appointment of Judicial Deputy Presidents

Appointment by Governor-General

(1) A Judicial Deputy President is to be appointed by the Governor-General, by written instrument, on the recommendation of the Minister.

(2) Before the Minister makes a recommendation to the Governor-General, the Minister must:
  (a) consult the Chief Justice of the court of which the person is a Judge; and
  (b) seek, and take into account, the advice of the President in relation to:
    (i) whether the appointment would meet the operational needs of the Tribunal; and
    (ii) the effect of the appointment on the number of Judicial Deputy Presidents relative to the number of Non-Judicial Deputy Presidents, senior members and general members.

Qualification for appointment

(3) A person must not be appointed as a Judicial Deputy President unless the person is:
  (a) a Judge of the Federal Court; or
  (b) a Judge of the Federal Circuit and Family Court of Australia (Division 1).

Authorised Version C2024A00040 registered 03/06/2024

Period of appointment

(4) A Judicial Deputy President holds office for a period of 5 years unless a shorter period is specified in the instrument of appointment.

(5) If the instrument of appointment specifies a shorter period, the instrument must state the reasons why the shorter period is specified.

Basis of appointment

(6) A Judicial Deputy President must be appointed on a sessional basis.

207 Appointment of Non-Judicial Deputy Presidents

Appointment by Governor-General

(1) A Non-Judicial Deputy President is to be appointed by the Governor-General, by written instrument, on the recommendation of the Minister.

(2) Before the Minister makes a recommendation to the Governor-General, the Minister must:

(a) seek, and take into account, the advice of the President in relation to:

(i) whether the appointment would meet the operational needs of the Tribunal; and

(ii) the financial capacity of the Tribunal for the appointment; and

(iii) the effect of the appointment on the number of Non-Judicial Deputy Presidents relative to the number of senior members and general members; and

(b) be satisfied that the person was assessed, by a panel established under section 209, as suitable for the appointment through an assessment process that:

(i) was merit-based; and

(ii) included public advertising of the position; and

Authorised Version C2024A00040 registered 03/06/2024

(iii) complied with the requirements (if any) prescribed by the regulations.

Qualification for appointment

(3) A person must not be appointed as a Non-Judicial Deputy President unless:

(a) the person is enrolled as a legal practitioner and has been so enrolled for at least 10 years; and

(b) either:

(i) the person is a former Judge; or

(ii) the Minister is satisfied that the person has substantial expertise in one or more areas relevant to the jurisdiction of the Tribunal.

Period of appointment

(4) A Non-Judicial Deputy President holds office for a period of 5 years unless a shorter period is specified in the instrument of appointment.

(5) If the instrument of appointment specifies a shorter period, the instrument must state the reasons why the shorter period is specified.

Basis of appointment

(6) A Non-Judicial Deputy President may be appointed on a salaried or sessional basis.

Reappointment

(7) A person may be reappointed as a Non-Judicial Deputy President by written instrument made within 6 months before the end of the period specified in the person's instrument of appointment.

(8) Before a person is reappointed as a Non-Judicial Deputy President, the Minister must seek, and take into account, the advice of the President in relation to the person's performance against the performance standard.

Authorised Version C2024A00040 registered 03/06/2024

(9) Paragraph (2)(b) applies only in relation to every second reappointment of a person after the person's first appointment under subsection (1).

208 Appointment of senior members and general members

Appointment by Governor-General

(1) A senior member or general member is to be appointed by the Governor-General, by written instrument, on the recommendation of the Minister.

(2) Before the Minister makes a recommendation to the Governor-General, the Minister must:

(a) seek, and take into account, the advice of the President in relation to:

(i) whether the appointment would meet the operational needs of the Tribunal; and

(ii) the financial capacity of the Tribunal for the appointment; and

(iii) the effect of the appointment on the number of senior members and general members relative to the number of Non-Judicial Deputy Presidents; and

(b) be satisfied that the person was assessed, by a panel established under section 209, as suitable for the appointment through an assessment process that:

(i) was merit-based; and

(ii) included public advertising of the position; and

(iii) complied with the requirements (if any) prescribed by the regulations.

Qualification for appointment—senior member

(3) A person must not be appointed as a senior member unless:

(a) the person is enrolled as a legal practitioner and has been so enrolled for at least 7 years; or

(b) the Minister is satisfied that the person has at least 7 years' specialised training or experience in a subject matter relevant to the jurisdiction of the Tribunal.

Authorised Version C2024A00040 registered 03/06/2024

Qualification for appointment—general member

(4) A person must not be appointed as a general member unless:
  (a) the person is enrolled as a legal practitioner and has been so enrolled for at least 5 years; or
  (b) the Minister is satisfied that the person has at least 5 years' specialised training or experience in a subject matter relevant to the jurisdiction of the Tribunal.

Period of appointment

(5) A senior member or general member holds office for a period of 5 years unless a shorter period is specified in the instrument of appointment.

(6) If the instrument of appointment specifies a shorter period, the instrument must state the reasons why the shorter period is specified.

Basis of appointment

(7) A senior member or general member may be appointed on a salaried or sessional basis.

Reappointment

(8) A person may be reappointed as a senior member or general member by written instrument made within 6 months before the end of the period specified in the person's instrument of appointment.

(9) Before a person is reappointed as a senior member or general member, the Minister must seek, and take into account, the advice of the President in relation to the person's performance against the performance standard.

(10) Paragraph (2)(b) applies only in relation to every second reappointment of a person to an office after the person's first appointment to that office under subsection (1).

Authorised Version C2024A00040 registered 03/06/2024

209 Minister must establish assessment panel

(1) The Minister must, from time to time, establish one or more panels (***assessment panels***) of persons for the purposes of assessing whether a candidate or candidates are suitable for appointment under section 205, 207, 208 or 227.

(2) The regulations may make provision for and in relation to assessment panels.

(3) Without limiting subsection (2), the regulations may make provision for and in relation to the following:
  (a) the establishment of assessment panels;
  (b) the composition of assessment panels;
  (c) the operation and procedures of assessment panels;
  (d) the methodology to be used by assessment panels in assessing candidates for appointment as a member;
  (e) the provision of assistance by the Department to assessment panels, including secretariat services and clerical assistance.

210 Appointment of a Judge not to affect tenure etc.

(1) The appointment of a Judge as a member, or service by a Judge as a member, does not affect:
  (a) the Judge's tenure of office as a Judge; or
  (b) the Judge's rank, title, status, precedence, salary, annual or other allowances or other rights or privileges as the holder of the Judge's office as a Judge.

(2) For all purposes, the Judge's service as a member is taken to be service as a Judge.

(3) A member who is a Judge ceases to hold office as a member if the member ceases to be a Judge.

211 Extension of appointment

(1) The Minister may, at the request of the President and by written instrument, extend a member's appointment if, apart from this

Authorised Version C2024A00040 registered 03/06/2024

section, the member's appointment would cease to have effect (other than under section 220 or 221) on a day (the ***cessation day***).

(2) The extension must be made before the cessation day.

(3) The extended appointment has effect until the earliest of the following:
  (a) the end of the period of 3 months after the cessation day;
  (b) if the member gives a resignation under section 220—the time when that resignation takes effect;
  (c) if the extended appointment is terminated under section 221—the time when that termination takes effect.

(4) An instrument made under subsection (1) is not a legislative instrument.

212 Acting appointments

President

(1) The Minister may, by written instrument, appoint a person 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 the office.

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

(2) A person must not be appointed to act as the President unless:
  (a) the person is qualified, as mentioned in subsection 205(3), to be appointed as the President; and
  (b) the Minister has consulted the Chief Justice of the Federal Court.

Authorised Version C2024A00040 registered 03/06/2024

Other members

(3) The Minister may, at the request of the President and by written instrument, appoint a person to act as a member other than the President:

(a) during a vacancy in the office of a member other than the President (whether or not an appointment has previously been made to the office); or

(b) during any period, or during all periods, when a member other than the President:

(i) is absent from duty or from Australia; or

(ii) is, for any reason, unable to perform the duties of the office.

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

(4) A person must not be appointed to act as a member other than the President unless:

(a) if the person is to act as a Judicial Deputy President:

(i) the person is qualified, as mentioned in subsection 206(3), to be appointed as a Judicial Deputy President; and

(ii) the Minister has consulted the Chief Justice of the court of which the person is a Judge; or

(b) if the person is to act as a Non-Judicial Deputy President—the person is qualified, as mentioned in subsection 207(3), to be appointed as a Non-Judicial Deputy President; or

(c) if the person is to act as a senior member—the person is qualified, as mentioned in subsection 208(3), to be appointed as a senior member; or

(d) if the person is to act as a general member—the person is qualified, as mentioned in subsection 208(4), to be appointed as a general member.

Extension of acting appointment

(5) If a person has been appointed under this section to act as a member, the Minister may extend the person's appointment if the

Authorised Version C2024A00040 registered 03/06/2024

Minister is satisfied that it is necessary to do so by reason of a pending proceeding or other special circumstances.

(6) The extension must be made:
  (a) in writing; and
  (b) before the day that the member who was absent or unable to perform the duties of the member's office returns to perform those duties.

(7) The extension must not be for more than 12 months.

213 Oath or affirmation of office

(1) A person who is appointed or reappointed as a member or to act as a member must, before beginning to discharge the duties of the member's office, take an oath or affirmation.

