

EXPOSURE DRAFT



EXPOSURE DRAFT (19/07/2024)

Administrative Review Tribunal Rules 2024

I, Mark Dreyfus KC, Attorney-General, make the following rules.

Dated 2024

Mark Dreyfus KC [DRAFT ONLY—NOT FOR SIGNATURE]
Attorney-General

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Preliminary **Part 1**

Section 1

Part 1—Preliminary

1 Name

This instrument is the *Administrative Review Tribunal Rules 2024*.

2 Commencement

- (1) Each provision of this instrument 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 instrument	At the same time as the <i>Administrative Review Tribunal Act 2024</i> commences.	

Note: This table relates only to the provisions of this instrument as originally made.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

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

3 Authority

This instrument is made under the *Administrative Review Tribunal Act 2024*.

4 Definitions

Note: A number of expressions used in this instrument are defined in the Act, including the following:

- (a) decision-maker;
- (b) election notice;
- (c) Principal Registrar;
- (d) second review;
- (e) statement of reasons;
- (f) Tribunal case event.

In this instrument:

Act means the *Administrative Review Tribunal Act 2024*.

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Part 1 Preliminary

Section 4

original decision-maker, in relation to an application under section 123 of the Act to the President to refer a decision of the Tribunal to the guidance and appeals panel, means the decision-maker of the reviewable decision that the Tribunal's decision relates to.

small business entity has the same meaning as in the *Income Tax Assessment Act 1997*.

small business taxation decision means a decision made:

- (a) under a taxation law (within the meaning of the *Income Tax Assessment Act 1997*); and
- (b) in relation to a small business entity.

Part 2—Applying for review of decision

5 When to apply—notice of decision given in writing

Purpose of this section

- (1) This section is made for the purposes of subsection 18(1) of the Act.

When this section applies

- (2) This section applies in relation to an application for review of a decision (the **decision under review**), other than a decision taken to be made by section 16 of the Act or a provision of another Act or legislative instrument, if the applicant is given notice of the decision in writing.

Period ends 28 days after notice is given, unless extended under this section

- (3) The period starts on the day the decision under review is made and ends on the day that is 28 days after the day the applicant is given the notice.

Period is extended if statement of reasons is given

- (4) Despite subsection (3), if the applicant is given a statement of reasons for the decision under review, the period starts on the day the decision under review is made and ends on the day that is 28 days after the day the applicant is given the statement of reasons.

Period is extended if statement of reasons is requested but not provided

- (5) Despite subsection (3), if:
- (a) the applicant is not given a statement of reasons for the decision under review; and
 - (b) the applicant requests a statement of reasons for the decision under review under section 268 of the Act; and
 - (c) the applicant is given written notice that the request is refused;
- the period starts on the day the decision under review is made and ends on the day that is 28 days after the applicant is given written notice that the request is refused.

Period is extended if applicant applies to Tribunal to obtain adequate statement of reasons

- (6) Despite subsections (3), (4) and (5), if:
- (a) the applicant requests a statement of reasons for the decision under review under section 268 of the Act; and
 - (b) the applicant is given a statement of reasons for the decision under review under section 269 or 270 of the Act; and

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Part 2 Applying for review of decision

Section 6

(c) the applicant applies to the Tribunal under section 271 of the Act for a decision about whether the statement of reasons contains adequate information about a matter; and

(d) the Tribunal decides that the statement of reasons does not contain adequate information about the matter;

the period starts on the day the decision under review is made and ends on the day that is 28 days after the day the applicant is given an additional statement containing adequate information about the matter.

6 When to apply—decisions taken to be made because timeframe expires

Purpose of this section

(1) This section is made for the purposes of subsection 18(1) of the Act.

When this section applies

(2) This section applies in relation to an application for review of a decision (the **decision under review**) that is taken to be made by section 16 of the Act or a provision of another Act or legislative instrument.

Period ends 28 days after decision is taken to be made, unless extended under this section

(3) The period starts on the day the decision under review is taken to be made and ends on the day that is 28 days after the day the decision under review is taken to be made.

Period is extended if decision is subsequently made

(4) Despite subsection (3), if:

(a) the decision under review is a decision not to do a thing; and

(b) after the decision under review is taken to be made, the decision-maker makes or purports to make a decision (the **subsequent decision**) to do or not do the thing; and

(c) the applicant is given notice of the subsequent decision in writing; the period starts on the day the decision under review is taken to be made and ends at the end of the period that applies or would apply in relation to the subsequent decision under section 5.

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Part 3—Proceedings

Division 1—Elections not to participate in kind of proceeding or Tribunal case event

7 Election notices

Requirements for giving election notices

- (1) For the purposes of paragraph 64(2)(a) of the Act, this section sets out requirements for giving election notices.

Note: If a purported election notice does not comply with the requirements set out in this section, it is not a valid election notice.

Election notices in relation to a kind of proceeding

- (2) An election notice in relation to a kind of proceeding in the Tribunal must:
 - (a) identify the kind of proceeding; and
 - (b) if the election notice relates to a proceeding for review of a reviewable decision—identify:
 - (i) the legislative provision under which the decision is made; and
 - (ii) who the decision-maker for the decision is.

Note: For example, a kind of proceeding may be identified by reference to the period (if any) within which the proceeding starts.

Election notices in relation to a kind of Tribunal case event

- (3) An election notice in relation to a kind of Tribunal case event in relation to a kind of proceeding in the Tribunal must:
 - (a) identify the kind of Tribunal case event and the kind of proceeding; and
 - (b) if the election notice relates to a proceeding for review of a reviewable decision—identify:
 - (i) the legislative provision under which the decision is made; and
 - (ii) who the decision-maker for the decision is.

