Administrative Appeals Tribunal Amendment Act 2005

No. 38, 2005

An Act to amend the *Administrative Appeals Tribunal Act 1975*, and for other purposes

Note: An electronic version of this Act is available in SCALEplus (http://scaleplus.law.gov.au/html/comact/browse/TOCN htm)

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No. 38, 2005

An Act to amend the *Administrative Appeals Tribunal Act 1975*, and for other purposes

[*Assented to 1 April 2005*]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Administrative Appeals Tribunal Amendment Act 2005*.

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**
Provision(s)	**Commencement**	**Date/Details**
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day on which this Act receives the Royal Assent.	1 April 2005
2. Schedule 1, items 1 to 110	A single day to be fixed by Proclamation. However, if any of the provision(s) do not commence within the period of 6 months beginning on the day on which this Act receives the Royal Assent, they commence on the first day after the end of that period.	
3. Schedule 1, item 111	The day on which this Act receives the Royal Assent.	1 April 2005
4. Schedule 1, items 112 to 180	At the same time as the provision(s) covered by table item 2.	
5. Schedule 1, item 181	The day on which this Act receives the Royal Assent.	1 April 2005
6. Schedule 1, items 182 to 236	At the same time as the provision(s) covered by table item 2.	

Note: This table relates only to the provisions of this Act as originally passed by the Parliament and assented to. It will not be expanded to deal with provisions inserted in this Act after assent.

(2) Column 3 of the table contains additional information that is not part of this Act. Information in this column may be added to or edited in any published version of this Act.

3 Schedule(s)

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule

concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—Amendments

Administrative Appeals Tribunal Act 1975

1 After section 2

Insert:

2A Tribunal's objective

In carrying out its functions, the Tribunal must pursue the objective of providing a mechanism of review that is fair, just, economical, informal and quick.

2 Subsection 3(1) (definition of *ACT enactment*)

Repeal the definition.

3 Subsection 3(1)

Insert:

alternative dispute resolution processes means procedures and services for the resolution of disputes, and includes:

(a) conferencing; and
(b) mediation; and
(c) neutral evaluation; and
(d) case appraisal; and
(e) conciliation; and
(f) procedures or services specified in the regulations;

but does not include:

(g) arbitration; or
(h) court procedures or services.

Paragraphs (b) to (f) of this definition do not limit paragraph (a) of this definition.

4 Subsection 3(1)

Insert:

authorised member means a member who has been authorised by the President under section 59A for the purposes of the provision in which the expression occurs.

5 Subsection 3(1) (definition of *enactment*)

Omit “, subject to section 3A”.

6 Subsection 3(1) (paragraph (b) of the definition of *enactment*)

After “the Northern Territory”, insert “or the Australian Capital Territory”.

7 Subsection 3(1) (definition of *State*)

Omit “except in section 16 or 64,”.

8 Subsection 3(1) (at the end of the definition of *State*)

Add “and the Australian Capital Territory”.

9 Subsection 3(3)

Omit “A reference”, substitute “Unless the contrary intention appears, a reference”.

10 Subsections 3(4) and (5)

Repeal the subsections.

11 Transitional—subsections 3(4) and (5) of the *Administrative Appeals Tribunal Act 1975*

Despite the repeal of subsections 3(4) and (5) of the *Administrative Appeals Tribunal Act 1975* by this Schedule, those subsections continue to apply after the commencement of this item, in relation to a document, statement, notice or other notification posted before the commencement of this item, as if:

(a) that repeal had not happened; and

(b) each reference in those subsections to furnished included a reference to given; and

(c) each reference in those subsections to furnishing included a reference to giving; and

(d) each reference in those subsections to service on included a reference to giving to; and

(e) each reference in those subsections to served included a reference to given.

12 Sections 3A and 3B

Repeal the sections.

13 Before section 5

Insert:

Division 1—Establishment of Tribunal

14 Before section 6

Insert:

Division 2—Members of Tribunal

15 Subsections 7(1) and (1A)

Repeal the subsections, substitute:

President

(1) A person must not be appointed as the President unless he or she is a Judge of the Federal Court of Australia.

Deputy President

(1AA) A person must not be appointed as a Deputy President unless he or she is enrolled as a legal practitioner (however described) of:

(a) the High Court; or

(b) the Supreme Court of a State or Territory;

and has been so enrolled for at least 5 years.

16 Subsection 7(1B)

Omit “shall”, substitute “must”.

Note: The following heading to subsection 7(1B) is inserted “*Senior member*”.

17 Paragraph 7(1B)(a)

Repeal the paragraph, substitute:

(a) is enrolled as a legal practitioner (however described) of:

(i) the High Court; or
(ii) the Supreme Court of a State or Territory;
and has been so enrolled for at least 5 years; or

18 Subsection 7(2)

Omit "shall", substitute "must".

Note: The following heading to subsection 7(2) is inserted "*Non-presidential member*".

19 Paragraph 7(2)(a)

Repeal the paragraph, substitute:

(a) is enrolled as a legal practitioner (however described) of:
(i) the High Court; or
(ii) the Supreme Court of a State or Territory; or

20 Paragraph 7(2)(b)

Omit "government;", substitute "government; or".

21 Subsections 8(1) and (2)

Repeal the subsections.

22 Transitional—section 8 of the *Administrative Appeals Tribunal Act 1975*

(1) This item applies to a member if the member was covered by subsection 8(1) or (2) of the *Administrative Appeals Tribunal Act 1975* immediately before the commencement of this item.

(2) Despite the repeal of subsections 8(1) and (2) of the *Administrative Appeals Tribunal Act 1975* by this Schedule, those subsections continue to apply after the commencement of this item, in relation to the member's appointment, as if those repeals had not happened.

23 After subsection 8(3)

Insert:

(4) A presidential member who is a Judge ceases to hold office as a member if he or she ceases to be a Judge.

24 Subsection 8(5)

Repeal the subsection.

25 Section 8A

Repeal the section.

27 Subsection 10(2)

Repeal the subsection, substitute:

Acting Deputy President

(2) If a Deputy President is, or is expected to be:

(a) in the case of a full-time Deputy President—absent from duty or from Australia; or

(b) in the case of a part-time Deputy President—unavailable to perform the duties of his or her office;

the Governor-General may appoint a person qualified to be appointed as a Deputy President:

(c) in a case to which paragraph (a) applies—to act as a full-time Deputy President during the absence; or

(d) in a case to which paragraph (b) applies—to act as a part-time Deputy President during the period of unavailability.

Note 1A: The following heading to subsection 10(1) is inserted "*Acting President*".

Note 1: The following heading to subsection 10(3) is inserted "*Acting non-presidential member*".

Note 2: The following heading to subsection 10(5) is inserted "*Extension of acting appointment*".

28 Transitional—subsection 10(2) of the *Administrative Appeals Tribunal Act 1975*

(1) This item applies to an appointment if:

(a) the appointment was made under subsection 10(2) of the *Administrative Appeals Tribunal Act 1975*; and

(b) the appointment was in force immediately before the commencement of this item.

(2) The appointment has effect, after the commencement of this item, as if it had been made under subsection 10(2) of the *Administrative Appeals Tribunal Act 1975* as amended by this Schedule.

29 Subsection 10(9)

Repeal the subsection, substitute:

Resignation

(9) A person who is acting as:
  (a) President; or
  (b) a Deputy President; or
  (c) a non-presidential member;

may resign his or her acting appointment by giving the Governor-General a written resignation. 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.

Note 1: The following heading to subsection 10(7) is inserted "*Terms and conditions*".

Note 2: The following heading to subsection 10(10) is inserted "*Exercise of powers*".

Note 3: The following heading to subsection 10(11) is inserted "*Validity of decisions etc.*".

30 Subsection 13(8)

Repeal the subsection.

Note 1: The following heading to subsection 13(1) is inserted "*Removal on grounds of proved misbehaviour or incapacity*".

Note 2: The following heading to subsection 13(2) is inserted "*Suspension on grounds of misbehaviour or incapacity*".

Note 3: The following heading to subsection 13(7) is inserted "*Removal on ground of bankruptcy*".

Note 4: The following heading to subsection 13(9) is inserted "*Retirement on ground of incapacity*".

Note 5: The following heading to subsection 13(10) is inserted "*No removal or suspension except under this section*".

Note 6: The following heading to subsection 13(11) is inserted "*Judge*".

Note 7: The following heading to subsection 13(12) is inserted "*CSS*".

Note 8: The following heading to subsection 13(13) is inserted "*PSS*".

31 Transitional—subsection 13(8) of the *Administrative Appeals Tribunal Act 1975*

Despite the repeal of subsection 13(8) of the *Administrative Appeals Tribunal Act 1975* by this Schedule, that subsection continues to apply after the commencement of this item, in relation to a person to whom the *Judges' Pensions Act 1968* applies, as if that repeal had not happened.

32 Section 15

Repeal the section, substitute:

15 Resignation

(1) A member may resign his or her 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.

33 Section 16

Repeal the section.

34 Transitional—section 16 of the *Administrative Appeals Tribunal Act 1975*

(1) This item applies if a person was appointed as a presidential member (within the meaning of section 16 of the *Administrative Appeals Tribunal Act 1975*) before the commencement of this item.

(2) Despite the repeal of section 16 of the *Administrative Appeals Tribunal Act 1975* by this Schedule, that section continues to apply after the commencement of this item, in relation to the person, as if that repeal had not happened.

35 Before section 19

Insert:

Division 1—Divisions of the Tribunal

36 Subsection 19(3)

Repeal the subsection, substitute:

Assignment of non-presidential member to Division or Divisions

(3) The Minister must assign a non-presidential member to a particular Division or Divisions of the Tribunal and may, with the consent of the member but not otherwise, vary the assignment.

(3AA) Before the Minister exercises a power conferred by subsection (3), the Minister must consult the President.

Note 1: The heading to section 19 is replaced by the heading "**Divisions of the Tribunal**".

Note 2: The following heading to subsection 19(2) is inserted "*Divisions of the Tribunal*".

Note 3: The following heading to subsection 19(3A) is inserted "*Taxation Appeals Division*".

Note 4: The following heading to subsection 19(3B) is inserted "*Security Appeals Division*".

Note 5: The following heading to subsection 19(4) is inserted "*Exercise of powers*".

Note 6: The following heading to subsection 19(5) is inserted "*Validity*".

Note 7: The following heading to subsection 19(6) is inserted "*Certain powers to be exercised in Security Appeals Division*".

37 Transitional—subsection 19(3) of the *Administrative Appeals Tribunal Act 1975*

(1) This item applies if the assignment of a non-presidential member to a particular Division or Divisions of the Tribunal was in force immediately before the commencement of this item.

(2) The *Administrative Appeals Tribunal Act 1975* has effect, after the commencement of this item, as if the Minister had, immediately after that commencement, assigned the member to that Division or those Divisions under subsection 19(3) of that Act.

(3) To avoid doubt, the Minister is not bound by the member's instrument of appointment in exercising a power conferred by subsection 19(3) of the *Administrative Appeals Tribunal Act 1975*.