(2) The oath or affirmation is an oath or affirmation that the person will well and truly serve in the office, and do right to all manner of people according to law without fear or favour, affection or ill-will.

(3) An oath or affirmation to be taken by the President must be taken before:
  (a) the Governor-General; or
  (b) a Justice of the High Court; or
  (c) a Judge of the Federal Court; or
  (d) a Judge of the Supreme Court of a State or a Territory.

(4) An oath or affirmation to be taken by a member other than the President must be taken before:
  (a) the Governor-General; or
  (b) a Justice of the High Court; or
  (c) a Judge of the Federal Court; or
  (d) a Judge of the Supreme Court of a State or a Territory; or
  (e) the President.

Authorised Version C2024A00040 registered 03/06/2024

Subdivision B—Members' terms and conditions

214 Remuneration

(1) A non-judicial member is to be paid the remuneration that is determined by the Remuneration Tribunal. If no determination of that remuneration by the Remuneration Tribunal is in operation, the member is to be paid the remuneration that is prescribed by the rules.

(2) A non-judicial member is to be paid the allowances that are prescribed by the rules.

(3) This section has effect subject to the *Remuneration Tribunal Act 1973*.

215 Leave

Salaried members

(1) A salaried member has the recreation leave entitlements that are determined by the Remuneration Tribunal.

(2) The Minister may grant the President 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 a salaried member (other than the President) leave of absence, other than recreation leave, on the terms and conditions as to remuneration or otherwise that the President determines.

Sessional members

(4) The President may grant leave of absence to a sessional member on the terms and conditions that the President determines.

Authorised Version C2024A00040 registered 03/06/2024

216 Other paid work

Salaried non-judicial members

(1) A non-judicial member appointed on a salaried basis must not engage in paid work outside the duties of the member's office without the President's approval.

Sessional non-judicial members

(2) A non-judicial member appointed on a sessional basis must not engage in any paid work that conflicts or could conflict with the proper performance of the member's duties.

217 Appearances before Tribunal

(1) A person covered by subsection (2) must not appear in a proceeding in the Tribunal:
  (a) as a representative of a party to the proceeding; or
  (b) as an expert witness in the proceeding.

(2) The following persons are covered by this subsection:
  (a) a member;
  (b) a person who ceased to be a member during:
    (i) the 12 months before the day of the appearance; or
    (ii) if a law of a State or Territory has the effect of prescribing a longer period before the day of the appearance—that longer period.

(3) Subsection (1) does not apply if the person has permission to appear in the proceeding from:
  (a) if the person is the President—the Minister; or
  (b) in any other case—the President.

218 Disclosure of interests

General duty to disclose interests

(1) If a member has an interest, pecuniary or otherwise, that conflicts or could conflict with the proper performance of the member's

Authorised Version C2024A00040 registered 03/06/2024

duties, the member must disclose the nature of the interest to the President (or, if the member is the President, the Minister).

Disclosure of interests relating to proceedings

(2) If a member who is:

(a) a member of the Tribunal as constituted for the purposes of a proceeding; or

(b) performing or exercising a function or power of the Tribunal in relation to a proceeding;

has an interest, pecuniary or otherwise, that conflicts or could conflict with the proper performance of the member's duties in the proceeding, the member:

(c) must disclose the nature of the interest to:

(i) the parties to the proceeding; and

(ii) the President (or, if the member is the President, the Minister); and

(d) 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.

Timing of disclosure

(3) A disclosure under this section must be made as soon as possible after the relevant facts have come to the member's knowledge.

219 Register of interests

(1) The President must keep a register of disclosures made under section 218.

(2) The President may keep the register by electronic means.

(3) The register must contain, for each disclosure:

(a) the nature of the interest disclosed; and

(b) any action taken as a result of the disclosure.

(4) The register is not a legislative instrument.

Authorised Version C2024A00040 registered 03/06/2024

220 Resignation

(1) A member may resign the member's appointment by giving the Governor-General a written resignation.

(2) The member must also give a copy of the written resignation to the President.

(3) 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.

221 Termination of appointment

(1) The Governor-General may, on the recommendation of the Minister, terminate the appointment of a non-judicial member if:

(a) the member is convicted of an indictable offence; or

(b) the member is unable to perform the duties of the member's office because of physical or mental incapacity; or

(c) the member's conduct or behaviour amounts to serious misconduct by the member; or

(d) the member is a salaried member and is absent, except on leave of absence, for 5 consecutive days or for 10 days in any 12 months; or

(e) the member is a sessional member and is unavailable, except on leave of absence, to perform the duties of the member's office for more than 3 months; or

(f) the member engages in conduct that constitutes a serious breach of the code of conduct; or

(g) the member engages in conduct that constitutes a serious breach of the performance standard; or

(h) the member is a salaried member and engages, except with the President's approval, in paid work outside the duties of the member's office (see subsection 216(1)); or

(i) the member is a sessional member and engages in paid work that conflicts or could conflict with the proper performance of the member's duties (see subsection 216(2)); or

(j) the member fails, without reasonable excuse, to comply with section 218 (disclosure of interests).

Authorised Version C2024A00040 registered 03/06/2024

(2) Without limiting the kinds of conduct that may constitute a serious breach of the code of conduct or performance standard for the purposes of paragraph (1)(f) or (g), such conduct includes:

(a) repeatedly breaching the code of conduct or performance standard; and

(b) breaching the code of conduct or performance standard in a way that is having, or is likely to have, a damaging effect on public trust and confidence in the Tribunal; and

(c) breaching the code of conduct or performance standard and failing to comply with a direction under subsection 200(1) in relation to the breach.

(3) The Governor-General must terminate the appointment of a non-judicial member if the member:

(a) becomes bankrupt; or

(b) applies to take the benefit of any law for the relief of bankrupt or insolvent debtors; or

(c) compounds with the member's creditors; or

(d) makes an assignment of the member's remuneration for the benefit of the member's creditors.

222 President must notify Minister about grounds for termination

If the President reasonably believes that there are grounds for terminating a non-judicial member's appointment under section 221, the President must notify the Minister as soon as possible.

223 Additional terms and conditions

A non-judicial member holds office on the terms and conditions (if any) in relation to matters not covered by this Act that are determined by the Minister.

Authorised Version C2024A00040 registered 03/06/2024

Division 4—Management of Tribunal

Subdivision A—Management functions of President

224 Management of administrative affairs of Tribunal

(1) The President is responsible for managing the administrative affairs of the Tribunal.

(2) The ***administrative affairs*** of the Tribunal do not include the corporate and registry services of the Tribunal.

Subdivision B—Appointment and functions of Principal Registrar

225 Principal Registrar

There is to be a Chief Executive Officer and Principal Registrar of the Administrative Review Tribunal.

226 Functions of Principal Registrar

(1) The Principal Registrar has the following functions:
  (a) to assist the President in managing the administrative affairs of the Tribunal;
  (b) to assist the Tribunal to pursue the objective in section 9;
  (c) to provide the corporate and registry services of the Tribunal;
  (d) any other function conferred on the Principal Registrar by this Act or another Act;
  (e) to do anything incidental or conducive to the performance of any of the above functions.

Note: The Principal Registrar is also responsible for matters relating to the Tribunal under the *Public Governance, Performance and Accountability Act 2013* and the *Public Service Act 1999* (see sections 238 and 241).

(2) The following matters relating to the Tribunal are the ***corporate and registry services*** of the Tribunal:
  (a) communications;

Authorised Version C2024A00040 registered 03/06/2024

(b) finance;
(c) human resources;
(d) the work health and safety of members, staff members and other persons interacting with the Tribunal;
(e) information technology;
(f) libraries;
(g) records management;
(h) administrative and case management support for proceedings in the Tribunal;
(i) procurement and contract management;
(j) property;
(k) risk oversight and management;
(l) security;
(m) statistics;
(n) any other matter prescribed by the rules.

(3) The Principal Registrar is not subject to direction by the President in relation to the Principal Registrar's performance or exercise of functions or powers under:
(a) the *Public Governance, Performance and Accountability Act 2013*; or
(b) the *Public Service Act 1999*.

227 Appointment of Principal Registrar

Appointment by Governor-General

(1) The Chief Executive Officer and Principal Registrar is to be appointed by the Governor-General, by written instrument, on the recommendation of the Minister.

(2) Before the Minister makes a recommendation to the Governor-General, the Minister must:
(a) be satisfied that the person has appropriate qualifications, knowledge or experience; and
(b) be satisfied that the person was assessed, by a panel established under section 209, as suitable for the appointment through an assessment process that:

Authorised Version C2024A00040 registered 03/06/2024

(i) was merit-based; and
(ii) included public advertising of the position; and
(iii) complied with the requirements (if any) prescribed by the regulations; and

(c) obtain the agreement of the President to the appointment.

Period of appointment

(3) The Principal Registrar holds office for a period of 5 years.

Basis of appointment

(4) The Principal Registrar must be appointed on a salaried basis.

Reappointment

(5) Paragraph (2)(b) does not apply in relation to the reappointment of a person who, immediately before the start of the period of reappointment, holds office as the Principal Registrar under a previous appointment under subsection (1).

