

ADMINISTRATIVE APPEALS TRIBUNAL ACT 1975

No. 91 of 1975

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Decisions that may be reviewed by Tribunal

ADMINISTRATIVE APPEALS TRIBUNAL ACT 1975

No. 91 of 1975

An Act to establish an Administrative Appeals Tribunal.

BE IT ENACTED by the Queen, the Senate and the House of Representatives of Australia, as follows:—

PART I—PRELIMINARY

1. This Act may be cited as the *Administrative Appeals Tribunal Act* 1975.¹ Short title.

2. This Act shall come into operation on a day to be fixed by Proclamation. Commence-
ment.

3. (1) In this Act, unless the contrary intention appears— Interpret-
ation.
“authority of Australia” means an authority, tribunal or other body, whether incorporated or not, that is established by an enactment;

“Deputy President” means a Deputy President of the Tribunal;

“Deputy Registrar” means a Deputy Registrar of the Tribunal;

“enactment” means—

(a) an Act;

(b) an Ordinance of a Territory; or

(c) an instrument (including rules, regulations or by-laws) made under an Act or under such an Ordinance,

and includes an enactment as amended by another enactment;

“full-time member” means a member who is appointed as a full-time member;

“Judge” means—

(a) a Judge of a court created by the Parliament or of a court of a State; or

(b) a person who has the same designation and status as a Judge of a court created by the Parliament;

“member” means a member of the Tribunal;

“non-presidential member” means a member other than a presidential member;

“officer of the Tribunal” includes the Registrar and a Deputy Registrar;

“part-time member” means a member who is appointed as a part-time member;

“President” means the President of the Tribunal;

“presidential member” means the President or a Deputy President;

“Registrar” means the Registrar of the Tribunal;

“Territory” does not include Papua New Guinea;

“Tribunal” means the Administrative Appeals Tribunal established by this Act and includes a member or members exercising powers of the Tribunal.

(2) Where a board, committee or other unincorporated body constituted by 2 or more persons is empowered by an enactment to make decisions, this Act applies as if that board, committee or other body were a person empowered to make those decisions.

(3) A reference in this Act to a decision includes a reference to—

- (a) making, suspending, revoking or refusing to make an order or determination;
- (b) giving, suspending, revoking or refusing to give a certificate, direction, approval, consent or permission;
- (c) issuing, suspending, revoking or refusing to issue a licence, authority or other instrument;
- (d) imposing a condition or restriction;
- (e) making a declaration, demand or requirement;
- (f) retaining, or refusing to deliver up, an article; or
- (g) doing or refusing to do any other act or thing.

Extension to external Territories.

4. This Act extends to every external Territory other than Papua New Guinea.

PART II—ESTABLISHMENT OF THE ADMINISTRATIVE APPEALS TRIBUNAL

Establishment of Tribunal.

5. There is hereby established an Administrative Appeals Tribunal, which shall consist of a President and such number of Deputy Presidents and other members as are appointed in accordance with this Act.

Appointment of members of Tribunal.

6. (1) The members shall be appointed by the Governor-General.

(2) A presidential member (other than a person who is, and is expected to continue to be, a Judge) shall be appointed as a full-time member.

(3) A non-presidential member shall be appointed either as a full-time member or as a part-time member.

7. (1) A person shall not be appointed as a presidential member unless he is or has been a Judge or is enrolled as a legal practitioner of the High Court, of another federal court or of the Supreme Court of a State or Territory and has been so enrolled for not less than 5 years. Qualifications for appointment.

(2) A person shall not be appointed as a non-presidential member unless he—

- (a) is enrolled as a legal practitioner of the High Court, of another federal court or of the Supreme Court of a State or Territory;
- (b) has had experience, for not less than 5 years, at a high level in industry, commerce, public administration, industrial relations, the practice of a profession or the service of a government or of an authority of a government;
- (c) has obtained a degree of a university, or an educational qualification of a similar standing, after studies in the field of law, economics or public administration or some other field considered by the Governor-General to have substantial relevance to the duties of a non-presidential member; or
- (d) has, in the opinion of the Governor-General, special knowledge or skill in relation to any class of matters in respect of which decisions may be made in the exercise of powers conferred by an enactment, being decisions in respect of which applications may be made to the Tribunal for review.

8. (1) Subject to this Part—

- (a) a presidential member who was appointed as a full-time member holds office until he attains the age of 70 years; and
- (b) a member other than a member to whom paragraph (a) applies holds office for such period, not exceeding 7 years, as is specified in the instrument of his appointment but is eligible for re-appointment. Term of appointment.

(2) A person who has attained the age of 70 years shall not be appointed or re-appointed as a full-time member, and a person shall not be appointed or re-appointed as a full-time member for a period that extends beyond the date on which he will attain the age of 70 years.

(3) Subject to this Part, a member holds office on such terms and conditions as are prescribed.

9. (1) Subject to this section, the President shall be paid salary at the rate of \$36,000 per annum and an annual allowance at the rate of \$2,250 per annum. Remuneration and allowances.

(2) Subject to this section, a Deputy President shall be paid salary at the rate of \$35,000 per annum and an annual allowance at the rate of \$1,750 per annum.

(3) If a person who is a Judge is appointed as a presidential member, he is not, while he receives salary or annual allowance as a Judge,

entitled to salary or annual allowance, as the case may be, under this Act except to the extent that the salary or annual allowance that would be payable to him under this Act apart from this sub-section exceeds the salary or annual allowance payable to him as a Judge.

(4) Any salary payable under this section to a presidential member who is a Judge of a court created by the Parliament or has the same status as a Judge of such a court by virtue of an Act other than this Act forms part of his salary as a Judge for the purposes of the *Judges' Pensions Act 1968-1974*.

(5) A non-presidential member shall be paid such remuneration as is determined by the Remuneration Tribunal, but, if no determination of that remuneration by the Remuneration Tribunal is in operation, he shall be paid such remuneration as is prescribed.

(6) A member who is not a Judge shall be paid such allowances as are prescribed.

(7) Sub-sections (5) and (6) have effect subject to the *Remuneration Tribunals Act 1973-1974*.

Acting
appoint-
ments.

10. (1) The Minister may appoint a Deputy President to act as President during any period, or during all periods, when the President is absent from duty or from Australia or during a vacancy in the office of President.

(2) Where a presidential member (including the President) is, or is expected to be, absent from duty or from Australia, the Governor-General may appoint a person qualified to be appointed as a presidential member to act as a Deputy President during the absence.

(3) Where a non-presidential member being a full-time member is, or is expected to be, absent from duty or from Australia, the Governor-General may appoint a person qualified to be appointed as a non-presidential member to act as such a member during the absence.

(4) Where a non-presidential member being a part-time member is, or is expected to be, unavailable to perform the duties of his office, the Governor-General may appoint a person qualified to be appointed as a non-presidential member to act as such a member during the period for which the member is so unavailable.

(5) Where a person has been appointed under sub-section (2), (3) or (4), the Governor-General may, by reason of a pending proceeding or other special circumstances, direct, before the absent or unavailable member ceases to be absent or unavailable, that the person so appointed shall continue to act under the appointment after the member ceases to be absent or unavailable until the Governor-General terminates the appointment, but a person shall not continue to act by virtue of this sub-section for more than 12 months after the member ceases to be absent or unavailable.

(6) Where a person has been appointed under this section to act as a member during the absence or unavailability of a member and the member ceases to hold office without having resumed duty or become available to perform the duties of his office, the period of appointment of the person so appointed shall, subject to this Act, be deemed to continue until it is terminated by the Governor-General or until the expiration of 12 months from the day on which the absent or unavailable member ceases to hold office, whichever first happens.

(7) A person acting as President, as a Deputy President or as a non-presidential member shall act in that capacity on such terms and conditions as the Minister determines.

(8) A person acting as the President, as a Deputy President or as a non-presidential member has all the powers and duties, and shall perform all the functions, conferred or imposed by this Act on the President, a Deputy President or a non-presidential member, as the case may be, and, for the purpose of the exercise of those powers or duties, or the performance of those functions, this Act has effect as if a reference to the President, a Deputy President or a non-presidential member included a reference to a person acting as the President, a Deputy President or a non-presidential member, as the case may be.

(9) Where the Tribunal is constituted for the purposes of a proceeding by, or the Tribunal as constituted for the purposes of a proceeding includes, a person acting or purporting to be appointed under this section, or a person so acting or purporting to be appointed has done any act, the validity of any decision of, or of any direction given or other act done by, the Tribunal as so constituted or of the act done by the person so acting or purporting to be appointed shall not be called in question in any proceeding on the ground that the occasion for the person to act or for the appointment of the person had not arisen or that the occasion for his appointment had passed or his appointment had ceased to have effect.