38 Before section 20

Insert:

Division 2—Arrangement of business of the Tribunal

39 Subsection 20(1)

Omit "orderly and expeditious", substitute "expeditious and efficient".

40 Subsections 20(1A), (2) and (3)

Repeal the subsections, substitute:

President may give directions

(2) The President may give directions as to:
  (a) the operations of the Tribunal generally; and
  (b) the operations of the Tribunal at a particular place; and
  (c) the procedure of the Tribunal generally; and
  (d) the procedure of the Tribunal at a particular place; and
  (e) the conduct of reviews by the Tribunal.

(3) Subsection (2) does not limit subsection (1).

(4) The President may give directions as to:
  (a) the arrangement of the business of the Tribunal; and
  (b) the places at which the Tribunal may sit.

(5) Subsection (4) does not limit subsection (1).

(6) The President may at any time vary or revoke a direction under this section.

41 Transitional—subsection 20(2) of the *Administrative Appeals Tribunal Act 1975*

(1) This item applies to a direction if:
  (a) the direction was given for the purposes of paragraph 20(1A)(d) or (e) of the *Administrative Appeals Tribunal Act 1975*; and
  (b) the direction was in force immediately before the commencement of this item.

(2) The direction has effect, after the commencement of this item, as if it had been given under subsection 20(2) of the *Administrative Appeals Tribunal Act 1975* as amended by this Schedule.

42 Transitional—subsection 20(4) of the *Administrative Appeals Tribunal Act 1975*

(1) This item applies to a direction if:
  (a) the direction was given for the purposes of paragraph 20(1A)(a) or (c) of the *Administrative Appeals Tribunal Act 1975*; and

(b) the direction was in force immediately before the commencement of this item.

(2) The direction has effect, after the commencement of this item, as if it had been given under subsection 20(4) of the *Administrative Appeals Tribunal Act 1975* as amended by this Schedule.

43 After section 20

Insert:

20A Places of sitting

Sittings of the Tribunal are to be held from time to time as required at the places at which the Registries of the Tribunal are established, but the Tribunal may sit at any place in Australia or in an external Territory.

44 Before section 21

Insert:

Division 3—Constitution and reconstitution of the Tribunal

20B President may give directions as to constitution of Tribunal

(1) The President may give directions as to the persons who are to constitute the Tribunal for the purposes of a particular proceeding.

Note: See also section 23B.

(2) If the President gives a direction as to the persons who are to constitute the Tribunal for the purposes of a particular proceeding, he or she may at any time after the giving of the direction and before the commencement of the hearing of the proceeding:

(a) revoke the direction; and

(b) give a further direction under subsection (1) as to the persons who are to constitute the Tribunal for the purposes of the proceeding.

45 Transitional—section 20B of the *Administrative Appeals Tribunal Act 1975*

(1) This item applies to a direction if:

(a) the direction was given for the purposes of paragraph 20(1A)(b) or subsection 20(2) of the *Administrative Appeals Tribunal Act 1975*; and

(b) the direction was in force immediately before the commencement of this item.

(2) The direction has effect, after the commencement of this item, as if it had been given under subsection 20B(1) of the *Administrative Appeals Tribunal Act 1975* as amended by this Schedule.

46 Subsection 21(1)

Omit “, (1AB)”.

Note 1: The following heading to subsection 21(1AAA) is inserted “*Scope*”.

Note 2: The following heading to subsection 21(1) is inserted “*Constitution of Tribunal*”.

47 Subsection 21(1AB)

Repeal the subsection.

48 Subsection 21(1A)

Omit “34A(4)”, substitute “34D(1)”.

49 Subsection 21(1A)

Omit “42A”, substitute “subsection 41(2) or (3), section 42A”.

50 Paragraph 21(1A)(a)

Repeal the paragraph, substitute:

(a) where the hearing of the relevant proceeding has not commenced—by a presidential member or an authorised member; or

51 Transitional—paragraph 21(1A)(a) of the *Administrative Appeals Tribunal Act 1975*

The amendment made by item 50 does not apply to a proceeding if, immediately before the commencement of this item, the Tribunal was constituted for the purposes of the proceeding by one or more members.

52 Subsection 21(2)

Omit “shall” (first occurring), substitute “should”.

53 Subsection 21(2)

Omit “shall” (second occurring), substitute “may, if the President directs under section 20B,”.

54 Transitional—subsection 21(2) of the *Administrative Appeals Tribunal Act 1975*

(1) This item applies to a proceeding before the Tribunal if, immediately before the commencement of this item, the Tribunal was constituted by a particular member, for the purposes of the proceeding, in accordance with subsection 21(2) of the *Administrative Appeals Tribunal Act 1975*.

(2) The *Administrative Appeals Tribunal Act 1975* has effect, after the commencement of this item, as if the Tribunal had been constituted by that member, for the purposes of the proceeding, in accordance with a direction given under section 20B of that Act.

(3) Subitem (2) does not prevent the reconstitution of the Tribunal.

55 Subsections 21(3) and (4)

Repeal the subsections.

Note 1: The following heading to subsection 21AA(1) is inserted “*Scope*”.

Note 2: The following heading to subsection 21AA(2) is inserted “*Constitution of Security Appeals Division*”.

Note 3: The following heading to subsection 21AA(3) is inserted “*When presidential member must not participate*”.

Note 4: The following heading to subsection 21AA(4) is inserted “*Presidential member to preside*”.

Note 5: The following heading to subsection 21AA(5) is inserted “*Qualifications*”.

Note 6: The following heading to subsection 21AA(6) is inserted “*What happens if member ceases to be available*”.

56 Transitional—subsections 21(3) and (4) of the *Administrative Appeals Tribunal Act 1975*

The amendment made by item 55 does not apply to a proceeding if, immediately before the commencement of this item, the Tribunal was constituted for the purposes of the proceeding by one or more members.

57 Subsection 21A(2)

Omit “furnish him or her with”, substitute “give him or her”.

Note 1: The heading to section 21A is altered by omitting "**in certain cases**" and substituting "**at the request of a party**".

Note 2: The following heading to subsection 21A(1AA) is inserted "*Scope*".

Note 3: The following heading to subsection 21A(1) is inserted "*Party may request reconstitution of Tribunal*".

58 Subsection 21A(3)

Omit "varying the constitution of the Tribunal for the purposes of the proceeding.", substitute:

that the Tribunal as constituted for the purposes of the proceeding be reconstituted by:

(a) adding one or more members; or

(b) removing one or more members; or

(c) substituting one or more other members;

(or any combination of these).

59 Transitional—subsection 21A(3) of the *Administrative Appeals Tribunal Act 1975*

The amendment of subsection 21A(3) of the *Administrative Appeals Tribunal Act 1975* made by this Schedule does not affect the continuity of a direction that was given under that subsection before the commencement of this item.

60 At the end of subsection 21A(4)

Add:

Note: Section 23D provides that the reconstituted Tribunal may have regard to any record of the proceeding before the Tribunal as previously constituted.

61 Subsection 21A(6)

Repeal the subsection.

62 Subsection 22(2)

Omit "20(2) or section 21A varying the constitution of", substitute "20B(2), section 21A, subsection 23(3) or (4) or section 23A reconstituting".

Note 1: The following heading to subsection 22(1AA) is inserted "*Scope*".

Note 2: The following heading to subsection 22(1) is inserted "*Multiple member Tribunal—who is to preside*".

Note 3: The following heading to subsection 22(2) is inserted "*Reconstituted Tribunal—who is to preside*".

63 Subsection 22(2)

Omit "or in a case to which paragraph 23(1)(a) applies".

64 Subsection 22(2)

Omit "or as constituted by the remaining member or members, as the case may be".

65 Transitional—subsection 22(2) of the *Administrative Appeals Tribunal Act 1975*

The amendments of subsection 22(2) of the *Administrative Appeals Tribunal Act 1975* made by this Schedule do not affect the continuity of a direction that was given under that subsection before the commencement of this item.

66 Sections 23, 23A and 23B

Repeal the sections, substitute:

23 Reconstitution of Tribunal if member is unavailable

Scope

(1) This section does not apply in relation to a proceeding in the Security Appeals Division.

(2) This section applies if:
  (a) the hearing of a proceeding has commenced or is completed; and
  (b) a member (the ***unavailable member***) who constitutes, or is one of the members who constitute, the Tribunal for the purposes of the proceeding:
    (i) stops being a member; or
    (ii) for any reason, is not available for the purposes of the proceeding; or
    (iii) is directed by the President not to continue to take part in the proceeding.

Single member Tribunal

(3) If the unavailable member constitutes the Tribunal, the President must direct another member or members to constitute the Tribunal for the purposes of completing the proceeding.

Multiple member Tribunal

(4) If the unavailable member is one of the members who constitute the Tribunal, the President must:
   (a) direct the remaining member or members to constitute the Tribunal for the purposes of completing the proceeding; or
   (b) direct a member or members to constitute the Tribunal for the purposes of completing the proceeding.

Note: See also section 23B.

(5) A member who is the subject of a direction under paragraph (4)(b) may be the remaining member or one of the remaining members.

Member who stops being a member and becomes a member again

(6) For the purposes of this section, a member who:
   (a) stops being a member; and
   (b) at a later time becomes a member again;

is taken, from that later time, to be another member.

Reconstituted Tribunal must continue proceeding

(7) The Tribunal as reconstituted in accordance with a direction under subsection (3) or (4) must continue the proceeding.

Note: Section 23D provides that the reconstituted Tribunal may have regard to any record of the proceeding before the Tribunal as previously constituted.

Limitations on President's powers to give directions

(8) The President must not give a direction under this section about the constitution of the Tribunal if the Tribunal has made a decision under subsection 43(1).

(9) The President must not give a direction under subparagraph (2)(b)(iii) unless:

(a) the President is satisfied that the direction is in the interests of justice; and

(b) the President has consulted the member concerned.

(10) The President must not give a direction under subsection (3) or (4) unless the President has consulted the parties to the proceeding.

(11) The President must not give a direction under paragraph (4)(b) that results in the remaining member, or any of the remaining members, not constituting the Tribunal for the purposes of completing the proceeding unless:

(a) the President is satisfied that the direction is in the interests of justice; and

(b) the President has consulted the remaining member concerned.

(12) In determining whether a direction covered by subsection (9) or (11) is in the interests of justice, the President must have regard to the objective of proceedings that are conducted in a manner that is fair, just, economical, informal and quick.

23A Reconstitution of Tribunal to achieve expeditious and efficient conduct of proceeding

Scope

(1) This section does not apply in relation to a proceeding in the Security Appeals Division.

Reconstitution of Tribunal to achieve expeditious and efficient conduct of proceeding

(2) If the hearing of a proceeding has commenced or is completed, the President may direct that the Tribunal as constituted for the purposes of a particular proceeding be reconstituted by:

(a) adding one or more members; or

(b) removing one or more members; or

(c) substituting one or more other members;

(or any combination of these) if the President thinks that the reconstitution is in the interests of achieving the expeditious and efficient conduct of the proceeding.