Note: Election notices cannot be given in relation to certain Tribunal case events (see paragraph 60(1)(b) of the Act).

Election notices in relation to proceedings for review of a reviewable decision

- (4) An election notice that gives the Tribunal notice that a person does not wish to participate in a proceeding for review of a reviewable decision (the **review proceeding**) must also give the Tribunal notice that the person does not wish to participate in any proceeding related to an incidental application to the Tribunal made in the course of, or in connection with, the review proceeding.
- (5) An election notice that gives the Tribunal notice that a person does not wish to participate in a kind of Tribunal case event in relation to a proceeding for review of a reviewable decision (the **review proceeding**) must also give the Tribunal

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Part 3 Proceedings

Division 1 Elections not to participate in kind of proceeding or Tribunal case event

Section 8

notice that the person does not wish to participate in that kind of Tribunal case event in relation to any proceeding related to an incidental application to the Tribunal made in the course of, or in connection with, the review proceeding.

8 Conditions to be satisfied for a person to be a non-participating party

Non-participating party to a proceeding

- (1) For the purposes of paragraph 61(1)(e) of the Act, it is a condition that the election notice is given at least 14 days before the start of the proceeding.

Non-participating party to a Tribunal case event

- (2) For the purposes of paragraph 61(1A)(e) of the Act, it is a condition that the election notice is given at least 14 days before the start of the proceeding.

9 Additional circumstances in which a person is a non-participating party

- (1) For the purposes of subsection 61(3) of the Act, a person is a non-participating party to a proceeding if, but for the person's withdrawal of an election notice:
 - (a) during the proceeding; or
 - (b) within 14 days before the start of the proceeding;

the person would be a non-participating party to the proceeding under subsection 61(1) of the Act.

- (2) For the purposes of subsection 61(3) of the Act, a person is a non-participating party to a Tribunal case event in relation to a proceeding if, but for the person's withdrawal of an election notice:

- (a) during the proceeding; or
- (b) within 14 days before the start of the proceeding;

the person would be a non-participating party to the Tribunal case event in relation to the proceeding under subsection 61(1A) of the Act.

10 Publication

For the purposes of paragraph 64(2)(b) of the Act, if the Tribunal is given an election notice, the Tribunal must publish a copy of the election notice.

11 Participation notices

Participation notices must give reasons

- (1) For the purposes of paragraph 64(2)(a) of the Act, a participation notice in relation to a proceeding or Tribunal case event in relation to a proceeding must identify the reason why the non-participating party to the proceeding or Tribunal case event wishes to participate in the proceeding or Tribunal case event.

Other parties to be notified

- (2) For the purposes of paragraph 64(1)(b) of the Act, if a non-participating party to a proceeding or Tribunal case event in relation to a proceeding gives the Tribunal

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a participation notice, the party must give a copy of the notice to each of the other parties to the proceeding.

12 Participation of non-participating parties

Matters for Tribunal consideration

- (1) For the purposes of paragraph 64(1)(a) of the Act, in deciding whether or not a party is to participate in a proceeding or Tribunal case event in relation to a proceeding under section 62 of the Act, the Tribunal may have regard to the following:
 - (a) the effect that the participation of the party would have on the ability of the Tribunal to achieve the objective in section 9 of the Act;
 - (b) the timeliness of the participation notice given to the Tribunal by the party;
 - (c) the circumstances of the parties to the proceeding;
 - (d) whether the proceeding:
 - (i) is, or is likely to be, complex; or
 - (ii) involves, or is likely to involve, a significant conclusion of law; or
 - (iii) has, or is likely to have, significant implications for Commonwealth policy or administration; or
 - (iv) could be resolved using dispute resolution processes;
 - (e) any other matters that the Tribunal considers relevant.
- (2) For the purposes of paragraph 64(1)(a) of the Act, before ordering a party to do a thing in relation to a proceeding under subsection 63(2) of the Act, the Tribunal may have regard to the following:
 - (a) the effect that it would have on the ability of the Tribunal to achieve the objective in section 9 of the Act;
 - (b) the circumstances of the parties to the proceeding;
 - (c) whether the proceeding:
 - (i) is, or is likely to be, complex; or
 - (ii) involves, or is likely to involve, a significant conclusion of law; or
 - (iii) has, or is likely to have, significant implications for Commonwealth policy or administration; or
 - (iv) could be resolved using dispute resolution processes;
 - (d) any other matters that the Tribunal considers relevant.

Tribunal must notify parties of participation

- (3) For the purposes of paragraph 64(1)(a) of the Act, if the Tribunal decides under section 62 of the Act whether or not a party is to participate in a proceeding or Tribunal case event in relation to a proceeding, or orders a party to do a thing in relation to a proceeding under subsection 63(2) of the Act, the Tribunal must give written notice of the decision or order to the parties to the proceeding.
- (4) A failure to comply with subsection (3) does not affect the validity of the decision or order.

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Part 3 Proceedings

Division 2 Witness fees and expenses

Section 13

Division 2—Witness fees and expenses

13 Entitlement to fees and allowances

Fees for compliance with summons

- (1) For the purposes of subsection 77(1) of the Act, the following fees are prescribed for compliance with a summons under subsection 74(1) of the Act for a person to give evidence:
 - (a) if the person has an occupation and is remunerated in that occupation by wages, salary or fees—the amount of wages, salary or fees that are not paid to the person because the person appears before the Tribunal;
 - (b) in any other case—a reasonable amount, up to a maximum of \$75 for each day on which the person appears before the Tribunal.