228 Acting appointments

The President may, by written instrument, appoint a person to act as the Principal Registrar:

(a) during a vacancy in the office of Principal Registrar (whether or not an appointment has previously been made to the office); or

(b) during any period, or during all periods, when the Principal Registrar:
(i) is absent from duty or from Australia; or
(ii) is, for any reason, unable to perform the duties of the office.

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

Authorised Version C2024A00040 registered 03/06/2024

229 Remuneration

(1) The Principal Registrar is to be paid the remuneration that is determined by the Remuneration Tribunal. If no determination of that remuneration by the Remuneration Tribunal is in operation, the Principal Registrar is to be paid the remuneration that is prescribed by the rules.

(2) The Principal Registrar is to be paid the allowances that are prescribed by the rules.

(3) This section has effect subject to the *Remuneration Tribunal Act 1973*.

230 Leave

(1) The Principal Registrar has the recreation leave entitlements that are determined by the Remuneration Tribunal.

(2) The President may grant the Principal Registrar leave of absence, other than recreation leave, on the terms and conditions as to remuneration or otherwise that the Minister determines.

231 Other paid work

The Principal Registrar must not engage in paid work outside the duties of the Principal Registrar's office without the President's approval.

232 Disclosure of interests

(1) A disclosure by the Principal Registrar under section 29 of the *Public Governance, Performance and Accountability Act 2013* (which deals with the duty to disclose interests) must be made to the President.

(2) Subsection (1) applies in addition to any rules made for the purposes of that section.

(3) For the purposes of this Act and the *Public Governance, Performance and Accountability Act 2013*, the Principal Registrar

Authorised Version C2024A00040 registered 03/06/2024

is taken not to have complied with section 29 of that Act if the Principal Registrar does not comply with subsection (1) of this section.

233 Resignation

(1) The Principal Registrar may resign the Principal Registrar's 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.

234 Termination of appointment

(1) The Governor-General may, on the recommendation of the Minister, terminate the appointment of the Principal Registrar if:

(a) the Principal Registrar is convicted of an indictable offence; or

(b) the Principal Registrar is unable to perform the duties of the Principal Registrar's office because of physical or mental incapacity; or

(c) the Principal Registrar's conduct or behaviour amounts to serious misconduct by the Principal Registrar; or

(d) the Minister is satisfied that the performance of the Principal Registrar has been unsatisfactory for a significant period; or

(e) the Principal Registrar is absent, except on leave of absence, for 5 consecutive days or for 10 days in any 12 months; or

(f) the Principal Registrar engages, except with the President's approval, in paid work outside the duties of the Principal Registrar's office (see section 231); or

(g) the Principal Registrar fails, without reasonable excuse, to comply with section 29 of the *Public Governance, Performance and Accountability Act 2013* (which deals with the duty to disclose interests) or rules made for the purposes of that section.

(1A) Before the Minister makes a recommendation to the Governor-General, the Minister must consult the President.

Authorised Version C2024A00040 registered 03/06/2024

(2) The Governor-General must terminate the appointment of the Principal Registrar if the Principal Registrar:
  (a) becomes bankrupt; or
  (b) applies to take the benefit of any law for the relief of bankrupt or insolvent debtors; or
  (c) compounds with the Principal Registrar's creditors; or
  (d) makes an assignment of the Principal Registrar's remuneration for the benefit of the Principal Registrar's creditors.

235 Additional terms and conditions

The Principal Registrar holds office on the terms and conditions (if any) in relation to matters not covered by this Act that are determined by the Minister.

Subdivision C—Leadership of Tribunal

236 Tribunal Advisory Committee

(1) The Tribunal Advisory Committee is established by this section.

Membership

(2) The Tribunal Advisory Committee consists of:
  (a) the President; and
  (b) the Principal Registrar; and
  (c) the jurisdictional area leaders; and
  (d) such other members or staff members as are nominated in writing by the President.

(3) The President is the Chair of the Tribunal Advisory Committee.

Functions

(4) The Tribunal Advisory Committee has the following functions:
  (a) to promote the Tribunal's objective in section 9;
  (b) to promote the training, education and professional development of members;

Authorised Version C2024A00040 registered 03/06/2024

(c) to oversee the caseload of the Tribunal;

(d) to review the performance of the Tribunal, including its financial performance;

(e) to oversee trends and patterns across, and systemic issues arising in, the jurisdictional areas;

(f) to advise the President and the Principal Registrar on any matter relating to the above functions;

(g) to advise the President on any matter relating to the code of conduct, the performance standard or the practice directions;

(h) to do anything incidental to the performance of the above functions.

(5) In performing the functions of the Tribunal Advisory Committee, the members of the Committee (other than a member of the Committee who is a Judge) must have regard to any views expressed by stakeholders.

(6) Subsection (5) does not apply if the matter relates to a particular proceeding in the Tribunal.

Meetings

(7) The President must convene such meetings of the Tribunal Advisory Committee as are necessary for the performance of the Committee's functions.

(8) The President must preside at all meetings at which the President is present.

(9) If the President is unable to attend a meeting, the President must nominate another member of the Tribunal Advisory Committee to preside at the meeting.

Authorised Version C2024A00040 registered 03/06/2024

Division 5—Staff and consultants

237 Appointment of registrars

Appointment by Principal Registrar

(1) A registrar is to be appointed by the Principal Registrar by written instrument.

Qualification for appointment

(2) A person must not be appointed as a registrar unless:
  (a) the person is a staff member; and
  (b) the person:
    (i) has obtained a degree from a university, or an educational qualification of a similar standing, in the field of law; or
    (ii) has obtained an educational qualification, or has training or experience, related to dispute resolution; or
    (iii) has, in the opinion of the Principal Registrar, experience related to one or more functions or powers of the Tribunal.

238 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 Principal Registrar and the APS employees assisting the Principal Registrar together constitute a Statutory Agency; and
  (b) the Principal Registrar is the Head of that Statutory Agency.

239 APS employees and others made available

(1) The Tribunal may be assisted by the following persons, whose services are made available to the Tribunal in connection with the

Authorised Version C2024A00040 registered 03/06/2024

performance or exercise of any of the Tribunal's functions or powers:

(a) an employee of an Agency (within the meaning of the *Public Service Act 1999*);

(b) an officer of the Supreme Court of Norfolk Island.

(2) When performing services for the Tribunal under subsection (1), a person is subject to the directions of the Principal Registrar.

240 Consultants

The Principal Registrar may, on behalf of the Commonwealth, engage consultants to assist in the performance of the Tribunal's functions.

Authorised Version C2024A00040 registered 03/06/2024

Division 6—Application of finance law and reporting requirements

241 Application of 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 Principal Registrar;
  (ii) the staff members;
  (iii) persons engaged under subsection 90(1);
  (iv) consultants engaged under section 240; and

(b) the listed entity is to be known as the Administrative Review Tribunal; and

(c) the Principal Registrar is the accountable authority of the listed entity; and

(d) the persons mentioned in paragraph (a) are officials of the listed entity; and

(e) the purposes of the listed entity include the functions of the Principal Registrar mentioned in section 226.

242 Report by President

(1) As soon as practicable after 30 June in each financial year, the President must prepare a report on the management of the administrative affairs of the Tribunal during the financial year.

(2) The report for a financial year must include:
  (a) a description of any measures taken by the Tribunal during that year to pursue the objective in section 9; and
  (b) an assessment of the operation of each jurisdictional area during that year; and
  (c) an assessment of the operation of the Tribunal constituted by the guidance and appeals panel for the purposes of proceedings during that year; and
  (d) the number of applications made during the year to the Tribunal for review of decisions; and

Authorised Version C2024A00040 registered 03/06/2024

(e) particulars of the results of reviews of decisions by the Tribunal during the year; and

(f) the number of guidance and appeals panel proceedings in the Tribunal during that year, and particulars of the results of those proceedings; and

(g) the number of proceedings in the Tribunal involving non-participating parties during that year; and

(h) a summary of any actions taken by the Tribunal under section 185 (referring questions of law) during that year; and

(ha) the number of decisions made in accordance with section 103 (if parties reach agreement—review of decisions only) during that year in each jurisdictional area and by the Tribunal as constituted by the guidance and appeals panel for the purposes of proceedings; and

(hb) the number of Tribunal decisions affirmed by a federal court during that year; and

(hc) the number of Tribunal decisions overturned by a federal court during that year; and

(i) a summary of any actions taken by the President or jurisdictional area leaders during that year to:

(i) identify systemic issues related to the making of reviewable decisions arising in the caseload of the Tribunal; and

(ii) inform relevant Ministers, relevant Commonwealth entities and the Council of those issues; and

(j) an overview of any actions taken during that year (including any actions taken under section 203) in relation to:

(i) non-judicial members upholding the code of conduct; or

(ii) non-judicial members meeting the performance standard; or

(iii) the training, education and professional development of members; and

(k) a description of any measures taken by the President during that year to engage with:

(i) civil society; or

(ii) persons whose interests are affected by reviewable decisions; and

Authorised Version C2024A00040 registered 03/06/2024

(l) any other information prescribed by the rules.

(3) A report prepared under this section after 30 June in a year must be given to the Minister by 15 October of that year.

(4) The Minister must cause a copy of the report to be tabled in each House of the Parliament within 15 sitting days of that House after the report is given to the Minister.