11. A full-time member shall not engage in paid employment outside the duties of his office. Outside employment.

12. The Minister may grant leave of absence to a full-time member upon such terms and conditions as to remuneration or otherwise as the Minister determines. Leave of absence.

13. (1) The Governor-General may remove a member from office on an address praying for his removal on the ground of proved misbehaviour or incapacity being presented to the Governor-General by each House of the Parliament in the same session of the Parliament. Removal from office.

(2) The Governor-General may suspend a non-presidential member from office on the ground of misbehaviour or incapacity.

(3) Where the Governor-General suspends a non-presidential member from office, the Minister shall cause a statement of the ground of the suspension to be laid before each House of the Parliament within 7 sitting days of that House after the suspension.

(4) Where such a statement has been laid before a House of the Parliament, that House may, within 15 sitting days of that House after the day on which the statement has been laid before it, by resolution, declare that the member should be removed from office and, if each House so passes such a resolution, the Governor-General shall remove the member from office.

(5) If, at the expiration of 15 sitting days of a House of the Parliament after the day on which the statement has been laid before that House, that House has not passed such a resolution, the suspension terminates.

(6) The suspension of a member from office under this section does not affect any entitlement of the member to be paid remuneration and allowances.

(7) If a member becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his creditors or makes an assignment of his remuneration for their benefit, the Governor-General shall remove him from office.

(8) A member to whom the *Judges' Pensions Act* 1968-1974 applies may, with the approval of the Minister, retire from office on the ground of permanent disability or infirmity.

(9) The Governor-General may, with the consent of a member who is contributing to the Superannuation Fund under the *Superannuation Act* 1922-1974, retire the member from office on the ground of incapacity.

(10) A member shall not be removed or suspended from office except as provided by this section.

Disclosure of
interests by
members.

14. (1) Where a member is, or is to be, a member of the Tribunal as constituted for the purposes of a proceeding and he has or acquires any interest, pecuniary or otherwise, that could conflict with the proper performance of his functions in relation to that proceeding—

- (a) he shall disclose the interest to the parties to the proceeding; and
- (b) except with the consent of all the parties to the proceeding, he shall not take part in the proceeding or exercise any powers in relation to the review by the Tribunal of the decision to which the proceeding relates.

(2) Where the President becomes aware that a member is, or is to be, a member of the Tribunal as constituted for the purposes of a

proceeding and that the member has in relation to that proceeding such an interest as is mentioned in sub-section (1)—

- (a) if the President considers that the member should not take part, or should not continue to take part, in the proceeding—he shall give a direction to the member accordingly; or
- (b) in any other case—he shall cause the interest of the member to be disclosed to the parties to the proceeding.

15. A member may resign his office by writing signed by him and delivered to the Governor-General. Resignation.

16. If a full-time member was, immediately before his appointment, an officer of the Australian Public Service or a person to whom the *Officers' Rights Declaration Act 1928-1975* applied— Rights of public servant appointed as full-time member.

- (a) he retains his existing and accruing rights;
- (b) for the purpose of determining those rights, his service as a full-time member shall be taken into account as if it were service in the Australian Public Service;
- (c) he shall be deemed, in respect of any service by him as a presidential member, to continue to be an employee within the meaning of the *Superannuation Act 1922-1974*; and
- (d) the *Officers' Rights Declaration Act 1928-1975* applies as if this Act and this section had been specified in the Schedule to that Act.

17. (1) For the purposes of sub-sections 4 (3A) and (4) of the *Superannuation Act 1922-1974*, a full-time member shall be deemed to be required, by the terms of his appointment, to give the whole of his time to the duties of his office. Application of Superannuation Act.

(2) If a member who is contributing to the Superannuation Fund under the *Superannuation Act 1922-1974* is removed from office under sub-section 13 (1) on the ground of incapacity or under sub-section 13 (4) following his suspension from office on that ground, or is retired from office under sub-section 13 (9), the removal from office or the retirement shall be deemed for the purposes of that Act to be retirement on the ground of invalidity.

(3) If a presidential member who was appointed as a full-time member but to whom section 16 does not apply was, immediately before his appointment, contributing to the Superannuation Fund under the *Superannuation Act 1922-1974*, he shall be deemed, in respect of his service as a presidential member, to continue to be an employee within the meaning of that Act.

18. (1) Subject to this section, the *Judges' Pensions Act 1968-1974* has effect as if a presidential member had the status of a Judge of the Australian Industrial Court. Application of Judges' Pensions Act.

(2) The *Judges' Pensions Act* 1968-1974 does not apply to a presidential member to whom section 16 or sub-section 17 (3) applies.

(3) If a presidential member to whom section 16 or sub-section 17 (3) would, but for this sub-section, apply elects, within 3 months after his appointment as a presidential member, by notice in writing to the Minister, that that section or sub-section shall not apply to him, that section or sub-section does not apply, and shall be deemed not to have applied, to him.

(4) Where a presidential member makes an election in accordance with sub-section (3), the *Superannuation Act* 1922-1974 applies in relation to him as if he had resigned.

(5) The amount of any pension that, but for this sub-section, would be payable to a person under the *Judges' Pensions Act* 1968-1974 in respect of any period by virtue of that person or another person having been a presidential member shall be reduced by the amount of any other pension or retiring allowance payable to the first-mentioned person in respect of that period out of moneys provided in whole or in part by—

- (a) Australia, a State or the Administration of a Territory;
- (b) a body corporate established for a public purpose by a law of Australia, of a State or of a Territory; or
- (c) an incorporated company all the stock or shares in the capital of which is or are beneficially owned by Australia or a State.

PART III—ORGANIZATION OF THE TRIBUNAL

Divisions.

19. (1) The Tribunal shall exercise powers conferred on it in Divisions of the Tribunal in accordance with this section.

(2) The Divisions of the Tribunal are as follows:—

- (a) General Administrative Division;
- (b) Medical Appeals Division;
- (c) Valuation and Compensation Division; and
- (d) such other Divisions as are prescribed.

(3) The Governor-General shall, in the instrument of appointment of a non-presidential member, assign the member to a particular Division or Divisions of the Tribunal and may, with the consent of the member but not otherwise, vary the assignment.

(4) A non-presidential member shall exercise, or participate in the exercise of, the powers of the Tribunal only in the Division or Divisions of the Tribunal to which he is assigned.

(5) The foregoing provisions of this section do not affect the validity of any exercise of powers by the Tribunal otherwise than in accordance with those provisions.

20. (1) Subject to sections 19 and 21 and to the regulations, the President may give directions as to the arrangement of the business of the Tribunal and as to the persons who are to constitute the Tribunal for the purposes of particular proceedings. Arrange-
ment of
business.

(2) The President may, either generally or otherwise as provided by the instrument of delegation, by writing signed by him, delegate all or any of his powers under sub-section (1) to a Deputy President.

(3) A delegation under sub-section (2) is revocable at will and does not prevent the exercise of a power by the President.

21. (1) The Tribunal shall, for the purpose of the exercise of its powers in relation to a matter, be constituted by a presidential member and 2 non-presidential members. Constitution
of Tribunal
for exercise
of powers.

(2) Where, before the commencement of the hearing of a proceeding before the Tribunal, there is lodged with the Tribunal, as prescribed, a notice, signed by or on behalf of all the parties, stating that they have agreed that the proceeding shall be dealt with by the Tribunal constituted by a presidential member alone, the Tribunal shall be constituted for the purposes of that proceeding by a presidential member alone.

22. (1) If the President is a member of the Tribunal as constituted for the purposes of a proceeding, he shall preside at the hearing of that proceeding. Member
presiding.

(2) If the President is not a member of the Tribunal as constituted for the purposes of a proceeding, the Deputy President who is a member of the Tribunal as so constituted, or, if by reason of a provision included in an enactment in accordance with sub-section 25 (6) or a provision of the Schedule there are 2 or more Deputy Presidents who are members of the Tribunal as so constituted, one of those Deputy Presidents who is nominated by the President, shall preside at the hearing of the proceeding.

23. (1) Where the hearing of any proceeding has been commenced or completed by the Tribunal constituted by 2 or more members but, before the matter to which the proceeding relates has been determined, one of the members constituting the Tribunal for the purposes of the proceeding has ceased to be a member or has ceased to be available for the purposes of the proceeding— Member of
Tribunal
ceasing to be
available.