Allowances for compliance with summons

- (2) For the purposes of subsection 77(1) of the Act, the following allowances are prescribed:
 - (a) for compliance with a summons under subsection 74(1) of the Act for a person to give evidence:
 - (i) a reasonable amount for travel between the person's usual place of employment or residence and the place where the person appears before the Tribunal; and
 - (ii) if the person is required to be absent overnight from the person's usual place of residence—a reasonable amount for meals and accommodation;
 - (b) for compliance with a summons under subsection 74(1) of the Act for a person to produce a document or thing to the Tribunal—the person's reasonable expenses in producing the document or thing.

14 Fees and allowances

Circumstances in which a person is not to be paid

- (1) Despite section 13 of this instrument, for the purposes of paragraph 77(2)(b) of the Act:
 - (a) fees and allowances in relation to a proceeding are not to be paid to a person who is a party to the proceeding, unless the Tribunal orders otherwise; and
 - (b) an allowance mentioned in paragraph 13(2)(a) of this instrument is not to be paid to a person if the person is given the equivalent in kind (such as access to pre-paid travel, meals or accommodation) by the person who would otherwise have been required to pay the allowance under subsection (2) or (3) of this section.

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Who must pay

- (2) For the purposes of paragraph 77(2)(c) of the Act, a fee mentioned in subsection 13(1) or an allowance mentioned in subsection 13(2) of this instrument must be paid by:
 - (a) if the person summoned under subsection 74(1) of the Act was summoned at the request of a party to a proceeding—the party; or
 - (b) in any other case—the Commonwealth.
- (3) Despite paragraph (2)(a), the Tribunal may order that a fee or allowance mentioned subsection (2) be paid, in whole or in part, by the Commonwealth.

When fees and allowances must be paid

- (4) For the purposes of paragraph 77(2)(d) of the Act, a person who is summoned under subsection 74(1) of the Act must be paid:
 - (a) the fees for compliance with the summons as soon as practicable after the person has complied with the summons; and
 - (b) the allowances for compliance with the summons:
 - (i) when the person is given the summons; or
 - (ii) within a reasonable time before the day the person is required to comply with the summons.

Tribunal may make orders relating to the payment of a fee or allowance

- (5) For the purposes of paragraph 77(3)(c) of the Act, if a person summoned under subsection 74(1) of the Act was summoned at the request of a party to a proceeding, the person may apply to the Tribunal for a determination of the amount of fees or allowances to be paid under this Division if the person and the party cannot agree on the amount.

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Part 4 Notice and information about administrative decisions

Section 15

Part 4—Notice and information about administrative decisions

15 Decision-maker must have regard to matters when giving notice of decisions in certain review pathways

- (1) For the purposes of subsection 267(3) of the Act, the decision-maker must have regard to the matters set out in subsections (2) to (6) of this section.
- (2) A notice of a decision should be in plain language and be as clear and simple as possible.
- (3) A notice of a decision should be given in an accessible manner.
- (4) A notice of a decision should identify the following:
 - (a) the legislative provision under which the decision was made;
 - (b) who the decision-maker for the decision is;
 - (c) how a person can obtain further information about the decision, including:
 - (i) where a person can seek further information about the decision; and
 - (ii) if a statement of reasons for the decision has not already been given—how a person can request a statement of reasons for the decision;
 - (d) if a person can seek access to documents or information about the decision under the *Freedom of Information Act 1982* or any other Act—how that access can be sought;
 - (e) the following information in relation to the right (if any) to have the decision reviewed:
 - (i) the kind of review available;
 - (ii) how a person can apply for the review;
 - (iii) the time limits (if any) to apply for the review;
 - (iv) if a fee is payable for the review—the amount of the fee, when the fee is payable and whether there are any fee waivers, concessions or refunds available;
 - (v) how the person or body that may conduct the review can be contacted;
 - (vi) where a person can seek further information about how the person can have the decision reviewed;
 - (f) how a person can make a complaint in relation to the decision;
 - (g) any legal, financial or other forms of advice and assistance that may be available to a person whose interests are affected by the decision;
 - (h) any other information that the decision-maker considers appropriate in the circumstances.
- (5) It is possible for a notice of a decision to identify the information or material mentioned in subsection (4) by providing an electronic link that can be used to access the information or material.

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Note: Whether it is appropriate to identify information or material by providing an electronic link that can be used to access the information or material will depend on the circumstances.

- (6) A decision-maker should publish, on the internet or in any other way the decision-maker considers appropriate, a notice of a decision if:
- (a) one or more of the persons whose interests are affected by the decision are not readily identifiable; or
 - (b) there is a large number of persons whose interests are affected by the decision; or
 - (c) the cost of giving a notice of the decision to each person whose interests are affected by the decision would be substantial.

Note: In addition to publishing a notice of a decision, a decision-maker may also give a notice of the decision to a person whose interests are affected by the decision.

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Part 5 Miscellaneous

Division 1 Performing and exercising functions and powers of Tribunal

Section 16

Part 5—Miscellaneous

Division 1—Performing and exercising functions and powers of Tribunal

16 Authorisations for members

General authorisations

- (1) For the purposes of paragraph 284(1)(b) of the Act, a member may be authorised to perform or exercise a function or power of the Tribunal under a provision of an Act listed in the following table.