Note: See also section 23B.

Reconstituted Tribunal must continue proceeding

(3) The Tribunal as constituted in accordance with a direction under subsection (2) must continue the proceeding.

Note: Section 23D provides that the reconstituted Tribunal may have regard to any record of the proceeding before the Tribunal as previously constituted.

Limitations on President's power to give direction

(4) The President must not give a direction under this section about the constitution of the Tribunal if the Tribunal has made a decision under subsection 43(1).

(5) The President must not give a direction under this section unless the President has consulted the parties to the proceeding.

23B Matters to which the President must have regard in constituting the Tribunal

In giving a direction under section 20B, 23 or 23A as to the persons who are to constitute the Tribunal for the purposes of a particular proceeding, the President must have regard to:

(a) the degree of public importance or complexity of the matters to which that proceeding relates; and

(b) the status of the position or office held by the person who made the decision that is to be reviewed by the Tribunal; and

(c) the degree to which the matters to which that proceeding relates concern the security, defence or international relations of Australia; and

(d) the degree of financial importance of the matters to which that proceeding relates; and

(e) if that proceeding relates to the review of a decision made in the exercise of powers conferred by a particular enactment—the purpose or object underlying the enactment (whether or not that purpose or object is expressly stated); and

(f) the degree to which it is desirable for any or all of the persons who are to constitute the Tribunal to have knowledge, expertise or experience in relation to the matters to which that proceeding relates; and

(g) any notice given under subsection 21(2) by the parties to that proceeding; and

(h) such other matters (if any) as the President considers relevant.

23C Limitation on composition of reconstituted Tribunal

Scope

(1) This section does not apply in relation to a proceeding in the Security Appeals Division.

Limitation on composition of reconstituted Tribunal

(2) A direction relating to the reconstitution of the Tribunal must not be given unless the member or members who constitute the reconstituted Tribunal could have constituted the Tribunal for the purposes of the proceeding if the proceeding had commenced immediately before the direction was given.

23D Tribunal may have regard to record of previous proceeding

Scope

(1) This section does not apply in relation to a proceeding in the Security Appeals Division.

Tribunal may have regard to record of previous proceeding

(2) If the Tribunal is reconstituted, the Tribunal may, for the purposes of the proceeding, have regard to any record of the proceeding before the Tribunal as previously constituted (including a record of any evidence taken in the proceeding).

(3) Subsection (2) does not apply in a case where the Tribunal is reconstituted following an order under subsection 44(4) remitting a case to be heard and decided again.

Note 1: Subsection 44AA(9) applies subsection 44(4) to appeals transferred to the Federal Magistrates Court.

Note 2: Paragraph 44(6)(b) deals with a proceeding reheard by the Tribunal following an appeal.

23E Constitution of Tribunal for review of amount taxed—general rule

Scope

(1) This section applies to a proceeding (the ***taxing review proceeding***) by way of an application to the Tribunal under subsection 69A(2) for review of a decision by the Registrar, a District Registrar or a Deputy Registrar taxing any costs ordered by the Tribunal to be paid by a party to another proceeding (the ***substantive proceeding***).

Constitution of Tribunal for taxing review proceeding

(2) For the purposes of the taxing review proceeding, the Tribunal is to be constituted by:
   (a) if the Tribunal was constituted for the purposes of the substantive proceeding by a single member—that member; or
   (b) if the Tribunal was constituted for the purposes of the substantive proceeding by 2 or 3 members—the member who presided for the purposes of the substantive proceeding.

(3) This section has effect subject to section 23F.

23F Constitution of Tribunal for review of amount taxed—member unavailable

Scope

(1) This section applies to a proceeding (the ***taxing review proceeding***) by way of an application to the Tribunal under subsection 69A(2) for review of a decision by the Registrar, a District Registrar or a Deputy Registrar taxing any costs ordered by the Tribunal to be paid by a party to another proceeding (the ***substantive proceeding***) if:
   (a) in a case where the Tribunal was constituted for the purposes of the substantive proceeding by a single member—that member (the ***unavailable member***):
      (i) has stopped being a member; or
      (ii) for any reason, is not available to take part in the taxing review proceeding; or

(iii) is directed by the President not to take part in the taxing review proceeding; or

(b) in a case where the Tribunal was constituted for the purposes of the substantive proceeding by 2 or 3 members—the member (the ***unavailable member***) who presided at the substantive proceeding:

(i) has stopped being a member; or

(ii) for any reason, is not available to take part in the taxing review proceeding; or

(iii) is directed by the President not to take part in the taxing review proceeding.

Single member Tribunal

(2) If the unavailable member constituted the Tribunal for the purposes of the substantive proceeding, the President must direct another member to constitute the Tribunal for the purposes of the taxing review proceeding.

Multiple member Tribunal

(3) If the unavailable member is one of the members who constituted the Tribunal for the purposes of the substantive proceeding, the President must:

(a) direct the remaining member, or one of the remaining members, to constitute the Tribunal for the purposes of the taxing review proceeding; or

(b) direct another member to constitute the Tribunal for the purposes of the taxing review proceeding.

Member who stops being a member and becomes a member again

(4) For the purposes of this section, a member who:

(a) stops being a member; and

(b) at a later time becomes a member again;

is taken, from that later time, to be another member.

Limitations on President's powers to give directions

(5) The President must not give a direction under subparagraph (1)(a)(iii) or (b)(iii) unless the President is satisfied that the direction is in the interests of justice.

(6) The President must not give a direction under paragraph (3)(b) that results in the remaining member, or any of the remaining members, not constituting the Tribunal for the purposes of the taxing review proceeding unless the President is satisfied that the direction is in the interests of justice.

67 Transitional—paragraph 23(1)(a) of the *Administrative Appeals Tribunal Act 1975*

(1) This item applies to a proceeding before the Tribunal if, immediately before the commencement of this item, the Tribunal was constituted by a particular member or members, for the purposes of the proceeding, in accordance with paragraph 23(1)(a) of the *Administrative Appeals Tribunal Act 1975*.

(2) The *Administrative Appeals Tribunal Act 1975* has effect, after the commencement of this item, as if the Tribunal had been constituted by that member or those members, for the purposes of the proceeding, in accordance with a direction given under subsection 20B(1) of that Act.

(3) Subitem (2) does not prevent the reconstitution of the Tribunal.

68 Transitional—section 23D of the *Administrative Appeals Tribunal Act 1975*

Section 23D of the *Administrative Appeals Tribunal Act 1975* applies in relation to a reconstitution of the Tribunal before or after the commencement of this item.

69 Application of amendment—sections 23E and 23F of the *Administrative Appeals Tribunal Act 1975*

Sections 23E and 23F of the *Administrative Appeals Tribunal Act 1975* do not apply to a taxing review proceeding if, immediately before the commencement of this item, the Tribunal was constituted for the purposes of the taxing review proceeding by one or more members.

70 Section 24

Repeal the section.

71 Section 24H

Repeal the section, substitute:

24H Resignation

(1) The Registrar may resign his or her 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.

72 Before section 25

Insert:

Division 1—Applications for review of decisions

73 After subsection 25(4)

Insert:

Tribunal may determine scope of review

(4A) The Tribunal may determine the scope of the review of a decision by limiting the questions of fact, the evidence and the issues that it considers.

Note 1: The following heading to subsection 25(1) is inserted "*Enactment may provide for applications for review of decisions*".

Note 2: The following heading to subsection 25(3A) is inserted "*Delegations, acting appointments and authorisations*".

Note 3: The following heading to subsection 25(4) is inserted "*Tribunal's power to review decisions*".

Note 4: The following heading to subsection 25(5) is inserted "*Failure of decision-maker to meet deadline*".

74 Subsections 25(6) and (6A)

Repeal the subsections, substitute:

Enactment may add to, exclude or modify operation of certain provisions

(6) If an enactment provides for applications to the Tribunal:

(a) that enactment may also include provisions adding to, excluding or modifying the operation of any of the provisions of sections 27, 29, 32, 33 and 35 or of subsection 41(1) or 43(1) or (2) in relation to such applications; and

(b) those sections and subsections have effect subject to any provisions so included.

75 Paragraph 25(7)(e)

Omit “, or another member authorized by the President,”, substitute “or an authorised member”.

Note: The following heading to subsection 25(7) is inserted “*What happens if decision-maker ceases to hold office etc.*”.

76 Subsections 25(8), (9), (10), (11) and (12)

Repeal the subsections.

77 Subsection 28(1)

Omit “furnish” (wherever occurring), substitute “give”.

Note 1: The following heading to subsection 28(1) is inserted “*Request for statement of reasons*”.

Note 2: The following heading to subsection 28(1AAA) is inserted “*Exception—Security Appeals Division*”.

78 Subsections 28(1AA) and (1AB)

Omit “furnished with”, substitute “given”.

Note: The following heading to subsection 28(1AA) is inserted “*What happens if decision-maker contests applicant’s entitlement to statement of reasons*”.

79 Subsection 28(1AB)

Omit “furnish”, substitute “give”.

80 Subsection 28(1AC)

Omit “furnished with”, substitute “given”.

81 Subsection 28(1A)

Omit “furnish”, substitute “give”.

Note: The following heading to subsection 28(1A) is inserted “*When decision-maker may refuse to give statement of reasons*”.

82 Subsection 28(1A)

Omit “furnished” (wherever occurring), substitute “given”.

83 Subsection 28(2)

Omit “the following provisions of this section have effect”, substitute “subsections (3) and (3A) have effect”.

Note: The following heading to subsection 28(2) is inserted “*Public interest certificate*”.

84 Paragraph 28(3)(b)

Omit “furnish”, substitute “give”.

85 Subparagraph 28(3A)(a)(ii)

Omit “furnished” (wherever occurring), substitute “given”.

86 Subparagraph 28(3A)(a)(ii)

Omit “furnishing”, substitute “giving”.

87 Subsections 28(4) and (5)

Omit “furnished” (wherever occurring), substitute “given”.

Note 1: The following heading to subsection 28(4) is inserted “*When applicant not entitled to request statement of reasons*”.

Note 2: The following heading to subsection 28(5) is inserted “*Inadequate statement of reasons*”.

88 Subsection 28(5)

Omit “furnish”, substitute “give”.

89 Paragraph 29(1)(d)

Omit “furnished”, substitute “given”.

90 At the end of subsection 29(1)

Add:

Note: Paragraph 33(1)(c) provides that the Tribunal is not bound by the rules of evidence but may inform itself on any matter in such manner as it thinks appropriate.

91 Subsection 29(1A)

Omit “furnish”, substitute “provide”.

Note: The following heading to subsection 29(1A) is inserted “*Address at which documents may be given*”.

92 Subsection 29(1A)

Omit “served” (wherever occurring), substitute “given”.

93 Subsection 29(1A)

Omit “for service”, substitute “at which such documents may be given”.

94 Subsection 29(1A)

Omit “furnished”, substitute “provided”.