(a) in the case where—

- (i) the Tribunal is required in accordance with section 21 to be constituted for the purposes of the proceeding by 2 or more members including a presidential member; and
- (ii) as a result of the member ceasing to be a member or ceasing to be available, the members constituting the Tribunal no longer include a presidential member,

the proceeding shall be reheard by the Tribunal as reconstituted in accordance with section 21; or

(b) in any other case—

- (i) if the parties agree, the hearing and determination, or the determination, of the proceeding may be completed by the Tribunal constituted by the remaining member or members; or
- (ii) if the parties do not agree as mentioned in subparagraph (i), the proceeding shall be reheard by the Tribunal as reconstituted in accordance with section 21.

(2) Where a proceeding is reheard by the Tribunal, the Tribunal may, for the purposes of that 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.

Places of sitting.

24. Sittings of the Tribunal shall 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 other than Papua New Guinea.

PART IV—REVIEWS BY THE TRIBUNAL OF DECISIONS

Tribunal may review certain decisions.

25. (1) An enactment may provide that applications may be made to the Tribunal—

- (a) for review of decisions made in the exercise of powers conferred by that enactment; or
- (b) for the review of decisions made in the exercise of powers conferred, or that may be conferred, by another enactment having effect under that enactment.

(2) An enactment (being an Act, an Ordinance of a Territory, or regulations made under an Act) may make provision under this section that is inconsistent with a provision of the Schedule and, where such an enactment so makes provision, any provision of the Schedule that is inconsistent with that provision of the enactment is of no effect.

(3) Where an enactment makes provision in accordance with subsection (1), that enactment—

- (a) shall specify the person or persons to whose decisions the provision applies;
- (b) may be expressed to apply to all decisions of a person, or to a class of such decisions; and
- (c) may specify conditions subject to which applications may be made.

(4) The Tribunal has power to review any decision in respect of which application is made to it under any enactment.

(5) For the purposes of this section, a failure by a person to do an act or thing within the period prescribed by an enactment as the period within which that person is required or permitted to do that act or thing shall be deemed to constitute the making of a decision by that person at the expiration of that period not to do that act or thing.

- (6) Where an enactment provides for applications to the Tribunal—
- (a) that enactment may also include a provision that a non-presidential member shall not exercise, or participate in the exercise of, the powers of the Tribunal in relation to such applications unless he was appointed as a non-presidential member in accordance with a procedure, or has special qualifications, specified in the provision, and sub-section 20 (1) has effect subject to any provision so included; and
 - (b) that enactment may also include provisions adding to, excluding or modifying the operation of any of the provisions of sections 21, 22, 27, 29, 32, 33 and 35 or of sub-section 43 (1) or (2) in relation to such applications, and those sections and sub-sections have effect subject to any provisions so included.

(7) Where—

- (a) a person has made a decision in respect of which an application may be made to the Tribunal;
- (b) the person made the decision by reason that he held or performed the duties of an office or appointment; and
- (c) the person no longer holds or performs the duties of the office or appointment,

this Act has effect as if the decision had been made by—

- (d) the person for the time being holding or performing the duties of that office or appointment; or
- (e) if there is no person for the time being holding or performing the duties of that office or appointment or the office no longer exists—such person as the President, or another member authorized by the President, specifies.

26. (1) The provisions of the Schedule have effect according to their tenor notwithstanding anything contained in any other provision of this Act (other than sub-section 25 (2)) or in any provision of any other enactment in force at the commencement of this Act.

Tribunal may review decisions as provided by the Schedule.

(2) A reference in sub-section 25 (4) to an enactment includes a reference to the Schedule.

(3) The regulations may amend the Schedule—

- (a) by inserting in the Schedule—
 - (i) provisions authorizing the making of applications to the Tribunal for review of decisions made in the exercise of powers conferred by an enactment; and

- (ii) where a provision authorizing the making of such an application is contained in the Schedule—provisions, having effect in relation to the application, of the kinds mentioned in paragraphs 25 (6) (a) and (b);
 - (b) by inserting in the Schedule a provision modifying or excluding the operation of any provision of an enactment in force at the commencement of this Act that provides for the review otherwise than by the Tribunal of decisions in respect of which applications may be made to the Tribunal for review; and
 - (c) by omitting any provision of the Schedule that has ceased to have effect by virtue of the operation of any other enactment.
- (4) An amendment of the Schedule made by the regulations applies only in respect of decisions made after the amendment takes effect.

Persons who may apply to Tribunal.

27. (1) Where this Act or any other enactment provides that an application may be made to the Tribunal for a review of a decision, the application may be made by or on behalf of any person or persons (including Australia or an authority of Australia) whose interests are affected by the decision.

(2) An organization or association of persons, whether incorporated or not, shall be taken to have interests that are affected by a decision if the decision relates to a matter included in the objects or purposes of the organization or association.

(3) Sub-section (2) does not apply in relation to a decision given before the organization or association was formed or before the objects or purposes of the organization or association included the matter concerned.

Person affected by decision may obtain reasons for decision.

28. (1) Where a person makes a decision in respect of which an application may be made to the Tribunal for a review, any person (in this section referred to as the “applicant”) who is entitled to apply to the Tribunal for a review of the decision may, by notice in writing given within the prescribed period to the person who made the decision, request that person to furnish to the applicant a statement in writing setting out the findings on material questions of fact and the reasons for the decision, and the person who made the decision shall, within 14 day after receiving the request, prepare, and furnish to the applicant, such a statement.

(2) If the Attorney-General certifies, by writing signed by him, that the disclosure of the contents of a statement prepared in accordance with sub-section (1) would be contrary to the public interest—

- (a) by reason that it would prejudice the security, defence or international relations of Australia;
- (b) by reason that it would involve the disclosure of deliberations or decisions of the Cabinet or of a Committee of the Cabinet; or

- (c) for any other reason specified in the certificate that could form the basis for a claim by the Crown in right of Australia in a judicial proceeding that the contents of the statement should not be disclosed,

the person who made the decision is not required by that sub-section to furnish the statement to the applicant.

(3) Where a certificate is given under sub-section (2) in relation to the contents of a statement prepared in accordance with sub-section (1) in relation to a decision, sub-sections 36 (2) to (6), inclusive, apply in relation to any statement setting out findings and reasons in relation to that decision that is lodged with the Tribunal under section 37 as if the certificate were a certificate given under sub-section 36 (1) in relation to the contents of the last-mentioned statement.

29. (1) An application to the Tribunal for a review of a decision—

- (a) shall be in writing in accordance with the prescribed form;
- (b) shall set out the grounds of the application; and
- (c) shall be lodged with the Tribunal within the prescribed period after the decision was made.

Manner of applying for review.

(2) The Registrar or a Deputy Registrar shall cause notice in writing of the application, in accordance with the prescribed form, to be served on the person who made the decision.

30. (1) The parties to a proceeding before the Tribunal for a review of a decision are—

- (a) any person who, being entitled to do so, has duly applied to the Tribunal for a review of the decision;
- (b) the person who made the decision; and
- (c) any other person who was entitled to apply to the Tribunal for a review of the decision, applied to the Tribunal to be made a party to the proceeding and was made such a party by an order of the Tribunal.

Parties to proceeding before Tribunal.

(2) A person who is a party to a proceeding before the Tribunal—

- (a) by reason of a decision made by him in the performance of the duties of an office or appointment; or
- (b) by reason of the operation of sub-section 25 (7),

shall be described in the proceeding by his official name.

31. Where it is necessary for the purposes of this Act to decide whether the interests of a person are affected by a decision, that matter shall be decided by the Tribunal and, if the Tribunal decides that the interests of a person are affected by a decision, the decision of the Tribunal is conclusive.

Tribunal to determine persons whose interests are affected by decision.

Represent-
ation before
Tribunal.

32. At the hearing of a proceeding before the Tribunal, a party to the proceeding may appear in person or may be represented by some other person.

Procedure of
Tribunal.

33. (1) In a proceeding before the Tribunal—

- (a) the procedure of the Tribunal shall, subject to this Act, be as prescribed;
- (b) the proceeding shall be conducted with as little formality and technicality, and with as much expedition, as the requirements of this Act and of every other relevant enactment and a proper consideration of the matters before the Tribunal permit; and
- (c) the Tribunal is not bound by the rules of evidence but may inform itself on any matter in such manner as it thinks appropriate.