Authorisations for members		
Item	Column 1 Act	Column 2 Provision
1	<i>A New Tax System (Family Assistance) (Administration) Act 1999</i>	subsections 111A(2), 116(1), 119(1), 120(1), 121(3) and 122(2) and (3)
2	<i>Archives Act 1983</i>	subsections 40(11) and (12), 43(3), (5), and (7) and 50A(6) and (9)
3	<i>Australian Charities and Not-for-profits Commission Act 2012</i>	paragraph 165-20(b), subsection 165-25(5) and paragraphs 165-30(a) and 165-55(2)(b)
4	<i>Biosecurity Act 2015</i>	subsection 76(5)
5	<i>Child Support (Registration and Collection) Act 1988</i>	paragraphs 92(1)(a) and (b) and subsections 95C(1), 95H(1), 95J(1), 95K(3), 95N(3) and 98C(2)
6	<i>Freedom of Information Act 1982</i>	subsections 58A(2), 60AB(2), 60A(6) and (9) and 62(2) and section 66
7	<i>Migration Act 1958</i>	subsections 332G(1) and (4) and 352(1), section 353, subsection 359A(1), section 363 and subsections 368A(1) and (3), 368B(5) and (6), 368C(3) and (5) and 500(6D), (6FA) and (6K)
8	<i>Paid Parental Leave Act 2010</i>	subsections 227(1), 230(1), 231(1), 232(3) and 233(2)
9	<i>Renewable Energy (Electricity) Act 2000</i>	section 61
10	<i>Social Security (Administration) Act 1999</i>	subsections 148(1), 165A(1), 166(1), 168(3) and 176(2) and (3)
11	<i>Student Assistance Act 1973</i>	paragraph 312(1)(b) and subsection 315A(3)
12	<i>Taxation Administration Act 1953</i>	paragraph 14ZZD(b), subsection 14ZZF(5) and paragraph 14ZZK(a)

- (2) For the purposes of paragraph 284(1)(b) of the Act, a member may be authorised to determine, for the purposes of section 348 of the *Migration Act 1958*, whether an application to the ART for review of a reviewable migration decision or a

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reviewable protection decision is properly made under section 347 or 347A of the *Migration Act 1958*.

Limited authorisations

- (3) For the purposes of paragraph 284(1)(b) and section 287 of the Act, a member may be authorised to perform or exercise a function or power of the Tribunal under a provision of an Act listed in the following table if and only if the performance or exercise of the function or power relates to the performance or exercise of a function or power by the member under section 103 of the Act.

Authorisations for members		
Item	Column 1 Act	Column 2 Provision
1	<i>A New Tax System (Family Assistance) (Administration) Act 1999</i>	subsections 124(1) and (2) and 125(2) and section 127
2	<i>Archives Act 1983</i>	subsections 44(2) and (7)
3	<i>Child Support (Registration and Collection) Act 1988</i>	subsection 95N(2)
4	<i>Federal Proceedings (Costs) Act 1981</i>	subsection 10A(1)
5	<i>Military Rehabilitation and Compensation Act 2004</i>	subsections 357(3) and (4)
6	<i>Paid Parental Leave Act 2010</i>	subsections 272(2) and 272(3)
7	<i>Radiocommunications Act 1992</i>	paragraph 2(1)(c) of Part 2 of the Schedule
8	<i>Safety, Rehabilitation and Compensation Act 1988</i>	subsections 67(8), (8A), (8B) and (9)
9	<i>Safety, Rehabilitation and Compensation (Defence-related Claims) Act 1988</i>	subsections 67(8), (8A) and (9)
10	<i>Seafarers Rehabilitation and Compensation Act 1992</i>	subsections 92(1) and (2)
11	<i>Social Security (Administration) Act 1999</i>	sections 177 and 183
12	<i>Student Assistance Act 1973</i>	sections 317 and 319
13	<i>Veterans' Entitlements Act 1986</i>	subsections 177(2), (3), (5), (5A) and (6)

17 Authorisations for registrars

General authorisations

- (1) For the purposes of paragraph 285(1)(b) of the Act, a registrar may be authorised to perform or exercise a function or power of the Tribunal under a provision of an Act listed in the following table.

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Part 5 Miscellaneous

Division 1 Performing and exercising functions and powers of Tribunal

Section 17

Authorisations for registrars

Item	Column 1 Act	Column 2 Provision
1	<i>A New Tax System (Family Assistance) (Administration) Act 1999</i>	subsections 111A(2), 116(1), 119(1), 120(1) and 122(2) and (3)
2	<i>Archives Act 1983</i>	subsections 40(12) and 43(3), (5) and (7)
3	<i>Australian Charities and Not-for-profits Commission Act 2012</i>	paragraph 165-20(b), subsection 165-25(5) and paragraph 165-55(2)(b)
4	<i>Biosecurity Act 2015</i>	subsection 76(5)
5	<i>Child Support (Registration and Collection) Act 1988</i>	paragraphs 92(1)(a) and (b) and subsections 95C(1), 95H(1), 95J(1), 95N(3) and 98C(2)
6	<i>Freedom of Information Act 1982</i>	subsection 62(2)
7	<i>Migration Act 1958</i>	subsections 332G(1) and (4) and 352(1), section 353, subsection 359A(1), section 363 and subsections 368A(1) and (3), 368B(5) and (6) and 500(6D), (6FA) and (6K)
8	<i>Paid Parental Leave Act 2010</i>	subsections 227(1), 230(1), 231(1) and 233(2)
9	<i>Social Security (Administration) Act 1999</i>	subsections 148(1), 165A(1), 166(1) and 176(2) and (3)
10	<i>Student Assistance Act 1973</i>	paragraph 312(1)(b)
11	<i>Taxation Administration Act 1953</i>	paragraph 14ZZD(b) and subsection 14ZZF(5)

- (2) For the purposes of paragraph 285(1)(b) of the Act, a registrar may be authorised to determine, for the purposes of section 348 of the *Migration Act 1958*, whether an application to the ART for review of a reviewable migration decision or a reviewable protection decision is properly made under section 347 or 347A of the *Migration Act 1958*.