95 After subsection 29(1A)

Insert:

Tribunal may request amendment of insufficient statement

(1B) If:

(a) an application contains a statement under paragraph (1)(c); and

(b) the Tribunal is of the opinion that the statement is not sufficient to enable the Tribunal to readily identify the respects in which the applicant believes that the decision is not the correct or preferable decision;

the Tribunal may, by notice given to the applicant, request the applicant to amend the statement, within the period specified in the notice, so that the statement is sufficient to enable the Tribunal to readily identify the respects in which the applicant believes that the decision is not the correct or preferable decision.

96 Subsection 29(2)

Omit “furnished” (wherever occurring), substitute “given”.

Note: The following heading to subsection 29(2) is inserted “*Prescribed time for making applications—general*”.

97 Subparagraph 29(2)(b)(ii)

Omit “furnish”, substitute “give”.

98 Subsection 29(3)

Omit “furnished” (wherever occurring), substitute “given”.

Note 1: The following heading to subsection 29(3) is inserted “*Prescribed time for making applications—decision-maker’s failure to meet deadline*”.

Note 2: The following heading to subsection 29(4) is inserted “*What happens if there is no prescribed time for making applications*”.

99 At the end of subsection 29(7)

Add “if the Tribunal is satisfied that it is reasonable in all the circumstances to do so”.

Note: The following heading to subsection 29(7) is inserted “*Tribunal may extend time for making application*”.

100 Transitional—subsection 29(7) of the *Administrative Appeals Tribunal Act 1975*

The amendment of subsection 29(7) of the *Administrative Appeals Tribunal Act 1975* made by this Schedule does not affect an extension of time granted under that subsection before the commencement of this item.

101 Subsection 29(9)

Omit “serve notice of the application on”, substitute “give notice of the application to”.

102 Subsection 29(10)

Omit “on whom a notice is served”, substitute “to whom a notice is given”.

103 Subsection 29(11)

Omit “served on”, substitute “given to”.

Note: The following heading to subsection 29(11) is inserted “*Decision-maker to be notified of application for review*”.

104 Before section 30

Insert:

Division 2—Parties and procedure

105 At the end of subsection 30(1)

Add:

Note: See also subsections 36(3A) and 36A(2A) (Attorney-General deemed to be a party to certain proceedings), and subsections 36B(4) and 36C(3) (State Attorney-General deemed to be a party to certain proceedings).

Note 1: The following heading to subsection 30(1AA) is inserted “*Scope*”.

Note 2: The following heading to subsection 30(1) is inserted “*Parties*”.

Note 3: The following heading to subsection 30(1A) is inserted “*Person whose interests are affected may apply to be a party*”.

Note 4: The following heading to subsection 30(2) is inserted "*Official name*".

106 After subsection 33(1)

Insert:

Decision-maker must assist Tribunal

(1AA) In a proceeding before the Tribunal for a review of a decision, the person who made the decision must use his or her best endeavours to assist the Tribunal to make its decision in relation to the proceeding.

107 Subsection 33(1A)

Repeal the subsection, substitute:

Directions hearing

(1A) The President or an authorised member may hold a directions hearing in relation to a proceeding.

108 Paragraph 33(2)(a)

Omit "or by a member authorized by the President to give directions for the purposes of this paragraph", substitute ", by an authorised member or by an authorised Conference Registrar".

Note 1: The following heading to subsection 33(2) is inserted "*Who may give directions*".

Note 2: The following heading to subsection 33(2A) is inserted "*Types of directions*".

109 Subsection 33(3)

After "member", insert "or Conference Registrar".

Note: The following heading to subsection 33(3) is inserted "*Directions may be varied or revoked*".

110 Subsections 33(4) and (5)

Repeal the subsections, substitute:

Authorised Conference Registrar

(4) The President may authorise a particular Conference Registrar to be an authorised Conference Registrar for the purposes of paragraph (2)(a).

(5) An authorisation under subsection (4) may be:
  (a) general; or
  (b) limited to:
    (i) a particular reviewable decision or particular reviewable decisions; or
    (ii) reviewable decisions included in a particular class or classes of reviewable decisions; or
    (iii) a particular proceeding or particular proceedings; or
    (iv) proceedings included in a particular class or classes of proceedings.

(6) The President may at any time vary or revoke an authorisation under subsection (4).

(7) In this section:

authorised Conference Registrar means a Conference Registrar authorised under subsection (4).

reviewable decision means a decision in respect of which an application to the Tribunal for review has been, or may be, made.

111 Transitional—subsection 33(4) of the *Administrative Appeals Tribunal Act 1975*

(1) This item applies to the power to make an authorisation under subsection 33(4) of the *Administrative Appeals Tribunal Act 1975* as amended by this Schedule.

(2) For the purposes of section 4 of the *Acts Interpretation Act 1901*, that power is taken to be a power to make an instrument of an administrative character.

112 Sections 34 and 34A

Repeal the sections, substitute:

Division 3—Alternative dispute resolution processes

34 Scope of Division

This Division does not apply to a proceeding in the Security Appeals Division to which section 39A applies.

34A Referral of proceeding for alternative dispute resolution process

(1) If an application is made to the Tribunal for review of a decision, the President may:

(a) direct the holding of a conference of the parties or their representatives in relation to the proceeding, or any part of the proceeding or any matter arising out of the proceeding; or

(b) direct that the proceeding, or any part of the proceeding or any matter arising out of the proceeding, be referred for a particular alternative dispute resolution process (other than conferencing).

(2) The President may also direct the holding of conferences of the parties or their representatives in the case of applications made to the Tribunal for review of decisions of a kind specified in the direction.

(3) The President may also direct that proceedings be referred for a particular alternative dispute resolution process (other than conferencing) in the case of applications made to the Tribunal for review of decisions of a kind specified in the direction.

(4) A direction may be given under a particular paragraph of subsection (1):

(a) whether or not a direction has previously been given under the same or the other paragraph of that subsection in relation to the proceeding; and

(b) whether or not a direction under subsection (2) or (3) has applied.

(5) If a direction under this section is applicable to:

(a) a proceeding; or

(b) a part of a proceeding; or

(c) a matter arising out of a proceeding;

each party must act in good faith in relation to the conduct of the alternative dispute resolution process concerned.

34B Alternative dispute resolution processes—proceeding before the Small Taxation Claims Tribunal

Scope

(1) This section applies to a proceeding before the Small Taxation Claims Tribunal.

Statement about alternative dispute resolution processes to be given to applicant

(2) The Registrar, a District Registrar or a Deputy Registrar must give to the applicant:

(a) if the proceeding relates to an application to which subparagraph 24AC(1)(a)(i) or paragraph 24AC(1)(aa) or (b) applies—when the application is made; or

(b) if the proceeding relates to an application to which subparagraph 24AC(1)(a)(ii) applies—when the notification referred to in that subparagraph is given;

a statement setting out the procedures to be followed by the Tribunal and the alternative dispute resolution processes that are available under this Act.

Referral of matter for alternative dispute resolution process

(3) If the Tribunal considers at any time that it may assist in the resolution of the dispute between the parties if:

(a) the proceeding; or

(b) any part of the proceeding; or

(c) any matter arising out of the proceeding;

were dealt with by an alternative dispute resolution process, the Tribunal must:

(d) direct the holding of a conference of the parties or their representatives in relation to the proceeding, part of the proceeding, or matter, as the case may be; or

(e) direct that the proceeding, part of the proceeding, or matter, as the case may be, be referred for a particular alternative dispute resolution process (other than conferencing).

(4) If a direction under this section is applicable to:

(a) a proceeding; or

(b) a part of a proceeding; or

(c) a matter arising out of a proceeding;

each party must act in good faith in relation to the conduct of the alternative dispute resolution process concerned.

34C Directions by President

(1) The President may give directions about alternative dispute resolution processes.

(2) Directions under subsection (1) may relate to:

(a) the procedure to be followed in the conduct of an alternative dispute resolution process; and

(b) the person who is to conduct an alternative dispute resolution process; and

(c) the procedure to be followed when an alternative dispute resolution process ends.

(3) Subsection (2) does not limit subsection (1).

(4) The President may at any time vary or revoke a direction under subsection (1).

(5) A person is not entitled to conduct an alternative dispute resolution process unless the person is:

(a) a member; or

(b) an officer of the Tribunal; or

(c) a person engaged under section 34H.

34D Agreement about the terms of a decision etc.

(1) If:

(a) in the course of an alternative dispute resolution process under this Division, agreement is reached between the parties or their representatives as to the terms of a decision of the Tribunal:

(i) in the proceeding; or

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

(iii) in relation to the 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 lodged with the Tribunal; and

(c) 7 days pass after lodgment, and none of the parties has notified the Tribunal in writing that he or she 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, if it appears to it to be appropriate to do so, act in accordance with whichever of subsection (2) or (3) is relevant in the particular case.

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

(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 at the hearing of the proceeding with the part of the proceeding or the matter arising out of the proceeding, as the case may be, to which the agreement relates.

34E Evidence not admissible

(1) Evidence of anything said, or any act done, at an alternative dispute resolution process under this Division is not admissible:

(a) in any court; or

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

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

Exceptions

(2) Subsection (1) does not apply so as to prevent the admission, at the hearing of a proceeding before the Tribunal, of particular evidence if the parties agree to the evidence being admissible at the hearing.

(3) Subsection (1) does not apply so as to prevent the admission, at the hearing of a proceeding before the Tribunal, of:

(a) a case appraisal report prepared by a person conducting an alternative dispute resolution process under this Division; or

(b) a neutral evaluation report prepared by a person conducting an alternative dispute resolution process under this Division;

unless a party to the proceeding notifies the Tribunal before the hearing that he or she objects to the report being admissible at the hearing.

34F Eligibility of person conducting alternative dispute resolution process to sit as a member of the Tribunal

If:

(a) an alternative dispute resolution process under this Division in relation to a proceeding is conducted by a member of the Tribunal; and

(b) a party to the proceeding notifies the Tribunal before the hearing that he or she objects to that member participating in the hearing;

that member is not entitled to be a member of the Tribunal as constituted for the purposes of the proceeding.

34G Participation by telephone etc.

The person conducting an alternative dispute resolution process under this Division may allow a person to participate by:

(a) telephone; or

(b) closed-circuit television; or

(c) any other means of communication.

34H Engagement of persons to conduct alternative dispute resolution processes

(1) The Registrar may, on behalf of the Commonwealth, engage persons to conduct one or more kinds of alternative dispute resolution processes under this Division.

(2) The Registrar must not engage a person under subsection (1) unless the Registrar is satisfied, having regard to the person's qualifications and experience, that the person is a suitable person to

conduct the relevant kind or kinds of alternative dispute resolution processes under this Division.

113 Transitional—paragraph 34A(1)(a) of the *Administrative Appeals Tribunal Act 1975*

(1) This item applies to a direction if:

(a) the direction was given under subsection 34(1) of the *Administrative Appeals Tribunal Act 1975*; and

(b) the direction was in force immediately before the commencement of this item.