(2) The member presiding at the hearing of a proceeding before the Tribunal may, in respect of a matter not dealt with by this Act or the regulations, give directions as to the procedure to be followed at or in connexion with the hearing.

Preliminary
conferences.

34. (1) Where an application is made to the Tribunal for a review of a decision, a presidential member may, if he thinks it desirable to do so after consideration of any material that has been lodged by the parties and if the parties agree, direct the holding of a conference of the parties or their representatives presided over by the presidential member, by a non-presidential member assigned to the relevant Division or by an officer of the Tribunal.

(2) Where a conference is held in accordance with sub-section (1), if—

- (a) at or after the conference, agreement is reached between the parties or their representatives as to the terms of a decision of the Tribunal in the proceeding that would be acceptable to the parties;
- (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) the Tribunal is satisfied that a decision in those terms would be within the powers of the Tribunal,

the Tribunal shall, without holding a hearing, make a decision in accordance with those terms.

Hearings to
be in public
except in
special
circum-
stances.

35. (1) Subject to this section, the hearing of a proceeding before the Tribunal shall be in public.

(2) Where the Tribunal is satisfied that it is desirable to do so by reason of the confidential nature of any evidence or matter or for any other reason, the Tribunal may, by order—

- (a) direct that a hearing or part of a hearing shall take place in private and give directions as to the persons who may be present;
- (b) give directions prohibiting or restricting the publication of evidence given before the Tribunal, whether in public or in private, or of matters contained in documents lodged with the Tribunal or received in evidence by the Tribunal; and
- (c) give directions prohibiting or restricting the disclosure to some or all of the parties to a proceeding of evidence given before the Tribunal, or of the contents of a document lodged with the Tribunal, in relation to the proceeding.

36. (1) If the Attorney-General certifies, by writing signed by him, that the disclosure of information concerning a specified matter, or the disclosure of the contents of a document, would be contrary to the public interest—

Certain documents and information not required to be disclosed.

- (a) by reason that it would prejudice the security, defence or international relations of Australia;
- (b) by reason that it would involve the disclosure of deliberations or decisions of the Cabinet or of a Committee of the Cabinet; or
- (c) for any other reason specified in the certificate that could form the basis for a claim by the Crown in right of Australia in a judicial proceeding that the information or the contents of the documents should not be disclosed,

the following provisions of this section have effect.

(2) A person who is required by or under this Act to disclose the information or to produce the document to or lodge the document with the Tribunal for the purposes of a proceeding is not excused from the requirement but the Tribunal shall, subject to sub-section (3) and to section 46, do all things necessary to ensure that the information is not, or the contents of the document are not, disclosed to any person other than a member of the Tribunal as constituted for the purposes of the proceeding, and, in the case of a document produced to or lodged with the Tribunal, to ensure the return of the document to the person by whom it was produced or lodged.

(3) Where the Attorney-General has certified in accordance with sub-section (1) that the disclosure of information or of the contents of a document would be contrary to the public interest but the certificate does not specify a reason referred to in paragraph (1) (a) or (b), the Tribunal shall consider whether the information or the contents of the document should be disclosed to the parties to the proceeding and, if it considers that the information or the contents of the document should be so disclosed, it shall make the information available to the parties or permit the parties to inspect the document, as the case may be.

(4) In considering whether information or the contents of a document should be disclosed as mentioned in sub-section (3), the Tribunal

shall take as the basis of its consideration the principle that it is desirable in the interest of securing the effective performance of the functions of the Tribunal that the parties to a proceeding should be made aware of all relevant matters but shall pay due regard to any reason specified by the Attorney-General in the certificate as a reason why the disclosure of the information or of the contents of the document, as the case may be, would be contrary to the public interest.

(5) This section excludes the operation of any rules of law relating to the public interest that would otherwise apply in relation to the disclosure of information or of the contents of documents in proceedings before the Tribunal.

(6) For the purposes of this Act, the question whether information or the contents of a document should be disclosed to the parties to a proceeding shall be deemed to be a question of law.

Lodging of
material
documents
with
Tribunal.

37. Notwithstanding any rule of law relating to privilege or the public interest in relation to the production of documents, a person who made a decision that is the subject of an application for a review by the Tribunal—

- (a) shall, within the prescribed time after receiving notice of the application, lodge with the Tribunal such number of copies as is prescribed of—
 - (i) a statement setting out the findings on material questions of fact and the reasons for the decision; and
 - (ii) every other document or part of a document that is in his possession or under his control and is considered by him to be relevant to the review of the decision by the Tribunal; and
- (b) if the Tribunal notifies the person that the Tribunal considers that specified other documents or that other documents included in a specified class of documents may be relevant to the review of the decision by the Tribunal, shall lodge with the Tribunal such number of copies as is prescribed of each of those other documents that is in his possession or under his control.

Power of
Tribunal to
obtain
additional
statements.

38. Where the Tribunal considers that a statement referred to in subparagraph 37 (a) (i) that is lodged by a person with the Tribunal does not contain adequate particulars of findings on material questions of fact or of the reasons for a decision, the Tribunal may order that person to lodge an additional statement or additional statements containing further and better particulars in relation to matters specified in the order with respect to those findings or reasons.

39. Subject to sections 35 and 36, the Tribunal shall ensure that every party to a proceeding before the Tribunal is given a reasonable opportunity to present his case and, in particular, to inspect any documents to which the Tribunal proposes to have regard in reaching a decision in the proceeding and to make submissions in relation to those documents.

Opportunity to make submissions concerning evidence.

40. (1) For the purpose of reviewing a decision, the Tribunal may—

Powers of Tribunal.

- (a) take evidence on oath or affirmation;
- (b) proceed in the absence of a party who has had reasonable notice of the proceeding; and
- (c) adjourn the proceeding from time to time.

(2) The member who is to preside at the hearing of a proceeding before the Tribunal may—

- (a) summon a person to appear before the Tribunal at that hearing to give evidence and to produce such documents (if any) as are referred to in the summons;
- (b) require a person appearing before the Tribunal at that hearing to give evidence either to take an oath or make an affirmation; and
- (c) administer an oath or affirmation to a person so appearing before the Tribunal.

(3) The oath or affirmation to be taken or made by a person for the purposes of this section is an oath or affirmation that the answers he will give to questions asked him will be true.

(4) A person summoned to appear before the Tribunal may request that he be represented by counsel or a solicitor and upon such request being made the Tribunal may allow such person to be represented.

(5) The power of the Tribunal under paragraph (1) (a) to take evidence on oath or affirmation may be exercised on behalf of the Tribunal in relation to a particular proceeding before the Tribunal by the member who is to preside at the hearing of that proceeding or by another person (whether a member or not) authorized by the first-mentioned member and that power may be so exercised within or outside Australia but the Tribunal may direct that the power is to be exercised subject to limitations specified by the Tribunal.

(6) Where a person other than the member who is to preside at the hearing of a proceeding is authorized to take evidence in relation to the proceeding in accordance with sub-section (5)—

- (a) the person has, for the purpose of taking that evidence, all the powers of the Tribunal under sub-section (1) and all the powers under sub-section (2) of the member who is to preside at the hearing of the proceeding; and
- (b) for the purpose of the exercise of those powers by that person, this Act has effect (except where the context otherwise requires)

as if a reference to the Tribunal or to the member who is to preside at the hearing of a proceeding included a reference to that person.

Stay of action implementing decision.

41. (1) Subject to this section, the making of an application to the Tribunal for a review of a decision does not operate as a stay of action to implement the decision.

(2) The Tribunal or a presidential member may, on request being made, as prescribed, by a party to a proceeding relating to a decision, order that any action to implement the decision be stayed.

(3) An order shall not be made under sub-section (2) unless the person who made the decision has been given a reasonable opportunity to make a submission to the Tribunal in relation to the matter.

Manner in which questions to be decided.

42. (1) A question of law arising in a proceeding before the Tribunal at which a presidential member is presiding (including the question whether a particular question is one of law) shall be decided in accordance with the opinion of the member presiding.

(2) Subject to sub-section (1), when the members constituting the Tribunal for the purposes of a particular proceeding are divided in opinion as to the decision to be made on any question—

- (a) if there is a majority of the one opinion—the question shall be decided according to the opinion of the majority; or
- (b) in any other case—the question shall be decided according to the opinion of the member presiding.

Review by Tribunal.

43. (1) For the purpose of reviewing a decision, the Tribunal may exercise all the powers and discretions that are conferred by any relevant enactment on the person who made the decision and shall make a decision in writing—

- (a) affirming the decision under review;
- (b) varying the decision under review; or
- (c) setting aside the decision under review and—
 - (i) making a decision in substitution for the decision so set aside; or
 - (ii) remitting the matter for reconsideration in accordance with any directions or recommendations of the Tribunal.