(5) A report prepared under this section may be included in a report prepared and given to the Minister under section 46 of the *Public Governance, Performance and Accountability Act 2013* in relation to the Tribunal.

Authorised Version C2024A00040 registered 03/06/2024

Division 7—Other matters concerning management

243 Registries

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

244 Proceedings arising out of management of Tribunal

Any judicial or other proceeding relating to a matter arising out of the management of the administrative affairs of the Tribunal, including any proceeding relating to anything done by the President or the Principal Registrar under Divisions 4 to 7, may be instituted by or against the Commonwealth.

Authorised Version C2024A00040 registered 03/06/2024

Part 9—Administrative Review Council

Division 1—Preliminary

245 Simplified outline of this Part

This Part establishes the Administrative Review Council. The Council is separate from the Tribunal.

The Council does not review individual decisions. Its functions relate to the Commonwealth administrative law system. Those functions include matters relating to:

(a) monitoring the integrity and operation of the Commonwealth administrative law system; and

(b) inquiring into and reporting on matters related to the making of administrative decisions and the exercise of administrative discretions; and

(c) supporting education and training in relation to the Commonwealth administrative law system, the making of administrative decisions and the exercise of administrative discretions.

The Council consists of the President, the Commonwealth Ombudsman, the Australian Information Commissioner and other members appointed by the Governor-General. To be appointed, a member must have knowledge or experience in a specified area, or be a senior official of a Commonwealth entity. The Governor-General appoints one of the members to be the Chair of the Council.

The staff assisting the Council are to be APS employees in the Department whose services are made available to the Council. For the purposes of the *Public Governance, Performance and Accountability Act 2013*, the Council is part of the Department.

The Council must report annually in relation to its operations and some systemic issues related to the making of reviewable decisions.

Authorised Version C2024A00040 registered 03/06/2024

Division 2—Establishment

246 Administrative Review Council

The Administrative Review Council is established by this section.

247 Membership of Council

(1) The Administrative Review Council consists of the following members:

(a) the President;

(b) the Commonwealth Ombudsman;

(c) the Australian Information Commissioner;

(d) at least 3, but not more than 10, other members.

(2) The performance or exercise of the functions or powers of the Council is not affected by reason of the number of appointed members falling below 3 for less than 6 months.

248 Application of finance law

(1) For the purposes of paragraph (a) of the definition of ***Department of State*** in section 8 of the *Public Governance, Performance and Accountability Act 2013*, the Administrative Review Council is prescribed in relation to the Department.

(2) If a Council member is an official of a Commonwealth entity other than the Department, then, for the purposes of the *Public Governance, Performance and Accountability Act 2013*, the Council member is not an official of the Department merely because they are a Council member.

Authorised Version C2024A00040 registered 03/06/2024

Division 3—Council functions etc.

249 Functions and powers of Council

(1) The Council has the following functions:

(a) to monitor the integrity and operation of the Commonwealth administrative law system;

(b) to:

(i) inquire into the adequacy of procedures used in relation to the making of administrative decisions and the exercise of administrative discretions; and

(ii) consult and advise in relation to those procedures;

(c) to inquire into systemic issues related to the making of administrative decisions and the exercise of administrative discretions;

(d) to inquire into the availability, accessibility and effectiveness of review of administrative decisions and administrative discretions;

(e) to develop and publish guidance in relation to the making of administrative decisions and the exercise of administrative discretions;

(f) to support education and training for officials of Commonwealth entities in relation to:

(i) making administrative decisions and exercising administrative discretions; and

(ii) the Commonwealth administrative law system;

(g) any other function conferred on the Council by this Act or another Act;

(h) to do anything incidental or conducive to the performance of any of the above functions.

(2) The Council may, on its own initiative or at the request of the Minister, do any or all of the following:

(a) inquire into;

(b) prepare a report relating to;

(c) make recommendations to the Minister in relation to;

a matter relating to any of the Council's functions.

Authorised Version C2024A00040 registered 03/06/2024

(3) The Council may do all things necessary or convenient to be done for or in connection with the performance of its functions.

(4) A reference in this Division 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.

250 Reports by Council

(1) When the Council concludes its consideration of a matter in respect of which the Council has determined a report is to be prepared, the Council must prepare a report on the matter and give the report to the Minister.

(2) The Minister must cause a copy of the report to be tabled in each House of the Parliament within 15 sitting days of that House after the report is given to the Minister.

251 Meetings of Council

Convening meetings

(1) The Council must hold such meetings as are necessary for the efficient performance of its functions.

(2) The Chair of the Council may convene a meeting at any time.

Presiding at meetings

(3) The Chair of the Council must preside at all meetings at which the Chair is present.

(4) If the Chair is not present at a meeting, the Council members present must elect one of themselves to preside at the meeting.

Quorum

(5) At a meeting of the Council, a quorum is constituted by 5 Council members.

Authorised Version C2024A00040 registered 03/06/2024

Voting at meetings

(6) A question arising at a meeting of the Council is to be determined by a majority of the votes of the Council members present and voting.

(7) The person presiding at a meeting of the Council has a deliberative vote and, if the votes are equal, a casting vote.

Conduct of meetings

(8) The Council may, subject to this Part, regulate proceedings at its meetings as it considers appropriate.

Note: Section 33B of the *Acts Interpretation Act 1901* contains further information about the ways in which Council members may participate in meetings.

Authorised Version C2024A00040 registered 03/06/2024

Division 4—Appointment

252 Appointment of certain Council members

(1) Appointed members are to be appointed by the Governor-General by written instrument.

(2) An appointed member holds office on a part-time basis.

253 Appointment of Chair of Council

(1) One Council member is to be appointed by the Governor-General by written instrument as the Chair of the Council.

(2) An appointed member whose instrument of appointment contains a statement of the kind mentioned in subsection 255(2) (exception—appointment for specified project) cannot be appointed as the Chair of the Council.

254 Qualification for appointment

(1) A person is not to be appointed as an appointed member unless the person:

(a) has an extensive knowledge of administrative law or public administration; or

(b) has extensive experience providing legal services related to administrative law; or

(c) has direct experience, and has direct knowledge, of the needs of people, or groups of people, significantly affected by government decisions; or

(d) is an official of a Commonwealth entity who:

(i) is an Agency Head (within the meaning of the *Public Service Act 1999*); or

(ii) is an SES employee; or

(iii) holds a position that is equivalent to, or higher than, a position occupied by an SES employee.

Note: The expression ***SES employee*** is defined in section 2B of the *Acts Interpretation Act 1901*.

Authorised Version C2024A00040 registered 03/06/2024

(2) Before a person is appointed as an appointed member, the Minister must:

(a) take into account the need for a diversity of skills, expertise, experience and knowledge within the Council; and

(b) be satisfied that:

(i) there will be at least 2 appointed members who were not officials of a Commonwealth entity immediately before their appointment; and

(ii) there will be at least one appointed member of the kind mentioned in subparagraph (i) who is qualified as mentioned in paragraph (1)(c).

255 Period of appointment

General rule

(1) An appointed member holds office for the period specified in the instrument of appointment. The period must not exceed 5 years.

Exception—appointment for specified project

(2) An instrument appointing an appointed member may state that the member is appointed for the purpose of taking part in a project specified in the instrument that is being, or is to be, undertaken by the Council.

(3) If an instrument appointing an appointed member contains such a statement:

(a) the member is to take part in the project and has the rights of a Council member only for the purposes of taking part in the project; and

(b) despite subsection (1), if the appointment has not ceased under subsection (1) and has not been terminated under section 261—the appointment ceases when the Chair of the Council certifies, in writing, that the Council has finished the project.

Authorised Version C2024A00040 registered 03/06/2024

256 Acting appointments

The Minister may, by written instrument, appoint a Council member to act as the Chair of the Council:

(a) during a vacancy in the office of the Chair of the Council (whether or not an appointment has previously been made to the office); or

(b) during any period, or during all periods, when the Chair of the Council:

(i) is absent from duty or from Australia; or

(ii) is, for any reason, unable to perform the duties of the office.

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

257 Remuneration

(1) An appointed member is to be paid the remuneration that is determined by the Remuneration Tribunal. If no determination of that remuneration by the Remuneration Tribunal is in operation, the appointed member is to be paid the remuneration that is prescribed by the rules.

(2) An appointed member is to be paid the allowances that are prescribed by the rules.

(3) This section has effect subject to the *Remuneration Tribunal Act 1973*.

258 Leave

The Minister may grant leave of absence to an appointed member on the terms and conditions that the Minister determines.

259 Disclosure of interests

(1) A Council member who has an interest, pecuniary or otherwise, in a matter being considered or about to be considered by the Council must disclose the nature of the interest to a meeting of the Council.

Authorised Version C2024A00040 registered 03/06/2024

(2) The disclosure must be made as soon as possible after the relevant facts have come to the Council member's knowledge.

(3) The disclosure must be recorded in the minutes of the meeting of the Council.

(4) Unless the Council otherwise determines, the Council member:
  (a) must not be present during any deliberation by the Council on the matter; and
  (b) must not take part in any decision of the Council with respect to the matter.

(5) For the purposes of making a determination under subsection (4), the Council member:
  (a) must not be present during any deliberation of the Council for the purpose of making the determination; and
  (b) must not take part in making the determination.

(6) A determination under subsection (4) must be recorded in the minutes of the meeting of the Council.