(2) The direction, except to the extent to which it identifies the person who is to preside over a conference, has effect, after the commencement of this item, as if it had been given under paragraph 34A(1)(a) of the *Administrative Appeals Tribunal Act 1975* as amended by this Schedule.

114 Transitional—paragraph 34A(1)(b) of the *Administrative Appeals Tribunal Act 1975*

(1) This item applies to a direction if:

(a) the direction was given under subsection 34A(1) of the *Administrative Appeals Tribunal Act 1975*; and

(b) the direction was in force immediately before the commencement of this item.

(2) The direction, except to the extent to which it identifies the person who is to be the mediator, has effect, after the commencement of this item, as if it had been given under paragraph 34A(1)(b) of the *Administrative Appeals Tribunal Act 1975* as amended by this Schedule.

115 Transitional—paragraph 34B(3)(e) of the *Administrative Appeals Tribunal Act 1975*

(1) This item applies to a direction if:

(a) the direction was given under subparagraph 34A(1A)(b)(ii) of the *Administrative Appeals Tribunal Act 1975*; and

(b) the direction was in force immediately before the commencement of this item.

(2) The direction, except to the extent to which it identifies the person who is to be the mediator, has effect, after the commencement of this item, as if it had been given under paragraph 34B(3)(e) of the *Administrative Appeals Tribunal Act 1975* as amended by this Schedule.

116 Transitional—subsection 34A(2) of the *Administrative Appeals Tribunal Act 1975*

(1) This item applies to a direction if:

(a) the direction was given under subsection 34(2) of the *Administrative Appeals Tribunal Act 1975*; and

(b) the direction was in force immediately before the commencement of this item.

(2) The direction has effect, after the commencement of this item, as if it had been given under subsection 34A(2) of the *Administrative Appeals Tribunal Act 1975* as amended by this Schedule.

117 Transitional—Division 3 of Part IV of the *Administrative Appeals Tribunal Act 1975*

(1) This item applies to a conference or mediation if:

(a) the conference or mediation had begun, before the commencement of this item, under section 34 or 34A of the *Administrative Appeals Tribunal Act 1975*; and

(b) the conference or mediation had not been completed before the commencement of this item.

(2) The *Administrative Appeals Tribunal Act 1975* has effect, after the commencement of this item, as if:

(a) the conference or mediation were a conference or mediation under Division 3 of Part IV of that Act; and

(b) in the case of a conference—the person presiding at the conference had been directed under subsection 34C(1) of that Act to conduct the conference; and

(c) in the case of a mediation—the mediator had been directed under subsection 34C(1) of that Act to conduct the mediation;

and the conference or mediation is to be continued accordingly.

118 Transitional—paragraph 34D(1)(a) of the *Administrative Appeals Tribunal Act 1975*

(1) This item applies to an agreement if:

(a) the agreement was entered into before the commencement of this item; and

(b) the agreement was an agreement to which paragraph 34A(4)(a) of the *Administrative Appeals Tribunal Act 1975* applied; and

(c) the Tribunal had not exercised its powers under subsection 34A(5) or (6) of that Act, in relation to the agreement, before the commencement of this item.

(2) The *Administrative Appeals Tribunal Act 1975* has effect, after the commencement of this item, as if the agreement were an agreement to which paragraph 34D(1)(a) of that Act applies.

119 Transitional—subsections 34(3) and 34A(7) of the *Administrative Appeals Tribunal Act 1975*

Despite the repeal of subsections 34(3) and 34A(7) of the *Administrative Appeals Tribunal Act 1975* by this Schedule, those subsections continue to apply after the commencement of this item, in relation to anything said, or any act done, before the commencement of this item, at a conference or mediation, as if those repeals had not happened.

120 Transitional—subsections 34(4) and 34A(8) of the *Administrative Appeals Tribunal Act 1975*

(1) Despite the repeal of subsection 34(4) of the *Administrative Appeals Tribunal Act 1975* by this Schedule, that subsection continues to apply after the commencement of this item, in relation to a conference that was completed before the commencement of this item, as if that repeal had not happened.

(2) Despite the repeal of subsection 34A(8) of the *Administrative Appeals Tribunal Act 1975* by this Schedule, that subsection continues to apply after the commencement of this item, in relation to a mediation that was completed before the commencement of this item, as if:

(a) that repeal had not happened; and

(b) the reference in that subsection to subsection 34A(5) or (6) of the *Administrative Appeals Tribunal Act 1975* were a

reference to subsection 34D(2) or (3) of the *Administrative Appeals Tribunal Act 1975* as amended by this Schedule.

121 Before section 34B

Insert:

Division 4—Hearings and evidence

122 Section 34B

Renumber as section 34J.

Note 1: The following heading to subsection 35(1AA) is inserted "*Scope*".

Note 2: The following heading to subsection 35(1) is inserted "*Public hearing*".

Note 3: The following heading to subsection 35(2) is inserted "*Private hearing etc.*".

123 Subsection 35A(1)

Omit "or presiding over a conference mentioned in section 34, a mediator conducting a mediation under section 34A".

Note 1: The following heading to subsection 36(1AA) is inserted "*Scope*".

Note 2: The following heading to subsection 36(1) is inserted "*Attorney-General may issue public interest certificate*".

Note 3: The following heading to subsection 36(2) is inserted "*Protection of information etc.*".

Note 4: The following heading to subsection 36(3) is inserted "*Disclosure of information etc.*".

Note 5: The following heading to subsection 36(3A) is inserted "*Attorney-General taken to be a party*".

Note 6: The following heading to subsection 36(4) is inserted "*What Tribunal must consider in deciding whether to disclose information etc.*".

Note 7: The following heading to subsection 36A(1AA) is inserted "*Scope*".

Note 8: The following heading to subsection 36A(1) is inserted "*Intervention by Attorney-General*".

Note 9: The following heading to subsection 36A(2) is inserted "*When person excused from answering question*".

Note 10: The following heading to subsection 36A(2A) is inserted "*Attorney-General taken to be a party*".

Note 11: The following heading to subsection 36B(1AA) is inserted "*Scope*".

Note 12: The following heading to subsection 36B(1) is inserted "*State Attorney-General may issue public interest certificate*".

Note 13: The following heading to subsection 36B(2) is inserted "*Protection of information etc.*".

Note 14: The following heading to subsection 36B(3) is inserted "*Disclosure of information etc.*".

Note 15: The following heading to subsection 36B(4) is inserted "*State Attorney-General taken to be a party*".

Note 16: The following heading to subsection 36B(5) is inserted "*What Tribunal must consider in deciding whether to disclose information etc.*".

124 Paragraph 37(1)(b)

Omit "considered by the person to be".

Note 1: The following heading to subsection 36C(1AA) is inserted "*Scope*".

Note 2: The following heading to subsection 36C(1) is inserted "*Intervention by State Attorney-General*".

Note 3: The following heading to subsection 36C(2) is inserted "*When person excused from answering question*".

Note 4: The following heading to subsection 36C(3) is inserted "*State Attorney-General taken to be a party*".

Note 5: The following heading to subsection 36D(1AA) is inserted "*Scope*".

Note 6: The following heading to subsection 36D(1) is inserted "*Parties to be notified of Tribunal's decision*".

Note 7: The following heading to subsection 36D(2) is inserted "*Question of law*".

Note 8: The following heading to subsection 36D(3) is inserted "*Constitution of Tribunal*".

Note 9: The following heading to subsection 36D(4) is inserted "*Appeals*".

Note 10: The following heading to subsection 36D(5) is inserted "*Disclosure of information etc. to officers and staff of Tribunal*".

Note 11: The following heading to subsection 36D(6) is inserted "*Public interest*".

Note 12: The following heading to subsection 36D(7) is inserted "*Commonwealth Attorney-General or State Attorney-General may appear or be represented*".

Note 13: The following heading to subsection 37(1AAA) is inserted "*Scope*".

Note 14: The following heading to subsection 37(1) is inserted "*Decision-maker must lodge statement of reasons and relevant documents*".

Note 15: The following heading to subsection 37(1AB) is inserted "*Document setting out reasons for decision may be lodged instead of statement*".

125 Transitional—paragraph 37(1)(b) of the *Administrative Appeals Tribunal Act 1975*

The amendment made by item 124 does not apply to a proceeding by way of an application to the Tribunal for review of a decision made by a person if, before the commencement of this item, the person had complied with paragraph 37(1)(b) of the *Administrative Appeals Tribunal Act 1975* in relation to the proceeding.

126 Subparagraph 37(1AF)(b)(ii)

Omit “serves a copy of the application for the direction on”, substitute “gives a copy of the application for the direction to”.

Note 1: The following heading to subsection 37(1AE) is inserted “*Statement of reasons and relevant documents to be given to other party*”.

Note 2: The following heading to subsection 37(1AF) is inserted “*When document not required to be lodged*”.

Note 3: The following heading to subsection 37(1A) is inserted “*Tribunal may shorten deadline for lodging documents*”.

Note 4: The following heading to subsection 37(1B) is inserted “*What happens if application lodged out of time*”.

127 Subsection 37(2)

Omit “served on”, substitute “given to”.

Note: The following heading to subsection 37(2) is inserted “*Tribunal may require other documents to be lodged*”.

128 Subsection 37(2)

Omit “prescribed”, substitute “specified”.

129 Application—subsection 37(2) of the *Administrative Appeals Tribunal Act 1975*

The amendment made by item 128 does not apply to a notice under subsection 37(2) of the *Administrative Appeals Tribunal Act 1975* if the notice was served before the commencement of this item.

130 Subsection 37(2)

Omit “on whom such a notice is served”, substitute “to whom such a notice is given”.

Note: The following heading to subsection 37(3) is inserted “*Privilege and public interest*”.

131 Subsection 37(4)

Repeal the subsection.

132 Before section 40

Insert:

Division 5—Procedural powers of Tribunal

Note 1: The following heading to subsection 39A(1) is inserted "*Review of security assessment*".

Note 2: The following heading to subsection 39A(2) is inserted "*Parties*".

Note 3: The following heading to subsection 39A(3) is inserted "*Director-General of Security must present all relevant information*".

Note 4: The following heading to subsection 39A(4) is inserted "*Member may require parties to attend etc.*".

Note 5: The following heading to subsection 39A(5) is inserted "*Proceedings to be in private*".

Note 6: The following heading to subsection 39A(6) is inserted "*Right of parties etc. to be present*".

Note 7: The following heading to subsection 39A(8) is inserted "S*ecurity/defence certificate*".

Note 8: The following heading to subsection 39A(11) is inserted "*Protection of identity of person giving evidence*".

Note 9: The following heading to subsection 39A(12) is inserted "*Evidence and submissions*".

Note 10: The following heading to subsection 39A(18) is inserted "*Dismissal of application*".

Note 11: The following heading to subsection 39B(1) is inserted "*Scope*".

Note 12: The following heading to subsection 39B(2) is inserted "*Attorney-General may issue public interest certificate*".

Note 13: The following heading to subsection 39B(3) is inserted "*Protection of information etc.*".

Note 14: The following heading to subsection 39B(5) is inserted "*Disclosure of information etc.*".