(2) The Tribunal shall give reasons in writing for its decision and those reasons shall include its findings on material questions of fact.

(3) The Tribunal shall cause a copy of its decision to be served on each party to the proceeding.

(4) Without prejudice to any other method available by law for the proof of decisions or orders of the Tribunal, a document purporting to be a copy of such a decision or order, and to be certified by the Registrar or

a Deputy Registrar to be a true copy of the decision or order, is, in any proceeding, *prima facie* evidence of the decision or order.

(5) Sub-sections (3) and (4) apply in relation to the reasons given by the Tribunal for its decision as they apply in relation to the decision.

(6) A decision of a person as varied by the Tribunal, or a decision made by the Tribunal in substitution for the decision of a person, shall, for all purposes (other than the purposes of applications to the Tribunal for a review or of appeals to the Australian Industrial Court), be deemed to be a decision of that person and, unless the Tribunal otherwise orders, has effect, or shall be deemed to have had effect, on and from the day on which the decision under review has or had effect.

44. (1) A party to a proceeding before the Tribunal may, in such manner and within such time as are prescribed, appeal to the Australian Industrial Court, on a question of law, from any decision of the Tribunal in that proceeding.

Appeal to Australian Industrial Court from decisions of Tribunal.

(2) Where a person has applied to the Tribunal for a review of a decision, or has applied to be made a party to a proceeding before the Tribunal for a review of a decision, and the Tribunal decides that the interests of the person are not affected by the decision, the person may, in such manner and within such time as are prescribed, appeal to the Australian Industrial Court from the decision of the Tribunal.

(3) The Australian Industrial Court has jurisdiction to hear and determine appeals instituted in that Court in accordance with sub-sections (1) and (2).

(4) The Australian Industrial Court shall hear and determine the appeal and may make such order as it thinks appropriate by reason of its decision.

(5) Without limiting by implication the generality of sub-section (4), the orders that may be made by the Australian Industrial Court on an appeal include an order affirming or setting aside the decision of the Tribunal and an order remitting the case to be heard and decided again, either with or without the hearing of further evidence, by the Tribunal in accordance with the directions of the Court.

45. (1) The Tribunal may, of its own motion or at the request of a party, refer a question of law arising in a proceeding before the Tribunal to the Australian Industrial Court for decision but a question shall not be so referred by the Tribunal constituted by 2 or more members, in a proceeding at which a presidential member presides, without the concurrence of that presidential member.

Reference of questions of law to Australian Industrial Court.

(2) Jurisdiction is conferred on the Australian Industrial Court to hear and determine a question of law referred to it under this section.

(3) Where a question of law arising in any proceeding has been referred to the Australian Industrial Court under this section, the Tribunal shall not, in that proceeding—

- (a) give a decision to which the question is relevant while the reference is pending; or
- (b) proceed in a manner, or make a decision, that is inconsistent with the opinion of the Australian Industrial Court on the question.

Sending of documents to, and disclosure of documents by, Australian Industrial Court.

46. (1) When an appeal is instituted in the Australian Industrial Court in accordance with section 44 or a question of law is referred to that Court in accordance with section 45—

- (a) the Tribunal shall, notwithstanding sub-section 36 (2), cause to be sent to the Court all documents that were before the Tribunal in connexion with the proceeding to which the appeal or reference relates; and
- (b) at the conclusion of the proceeding before the Australian Industrial Court in relation to the appeal or reference, the Court shall cause the documents to be returned to the Tribunal.

(2) If there is in force in respect of any of the documents a certificate by the Attorney-General in accordance with sub-section 28 (2) or 36 (1) certifying that the disclosure of the contents of the document would be contrary to the public interest, the Australian Industrial Court shall, subject to sub-section (3), do all things necessary to ensure that the contents of the document are not disclosed to any person other than a member of the Court as constituted for the purposes of the proceeding.

(3) If—

- (a) the certificate does not specify a reason referred to in paragraph 28 (2) (a) or (b) or 36 (1) (a) or (b), as the case may be;
- (b) a question for decision by the Australian Industrial Court is whether the contents of the document should be disclosed to the parties to the proceeding before the Tribunal in respect of which the appeal was instituted or the reference was made; and
- (c) the Court decides that the contents of the document should be so disclosed,

the Court shall permit the parties to the proceeding before the Court to inspect the document.

PART V—ADMINISTRATIVE REVIEW COUNCIL

Interpretation.

47. (1) In this Part, unless the contrary intention appears—

“appointed member” means a member referred to in paragraph 49 (1) (d);

“Council” means the Administrative Review Council;

“member” means a member of the Council.

(2) A reference in this Part to an administrative decision or an administrative discretion includes a reference to an administrative decision made, or administrative discretion exercised, otherwise than under an enactment.

48. There is hereby established a Council by the name of the Administrative Review Council. Establishment of Council.

49. (1) The Council shall consist of— Composition of Council.

(a) the President;

(b) the Australian Ombudsman holding office under the *Ombudsman Act 1975*;

(c) the Chairman of the Law Reform Commission established by the *Law Reform Commission Act 1973*; and

(d) not less than 3 nor more than 7 other members.

(2) The members referred to in paragraph (1)(d) shall be appointed by the Governor-General and shall be appointed as part-time members.

(3) The performance of the functions or the exercise of the powers of the Council is not affected by a vacancy in the office of a member referred to in paragraph (1) (a), (b) or (c) or by reason of the number of appointed members falling below 3 for not more than 3 months.

50. A person shall not be appointed as a member referred to in paragraph 49(1)(d) unless he has had extensive experience in public administration or has an extensive knowledge of administrative law. Qualifications for appointment.

51. (1) The functions of the Council are— Functions and powers of Council.

(a) to ascertain, and keep under review, the classes of administrative decisions that are not the subject of review by a court, tribunal or other body;

(b) to make recommendations to the Minister as to whether any of those classes of decisions should be the subject of review by a court, tribunal or other body and, if so, as to the appropriate court, tribunal or other body to make that review;

(c) to inquire into the adequacy of the law and practice relating to the review by courts of administrative decisions and to make recommendations to the Minister as to any improvements that might be made in that law or practice;

(d) to inquire into the adequacy of the procedures in use by tribunals or other bodies engaged in the review of administrative decisions and to make recommendations to the Minister as to any improvements that might be made in those procedures;

- (e) to make recommendations to the Minister as to the manner in which tribunals engaged in the review of administrative decisions should be constituted;
- (f) to make recommendations to the Minister as to the desirability of administrative decisions that are the subject of review by tribunals other than the Administrative Appeals Tribunal being made the subject of review by the Administrative Appeals Tribunal; and
- (g) to make recommendations to the Minister as to ways and means of improving the procedures for the exercise of administrative discretions for the purpose of ensuring that those discretions are exercised in a just and equitable manner.

(2) The Council may do all things necessary or convenient to be done for or in connexion with the performance of its functions.

Period of appointment. **52.** An appointed member shall be appointed for such period, not exceeding 3 years, as the Governor-General specifies in the instrument of his appointment, but is eligible for re-appointment.

Remuneration and allowances. **53.** (1) An appointed member shall be paid such remuneration as is determined by the Remuneration Tribunal but, if no determination of that remuneration by that Tribunal is in operation, he shall be paid such remuneration as is prescribed.

(2) An appointed member shall be paid such allowances as are prescribed.

(3) This section has effect subject to the *Remuneration Tribunals Act 1973-1974*.

Resignation. **54.** An appointed member may resign his office by writing signed by him and delivered to the Governor-General.

Removal from office. **55.** (1) The Governor-General may remove an appointed member from office for misbehaviour or incapacity.

(2) If an appointed member is absent, except by leave of the Minister, from 3 consecutive meetings of the Council, the Governor-General may remove him from office.

Meetings. **56.** (1) The Council shall hold such meetings as are necessary for the performance of its functions.

(2) The President may at any time convene a meeting of the Council.

(3) The President shall, on receipt of a request in writing signed by 3 members, convene a meeting of the Council.

(4) At a meeting of the Council, 4 members constitute a quorum.

(5) The President shall preside at all meetings of the Council at which he is present.

(6) If the President is not present at a meeting of the Council, the members present shall elect one of their number to preside at that meeting and the person so elected shall preside accordingly.

(7) Questions arising at a meeting of the Council shall be determined by a majority of the votes of the members present and voting.