260 Resignation

(1) An appointed member may resign the appointed member's appointment by giving the Governor-General a written resignation.

(2) The Chair of the Council may resign the Chair's appointment as the Chair without resigning the Chair's appointment as a Council member by giving the Governor-General a written resignation.

(3) 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.

261 Termination of appointment

Termination of appointed members

(1) The Governor-General may, on the recommendation of the Minister, terminate the appointment of an appointed member if:

Authorised Version C2024A00040 registered 03/06/2024

(a) the appointed member is convicted of an indictable offence; or

(b) the appointed member is unable to perform the duties of the appointed member's office because of physical or mental incapacity; or

(c) the appointed member's conduct or behaviour amounts to serious misconduct by the appointed member; or

(d) the appointed member is absent, except on leave of absence, from 3 consecutive meetings of the Council; or

(e) the appointed member fails, without reasonable excuse, to comply with section 259 (disclosure of interests).

(2) The Governor-General must terminate the appointment of an appointed member if the appointed member:

(a) becomes bankrupt; or

(b) applies to take the benefit of any law for the relief of bankrupt or insolvent debtors; or

(c) compounds with the appointed member's creditors; or

(d) makes an assignment of the appointed member's remuneration for the benefit of the appointed member's creditors.

Termination of members appointed for a specified project

(3) The Governor-General may at any time terminate the appointment of an appointed member whose instrument of appointment contains a statement of the kind mentioned in subsection 255(2) (exception—appointment for specified project).

262 Additional terms and conditions

An appointed member holds office on the terms and conditions (if any) in relation to matters not covered by this Act that are determined by the Minister.

Authorised Version C2024A00040 registered 03/06/2024

Division 5—Staff to assist Council

263 Arrangements relating to staff of the Department

(1) The staff assisting the Council are to be APS employees in the Department whose services are made available to the Council, by the Secretary of the Department, in connection with the performance or exercise of any of the Council's functions or powers.

Note: The expression ***APS employee*** is defined in section 2B of the *Acts Interpretation Act 1901*.

(2) The Secretary of the Department must consult the Chair of the Council before making staff available to the Council.

(3) When performing services for the Council, the staff are subject to the directions of the Council.

Authorised Version C2024A00040 registered 03/06/2024

Division 6—Annual report

264 Annual report

(1) After the end of each financial year, the Council must prepare and give a report to the Minister for presentation to the Parliament on the operations of the Council during that financial year.

(2) The report for a financial year must include:

(a) a description of any systemic issues related to the making of reviewable decisions that the President has informed the Council of during that year; and

(b) a description of any information given to the Council under section 294B during that year.

Note 1: One of the President's functions is to inform relevant Ministers, relevant Commonwealth entities and the Council of any systemic issues related to the making of reviewable decisions that have been identified in the caseload of the Tribunal: see paragraph 193(i).

Note 2: Section 294B requires Ministers and Commonwealth entities to inform the Council of action taken or proposed to be taken in relation to some systemic issues.

(3) The report for a financial year may include a description of any actions taken by the Council during that year in response to a systemic issue related to the making of reviewable decisions.

Authorised Version C2024A00040 registered 03/06/2024

Part 10—Notice and information about administrative decision

Division 1—Preliminary

265 Simplified outline of this Part

Generally, decision-makers must take reasonable steps to give notice of reviewable decisions to anyone whose interests are affected. This requirement also applies to some decisions that are related to reviewable decisions. Notices must include notice of any review rights and decision-makers must have regard to matters prescribed by the rules.

A person whose interests are affected by a reviewable decision may request the decision-maker to give a statement of reasons for the decision. Applications can be made to the Tribunal if a statement of reasons is not given or is inadequate.

This Part contains the standard provisions for these matters. Other legislation can include provisions that apply in addition to, or instead of, these standard provisions.

Authorised Version C2024A00040 registered 03/06/2024

Division 2—Decision-makers to give notice of decisions

266 Decision-maker to give notice of decision and review rights

When this section applies

(1) If any decision in a review pathway is or would be a reviewable decision, this section applies in relation to every decision in the review pathway.

(2) However, this section does not apply in relation to a decision by a court or a decision by the Tribunal under this Act.

(3) A ***review pathway*** is a decision and any decision on review or further review of the decision.

General rules

(4) The decision-maker must take reasonable steps to give notice of the decision to any person whose interests are affected by the decision.

(5) The notice must include notice of the right (if any) to have the decision reviewed, including, for a reviewable decision, the right to apply to the Tribunal for review of the decision.

Exceptions

(6) However, subsection (4) does not require the decision-maker to give notice if:

(a) another Act or an instrument made under an Act requires notice to be given of review rights for the decision; or

(b) the decision is taken to have been made by:

(i) section 16 of this Act (decision is taken to be made if timeframe expires); or

(ii) section 10 of the *Ombudsman Act 1976* (unreasonable delay in exercising power); or

(c) the decision is:

(i) a decision not to impose a liability, penalty or any kind of limitation on a person; or

Authorised Version C2024A00040 registered 03/06/2024

(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; or

(iii) a decision that determines a person to be in the most favourable of several categories of entitlement to a monetary benefit established by an Act or an instrument made under an Act;

and does not adversely affect the interests of any other person.

Effect of failure to comply

(7) A failure to comply with this section does not affect the validity of the decision.

267 Decision-maker must have regard to rules when giving notice of decision

When this section applies

(1) If any decision in a review pathway is or would be a reviewable decision, this section applies in relation to every decision in the review pathway.

(2) However, this section does not apply in relation to a decision by a court or a decision by the Tribunal under this Act.

General rule

(3) In giving notice of the decision to a person whose interests are affected by the decision, the decision-maker must have regard to the matters (if any) prescribed by the rules.

(4) Subsection (3) does not apply if the decision-maker has had regard to the matters in giving notice of a decision of the same kind.

(5) Subsection (3) applies in relation to a notice given under:

(a) subsection 266(4); or

Authorised Version C2024A00040 registered 03/06/2024

(b) another Act or an instrument made under an Act.

Effect of failure to comply

(6) A failure to comply with this section does not affect the validity of the decision.

Authorised Version C2024A00040 registered 03/06/2024

Division 3—Decision-makers to give reasons for decisions

268 Requesting reasons for reviewable decision from decision-maker

(1) A person whose interests are affected by a reviewable decision may request the decision-maker to give the person a statement of reasons for the decision.

Note 1: For which decisions are reviewable decisions, see section 12.

Note 2: For when an organisation's or association's interests are taken to be affected, see section 15.

Note 3: For what must be included in a statement of reasons, see the definition of ***statement of reasons*** in section 4.

(2) The request must be given to the decision-maker in writing.

Note: Requests may be refused if made outside specified timeframes (see subsection 269(8)).

269 Decision-maker to give statement of reasons

When this section applies

(1) This section applies if a person requests the decision-maker for a reviewable decision to give the person a statement of reasons for the decision under section 268.

General rules

(2) Within 28 days after receiving the request, the decision-maker must give the person a statement of reasons for the decision.

(3) Before giving the statement of reasons to the person, the decision-maker may remove from the statement any information that concerns another person.

(4) Before giving the statement of reasons to the person, the decision-maker may remove from the statement any information specified in a certificate under section 272 (public interest certificate in relation to statement of reasons).

Authorised Version C2024A00040 registered 03/06/2024

(5) If the decision-maker removes information from a statement of reasons under subsection (3) or (4), the decision-maker must, when giving the statement, notify the applicant of the removal and the reasons for it.

Exception—person is not affected

(6) Despite subsection (2), the decision-maker must refuse the request if the person's interests are not affected by the decision.

Exception—person has already been given reasons

(7) Despite subsection (2), the decision-maker may refuse the request if the person has already been given a statement of reasons for the decision.

Note: A statement of reasons for a decision may be given in the document setting out the decision or separately.

Exception—timeframes

(8) Despite subsection (2):

(a) if the decision was set out in a document given to the person, the decision-maker may refuse the request if the request is not made within 28 days after the document was given to the person; and

(b) if the decision was not set out in a document given to the person, the decision-maker may refuse the request if the request is not made within a reasonable time after the decision is made.

Exception—would disclose information that concerns another person

(9) Despite subsections (2) and (3), the decision-maker may refuse the request if:

(a) giving the statement of reasons to the person would disclose information that concerns another person; and

(b) it is not reasonably practicable for the decision-maker to remove the information from the statement.

Authorised Version C2024A00040 registered 03/06/2024

Exception—public interest certificate

(10) Despite subsections (2) and (4), the decision-maker may refuse the request if:

(a) giving the statement of reasons would disclose information specified in a certificate under section 272 (public interest certificate in relation to statement of reasons); and

(b) the statement would be false or misleading if the information were removed.

Decision-maker must explain refusal to give statement of reasons

(11) If the decision-maker refuses to give a statement of reasons for the decision (other than under subsection (7)), the decision-maker must give the person written notice that the request is refused.

(12) The notice must:

(a) explain the reason for the refusal; and

(b) be given within 28 days after receiving the request.

270 Applying to Tribunal to obtain reasons for reviewable decision

When this section applies

(1) This section applies if a person requests the decision-maker for a reviewable decision to give the person a statement of reasons for the decision under section 268 and:

(a) the person is given notice that the request is refused; or

(b) the person is not given a statement in response to the request within 28 days after the request is received.