Note 15: The following heading to subsection 39B(6) is inserted "*What presidential member must consider in deciding whether to authorise disclosure of information etc.*".

Note 16: The following heading to subsection 39B(7) is inserted "*Disclosure of information etc. to staff of Tribunal*".

Note 17: The following heading to subsection 39B(8) is inserted "*Public interest*".

Note 18: The following heading to subsection 39B(9) is inserted "*Copy of document*".

Note 19: The following heading to subsection 39B(10) is inserted "*Certificate lodged under subsection 38A(1)*".

Note 20: The following heading to subsection 39B(11) is inserted "*Duty of Tribunal*".

133 Subsection 40(1C)

Omit "or a senior member" (first occurring), substitute ", a senior member or an authorised member".

Note: The following heading to subsection 40(1A) is inserted "*Summons*".

134 Subsection 40(1C)

Omit “or a senior member” (last occurring), substitute “, a senior member or an authorised member”.

135 Subsection 40(1D)

Omit “or senior member”, substitute “, a senior member or an authorised member”.

136 Subsection 40(1E)

Omit “of the hearing or directions hearing, as the case may be,”, substitute “specified in the summons”.

137 Subsection 40(1E)

Omit “that hearing” (wherever occurring), substitute “the hearing concerned”.

Note: The following heading to subsection 40(2) is inserted “*Oath or affirmation*”.

138 Application of amendments—subsection 40(1E) of the *Administrative Appeals Tribunal Act 1975*

The amendments made by items 136 and 137 apply to a summons issued after the commencement of this item.

139 Subsection 40(7)

Omit “, a conference mentioned in section 34 or a mediation under section 34A”, substitute “under this Act or an alternative dispute resolution process under Division 3”.

Note 1: The following heading to subsection 40(4) is inserted “*Representation*”.

Note 2: The following heading to subsection 40(5) is inserted “*Tribunal’s power to take evidence*”.

Note 3: The following heading to subsection 40(7) is inserted “*Incidental proceedings*”.

140 Subsection 40(7)

Omit “conference, or the mediator”, substitute “person conducting the alternative dispute resolution process”.

141 Subsection 41(2)

Omit “or a presidential member”.

142 Subsection 41(2)

Omit “or presidential member” (wherever occurring).

143 Subsection 41(3)

Omit “or a presidential member”.

144 Transitional—subsections 41(2) and (3) of the *Administrative Appeals Tribunal Act 1975*

(1) This item applies to an order if:

(a) the order was made by a presidential member under subsection 41(2) or (3) of the *Administrative Appeals Tribunal Act 1975*; and

(b) the order was in force immediately before the commencement of this item.

(2) The order has effect, after the commencement of this item, as if it had been made by the Tribunal under subsection 41(2) or (3), as the case may be, of the *Administrative Appeals Tribunal Act 1975* as amended by this Schedule.

145 Subsection 41(4)

Omit “or a presidential member”.

146 Subsection 41(4)

Omit “or presidential member” (wherever occurring).

147 Subsection 41(5)

Omit “or a presidential member”.

148 Subsection 41(5)

Omit “or presidential member” (wherever occurring).

149 Subsection 41(5)

Omit “served on”, substitute “given to”.

150 Subsections 41(7) and (8)

Repeal the subsections.

151 Section 42

Repeal the section, substitute:

42 Resolving disagreements

2 members

(1) If:
  (a) 2 members constitute the Tribunal for the purposes of a particular proceeding; and
  (b) the members do not agree about any matter arising in the proceeding;

the view of the presiding member prevails.

3 members

(2) If:
  (a) 3 members constitute the Tribunal for the purposes of a particular proceeding; and
  (b) the members do not agree about any matter arising in the proceeding; and
  (c) the matter does not consist of a question of law;

then:
  (d) if the majority agree—the view of the majority prevails; or
  (e) otherwise—the view of the presiding member prevails.

(3) If:
  (a) 3 members constitute the Tribunal for the purposes of a particular proceeding; and
  (b) the members do not agree about a question of law arising in the proceeding;

the view of the presiding member prevails.

Question of law

(4) A reference in this section to a ***question of law*** includes a reference to the question of whether a particular question is one of law.

152 Application—section 42 of the *Administrative Appeals Tribunal Act 1975*

The amendment made by item 151 does not apply to a proceeding if, immediately before the commencement of this item, the Tribunal was constituted for the purposes of the proceeding by one or more members.

153 Subsection 42A(2)

Omit “, a conference mentioned in section 34, or a mediation under section 34A,”, substitute “, or an alternative dispute resolution process under Division 3,”.

Note 1: The following heading to subsection 42A(1) is inserted “*Dismissal if parties consent*”.

Note 2: The following heading to subsection 42A(1A) is inserted “*Deemed dismissal—applicant discontinues or withdraws application*”.

Note 3: The following heading to subsection 42A(2) is inserted “*Dismissal if party fails to appear*”.

154 Subsection 42A(3)

Omit “, conference, mediation”.

155 After subsection 42A(3)

Insert:

(3A) For the purposes of subsection (2), a person is taken to appear in person or by a representative at an alternative dispute resolution process if the person or the person’s representative, as the case may be, participates in it by a means allowed under section 34G.

Note: The following heading to subsection 42A(4) is inserted “*Dismissal if decision not reviewable*”.

156 Subsection 42A(5)

Omit “a presidential member or senior member, on behalf of the Tribunal,”, substitute “the Tribunal”.

Note 1: The following heading to subsection 42A(5) is inserted “*Dismissal if applicant fails to proceed or fails to comply with Tribunal’s direction*”.

Note 2: The following heading to subsection 42A(6) is inserted “*Dismissed application taken to be concluded*”.

Note 3: The following heading to subsection 42A(7) is inserted “*Dismissal if party fails to appear—giving of appropriate notice*”.

Note 4: The following heading to subsection 42A(8) is inserted “*Reinstatement of application*”.

157 Paragraph 42C(1)(a)

Omit “a mediation under section 34A”, substitute “an alternative dispute resolution process under Division 3”.

158 Subsection 42C(2)

After “reached is”, insert “an agreement as”.

159 At the end of subsection 42D(2)

Add:

Note: For time limits, see subsection (5).

Note: The following heading to subsection 42D(2) is inserted "*Powers of person to whom a decision is remitted*".

160 At the end of section 42D

Add:

Time limits

(5) The person must reconsider the decision, and do one of the things mentioned in paragraphs (2)(a), (b) and (c), within whichever of the following periods is applicable:

(a) if the Tribunal, when remitting the decision, specified a period within which the person was to reconsider the decision—that period;

(b) in any other case—the period of 28 days beginning on the day on which the decision was remitted to the person.

(6) The Tribunal may, on the application of the person, extend the period applicable under subsection (5).

(7) If the person has not reconsidered the decision, and done one of the things mentioned in paragraphs (2)(a), (b) and (c), within the period applicable under subsection (5), the person is taken to have affirmed the decision.

(8) If the person affirms the decision, the proceeding resumes.

161 Application of amendment—subsections 42D(5), (6), (7) and (8) of the *Administrative Appeals Tribunal Act 1975*

Subsections 42D(5), (6), (7) and (8) of the *Administrative Appeals Tribunal Act 1975* apply in relation to a decision remitted after the commencement of this item.

162 Before section 43

Insert:

Division 6—Tribunal's decision on review

163 Subsection 43(2A)

Omit "served on", substitute "given to".

Note 1: The heading to section 43 is replaced by the heading "**Tribunal's decision on review**".

Note 2: The following heading to subsection 43(1) is inserted "*Tribunal's decision on review*".

Note 3: The following heading to subsection 43(2) is inserted "*Tribunal must give reasons for its decision*".

164 Subsection 43(2A)

Omit "furnish" (wherever occurring), substitute "give".

165 Subsection 43(3)

Omit "served on", substitute "given to".

Note 1: The following heading to subsection 43(3) is inserted "*Tribunal must give copies of its decision to parties*".

Note 2: The following heading to subsection 43(4) is inserted "*Evidence of Tribunal's decision or order*".

Note 3: The following heading to subsection 43(5A) is inserted "*When Tribunal's decision comes into operation*".

Note 4: The following heading to subsection 43(6) is inserted "*Tribunal's decision taken to be decision of decision-maker*".

166 Before section 43AAA

Insert:

Division 7—Miscellaneous

Note 1: The following heading to subsection 43AAA(1) is inserted "*Scope*".

Note 2: The following heading to subsection 43AAA(2) is inserted "*Findings*".

Note 3: The following heading to subsection 43AAA(4) is inserted "*Copies of findings to be given to parties etc.*".

Note 4: The following heading to subsection 43AAA(6) is inserted "*Applicant may publish findings*".

Note 5: The following heading to subsection 43AAA(7) is inserted "*Tribunal may attach comments to findings*".

167 Section 43A

Omit "furnished" (wherever occurring), substitute "given".

Note 1: The following heading to subsection 43AA(1) is inserted "*Correction of errors*".

Note 2: The following heading to subsection 43AA(3) is inserted "*Examples of obvious errors*".

Note 3: The following heading to subsection 43AA(4) is inserted "*Exercise of powers*".

168 Paragraph 43B(1)(b)

Omit "or of the Australian Capital Territory".

Note: The heading to section 43B is altered by omitting "**or the ACT**".

169 Subsection 43B(2)

Omit "or of the Australian Capital Territory" (first occurring).

170 Subsection 43B(2)

Omit "or of the Australian Capital Territory, as the case requires".

171 Paragraph 44(2A)(a)

Omit "furnished", substitute "given".

Note 1: The following heading to subsection 44(1) is inserted "*Appeal on question of law*".

Note 2: The following heading to subsection 44(2) is inserted "*Appeal about standing*".

Note 3: The following heading to subsection 44(2A) is inserted "*When and how appeal instituted*".

Note 4: The following heading to subsection 44(3) is inserted "*Jurisdiction*".

Note 5: The following heading to subsection 44(4) is inserted "*Powers of Federal Court*".

172 Subsection 44(6)

Omit all the words after "again", substitute:

by the Tribunal:

(a) the Tribunal need not be constituted for the hearing by the person or persons who made the decision to which the appeal relates; and

(b) whether or not the Tribunal is reconstituted for the hearing—the Tribunal may, for the purposes of the proceeding, have regard to any record of the proceeding before the Tribunal prior to the appeal (including a record of any evidence taken in the proceeding), so long as doing so is not inconsistent with the directions of the Court.

Note: The following heading to subsection 44(6) is inserted "*Constitution of Tribunal if Federal Court remits case etc.*".

173 At the end of section 44

Add:

Federal Court may make findings of fact

(7) If a party to a proceeding before the Tribunal appeals to the Federal Court of Australia under subsection (1), the 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 for the Court to make the findings of fact, having regard to:

(i) the extent (if any) to which it is necessary for facts to be found; and

(ii) the means by which those facts might be established; and

(iii) the expeditious and efficient resolution of the whole of the matter to which the proceeding before the Tribunal relates; and

(iv) the relative expense to the parties of the Court, rather than the Tribunal, making the findings of fact; and

(v) the relative delay to the parties of the Court, rather than the Tribunal, making the findings of fact; and

(vi) whether any of the parties considers that it is appropriate for the Court, rather than the Tribunal, to make the findings of fact; and

(vii) such other matters (if any) as the Court considers relevant.