(8) The member presiding at a meeting of the Council has a deliberative vote and, in the event of an equality of votes, also has a casting vote.

(9) The Council may regulate the conduct of proceedings at its meetings as it thinks fit and shall keep minutes of those proceedings.

(10) A person acting in the office of the Australian Ombudsman may attend a meeting of the Council and, in relation to a meeting of the Council that he attends in pursuance with this sub-section, shall be deemed to be the Australian Ombudsman.

57. The staff of the Council shall be persons appointed or employed under the *Public Service Act* 1922-1975. Staff of Council.

58. (1) The Council shall, as soon as practicable after 30 June in each year, prepare and furnish to the Minister a report of the operations of the Council during that year. Annual report.

(2) The Minister shall cause the report of the Council to be laid before each House of the Parliament within 15 sitting days of that House after the receipt of the report by the Minister.

(3) The first report by the Council shall relate to the period commencing on the date of commencement of this Act and ending on 30 June 1976.

PART VI—MISCELLANEOUS

59. If an enactment so provides, the Tribunal may give an advisory opinion on a matter or question referred to it in accordance with the enactment and, for the purpose of giving such an opinion, the Tribunal may hold such hearings and inform itself in such manner as it thinks appropriate. Advisory opinions.

60. (1) A member has, in the performance of his duties as a member, the same protection and immunity as a Justice of the High Court. Protection of members, barristers and witnesses.

(2) A barrister, solicitor or other person appearing before the Tribunal on behalf of a party has the same protection and immunity as a barrister has in appearing for a party in proceedings in the High Court.

(3) Subject to this Act, a person summoned to attend or appearing before the Tribunal as a witness has the same protection, and is, in addition to the penalties provided by this Act, subject to the same liabilities, as a witness in proceedings in the High Court.

Failure of witness to attend.

61. A person served, as prescribed, with a summons to appear as a witness before the Tribunal shall not, without reasonable excuse—

- (a) fail to attend as required by the summons; or
- (b) fail to appear and report himself from day to day unless excused, or released from further attendance, by a member.

Penalty: \$1,000 or imprisonment for 3 months.

Refusal to be sworn or to answer questions.

62. A person appearing as a witness before the Tribunal shall not, without reasonable excuse—

- (a) when required in pursuance of section 40 either to take an oath or make an affirmation—refuse or fail to comply with the requirement;
- (b) refuse or fail to answer a question that he is required to answer by the member presiding at the proceeding; or
- (c) refuse or fail to produce a document that he was required to produce by a summons under this Act served on him as prescribed.

Penalty: \$1,000 or imprisonment for 3 months.

Contempt of Tribunal.

63. A person shall not—

- (a) insult a member in or in relation to the exercise of his powers or functions as a member;
- (b) interrupt the proceedings of the Tribunal;
- (c) create a disturbance, or take part in creating or continuing a disturbance, in or near a place where the Tribunal is sitting; or
- (d) do any other act or thing that would, if the Tribunal were a court of record, constitute a contempt of that court.

Penalty: \$1,000 or imprisonment for 3 months.

Registries.

64. (1) The Governor-General shall cause such Registries of the Tribunal to be established as he thinks fit, but so that at least one Registry shall be established in each State, in the Australian Capital Territory and in the Northern Territory.

(2) The Governor-General shall designate one of the Registries as the Principal Registry.

Officers of Tribunal.

65. (1) There shall be a Registrar of the Tribunal and such Deputy Registrars of the Tribunal and other officers of the Tribunal as are required.

(2) The Registrar, the Deputy Registrars and the other officers of the Tribunal shall be appointed by the Minister and shall have such

duties, powers and functions as are provided by this Act and the regulations and such other duties and functions as the President directs.

(3) The Registrar, the Deputy Registrars and the other officers of the Tribunal shall be persons appointed or employed under the *Public Service Act 1922-1975*.

(4) Where the Registrar, a Deputy Registrar or another officer of the Tribunal is, or is expected to be, absent from duty, or the office of the Registrar, of a Deputy Registrar or of another officer of the Tribunal is vacant, the Minister may appoint a person appointed or employed under the *Public Service Act 1922-1975* to act as the Registrar, as that Deputy Registrar or as that other officer of the Tribunal during the absence or until the filling of the vacancy, as the case may be.

(5) A person appointed to act as the Registrar, as a Deputy Registrar or as another officer of the Tribunal has all the powers and duties, and shall perform all the functions, conferred on the Registrar, the Deputy Registrar or the other officer of the Tribunal, as the case may be, and, for the purpose of the exercise of the powers or duties, or the performance of the functions, of the Registrar or of a Deputy Registrar, this Act has effect as if a reference to the Registrar or to a Deputy Registrar included a reference to a person acting as the Registrar or as a Deputy Registrar, as the case may be.

66. (1) A person who is or has been a member or an officer of the Tribunal shall not, either directly or indirectly, except for the purposes of this Act— Secrecy.

- (a) make a record of, or divulge or communicate to any person, any information concerning the affairs of another person acquired by him by reason of his office or employment under or for the purposes of this Act; or
- (b) produce to any person a document relating to the affairs of another person furnished for the purposes of this Act.

(2) A person who is or has been a member or an officer of the Tribunal shall not be required to produce in a court any document relating to the affairs of another person of which he has custody, or to which he has access, by virtue of his office or employment under or for the purposes of this Act, or to divulge or to communicate to a court any information concerning the affairs of another person obtained by him by reason of such an office or employment, except when it is necessary to do so for purposes of this Act.

(3) In this section—

“court” includes any tribunal, authority or person having power to require the production of documents or the answering of questions;

“produce” includes permit access to, and “production” has a corresponding meaning.

Fees for witnesses.

67. (1) A person summoned to appear as a witness before the Tribunal is entitled to be paid fees, and allowances for expenses, fixed by or in accordance with the regulations in respect of his attendance.

(2) Subject to sub-section (3), the fees and allowances shall be paid—

- (a) in a case where the witness was summoned at the request of a party other than the person who made the decision subject to review—by that party; and
- (b) in any other case—by Australia.

(3) The Tribunal may, in its discretion, order that the fees and allowances of a witness referred to in paragraph (2) (a) shall be paid, in whole or in part, by Australia.

Lodging of documents.

68. Where a document is required by this Act to be lodged with the Tribunal, the document shall be lodged at the office of the Registrar or of a Deputy Registrar.

Legal assistance.

69. (1) A person who—

- (a) has made, or proposes to make, an application to the Tribunal for a review of a decision;
- (b) is a party to a proceeding before the Tribunal instituted by another person; or
- (c) proposes to institute a proceeding, or is a party to a proceeding instituted, before a court in respect of a matter arising under this Act,

may apply to the Attorney-General for the provision of assistance under this section in respect of the proceeding.

(2) Where an application is made by a person under sub-section (1), the Attorney-General may, if he is satisfied that it would involve hardship to that person to refuse the application and that, in all the circumstances, it is reasonable that the application should be granted, authorize the provision by Australia to that person, either unconditionally or subject to such conditions as the Attorney-General determines, of such legal or financial assistance in relation to the proceeding as the Attorney-General determines.

Regulations.

70. The Governor-General may make regulations, not inconsistent with this Act, prescribing all matters required or permitted by this Act to be prescribed or necessary or convenient to be prescribed for carrying out or giving effect to this Act.

SCHEDULE

Section 26

PART I—INTERPRETATION

1. (1) This Schedule applies only in respect of decisions made after the commencement of this Act.

(2) Expressions used in a succeeding Part of this Schedule have, unless the contrary intention appears, the same respective meanings as those expressions have in the Act specified in the heading to that Part.

(3) A reference in this Schedule to a decision by the holder of an office includes a reference to a decision by a person for the time being acting in or performing any of the duties of the office.

(4) This Schedule applies to a decision made by a person to whom the power to make the decision has been delegated in like manner as it would have applied if the decision had been made by the person who delegated that power.

PART II—AGRICULTURAL TRACTORS BOUNTY ACT

2. Applications may be made to the Tribunal for review of—

- (a) a decision of the Minister under sub-section 6 (5) of the *Agricultural Tractors Bounty Act 1966-1973*;
- (b) a determination of the Comptroller-General of Customs under sub-section 6 (6) of that Act;
- (c) a decision of the Comptroller-General of Customs under section 8 of that Act;
- (d) a decision of the Minister under section 9 of that Act;
- (e) a decision of the Minister under sub-section 11 (3) of that Act;
- (f) a determination of the Minister under sub-section 11 (6) of that Act; and
- (g) a decision of the Minister under sub-section 11 (8) of that Act cancelling the registration of premises.