Limited authorisations

- (3) For the purposes of paragraph 285(1)(b) and section 287 of the Act, a registrar may be authorised to perform or exercise a function or power of the Tribunal under a provision of an Act listed in the following table if and only if the performance or exercise of the function or power relates to the performance or exercise of a function or power by the registrar under section 103 of the Act.

Authorisations for registrars

Item	Column 1 Act	Column 2 Provision
1	<i>A New Tax System (Family Assistance) (Administration) Act 1999</i>	subsections 124(1) and (2) and 125(2) and section 127
2	<i>Archives Act 1983</i>	subsections 44(2) and (7)

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Miscellaneous **Part 5**
Performing and exercising functions and powers of Tribunal **Division 1**

Section 18

Authorisations for registrars

Item	Column 1 Act	Column 2 Provision
3	<i>Child Support (Registration and Collection) Act 1988</i>	subsection 95N(2)
4	<i>Military Rehabilitation and Compensation Act 2004</i>	subsections 357(3) and (4)
5	<i>Paid Parental Leave Act 2010</i>	subsections 272(2) and 272(3)
6	<i>Safety, Rehabilitation and Compensation Act 1988</i>	subsections 67(8), (8A), (8B) and (9)
7	<i>Safety, Rehabilitation and Compensation (Defence-related Claims) Act 1988</i>	subsections 67(8), (8A) and (9)
8	<i>Seafarers Rehabilitation and Compensation Act 1992</i>	subsections 92(1) and (2)
9	<i>Social Security (Administration) Act 1999</i>	sections 177 and 183
10	<i>Student Assistance Act 1973</i>	sections 317 and 319
11	<i>Veterans' Entitlements Act 1986</i>	subsections 177(2), (3), (5), (5A) and (6)

18 Authorisations for staff members

For the purposes of paragraph 286(b) of the Act, a staff member may be authorised to perform or exercise a function or power of the Tribunal under a provision of an Act listed in the following table.

Authorisations for staff members

Item	Column 1 Act	Column 2 Provision
1	<i>A New Tax System (Family Assistance) (Administration) Act 1999</i>	subsection 122(2)
2	<i>Child Support (Registration and Collection) Act 1988</i>	subsection 95N(3)
3	<i>Migration Act 1958</i>	subsections 332G(1) and (4) and 352(1), section 363 and subsections 368A(1) and (3), 368B(5) and (6) and 500(6D)
4	<i>Paid Parental Leave Act 2010</i>	subsection 233(2)
5	<i>Social Security (Administration) Act 1999</i>	subsection 176(2)

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Division 2 Fees

Section 19

Division 2—Fees

Subdivision A—Purpose and scope of operation of this Division

19 Purpose of this Division

For the purposes of paragraphs 296(2)(a) and (b) of the Act, this Division provides for fees to be payable in respect of the following:

- (a) applications to the Tribunal (including applications taken to be made to the Tribunal, and applications referred to the guidance and appeals panel under section 122 of the Act);
- (b) applications to the President under section 123 of the Act.

20 Scope of operation of this Division

This Division does not apply in relation to a review of the following, within the meaning of the *Migration Act 1958*:

- (a) a reviewable migration decision;
- (b) a reviewable protection decision.

Subdivision B—Applications to the Tribunal

21 Fees for applications to the Tribunal

Standard application fee

- (1) The fee of \$1,121 is prescribed in respect of:
 - (a) an application to the Tribunal for review of a decision (other than an application referred to in subsection (2) or (3) or section 29); or
 - (b) an application to the Tribunal under subsection 270(2) of the Act; or
 - (c) an application to the Tribunal under subsection 62(2) of the *Freedom of Information Act 1982*.

Note: The fee is indexed under section 32.

Lower application fee for small business taxation decisions

- (2) The fee of \$602 is prescribed in respect of an application for review of a small business taxation decision (other than an application referred to in subsection (3)).

Note: The fee is indexed under section 32.

Lower application fee for certain other taxation decisions

- (3) The fee of \$111 is prescribed in respect of an application for review of a decision:
 - (a) that is a reviewable objection decision under Part IVC of the *Taxation Administration Act 1953*, where either:

- (i) the application states that the amount that the applicant considers to be the amount of tax in dispute is less than \$5,000; or
- (ii) after the application is made, but before the start of the hearing of the application, the applicant notifies the Tribunal in writing that the amount that the applicant considers to be the amount of tax in dispute is less than \$5,000; or
- (b) that is a decision refusing a request for an extension of time within which to make a taxation objection under section 14ZX of the *Taxation Administration Act 1953*.

Note: The fee is indexed under section 32.

Fee in concessional circumstances

- (4) However, the fee of \$100 is prescribed instead of the amount referred to in subsection (1), (2) or (3) if any of the circumstances in subsection 28(1) exist.