(8) For the purposes of making findings of fact under subsection (7), the Federal Court of Australia may:

(a) have regard to the evidence given in the proceeding before the Tribunal; and

(b) receive further evidence.

(9) Subsection (7) does not limit the Federal Court of Australia's power under subsection (5) to make an order remitting the case to be heard and decided again by the Tribunal.

(10) The jurisdiction of the Federal Court of Australia under subsection (3) includes jurisdiction to make findings of fact under subsection (7).

174 At the end of section 44AA

Add:

Federal Magistrates Court may make findings of fact

(11) If an appeal under subsection 44(1) is transferred to the Federal Magistrates Court under subsection (1) of this section, subsections 44(7), (8) and (9) apply in relation to the making of findings of fact by the Federal Magistrates Court in a corresponding way to the way in which they apply to the making of findings of fact by the Federal Court of Australia.

(12) The jurisdiction of the Federal Magistrates Court under subsection (8) of this section includes jurisdiction to make findings of fact under subsection 44(7) (as applied by subsection (11) of this section).

Note 1: The following heading to subsection 44AA(1) is inserted "*Transfer of appeals*".

Note 2: The following heading to subsection 44AA(4) is inserted "*Federal Court Rules*".

Note 3: The following heading to subsection 44AA(7) is inserted "*Matters to which the Federal Court must have regard in transferring appeal*".

Note 4: The following heading to subsection 44AA(8) is inserted "*Jurisdiction*".

Note 5: The following heading to subsection 44AA(9) is inserted "*Powers etc.*".

Note 6: The following heading to subsection 44AA(10) is inserted "*No appeal from decision of Federal Court*".

Note 7: The following heading to subsection 44A(1) is inserted "*Appeal does not affect operation of Tribunal's decision*".

Note 8: The following heading to subsection 44A(2) is inserted "*Stay orders*".

175 Application of amendments—sections 44 and 44AA of the *Administrative Appeals Tribunal Act 1975*

The amendments of sections 44 and 44AA of the *Administrative Appeals Tribunal Act 1975* made by items 173 and 174 apply in relation to an appeal instituted after the commencement of this item.

176 Paragraphs 45(1)(a) and (b)

Repeal the paragraphs, substitute:

(a) a question must not be so referred without the concurrence of the President; and

Note 1: The following heading to subsection 46(1) is inserted "*Sending of documents to courts*".

Note 2: The following heading to subsection 46(2) is inserted "*Disclosure of documents by courts*".

177 Application of amendment—subsection 45(1) of the *Administrative Appeals Tribunal Act 1975*

The amendment of subsection 45(1) of the *Administrative Appeals Tribunal Act 1975* made by this Schedule applies in relation to a question of law referred after the commencement of this item.

178 Section 54

Repeal the section, substitute:

54 Resignation

(1) An appointed member may resign his or her 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.

Note 1: The following heading to subsection 52(1) is inserted "*General rule*".

Note 2: The following heading to subsection 52(2) is inserted "*Special rule—appointment for a particular project*".

Note 3: The following heading to subsection 56(2) is inserted "C*onvening meeting*".

Note 4: The following heading to subsection 56(4) is inserted "*Quorum*".

Note 5: The following heading to subsection 56(5) is inserted "*Who is to preside*".

Note 6: The following heading to subsection 56(7) is inserted "*Questions to be determined by majority*".

Note 7: The following heading to subsection 56(8) is inserted "*Presiding member has deliberative vote etc.*".

Note 8: The following heading to subsection 56(9) is inserted "*Council may regulate meetings*".

Note 9: The following heading to subsection 56(10) is inserted "*Acting ombudsman may attend meetings*".

179 Subsection 58(1)

Omit "furnish", substitute "give".

180 After section 59

Insert:

59A Authorised members

(1) The President may authorise a particular member to be an authorised member for the purposes of one or more specified provisions of this Act.

(2) An authorisation under subsection (1), to the extent to which it relates to a particular provision of this Act, may be:
  (a) general; or
  (b) limited to:
    (i) a particular reviewable decision or particular reviewable decisions; or
    (ii) reviewable decisions included in a particular class or classes of reviewable decisions; or
    (iii) a particular proceeding or particular proceedings; or
    (iv) proceedings included in a particular class or classes of proceedings.

(3) The President may at any time vary or revoke an authorisation under subsection (1).

(4) In this section:

reviewable decision means a decision in respect of which an application to the Tribunal for review has been, or may be, made.

181 Transitional—section 59A of the *Administrative Appeals Tribunal Act 1975*

(1) This item applies to the power to make an authorisation under section 59A of the *Administrative Appeals Tribunal Act 1975* as amended by this Schedule.

(2) For the purposes of section 4 of the *Acts Interpretation Act 1901*, that power is taken to be a power to make an instrument of an administrative character.

182 Subsection 60(1A)

Omit “A mediator”, substitute “An alternative dispute resolution practitioner”.

Note 1: The heading to section 60 is altered by omitting “**mediators**” and substituting “**alternative dispute resolution practitioners**”.

Note 2: The following heading to subsection 60(1) is inserted “*Members*”.

Note 3: The following heading to subsection 60(1A) is inserted “*Alternative dispute resolution practitioners*”.

Note 4: The following heading to subsection 60(2) is inserted “*Barristers etc.*”.

183 Subsection 60(1A)

Omit “a mediator”, substitute “an alternative dispute resolution practitioner”.

184 Transitional—subsection 60(1A) of the *Administrative Appeals Tribunal Act 1975*

Despite the amendments of subsection 60(1A) of the *Administrative Appeals Tribunal Act 1975* made by this Schedule, that subsection continues to apply after the commencement of this item, in relation to anything done or omitted to be done by a mediator before the commencement of this item, as if those amendments had not been made.

185 After subsection 60(1A)

Insert:

Registrars, District Registrars or Deputy Registrars

(1B) A Registrar, a District Registrar or a Deputy Registrar has, in the performance of his or her duties as a Registrar, a District Registrar or a Deputy Registrar under section 40 or 69A, the same protection and immunity as a Justice of the High Court.

Conference Registrars

(1C) A Conference Registrar has, in the performance of his or her duties as a Conference Registrar under paragraph 33(2)(a), the same protection and immunity as a Justice of the High Court.

Note: The heading to section 60 is altered by inserting “**Registrars, District Registrars, Deputy Registrars, Conference Registrars,**” before “**barristers**”.

186 At the end of section 60

Add:

(4) In this section:

alternative dispute resolution practitioner means a person who conducts an alternative dispute resolution process under Division 3 of Part IV.

Note: The following heading to subsection 60(3) is inserted "*Witnesses*".

187 Sections 61, 62 and 62A

Repeal the sections, substitute:

61 Failure to comply with summons

Summons to appear as a witness

(1) A person is guilty of an offence if:
  (a) the person is given, as prescribed, a summons under this Act to appear as a witness before the Tribunal; and
  (b) the person:
    (i) fails to attend as required by the summons; or
    (ii) fails to appear and report from day to day unless excused, or released from further attendance, by a member.

Penalty: 30 penalty units or imprisonment for 6 months, or both.

(2) Subsection (1) does not apply if the person has a reasonable excuse.

Note: A defendant bears an evidential burden in relation to the matter in subsection (2) (see subsection 13.3(3) of the *Criminal Code*).

Summons to produce a book, document or thing

(3) A person is guilty of an offence if:
  (a) the person is given, as prescribed, a summons under this Act to produce a book, document or thing; and
  (b) the person fails to comply with the summons.

Penalty: 30 penalty units or imprisonment for 6 months, or both.

(4) Subsection (3) does not apply if the person has a reasonable excuse.

Note: A defendant bears an evidential burden in relation to the matter in subsection (4) (see subsection 13.3(3) of the *Criminal Code*).

62 Refusal to be sworn or to answer questions

Oath or affirmation

(1) A person is guilty of an offence if:
  (a) the person appears as a witness before the Tribunal; and
  (b) the person has been required under section 40 either to take an oath or make an affirmation; and
  (c) the person fails to comply with the requirement.

Penalty: 30 penalty units or imprisonment for 6 months, or both.

(2) Subsection (1) does not apply if the person has a reasonable excuse.

Note: A defendant bears an evidential burden in relation to the matter in subsection (2) (see subsection 13.3(3) of the *Criminal Code*).

Questions

(3) A person is guilty of an offence if:
  (a) the person appears as a witness before the Tribunal; and
  (b) the member presiding at the proceeding has required the person to answer a question; and
  (c) the person fails to answer the question.

Penalty: 30 penalty units or imprisonment for 6 months, or both.

(4) Subsection (3) does not apply if the person has a reasonable excuse.

Note: A defendant bears an evidential burden in relation to the matter in subsection (4) (see subsection 13.3(3) of the *Criminal Code*).

Books, documents or things

(5) A person is guilty of an offence if:
  (a) the person appears as a witness before the Tribunal; and
  (b) the person has been given, as prescribed, a summons under this Act to produce a book, document or thing; and
  (c) the person fails to produce the book, document or thing.

Penalty: 30 penalty units or imprisonment for 6 months, or both.

(6) Subsection (5) does not apply if the person has a reasonable excuse.

Note: A defendant bears an evidential burden in relation to the matter in subsection (6) (see subsection 13.3(3) of the *Criminal Code*).

62A False or misleading evidence

A person is guilty of an offence if:

(a) the person appears as a witness before the Tribunal; and

(b) the person gives evidence; and

(c) the person does so knowing that the evidence is false or misleading.

Penalty: 30 penalty units or imprisonment for 6 months, or both.

188 Section 62B

Omit “, a conference mentioned in section 34 or a mediation under section 34A”, substitute “or an alternative dispute resolution process under Division 3”.

189 Section 63

Repeal the section, substitute:

63 Contempt of Tribunal

Insulting a member

(1) A person is guilty of an offence if:

(a) the person engages in conduct; and

(b) the person’s conduct insults a member in, or in relation to, the exercise of his or her powers or functions as a member.

Penalty: 30 penalty units or imprisonment for 6 months, or both.

Interrupting proceedings of the Tribunal

(2) A person is guilty of an offence if:

(a) the person engages in conduct; and

(b) the person’s conduct interrupts the proceedings of the Tribunal.

Penalty: 30 penalty units or imprisonment for 6 months, or both.

Creating a disturbance

(3) A person is guilty of an offence if:
  (a) the person engages in conduct; and
  (b) the person's conduct creates a disturbance in or near a place where the Tribunal is sitting.

Penalty: 30 penalty units or imprisonment for 6 months, or both.

Taking part in creating or continuing a disturbance

(4) A person is guilty of an offence if:
  (a) the person takes part in creating or continuing a disturbance; and
  (b) the disturbance is in or near a place where the Tribunal is sitting.