PART III—AIR NAVIGATION ACT

3. (1) Applications may be made to the Tribunal for review of decisions by the Secretary to the Department of Transport—

- (a) refusing to grant a licence or certificate referred to in regulation 254 of the *Air Navigation Regulations*; or
- (b) varying or cancelling such a licence or certificate or suspending such a licence or certificate otherwise than under regulation 256 or 257 of those Regulations.

(2) A person is not entitled to—

- (a) have a matter to which a decision relates submitted for review to a board of review; or
- (b) appeal against a decision,

in accordance with regulation 259 or the *Air Navigation Regulations* if an application may be made to the Tribunal in respect of the decision by virtue of sub-clause (1).

PART IV—AUSTRALIAN CAPITAL TERRITORY TAXATION
ADMINISTRATION ACT

4. (1) An application may be made to the Tribunal for review of the revocation by the Commissioner of Taxation under section 20 of the *Australian Capital Territory Taxation Administration Act 1969-1973* of an authority granted to a banker under Division 2 of Part III of that Act.

(2) A person is not entitled to appeal under section 21 of the *Australian Capital Territory Taxation Administration Act 1969-1973* against the revocation of an authority in respect of which an application may be made to the Tribunal by virtue of sub-clause (1).

(3) For the purpose of reviewing a revocation of an authority referred to in sub-clause (1), the Tribunal shall be constituted by a presidential member alone.

SCHEDULE—continued

PART V—AUSTRALIAN FILM COMMISSION ACT

5. An application may be made to the Tribunal for review of a requirement made under section 10 of the *Australian Film Commission Act 1975*.

PART VI—BROADCASTING AND TELEVISION ACT

6. (1) Applications may be made to the Tribunal for review of decisions of the Minister made under section 86 of the *Broadcasting and Television Act 1942-1975* or decisions of the Australian Broadcasting Control Board made under section 119 of that Act.

(2) A person is not entitled to appeal under section 87A of the *Broadcasting and Television Act 1942-1975* against a decision in respect of which an application may be made to the Tribunal by virtue of sub-clause (1).

PART VII—BOOK BOUNTY ACT

7. Applications may be made to the Tribunal for review of—

- (a) a direction of the Minister under sub-section 3A (2) of the *Book Bounty Act 1969-1975*;
- (b) a determination of the Minister under sub-section 4 (2) or (3) of that Act;
- (c) a decision of the Minister under section 9 of that Act;
- (d) a decision of the Minister under sub-section 11 (3) of that Act;
- (e) a determination of the Minister under sub-section 11 (6) of that Act; and
- (f) a decision of the Minister under sub-section 11 (7) of that Act cancelling the registration of premises.

PART VIII—CELLULOSE ACETATE FLAKE BOUNTY ACT

8. Applications may be made to the Tribunal for review of—

- (a) decisions of the Comptroller-General of Customs made under section 9 of the *Cellulose Acetate Flake Bounty Act 1956-1973*; and
- (b) decisions of the Minister made under sub-sections 10 (3), (4) and (5) of that Act.

PART IX—COAL EXCISE ACT

9. Applications may be made to the Tribunal for review of decisions of the Collector under sections 12 and 16 of the *Coal Excise Act 1949-1973*.

PART X—COMMERCE (TRADE DESCRIPTIONS) ACT

10. (1) Applications may be made to the Tribunal for review of—

- (a) decisions of the Comptroller-General of Customs made under sub-section 7 (3) or section 10 of the *Commerce (Trade Descriptions) Act 1905-1973* other than a decision in respect of which an appeal has been made to the Minister for Police and Customs under that sub-section or section, as the case may be; and
- (b) decisions of the Secretary to the Department of Agriculture made under sub-section 11 (3) or section 13 of that Act other than a decision in respect of which an appeal has been made to the Minister for Agriculture under that sub-section or section, as the case may be.

(2) A person is not entitled—

- (a) to appeal to the Minister for Police and Customs under sub-section 7 (3) or section 10 of the *Commerce (Trade Descriptions) Act 1905-1973* against a decision of the Comptroller-General of Customs made under that sub-section or section, as the case may be; or
- (b) to appeal to the Minister for Agriculture under sub-section 11 (3) or section 13 of that Act against a decision of the Secretary to the Department of Agriculture made under that sub-section or section, as the case may be,

if an application has been made to the Tribunal for review of that decision.

SCHEDULE—continued

PART XI—COPYRIGHT ACT

11. (1) Applications may be made to the Tribunal for review of decisions of the Comptroller-General of Customs made under sub-section 135 (6) of the *Copyright Act* 1968-1973 other than a decision in respect of which an appeal has been made to the Minister for Police and Customs.

(2) A person is not entitled to appeal to the Minister for Police and Customs under sub-section 135 (6) of the *Copyright Act* 1968-1973 against a decision of the Comptroller-General of Customs made under that sub-section if an application has been made to the Tribunal for review of that decision.

PART XII—CUSTOMS ACT

12. (1) In this clause, “Customs Act” means the *Customs Act* 1901-1975.

(2) Applications may be made to the Tribunal for review of—

- (a) a demand made by a Collector under section 35A of the Customs Act;
- (b) a decision by the Minister under Division 1 of Part V of the Customs Act;
- (c) a decision by the Minister under section 119 of the Customs Act not to grant a Certificate of Clearance;
- (d) a refusal by a Collector under section 126 of the Customs Act;
- (e) quota orders, and variations of quota orders, made by the Minister under sections 132B and 132C of the Customs Act;
- (f) a direction of the Minister under paragraph 151 (8) (a) of the Customs Act;
- (g) a decision of the Collector under section 151A of the Customs Act;
- (h) a specification of the Minister under sub-section 157 (4) of the Customs Act;
- (i) a decision by the Minister under section 160 of the Customs Act;
- (j) a direction by the Minister under section 164B of the Customs Act;
- (k) a decision by a Collector under section 183A of the Customs Act; and
- (l) a decision by the Minister under section 183B of the Customs Act.

(3) Where a dispute referred to in sub-section 167 (1) of the Customs Act has arisen and the owner of the goods has, in accordance with that sub-section, paid under protest the sum demanded by the Collector, an application may be made to the Tribunal for review of the demand made by the Collector for that sum.

(4) For the purposes of the reviews referred to in paragraphs (2) (b), (k) and (l), the Tribunal shall be constituted by a presidential member alone.

(5) Sub-section 119 (3) of the Customs Act does not apply where a Certificate of Clearance is granted to the owner of the ship or aircraft referred to in that sub-section as a result of a review by the Tribunal.

(6) A person is not entitled to apply for a review under section 132E of the Customs Act of a quota order, or a variation of a quota order, if an application may be made to the Tribunal under paragraph (2) (e) in respect of the quota order or the variation, as the case may be.

(7) An application may not be made to the Tribunal under sub-clause (3) unless the application is made within the time specified in paragraph 167 (4) (a) or (b), whichever is appropriate, of the Customs Act.

(8) Where the owner of goods has made an application to the Tribunal under sub-clause (3), he is not entitled to bring an action under sub-section 167 (2) of the Customs Act.

(9) Where, on an application made under sub-clause (3), the Tribunal has made a decision reviewing a demand made by the Collector, the proper duty payable in respect of the goods concerned shall be deemed to be—

- (a) the sum determined to be the proper duty by, or ascertained to be the proper duty in accordance with—
 - (i) the decision of the Tribunal; or
 - (ii) an order of a court on appeal from that decision; or
- (b) the sum paid under protest,

whichever is the less.

SCHEDULE—continued

(10) A person is not entitled to appeal under sub-section 183C (1) of the Customs Act against a suspension, further suspension or revocation of a licence in respect of which an application may be made to the Tribunal under paragraph (2) (1).

PART XIII—CUSTOMS REGULATIONS

13. Applications may be made to the Tribunal for review of—
- (a) decisions of a Collector made under regulation 128B and sub-regulation 132 (2) of the Customs Regulations; and
 - (b) decisions in relation to drawback of customs duty made by the Minister or a Collector under regulations 129, 131, 133 and 134 (other than declarations by the Minister under sub-regulation 131 (1)) of those Regulations.

PART XIV—CUSTOMS TARIFF

14. Applications may be made to the Tribunal for review of—
- (a) a direction given by the Minister under section 7 of the *Customs Tariff* 1966-1974; and
 - (b) determinations made by the Minister under sections 8 and 31 of the *Customs Tariff* 1966-1974.