22 No additional fee for application referred to the guidance and appeals panel

No fee is payable in respect of an application that a person is taken to have made to the Tribunal under subsection 130(2) of the Act.

Note: Under subsection 130(2) of the Act, a person may be taken to have made an application to the Tribunal if the President refers a decision to the guidance and appeals panel under section 128 of the Act. No fee is payable for the application that the person is taken to have made (although a fee may be payable for the application under section 123 of the Act that resulted in the President making the referral—see Subdivision C of this Division).

23 Consequence if application not accompanied by prescribed fee

- (1) If an application is not accompanied by the prescribed fee, the Tribunal is not required to deal with the application unless, and until, the fee is paid.
- (2) For the purposes of section 98 of the Act, the time by which the fee must be paid is the end of the 6 weeks starting on the day the application is made.

Note: The Tribunal may dismiss the application under that section if the fee is not paid by that time.

24 Consequences if the Tribunal considers that the amount in dispute is not less than \$5,000

- (1) If:
 - (a) an applicant paid the fee mentioned in subsection 21(3) on the basis that the applicant considers that the amount of tax in dispute is less than \$5,000; and
 - (b) the Tribunal considers that the amount of tax in dispute is not less than \$5,000;

then the Tribunal may make an order declaring that the prescribed fee in respect of the application is:

- (c) the fee prescribed by subsection 21(1); or

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- (d) if the Tribunal considers that subsection 21(2) applies in relation to the application—the fee prescribed by that subsection; or
- (e) if any of the circumstances in subsection 28(1) exist—the fee prescribed by subsection 21(4).

- (2) If the applicant paid less than the fee declared by the Tribunal, the amount payable by the applicant is reduced by the amount paid.

Note: For refunds of excess amounts, see item 2 of the table in subsection 31(1).

Consequence if fee not paid

- (3) The Tribunal is not required to deal with the application unless, and until, the fee is paid.
- (4) For the purposes of section 98 of the Act, the time by which the fee must be paid is the end of the 6 weeks starting on the day the order is made.

Note: The Tribunal may dismiss the application under that section if the fee is not paid by that time.

25 Consequences if the Tribunal considers that an applicant is not a small business entity

- (1) If:
 - (a) an applicant paid the fee mentioned in subsection 21(2) on the basis that a decision related to a small business entity; and
 - (b) the Tribunal considers that the decision did not relate to a small business entity;

then the Tribunal may make an order declaring that the prescribed fee in respect of the application is:

- (c) the fee prescribed by subsection 21(1); or
- (d) if the Tribunal considers that subsection 21(3) applies in relation to the application—the fee prescribed by that subsection; or
- (e) if any of the circumstances in subsection 28(1) exist—the fee prescribed by subsection 21(4).

- (2) If the applicant paid less than the fee declared by the Tribunal, the amount payable by the applicant is reduced by the amount paid.

Note: For refunds of excess amounts, see item 2 of the table in subsection 31(1).

Consequence if fee not paid

- (3) The Tribunal is not required to deal with the application unless, and until, the fee is paid.
- (4) For the purposes of section 98 of the Act, the time by which the fee must be paid is the end of the 6 weeks starting on the day the order is made.

Note: The Tribunal may dismiss the application under that section if the fee is not paid by that time.

Subdivision C—Applications to the President

26 Fees for applications to the President

Standard application fee

- (1) The fee of \$1,121 is prescribed in respect of an application under section 123 of the Act to the President to refer a decision of the Tribunal to the guidance and appeals panel (other than an application referred to in section 29 of this instrument).

Note: The fee is indexed under section 32.

Fee in concessional circumstances

- (2) However, the fee of \$100 is prescribed instead of the amount referred to in subsection (1) if any of the circumstances in subsection 28(1) exist.

27 Consequence if application not accompanied by prescribed fee

- (1) If an application is not accompanied by the prescribed fee, the President is not required to deal with the application unless, and until, the fee is paid.
- (2) For the purposes of paragraph 128(3)(a) of the Act, the time by which the fee must be paid is the end of the 28 days starting on the day the application is made (or such longer period as the President, in special circumstances, allows).

Note: The President must not refer the decision to the guidance and appeals panel if the fee is not paid by that time.

Subdivision D—General provisions

28 Concessional circumstances

- (1) For the purposes of subsection 21(4), paragraphs 24(1)(e) and 25(1)(e) and subsection 26(2), the circumstances are the following:
 - (a) the applicant has been granted legal aid for the matter to which the fee relates under a legal aid scheme or service:
 - (i) established under a law of the Commonwealth or of a State or Territory; or
 - (ii) approved by the Attorney-General;
 - (b) the applicant is the holder of any of the following cards issued by the Commonwealth:
 - (i) a health care card;
 - (ii) a pensioner concession card;
 - (iii) a Commonwealth seniors health card;
 - (iv) any other card that certifies the holder's entitlement to Commonwealth health concessions;
 - (c) the applicant is serving a sentence of imprisonment or is otherwise detained in a public institution, or is in immigration detention (within the meaning of the *Migration Act 1958*);

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- (d) the applicant is younger than 18;
 - (e) the applicant is receiving youth allowance or Austudy payments under the *Social Security Act 1991* or benefits under the ABSTUDY scheme;
 - (f) the Principal Registrar makes an order that, having regard to the applicant's income, expenses, liabilities and assets, the Principal Registrar considers that the payment of an amount would cause, or has caused, financial hardship to the applicant.
- (2) For the purposes of paragraph (1)(b), the **holder** of a card does not include a dependant of the person who is issued the card.