Tribunal may require decision-maker to give statement of reasons

(2) The person may apply to the Tribunal for a decision about whether the decision-maker should give the person the statement of reasons.

(3) The Tribunal must decide whether the decision-maker should give the person the statement of reasons.

(4) If the Tribunal decides that the decision-maker should give the person the statement of reasons, the decision-maker must give the

Authorised Version C2024A00040 registered 03/06/2024

person the statement of reasons within 28 days after the Tribunal notifies the decision-maker of the Tribunal's decision.

271 Applying to Tribunal to obtain adequate statement of reasons

When this section applies

(1) This section applies if:

(a) both of the following apply:

(i) a person requests the decision-maker for a reviewable decision to give the person a statement of reasons for the decision under section 268;

(ii) the person is given a statement of reasons for the decision under section 269 or 270; or

(b) a person applies to the Tribunal for review of a reviewable decision for which the decision-maker has given the person a statement of reasons.

Tribunal may require decision-maker to give adequate information

(2) The person may apply to the Tribunal for a decision about whether the statement contains adequate information about any of the following matters in relation to the decision:

(a) the findings on material questions of fact;

(b) the evidence or other material on which the findings are based;

(c) the reasons for the decision.

(3) The Tribunal must decide whether the statement contains adequate information about the matter.

(4) If the Tribunal decides that the statement does not contain adequate information about the matter, the decision-maker must give the person an additional statement containing adequate information about the matter within 28 days after the Tribunal notifies the decision-maker of the Tribunal's decision.

Authorised Version C2024A00040 registered 03/06/2024

272 Public interest certificate in relation to statement of reasons

(1) The Attorney-General of the Commonwealth may certify, in writing, that the disclosure of specified information in a statement of reasons for a decision would be contrary to the public interest for one or more of the following reasons:

(a) the disclosure would prejudice the security, defence or international relations of the Commonwealth;

(b) the disclosure would involve the disclosure of deliberations or decisions of the Cabinet or of a Committee of the Cabinet;

(c) any other 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.

(2) If an application is made under subsection 270(2) or 271(2) in relation to the decision, the Attorney-General of the Commonwealth is taken to have certified under subsection 91(1) that the disclosure of the specified information in the proceeding in relation to the application would be contrary to the public interest for the reason specified in the certificate.

(3) If an application is made for review of the decision, the Attorney-General of the Commonwealth is taken to have certified under subsection 91(1) that the disclosure of the specified information in the proceeding for the review would be contrary to the public interest for the reason specified in the certificate.

(4) A certificate under subsection (1) is not a legislative instrument.

Authorised Version C2024A00040 registered 03/06/2024

Part 11—Miscellaneous

Division 1—Preliminary

273 Simplified outline of this Part

Limitations apply to production and disclosure of some documents and information by entrusted persons. An entrusted person is any person who is, or has been, a member, the Principal Registrar, a staff member or engaged to provide services to the Tribunal.

Some functions and powers of the Minister, President and Principal Registrar may be delegated.

Functions or powers of the Tribunal in relation to a proceeding may be performed or exercised by the Tribunal constituted for the purposes of the proceeding under Division 4 of Part 4. In some circumstances, Tribunal functions or powers may also be performed or exercised by a member, the Principal Registrar, a registrar or a staff member authorised by the President to do so. The President may also perform or exercise Tribunal functions or powers in some circumstances.

Matters dealt with in Division 5 include advisory opinions, communicating electronically, giving documents, calculating short periods of time, immunities, fees, legal or financial assistance and review of the operation of this Act. There is also a requirement that Ministers and Commonwealth entities inform the Council of action taken or proposed to be taken in relation to some systemic issues.

Rules and regulations may be made relating to this Act.

Authorised Version C2024A00040 registered 03/06/2024

Division 2—Confidentiality

274 Protected information and documents

General rule

(1) An entrusted person must not be required to produce or disclose a protected document or protected information to a court, tribunal, authority or person (other than a parliament) that has the power to require the production of documents or the answering of questions.

Exception

(2) However, subsection (1) does not apply to the extent that the production or disclosure is necessary for the purposes of:
  (a) this Act; or
  (b) another Act or instrument made under an Act conferring power on the Tribunal.

*Meaning of **protected document***

(3) A document is a ***protected document*** if the document:
  (a) concerns another person; and
  (b) was obtained by the entrusted person in the performance or exercise of the entrusted person's functions or powers under this Act, another Act or an instrument made under an Act.

*Meaning of **protected information***

(4) Information is ***protected information*** if the information:
  (a) concerns another person; and
  (b) was obtained by the entrusted person in the performance or exercise of the entrusted person's functions or powers under this Act, another Act or an instrument made under an Act.

275 Evidence about Tribunal proceedings

An entrusted person must not be required to give evidence to a court, tribunal, authority or person (other than a parliament) in relation to any Tribunal proceeding.

Authorised Version C2024A00040 registered 03/06/2024

276 Application of confidentiality provisions in other Acts and instruments

(1) If:

(a) a provision of an Act (other than this Act) or an instrument made under an Act prohibits the disclosure of information by persons who:

(i) are included in a particular class of persons; and

(ii) obtain the information in the performance or exercise of functions or powers under the Act or instrument; and

(b) an entrusted person obtains any such information in the performance or exercise of the entrusted person's functions or powers as an entrusted person;

the provision applies to the entrusted person as if the entrusted person:

(c) were included in the particular class of persons; and

(d) obtained the information in the performance or exercise of functions or powers under the Act or instrument.

(2) Paragraph (1)(a) applies whether the provision prohibits the disclosure of information absolutely, in certain circumstances only or subject to conditions.

Authorised Version C2024A00040 registered 03/06/2024

Division 3—Delegation

278 Delegation by Minister

General rule

(1) The Minister may, in writing, delegate the Minister's functions or powers under this Act to:
  (a) the Secretary of the Department; or
  (b) the President.

Exception—functions and powers that must not be delegated

(2) Despite subsection (1), the Minister must not delegate a function or power the Minister has under section 295 (rules).

Secretary of the Department must comply with directions

(3) In performing or exercising a function or power delegated under this section, the Secretary of the Department must comply with any written directions of the Minister.

279 Delegation by President

General rule

(1) The President may, in writing, delegate the President's functions or powers under this Act, another Act or an instrument made under an Act to:
  (a) a member; or
  (b) the Principal Registrar; or
  (c) a registrar; or
  (d) a staff member.

Exception—functions and powers that must not be delegated

(2) Despite subsection (1), the President must not delegate:
  (a) a function or power the President has because the President is:

Authorised Version C2024A00040 registered 03/06/2024

(i) a member of the Tribunal as constituted for the purposes of a proceeding; or

(ii) a Council member; or

(iii) authorised under section 281 to perform or exercise the function or power; or

(b) a function or power under a provision listed in the following table.

Functions and powers the President must not delegate		
Item	**Column 1** **Provision**	**Column 2** **Summary of topic of provision**
1	section 14	decision-maker
2	Division 3 of Part 4	practice directions
3	subsection 109(2)	Tribunal guidance decisions
4	Division 5 of Part 7	referring questions of law
5	section 196	jurisdictional areas and lists
6	section 197	jurisdictional area leaders
7	section 199	assignment of members to jurisdictional areas
8	section 200	President may give directions to members
9	section 201	code of conduct
10	section 202	performance standard
11	subsection 203(3)	President may restrict member's duties
12	section 222	President must notify Minister about grounds for termination
13	Subdivision B of Division 4 of Part 8	appointment and functions of Principal Registrar

Delegates must comply with directions

(3) In performing or exercising a function or power delegated under this section, the delegate must comply with any written directions of the President.

Authorised Version C2024A00040 registered 03/06/2024

280 Delegation by Principal Registrar

General rule

(1) The Principal Registrar may, in writing, delegate the Principal Registrar's functions or powers under this Act, another Act or an instrument made under an Act to a registrar or staff member.

Exception—functions and powers that must not be delegated

(2) Despite subsection (1), the Principal Registrar must not delegate a function or power that the Principal Registrar has because the Principal Registrar is authorised under section 283 to perform or exercise the function or power.

Delegates must comply with directions

(3) In performing or exercising a function or power delegated under this section, the delegate must comply with any written directions of the Principal Registrar.

Authorised Version C2024A00040 registered 03/06/2024

Division 4—Performing and exercising functions and powers of Tribunal

Subdivision A—Performance and exercise of functions and powers

281 Who may perform or exercise functions or powers

(1) A function or power of the Tribunal in relation to a proceeding may be performed or exercised as follows:

(a) by the Tribunal as constituted for the purposes of the proceeding;

(b) before the start of the hearing of the proceeding—by:

(i) the President; or

(ii) an authorised person;

(c) after the start of the hearing of the proceeding—by an authorised person, but only as approved by the Tribunal as constituted for the purposes of the proceeding;

(ca) for a function or power under subsection 114(1) to alter the text of a decision or statement of reasons for a decision—by the person who made the decision;

(d) for a function or power under subsection 114(1) to alter the text of a decision or statement of reasons for a decision—by an authorised person, but:

(i) only as approved by the President; and

(ii) not if the Tribunal as constituted for the purposes of the proceeding or the person who made the decision is available;

(e) for a function or power under section 102 (reinstatement of application), subsection 115(2) (taxing costs) or a provision mentioned in paragraph 286(a)—by an authorised person at any time.