PART XV—DEFENCE FORCE RETIREMENT AND DEATH BENEFITS ACT

15. (1) Applications may be made to the Tribunal for review of a decision of the Defence Force Retirement and Death Benefits Authority established under section 8 of the *Defence Force Retirement and Death Benefits Act* 1973-1974 in a case where, but for this Part, a request in relation to the decision could be made to that Authority under section 101 of that Act.

(2) A person is not entitled to make a request to the Authority referred to in sub-clause (1) of this clause under section 101 of the *Defence Force Retirement and Death Benefits Act* 1973-1974 in relation to a decision in respect of which an application may be made to the Tribunal by virtue of that sub-clause.

PART XVI—DISTILLATION ACT

16. Applications may be made to the Tribunal for review of—
- (a) a decision by the Collector under section 20 of the *Distillation Act* 1901-1973; and
 - (b) a cancellation of a licence by the Minister under section 24 of the *Distillation Act* 1901-1973.

PART XVII—EXCISE ACT

17. (1) In this clause, “Excise Act” means the *Excise Act* 1901-1974.
- (2) Applications may be made to the Tribunal for review of—
- (a) a decision by a Collector under section 5A of the Excise Act;
 - (b) a decision by the Collector under section 40 of the Excise Act;
 - (c) a cancellation by the Minister under section 43 of the Excise Act;
 - (d) quota orders, and variations of quota orders, made by the Minister under sections 59A and 59B of the Excise Act; and
 - (e) a demand made by a Collector under section 60 of the Excise Act.

(3) Where a dispute referred to in section 154 of the Excise Act has arisen and the owner of the goods has, in accordance with that section, deposited the amount of duty demanded by the Collector, an application may be made to the Tribunal for review of the demand made by the Collector for that amount.

(4) A person is not entitled to apply for review under section 59D of the Excise Act of a quota order, or a variation of a quota order, if an application may be made to the Tribunal under paragraph (2) (d) in respect of the quota order or the variation, as the case may be.

SCHEDULE—continued

(5) An application may not be made to the Tribunal under sub-clause (3) unless the application is made within a period of 6 months after the making of the deposit referred to in that sub-clause.

(6) Where the owner of goods has made an application to the Tribunal under sub-clause (3)—

(a) the consequences referred to in paragraph 154 (2) of the Excise Act shall not ensue and the owner of the goods is not entitled to institute against the Collector an action referred to in that paragraph; and

(b) the proper duty payable in respect of the goods shall be deemed to be—

(i) the amount determined to be the proper duty by, or ascertained to be the proper duty in accordance with—

(A) the decision of the Tribunal; or

(B) an order of a court on appeal from that decision; or

(ii) the amount of the deposit,

whichever is the less, and where the amount of the deposit exceeds the amount referred to in sub-paragraph (i), the excess shall be refunded by the Collector to the owner with interest at the rate of 5 per centum per annum.

PART XVIII—EXCISE REGULATIONS

18. Applications may be made to the Tribunal for review of—

(a) decisions of a Collector under regulation 58 of the Excise Regulations; and

(b) decisions in relation to drawback of excise duty made by the Minister or a Collector under regulations 76, 77, 78, 78A and 78B (other than declarations by the Minister under sub-regulation 77 (1)) of those Regulations.

PART XIX—INCOME TAX ASSESSMENT ACT

19. (1) An application may be made to the Tribunal for review of the cancellation by a Tax Agents' Board under section 251K of the *Income Tax Assessment Act* 1936-1975 of the registration of a tax agent.

(2) A person is not entitled to appeal under sub-section 251K (5) of the *Income Tax Assessment Act* 1936-1975 against a cancellation of the registration of a tax agent in respect of which an application may be made to the Tribunal by virtue of sub-clause (1).

(3) For the purpose of reviewing the cancellation of the registration of a tax agent, the Tribunal shall be constituted by a presidential member alone.

PART XX—MARRIAGE ACT

20. (1) An application may be made to the Tribunal for review of a decision of a Registrar of Ministers of Religion refusing to register a person who has applied for registration under Division 1 of Part IV of the *Marriage Act* 1961-1973 or removing the name of a person from a register in pursuance of section 33 of that Act.

(2) A person is not entitled to request a review under section 34 of the *Marriage Act* 1961-1973 of a decision in respect of which an application for review may be made to the Tribunal by virtue of sub-clause (1).

(3) For the purpose of reviewing a decision referred to in sub-clause (1), the Tribunal shall be constituted by a presidential member alone.

PART XXI—METAL WORKING MACHINE TOOLS BOUNTY ACT

21. Applications may be made to the Tribunal for a review of—

(a) a decision of the Minister under sub-section 3 (2) of the *Metal Working Machine Tools Bounty Act* 1972-1973;

(b) a determination by the Comptroller-General of Customs under section 5 of that Act;

(c) a decision of the Comptroller-General of Customs under section 9 of that Act;

(d) a decision of the Minister under section 10 of that Act;

(e) a decision of the Minister under sub-section 12 (3) of that Act;

SCHEDULE—continued

- (f) a decision of the Minister under sub-section 12 (6) of that Act;
- (g) a determination by the Minister under sub-section 12 (7) of that Act; and
- (h) a cancellation of the registration of premises made by the Minister under sub-section 12 (8) of that Act.

PART XXII—MIGRATION ACT

22. (1) Applications may be made to the Tribunal for review of decisions of the Minister made under section 12, 13 or 48 of the *Migration Act 1958-1973* other than a decision made on a matter remitted by the Tribunal for reconsideration in accordance with sub-clause (3).

(2) A person is not entitled to make an application under sub-clause (1) in relation to a decision made under section 12 or 13 of the *Migration Act 1958-1973* unless—

- (a) the person is an Australian citizen; or
- (b) the continued presence of the person in Australia is not subject to any limitation as to time imposed by law.

(3) After reviewing a decision referred to in sub-clause (1), the Tribunal shall either affirm the decision or remit the matter for reconsideration in accordance with any recommendations of the Tribunal.

(4) For the purpose of reviewing a decision referred to in sub-clause (1), the Tribunal shall be constituted by a presidential member alone.

PART XXIII—NATIONAL HEALTH ACT

23. (1) An application may be made to the Tribunal for review of a decision of the Director-General of Health under section 90 of the *National Health Act 1953-1975* rejecting an application of a pharmaceutical chemist under that section.

(2) A person is not entitled to appeal under sub-section 90 (5) of the *National Health Act 1953-1975* against a decision in respect of which an application may be made to the Tribunal by virtue of sub-clause (1).

(3) An application may be made to the Tribunal for review of a decision of the Minister under section 95 of the *National Health Act 1953-1975* suspending, further suspending or revoking the approval or authority of a medical practitioner or a pharmaceutical chemist.

(4) A person is not entitled to appeal under section 97 of the *National Health Act 1953-1975* against a decision in respect of which an application may be made to the Tribunal by virtue of sub-clause (3).

PART XXIV—PATENTS ACT

24. (1) Applications may be made to the Tribunal for review of a refusal by the Commissioner of Patents to register a person as a patent attorney under section 133 of the *Patents Act 1957-1973*.

(2) Applications may be made to the Tribunal for review of an order by the Commissioner of Patents under regulation 27 of the Patent Attorneys Regulations directing that the name of a patent attorney be removed from the Register of Patent Attorneys.

(3) A person is not entitled to appeal under regulation 29 of the Patent Attorneys Regulations against an order in respect of which an application may be made to the Tribunal by virtue of sub-clause (2).

(4) For the purpose of reviewing an order referred to in sub-clause (2), the Tribunal shall be constituted by a presidential member alone.

PART XXV—SPIRITS ACT

25. An application may be made to the Tribunal for a review of a decision of a Collector of Customs under section 20 of the *Spirits Act 1906-1973*.

SCHEDULE—continued

PART XXVI—TRADE MARKS ACT

26. (1) Applications may be made to the Tribunal for review of decisions of the Comptroller-General of Customs made under sub-section 103 (2) of the *Trade Marks Act* 1955-1973 other than a decision in respect of which an appeal has been made to the Minister for Police and Customs under that sub-section.

(2) A person is not entitled to appeal to the Minister for Police and Customs under sub-section 103 (2) of the *Trade Marks Act* 1955-1973 against a decision of the Comptroller-General of Customs made under that sub-section if an application has been made to the Tribunal for review of that decision.

NOTE

1. Act No. 91, 1975; assented to 28 August 1975.