29 Decisions for which application fee is not payable

No fee is prescribed in respect of:

- (a) an application for review of a decision mentioned in the following table; or
- (b) an application under section 123 of the Act to the President to refer a decision of the Tribunal to the guidance and appeals panel, if the Tribunal's decision was made on review of a decision mentioned in the following table.

Decisions for which application fee is not payable

Item	Decision
1	A decision under paragraph 28(1)(f) or section 30
2	A decision under each of the following provisions of the <i>Aged Care Act 1997</i> that has been reconsidered under section 85-4 or 85-5 of that Act: <ul style="list-style-type: none">(a) subsection 22-1(2);(b) subsection 22-2(1);(c) subsection 22-2(3);(d) subsection 22-2(4);(e) paragraph 22-5(2)(b);(f) subsection 22-5(3);(g) subsection 23-4(1)
3	A decision under the family assistance law within the meaning of the <i>A New Tax System (Family Assistance) (Administration) Act 1999</i> for which application is made for ART review, within the meaning of that Act, or second review
4	A decision referred to in section 89 of the <i>Child Support (Registration and Collection) Act 1988</i> where the application is for ART review, within the meaning of that Act, of the decision
5	A decision under a determination under section 58B of the <i>Defence Act 1903</i>
6	A decision of the Commonwealth Superannuation Corporation reviewable under section 107 of the <i>Defence Force Retirement and Death Benefits Act 1973</i>
7	A decision under the <i>Defence Service Homes Act 1918</i>
8	A decision under Part III of the <i>Disability Services Act 1986</i> (as that Part continues to apply under item 8 of Schedule 3 to the <i>Disability Services and Inclusion (Consequential Amendments and Transitional Provisions) Act 2023</i>)
9	A decision reviewable under the <i>Freedom of Information Act 1982</i> , being a decision made in relation to a document that relates to a decision specified in items 2 to 23

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Decisions for which application fee is not payable

Item	Decision
10	A decision under the <i>Lands Acquisition Act 1989</i>
11	A decision under the <i>Military Rehabilitation and Compensation Act 2004</i> (including a decision under the Motor Vehicle Compensation Scheme determined under section 212 of that Act)
12	A decision under the <i>National Disability Insurance Scheme Act 2013</i>
13	A decision under the <i>Paid Parental Leave Act 2010</i> where the application is for ART review, within the meaning of that Act, of the decision
14	A decision under the <i>Papua New Guinea (Staffing Assistance) Act 1973</i>
15	A decision under the <i>Safety, Rehabilitation and Compensation Act 1988</i>
16	A decision under the <i>Safety, Rehabilitation and Compensation (Defence-related Claims) Act 1988</i>
17	A decision under the <i>Seafarers Rehabilitation and Compensation Act 1992</i>
18	A decision under the social security law within the meaning of the <i>Social Security Act 1991</i> (whether the application is for ART review, within the meaning of that Act, of the decision, or second review)
19	A decision under the <i>Student Assistance Act 1973</i> other than a decision under Division 6 of Part 4A of that Act (whether the application is for ART review, within the meaning of that Act, of the decision, or second review)
20	A decision under the <i>Superannuation Act 1976</i>
21	A decision that is a reviewable objection decision under Part IVC of the <i>Taxation Administration Act 1953</i> which relates to an application made by the applicant under section 340-5 of Schedule 1 to that Act
22	A decision under the <i>Veterans' Entitlements Act 1986</i>
23	A decision under a legislative instrument under the <i>Veterans' Entitlements Act 1986</i>

Note: Item 3 does not cover a decision under the family assistance law within the meaning of the *A New Tax System (Family Assistance) (Administration) Act 1999* for which application is made for ART child care provider review within the meaning of that Act.

30 Multiple applications

- (1) The Principal Registrar may order that only one prescribed fee is payable in respect of 2 or more applications if:
 - (a) apart from this subsection, the same prescribed fee would be payable in respect of each of the applications; and
 - (b) the applications relate to:
 - (i) the same applicant; or
 - (ii) different applicants, and the Principal Registrar considers that, having regard to the relationship between the applicants, it is reasonable to treat the applications as relating to the same applicant; and
 - (c) either:
 - (i) all of the applications are made to the Tribunal; or
 - (ii) all of the applications are made to the President; and

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- (d) in the case of applications to the Tribunal—in the opinion of the Principal Registrar, the applications may be conveniently heard before the Tribunal at the same time; and
 - (e) in the case of applications to the President—in the opinion of the Principal Registrar, the applications may be conveniently considered by the President at the same time.
- (2) The Principal Registrar may order that only one prescribed fee is payable in respect of 2 or more applications if:
- (a) apart from this subsection, a different prescribed fee would be payable in respect of at least one of the applications; and
 - (b) the applications relate to:
 - (i) the same applicant; or
 - (ii) different applicants, and the Principal Registrar considers that, having regard to the relationship between the applicants, it is reasonable to treat the applications as relating to the same applicant; and
 - (c) either:
 - (i) all of the applications are made to the Tribunal; or
 - (ii) all of the applications are made to the President; and
 - (d) in the case of applications to the Tribunal—in the opinion of the Principal Registrar, the applications may be conveniently heard before the Tribunal at the same time; and
 - (e) in the case of applications to the President—in the opinion of the Principal Registrar, the applications may be conveniently considered by the President at the same time.
- (3) The prescribed fee specified in an order made under subsection (2) must be:
- (a) unless paragraph (b) of this subsection applies—equal to the highest prescribed fee that would, apart from subsection (2), be payable in respect of any of the applications; or
 - (b) if one of the applications is for review of a small business taxation decision—the fee prescribed by subsection 21(2) for applications to which subsection 21(3) does not apply.