(2) To avoid doubt, the paragraphs of subsection (1) do not limit each other.

(3) For the purposes of paragraph (1)(c) and subparagraph (1)(d)(i), an approval does not need to be in writing.

Authorised Version C2024A00040 registered 03/06/2024

282 How functions or powers must be performed or exercised

Authorised person must comply with President's directions

(1) In performing or exercising a function or power of the Tribunal, an authorised person must comply with any directions given by the President under this section.

(2) If the direction is made in writing, the direction is not a legislative instrument.

Applying opinion, belief or state of mind

(3) If performing or exercising a function or power of the Tribunal depends on the Tribunal's opinion, belief or state of mind in relation to a matter, the President or an authorised person may perform or exercise the function or power on the opinion, belief or state of mind of the President or authorised person in relation to the matter.

Subdivision B—Authorisations to perform and exercise functions and powers of Tribunal

283 Authorisations for Principal Registrar

The President may, in writing, authorise the Principal Registrar to perform or exercise a function or power of the Tribunal if:

(a) the President could authorise:

(i) a registrar to perform or exercise the function or power of the Tribunal (see section 285); or

(ii) a staff member to perform or exercise the function or power of the Tribunal (see section 286); or

(b) the rules prescribe that the Principal Registrar may be authorised to perform the function or exercise the power.

284 Authorisations for members

(1) The President may, in writing, authorise a member to perform or exercise a function or power of the Tribunal if:

(a) the President could authorise:

Authorised Version C2024A00040 registered 03/06/2024

(i) a registrar to perform or exercise the function or power (see section 285); or

(ii) a staff member to perform or exercise the function or power (see section 286); or

(b) the rules prescribe that a member may be authorised to perform or exercise the function or power; or

(c) the function or power is a function or power under a provision listed in the following table.

Authorisations for members

Item	Column 1 Provision	Column 2 Summary of topic of provision
1	Part 3	starting a review
2	Division 5 of Part 4	Tribunal procedure
3	section 69	hearings to be in public unless practice directions or Tribunal order requires otherwise
4	section 70	Tribunal may restrict publication or disclosure of information
6	section 78	inspection of documents produced under summons
7	Subdivision B of Division 6 of Part 4	management of proceedings
8	Subdivision A of Division 8 of Part 4	withdrawing and dismissing applications
9	section 105	Tribunal decision on review of reviewable decision
10	section 107	when Tribunal's decision on review comes into operation
10A	section 108	effect of Tribunal decision to vary or substitute a reviewable decision
11	Division 10 of Part 4	after proceeding ends
12	section 127	Tribunal decision continues to operate unless Tribunal orders otherwise
13	Part 6 (other than section 161)	proceedings in Intelligence and Security jurisdictional area

Authorised Version C2024A00040 registered 03/06/2024

Authorisations for members		
Item	**Column 1** **Provision**	**Column 2** **Summary of topic of provision**
14	Division 5 of Part 7	referring questions of law

(2) However, a function or power of the Tribunal under section 54, 105, 107, 108, 111 or 163 may be performed or exercised by a member if and only if it relates to the performance or exercise of a function or power by the member under section 103.

285 Authorisations for registrars

(1) The President may, in writing, authorise a registrar to perform or exercise a function or power of the Tribunal if:

(a) the President could authorise a staff member to perform or exercise the function or power (see section 286); or

(b) the rules prescribe that a registrar may be authorised to perform or exercise the function or power; or

(c) the function or power is a function or power under a provision listed in the following table.

Authorisations for registrars		
Item	**Column 1** **Provision**	**Column 2** **Summary of topic of provision**
1	Division 3 of Part 3	applying for review of decision
2	Subdivision A of Division 4 of Part 3	parties to proceeding
3	section 24	decision-maker must give Tribunal additional statement if Tribunal requires—general rule
4	section 26	decision-maker must give Tribunal additional documents on request—general rule
5	section 28	Exceptions—Tribunal may adjust requirements

Authorised Version C2024A00040 registered 03/06/2024

Authorisations for registrars		
Item	**Column 1** **Provision**	**Column 2** **Summary of topic of provision**
6	section 31	decision cannot be altered outside Tribunal process
7	section 54	Tribunal can exercise powers of decision-maker
8	section 65	certain parties may seek to withdraw from being a party
9	subsection 66(2)	representation before Tribunal
10	section 68	Tribunal may appoint interpreter
11	section 73	how a party may appear at a Tribunal case event
12	section 74	Tribunal may summon person to give evidence or produce documents
12A	section 75	Tribunal may take evidence
12B	section 76	taking evidence on oath or affirmation
13	subsection 78(1)	inspection of documents produced under summons
14	Subdivision B of Division 6 of Part 4	management of proceedings
15	Subdivision C of Division 6 of Part 4	dispute resolution processes
16	section 96	Tribunal may dismiss application if parties consent
17	section 97	Tribunal must dismiss application if decision is not reviewable decision
18	section 98	Tribunal may dismiss application if fee is not paid
19	section 100	Tribunal may dismiss application if applicant fails to comply with order etc.
20	Subdivision B of Division 8 of Part 4	decisions agreed by parties
21	section 105	Tribunal decision on review of reviewable decision

Authorised Version C2024A00040 registered 03/06/2024

Authorisations for registrars		
Item	**Column 1** **Provision**	**Column 2** **Summary of topic of provision**
22	section 107	when Tribunal's decision on review comes into operation
22A	section 108	effect of Tribunal decision to vary or substitute a reviewable decision
23	section 111	notice of decision and statement of reasons—review of reviewable decision
24	section 112	notice of decision and statement of reasons—other proceedings
25	section 115	taxing costs
26	section 166	making and recording findings
27	section 167	communicating decisions
28	section 168	findings relating to procedures or practices of agency
29	Division 3 of Part 10	decision-makers to give reasons for decisions

(2) However:

(a) a function or power of the Tribunal under paragraph 22(1)(c) or section 83 must not be performed or exercised in relation to a proceeding by a registrar after the start of the hearing of the proceeding; and

(b) a function or power of the Tribunal under section 54, 105, 107, 108 or 111 may be performed or exercised by a registrar if and only if it relates to the performance or exercise of a function or power by the registrar under section 103.

286 Authorisations for staff members

The President may, in writing, authorise a staff member to perform or exercise a function or power of the Tribunal if:

(a) it is a function or power of the Tribunal under:

(i) subsection 21(2) (parties and potential parties to be notified of application); or

(ii) subsection 22(3) (parties to proceeding for review); or

Authorised Version C2024A00040 registered 03/06/2024

(iii) section 72 (Tribunal must notify parties of Tribunal case event); or

(iv) section 126 (parties to be notified of application); or

(v) section 139 (additional persons to be notified of applications for review); or

(b) the rules prescribe that a staff member may be authorised to perform or exercise the function or power.

287 Authorisations are subject to conditions

An authorisation by the President under this Subdivision is subject to any conditions specified in the authorisation.

Authorised Version C2024A00040 registered 03/06/2024

Division 5—Other matters

288 Tribunal may give advisory opinion

If another Act or an instrument made under an Act so provides, the Tribunal may give an advisory opinion on a matter or question referred to it in accordance with the Act or instrument and, for the purpose of giving such an opinion, the Tribunal may hold such hearings and inform itself in such manner as it considers appropriate.

289 Certain things required to be done in writing may be done electronically

(1) A requirement in any of the following provisions of this Act that a thing be done in writing is taken to have been met if the thing is done by electronic communication (within the meaning of the *Electronic Transactions Act 1999*) in the manner specified in the practice directions:

(a) Division 4 of Part 3 (after an application is made);

(b) Part 4 (proceedings);

(c) Part 5 (guidance and appeals panel);

(d) Part 6 (proceedings in Intelligence and Security jurisdictional area);

(e) section 270 (applying to Tribunal to obtain reasons for reviewable decision);

(f) section 271 (applying to Tribunal to obtain adequate statement of reasons);

(g) this Division.

(2) A requirement in another Act or an instrument under an Act that information be given in writing to the Tribunal or a person for the purposes of a proceeding in the Tribunal is taken to have been met if the information is given by electronic communication (within the meaning of the *Electronic Transactions Act 1999*) in the manner specified in the practice directions.

(3) Subsection (1) or (2) does not apply if Division 2 of Part 2 of the *Electronic Transactions Act 1999* applies to the requirement.

Authorised Version C2024A00040 registered 03/06/2024

290 Giving documents

(1) A document or thing that is required or permitted by this Act or any other law to be produced or given to the Tribunal must be produced or given in accordance with the requirements (if any) in:
  (a) the practice directions; and
  (b) the rules.

(2) A document or thing that is required or permitted by this Act or any other law to be produced or given to a person for the purposes of a proceeding in the Tribunal must be produced or given in accordance with the requirements (if any) in:
  (a) the practice directions; and
  (b) the rules.

291 Giving documents etc. to decision-maker

When section applies

(1) This section applies if the Tribunal or any person is permitted or required under this Act to give a document or thing in relation to a decision to the decision-maker for the decision.