Penalty: 30 penalty units or imprisonment for 6 months, or both.

Contempt of Tribunal

(5) A person is guilty of an offence if:
  (a) the person engages in conduct; and
  (b) the person's conduct would, if the Tribunal were a court of record, constitute a contempt of that court.

Penalty: 30 penalty units or imprisonment for 6 months, or both.

190 Subsection 64(1)

Omit ", in the Australian Capital Territory and in the Northern Territory".

191 Subsection 66(2)

Omit "furnished", substitute "given".

Note 1: The following heading to subsection 66(1) is inserted "*Protected information*".

Note 2: The following heading to subsection 66(2) is inserted "*Protected documents*".

Note 3: The following heading to subsection 66(3) is inserted "*Tribunal proceedings*".

Note 4: The following heading to subsection 66(4) is inserted "*Definitions*".

192 Subsection 67(1)

Omit “to appear as a witness before the Tribunal”, substitute “under this Act”.

Note: The heading to section 67 is altered by omitting “**witnesses**” and substituting “**compliance with summons**”.

193 Subsection 67(1)

Omit “attendance”, substitute “compliance with the summons”.

194 Paragraph 67(2)(a)

Omit “witness”, substitute “person”.

195 Paragraph 67(2)(a)

Omit “other than the person who made the decision subject to review”.

196 Subsection 67(3)

Omit “witness”, substitute “person”.

197 Application—section 67 of the *Administrative Appeals Tribunal Act 1975*

The amendments of section 67 of the *Administrative Appeals Tribunal Act 1975* made by this Schedule apply in relation to a summons issued after the commencement of this item.

198 Section 67A

Omit “served on or” (wherever occurring).

199 Paragraph 67A(b)

Omit “on or to whom notices may be served or”, substitute “to whom notices may be”.

200 After section 68

68AA How documents may be given to a person

Post

(1) For the purposes of this Act:

(a) a document, statement, notice or other notification is taken to be given to a person if it is sent by post to whichever of the following addresses is applicable:

(i) if the document, statement, notice or other notification relates to a proceeding and the person has provided an address to which documents in relation to the proceeding may be sent—that address;

(ii) if subparagraph (i) does not apply and the person is not a company—the address of the place of residence or business of the person last known to the person posting the document, statement, notice or other notification;

(iii) if subparagraph (i) does not apply and the person is a company—the address of the registered office of the company; and

(b) a document, statement, notice or other notification so sent by post is taken to have been given, unless the contrary is proved, at the time when the document, statement, notice or other notification would have been delivered in the ordinary course of post.

Note: See also the *Electronic Transactions Act 1999*.

Tribunal direction

(2) For the purposes of this Act:

(a) if:

(i) a person is not a company; and

(ii) the person's present or any previous place of residence or business is unknown;

a document, statement, notice or other notification is taken to be given to the person, if it is given in accordance with a direction given by the Tribunal; and

(b) if, in accordance with that direction, the document, statement, notice or notification is sent by post—the document, statement, notice or notification is taken to have been given, unless the contrary is proved, at the time when the document, statement, notice or notification would have been delivered in the ordinary course of post.

Electronic communication

(3) For the purposes of this Act, if a document, statement, notice or other notification is given to a person by means of an electronic communication (within the meaning of the *Electronic Transactions Act 1999*), the document, statement, notice or other notification is taken to have been given on the day on which the electronic communication is dispatched.

(4) Subsection (3) of this section has effect despite subsections 14(3) and (4) of the *Electronic Transactions Act 1999*.

201 Transitional—acts or things done on basis that provision of *Administrative Appeals Tribunal Act 1975* referred to furnishing etc.

(1) This item applies to an act or thing if:

(a) the act or thing was done before the commencement of this item; and

(b) the act or thing was done on the basis that a particular provision of the *Administrative Appeals Tribunal Act 1975* referred to:

(i) furnish; or

(ii) furnished; or

(iii) furnishing; or

(iv) serve; or

(v) served; or

(vi) service.

(2) After the commencement of this item, the act or thing is as valid as it would have been if it had been done on the basis that the provision had referred instead to whichever of the following expressions is appropriate:

(a) give;

(b) given;

(c) giving.

(3) This item is enacted for the avoidance of doubt.

202 Transitional regulations

The Governor-General may make regulations in relation to transitional matters arising out of the amendments made by this Schedule.

Archives Act 1983

203 Section 48

Omit "(1)" (second and third occurring), substitute "(3)".

204 Section 48

Omit "(including the question whether a particular question is one of law)".

205 Application of amendments—section 48 of the *Archives Act 1983*

The amendments made by items 203 and 204 do not apply to a proceeding if, immediately before the commencement of this item, the Tribunal was constituted for the purposes of the proceeding by one or more members.

Commonwealth Electoral Act 1918

206 Subsection 141(6)

Repeal the subsection, substitute:

(6) For the purposes of a review referred to in subsection (5), the Administrative Appeals Tribunal is to be constituted by 3 members, at least one of whom is a Judge of the Federal Court of Australia.

(6A) Subsection 21(1AA) of the *Administrative Appeals Tribunal Act 1975* does not apply in relation to a review referred to in subsection (5) of this section.

Environment Protection and Biodiversity Conservation Act 1999

207 Subsection 303GJ(2)

Repeal the subsection.

Federal Proceedings (Costs) Act 1981

208 Subsection 10A(1)

Omit “or 23A”.

209 Transitional—subsection 10A(1) of the *Federal Proceedings (Costs) Act 1981*

Despite the amendment of subsection 10A(1) of the *Federal Proceedings (Costs) Act 1981* made by this Schedule, that subsection continues to apply after the commencement of this item, in relation to a rehearing that began before the commencement of this item, as if that amendment had not been made.

Freedom of Information Act 1982

210 Section 58D

Omit “(1)” (second and third occurring), substitute “(3)”.

211 Section 58D

Omit “(including the question whether a particular question is one of law)”.

212 Application of amendments—section 58D of the *Freedom of Information Act 1982*

The amendments made by items 210 and 211 do not apply to a proceeding if, immediately before the commencement of this item, the Tribunal was constituted for the purposes of the proceeding by one or more members.

213 After subsection 64(1)

Insert:

(1A) If, for the purposes of proceedings before the Tribunal under this Act in relation to a document that is claimed to be an exempt document, the document is voluntarily produced to the Tribunal, then only:

(a) the members of the Tribunal as constituted for the purposes of the review; or

(b) a member of the staff of the Tribunal in the course of the performance of his or her duties as a member of that staff;

may inspect, or have access to, the document.

214 After subsection 64(4)

Insert:

(4A) In making an order for the purposes of subsection (1), (2) or (4), the Tribunal may require the relevant document to be produced at any time later than 28 days after the decision-maker was given notice of the application, even if that time is before the Tribunal has begun to hear argument or otherwise deal with the matter.

215 Subsection 64(5)

After “Subsections (1)”, insert “, (1A)”.

216 Subsection 64(6)

After “Subsection (1)”, insert “, (1A)”.

217 Subsection 64(8)

After “subsection (1)”, insert “, (1A)”.

Insurance Acquisitions and Takeovers Act 1991

218 Subsection 67(4)

Repeal the subsection.

Insurance Act 1973

219 Subsections 63(10) and (11)

Repeal the subsections.

220 Subsections 63(12), (13) and (14)

Omit “the Tribunal” (wherever occurring), substitute “the Administrative Appeals Tribunal”.

Judges’ Pensions Act 1968

221 Subsection 4(1) (subparagraph (b)(ii) of the definition of *period of exempt service*)

Omit "section 16 of the *Administrative Appeals Tribunal Act 1975*", substitute "repealed section 16 of the *Administrative Appeals Tribunal Act 1975* (including that section as it continues to apply because of item 34 of Schedule 1 to the *Administrative Appeals Tribunal Amendment Act 2005*)".

Lands Acquisition Act 1989

222 Section 32

Repeal the section.

223 Subsection 131(2)

Omit "section 32", substitute "paragraph 42B(1)(a) of the *Administrative Appeals Tribunal Act 1975*".

Life Insurance Act 1995

224 Subsections 237(1) and (2)

Repeal the subsections.

225 Subsections 237(3), (4) and (5)

Omit "the Tribunal" (wherever occurring), substitute "the Administrative Appeals Tribunal".

Migration Act 1958

226 Subsection 500(5)

Repeal the subsection, substitute:

(5) In giving a direction under the *Administrative Appeals Tribunal Act 1975* as to the persons who are to constitute the Tribunal for the purposes of a proceeding for review of a decision referred to in subsection (1), the President must have regard to:

(a) the degree of public importance or complexity of the matters to which that proceeding relates; and

(b) the status of the position or office held by the person who made the decision that is to be reviewed by the Tribunal; and

(c) the degree to which the matters to which that proceeding relates concern the security, defence or international relations of Australia; and

(d) if:

(i) the person to whom the decision relates has been convicted of, or sentenced for, an offence; and

(ii) that conviction or sentence is relevant to the matters to which that proceeding relates;

the seriousness of that offence; and

(e) if:

(i) the person to whom the decision relates has been acquitted of an offence on the grounds of unsoundness of mind or insanity, and as a result the person has been detained in a facility or institution; and

(ii) that acquittal is relevant to the matters to which that proceeding relates;

the seriousness of that offence;

and must not have regard to any other matters.

(5A) Section 23B of the *Administrative Appeals Tribunal Act 1975* does not apply in relation to a proceeding for review of a decision referred to in subsection (1) of this section.

Military Rehabilitation and Compensation Act 2004

227 Section 355 (table item 1)

Omit “24”, substitute “20A”.

Narcotic Drugs Act 1967

228 Subsection 14A(2)

Repeal the subsection.

Privacy Act 1988

229 Subsections 61(3) and (4)

Repeal the subsections.

Safety, Rehabilitation and Compensation Act 1988

230 Subsection 65(2)

Repeal the subsection.

231 Subsection 65(3)

Omit “24”, substitute “20A”.

Seafarers Rehabilitation and Compensation Act 1992

232 Subsection 89(2)

Omit “24”, substitute “20A”.

Superannuation Act 1976

233 Subsection 3(1) (definition of *pensioner*)

Omit “and, for the purposes of subsection 154(7), includes a pensioner under the superseded Act”.

234 Subsections 154(7) and (8)

Repeal the subsections.

Trans-Tasman Mutual Recognition Act 1997

235 Subsection 35(3)

Omit “paragraph 20(1A)(b)”, substitute “subsection 20B(1)”.

236 Subsection 35(5)

Repeal the subsection, substitute:

(5) A reference in any of the following provisions to a member includes a reference to a person included in a direction under subsection (3) of this section:

(a) the definition of ***authorised member*** in subsection 3(1) of the *Administrative Appeals Tribunal Act 1975*;

(b) Part III, IIIA, IV or VI of the *Administrative Appeals Tribunal Act 1975*.

[*Minister's second reading speech made in—*
Senate on 17 November 2004
House of Representatives on 16 March 2005]

(181/04)