31 Refunds

- (1) If a person paid a fee in the circumstances referred to in an item in the following table, the person is entitled to the *refund amount* specified in that item.

Refund amounts			
Item	Fee	Circumstance	Refund amount
1	the person paid a fee referred to in this Division	the fee was not payable	the amount paid
2	the person paid a fee referred to in this Division	the person was liable to pay a lower fee	the difference between: (a) the fee paid; and (b) the lower fee

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Refund amounts

Item	Fee	Circumstance	Refund amount
3	the person paid a fee referred to in Subdivision B	the person is not entitled to apply for review by the Tribunal	the amount paid
4	the person paid a fee referred to in Subdivision B	the decision to which the application relates is not subject to review by the Tribunal	the amount paid
5	the person paid a fee referred to in Subdivision C	the person is not entitled to apply to refer the decision to which the application relates to the guidance and appeals panel	the amount paid
6	the person paid a fee referred to in Subdivision C	the decision to which the application relates cannot be referred to the guidance and appeals panel	the amount paid
7	the person paid fees in respect of more than one application	the Principal Registrar makes an order under section 30 that only one fee is payable	the difference between: (a) the total amount of the fees paid; and (b) the fee payable
8	the person paid a fee referred to in subsection 21(1), (2) or (3) in respect of an application	the Principal Registrar certifies that a proceeding in respect of the application has terminated in a manner favourable to the applicant	the difference between: (a) the fee paid; and (b) \$100
9	the person paid a fee referred to in subsection 21(1), (2) or (3) in respect of 2 or more applications under section 30	the Principal Registrar certifies that a proceeding in respect of at least one of those applications has terminated in a manner favourable to the applicant	the difference between: (a) the fee paid; and (b) \$100
10	the person paid a fee referred to in subsection 26(1) in respect of an application	(a) the person is not the original decision-maker; and (b) the President refers the decision to which the application relates to the guidance and appeals panel; and (c) the Principal Registrar certifies that a proceeding of the guidance and appeals panel in respect of the application has terminated in a manner favourable to the person	the difference between: (a) the fee paid; and (b) \$100

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Refund amounts

Item	Fee	Circumstance	Refund amount
11	the person paid a fee referred to in subsection 26(1) in respect of 2 or more applications under section 30	(a) the person is not the original decision-maker for any of the applications; and (b) the President refers at least one of the decisions to which the applications relate to the guidance and appeals panel; and (c) the Principal Registrar certifies that a proceeding of the guidance and appeals panel in respect of at least one of the applications has terminated in a manner favourable to the person	the difference between: (a) the fee paid; and (b) \$100

- (2) For the purposes of items 8 and 9 in subsection (1), a proceeding of the Tribunal (other than a proceeding of the guidance and appeals panel) may be taken to have terminated even if a decision in the proceeding has been, or could be, referred to the guidance and appeals panel.

32 Annual increase in fees

- (1) On each 1 July (an *indexation day*), the dollar amounts mentioned in subsections 21(1), (2) and (3) and 26(1) are each replaced by an amount worked out using the following formula:

$$\frac{\text{Indexation factor for the indexation day}}{\times} \text{Dollar amount in fee provision immediately before the indexation day}$$

- (2) The *indexation factor* for an indexation day is the number worked out using the following formula:

$$\frac{\text{Index number for the reference quarter}}{\text{Index number for the base quarter}}$$

where:

base quarter means the March quarter ending 1 year before the reference quarter ends.

index number, for a quarter, means the All Groups Consumer Price Index number (being the weighted average of the 8 capital cities) published by the Australian Statistician for that quarter.

March quarter means a period of 3 months ending on 31 March.

reference quarter means the March quarter immediately before the indexation day.

- (3) An indexation factor is to be calculated to 3 decimal places (rounding up if the fourth decimal place is 5 or more).
- (4) Amounts worked out under subsection (1) are to be rounded to the nearest whole dollar (rounding 50 cents upwards).
- (5) An indexation factor that is less than 1 is to be increased to 1.
- (6) Calculations under subsection (2):
 - (a) are to be made using only the index numbers published in terms of the most recently published index reference period; and
 - (b) are to be made disregarding index numbers that are published in substitution for previously published index numbers (except where the substituted numbers are published to take account of changes in the index reference period).
- (7) The replacement of an amount under subsection (1) on an indexation day applies in relation to an application made on or after the indexation day.

33 Review by Tribunal—certain fee payment decisions

- (1) A person may apply to the Tribunal for review of any of the following decisions by the Principal Registrar in respect of a prescribed fee:
 - (a) a decision not to make an order under paragraph 28(1)(f);
 - (b) a decision not to order that only one fee is payable under section 30.
- (2) If the Principal Registrar makes a decision of that kind, the Principal Registrar must give to the person liable to pay the fee the following things in writing:
 - (a) the Principal Registrar's decision;
 - (b) a statement of reasons for the Principal Registrar's decision;
 - (c) notice of the right of the person to apply to the Tribunal for review of the decision.
- (3) Each thing given under subsection (2) must be given within 28 days after the day the decision is made.
- (4) A failure by the Principal Registrar to provide the notice mentioned in paragraph (2)(c) does not affect the validity of the decision.