Giving documents etc. to Secretary

(2) The Tribunal or person may instead give the document or thing to the Secretary of the Department administered by the Minister who administers:
  (a) the Act under which the decision was made; or
  (b) if the decision was made under an instrument—the Act under which the instrument is made.

Giving documents etc. to holder of office

(3) If the holder of a particular office is prescribed by the rules, an Act or an instrument made under an Act as a person to whom documents or things may be given under this Act in relation to a class of decisions that includes the decision, the Tribunal or person may instead give the document or thing to the holder of that office.

Authorised Version C2024A00040 registered 03/06/2024

Note: Sections 28A and 29 of the *Acts Interpretation Act 1901* deal with the manner in which the documents may be given.

292 Calculation of short periods of time

If the period of time for doing anything:

(a) under this Act, any other Act or an instrument made under an Act; or

(b) in accordance with an order of the Tribunal;

in relation to a proceeding in the Tribunal is less than 7 days, do not count any day on which the registry of the Tribunal concerned is not open to the public in working out whether the period has ended.

293 Protection and immunity

Tribunal personnel

(1) Each of the following has the same protection and immunity as a Justice of the High Court:

(a) a member, in the performance of the member's duties;

(b) the Principal Registrar, in the performance of the Principal Registrar's duties under Part 3 (starting a review), Part 4 (proceedings), Part 5 (guidance and appeals panel), Part 6 (proceedings in Intelligence and Security jurisdictional area) or Part 7 (appeals and references of questions of law to Federal Court);

(c) an authorised person, in the performance of the person's duties as an authorised person;

(d) a person conducting a dispute resolution process under this Act, in conducting the dispute resolution process.

Representatives

(2) A legal practitioner or other person appearing before the Tribunal on behalf of a party has the same protection and immunity as a barrister appearing for a party in proceedings in the High Court.

Authorised Version C2024A00040 registered 03/06/2024

Witnesses

(3) Subject to this Act, a person appearing before the Tribunal to give evidence 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.

294 Legal or financial assistance

Applicants to Tribunal

(1) A person who applies, or proposes to apply, to the Tribunal for review of a reviewable decision may apply to the Attorney-General of the Commonwealth for assistance in respect of the proceeding in relation to the application to the Tribunal.

(2) A person who makes an application, or proposes to make an application, to refer a decision of the Tribunal to the guidance and appeals panel (a ***leave application***) may apply to the Attorney-General of the Commonwealth for assistance in respect of the leave application and the proceeding in relation to the guidance and appeals panel application (if any) taken to be made because of the referral.

Other parties to Tribunal proceedings

(3) A person who is, or proposes to become, a party to a proceeding in the Tribunal may apply to the Attorney-General of the Commonwealth for assistance in respect of the proceeding.

Court proceedings

(4) A person who:

(a) institutes, or proposes to institute; or

(b) is, or proposes to become, a party to;

a proceeding in a court in respect of a matter arising under this Act may apply to the Attorney-General of the Commonwealth for assistance in respect of the proceeding.

Authorised Version C2024A00040 registered 03/06/2024

Exceptions—proceedings prescribed by the rules

(5) Subsections (1) to (4) do not apply in relation to a kind of proceeding prescribed by the rules.

(6) Subsection (2) does not apply in relation to a kind of leave application prescribed by the rules.

Provision of assistance

(7) If the Attorney-General of the Commonwealth considers that:
   (a) it would involve hardship to the person to refuse the person's application; and
   (b) in all the circumstances, it is reasonable that the person's application should be granted;

the Attorney-General may authorise the provision by the Commonwealth to the person of legal or financial assistance determined by the Attorney-General in respect of the proceeding.

(8) The legal or financial assistance is subject to any conditions determined by the Attorney-General of the Commonwealth.

Time for making applications not affected

(9) Nothing done under, or for the purposes of, this section extends a period for making an application to the Tribunal.

Other assistance

(10) To avoid doubt, the power of the Commonwealth to make a payment, or to make, vary or administer an arrangement or grant, under this section must be disregarded for the purpose of paragraph 32B(1)(a) of the *Financial Framework (Supplementary Powers) Act 1997*.

Note: The effect of this subsection is to make clear that this section does not effectively limit the operation of section 32B of the *Financial Framework (Supplementary Powers) Act 1997*. The Commonwealth has the power to make, vary or administer an arrangement or grant under that section whether the Commonwealth also has the power to do so under this section.

Authorised Version C2024A00040 registered 03/06/2024

294A Review of operation of this Act

(1) The Minister must cause to be conducted a review into the operation of this Act and any Act dealing with consequential or transitional matters arising from the enactment of this Act.

(2) Without limiting subsection (1), the review must include consideration of:

(a) whether the Tribunal is achieving the objective in section 9; and

(b) any other matters relating to the operation of this Act determined by the Minister.

(3) The review must start within the 3 months before the fifth anniversary of the commencement of this Act.

(4) The review must be undertaken by one or more persons (the ***reviewers***) who, in the Minister's opinion, have appropriate expertise in administrative review.

(5) The review must include consultation with the Council, members of the public, Tribunal users and any other person or organisation the reviewers consider appropriate.

(6) The reviewers must give the Minister a written report on the review within 12 months after the fifth anniversary of the commencement of this Act.

(7) The Minister must cause a copy of the report to be tabled in each House of the Parliament within 15 sitting days of that House after the Minister receives the report.

294B Minister and Commonwealth entities to inform Council of action on systemic issues

Within 3 months after the President informs a Minister or Commonwealth entity in writing of a systemic issue related to the making of reviewable decisions that has been identified in the caseload of the Tribunal, the Minister or entity must inform the Council of the action the Minister or entity has taken or proposes to take in relation to the systemic issue.

Authorised Version C2024A00040 registered 03/06/2024

Note: For the President's functions in relation to systemic issues, see paragraph 193(i). For the Council's functions and reports in relation to systemic issues, see paragraph 249(1)(c) and section 264.

Authorised Version C2024A00040 registered 03/06/2024

Division 6—Rules and regulations

295 Rules

(1) The Minister may, by legislative instrument, make rules prescribing matters:

(a) required or permitted by this Act to be prescribed by the rules; or

(b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) To avoid doubt, the rules may not do the following:

(a) create an offence or civil penalty;

(b) provide powers of:

(i) arrest or detention; or

(ii) entry, search or seizure;

(c) impose a tax;

(d) set an amount to be appropriated from the Consolidated Revenue Fund under an appropriation in this Act;

(e) directly amend the text of this Act.

(3) Rules that are inconsistent with the regulations have no effect to the extent of the inconsistency, but rules are taken to be consistent with the regulations to the extent that the rules are capable of operating concurrently with the regulations.

(4) The rules may make provision in relation to a matter by applying, adopting or incorporating, with or without modification, a matter contained in the practice directions:

(a) as in force or existing at a particular time; or

(b) as in force or existing from time to time.

(5) Subsection (4) has effect despite anything in subsection 14(2) of the *Legislation Act 2003*.

(6) Before making rules affecting the practice, procedure or operations of the Tribunal, the Minister must consult the President.

Authorised Version C2024A00040 registered 03/06/2024

296 Tribunal may charge fees

(1) The Tribunal may, on behalf of the Commonwealth, charge fees in accordance with the rules.

(2) The rules may provide for fees to be payable in respect of the following:

(a) applications to the Tribunal (including applications taken to be made to the Tribunal);

(b) applications to the President;

(c) taxation of costs by the Tribunal;

(d) proceedings in the Tribunal;

(e) services provided by the Tribunal.

(3) Without limiting the scope of rules that may be made for the purposes of subsection (2), those rules may prescribe, or prescribe matters relating to, any or all of the following:

(a) the circumstances in which a fee is to be paid;

(b) who must pay;

(c) the time when payment is required;

(d) remittal, refund and waiver of fees.

(4) Rules made for the purposes of subsection (2) may do any or all of the following:

(a) prescribe fees in respect of a particular class or classes of applications, costs, proceedings or services;

(b) prescribe different fees in respect of different classes of applications, costs, proceedings or services;

(c) prescribe the amount of, or a method for working out the amount of, a fee;

(d) make provision in relation to the whole or a part of a fee;

(e) provide for the Tribunal to make orders relating to the payment of a fee in relation to a proceeding.

(5) A fee must not be such as to amount to taxation.

(6) A fee charged under subsection (1):

(a) is a debt due to the Tribunal, on behalf of the Commonwealth; and

Authorised Version C2024A00040 registered 03/06/2024

(b) is recoverable by the Tribunal, on behalf of the Commonwealth, in a court of competent jurisdiction.

297 Regulations

(1) The Governor-General may make regulations prescribing matters:

(a) required or permitted by this Act to be prescribed by the regulations; or

(b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

Norfolk Island enactments

(2) The regulations may provide for:

(a) applications to be made to the Tribunal for review of decisions made in the exercise of powers conferred by a Norfolk Island enactment; and

(b) such modifications to the operation of this Act as are necessary to provide for, and in relation to, the review of those decisions in like manner to the review of equivalent reviewable decisions under this Act; and

(c) the Tribunal to give an advisory opinion on a matter or question referred to it under a Norfolk Island enactment.

[*Minister's second reading speech made in—*
House of Representatives on 7 December 2023
Senate on 25 March 2024]

(150/23)

Authorised Version C2024A00040 registered 03/06/2024