

# ADMINISTRATIVE APPEALS TRIBUNAL AMENDMENT ACT 1977

No. 58 of 1977

An Act to amend the *Administrative Appeals Tribunal Act 1975*.

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

1. (1) This Act may be cited as the *Administrative Appeals Tribunal Amendment Act 1977*.<sup>1</sup> Short title,  
&c.

(2) The *Administrative Appeals Tribunal Act 1975*<sup>2</sup> is in this Act referred to as the Principal Act.

2. This Act shall come into operation on the day on which it receives the Royal Assent.<sup>1</sup> Commence-  
ment.

3. Section 3 of the Principal Act is amended—

(a) by inserting in sub-section (1), after the definition of “Registrar”, the following definition:—

“ ‘senior non-presidential member’ means a non-presidential member declared by the Governor-General in accordance with sub-section 6 (4) or (5) to be a senior non-presidential member; ”; and

(b) by adding at the end of the section the following sub-section:—

“(4) A document or statement that is required by this Act to be furnished to a person or a notice or other notification that is required by this Act to be served on or given to a person may be posted to the person by a pre-paid letter—

(a) where the person has furnished an address at which documents in relation to the proceeding may be served—to that address; or

(b) where no such address has been furnished—

(i) in the case of a person not being a company—to the address of his place of residence or business last known to the person posting the document, statement or notice or other notification; or

(ii) in the case of a company—to the address of the registered office of the company,

and, if a document, statement or notice or other notification is so posted, then, for the purposes of this Act, the document or statement shall be deemed to be furnished, or the notice or other

Interpret-  
ation.

notification shall be deemed to be served or given, as the case may be, at the time when the document, statement or notice or other notification is so posted.”

Appointment  
of members  
of Tribunal.

4. Section 6 of the Principal Act is amended by adding at the end thereof the following sub-sections:—

“(4) The Governor-General may, in the instrument of appointment of a non-presidential member, declare that member to be a senior non-presidential member.

“(5) At any time during the period of appointment of a non-presidential member, the Governor-General may, with the consent of that member, by instrument under the hand of the Governor-General, declare that member to be a senior non-presidential member.”

5. Section 9 of the Principal Act is repealed and the following section substituted:—

Remun-  
eration  
and  
allowances.

“9. (1) Subject to this section, a presidential member who is a Judge shall be paid salary at such rate (if any), and an annual allowance at such rate (if any), as are fixed by the Parliament.

“(2) A presidential member who is a Judge 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 (if any) 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.

“(3) If the President or a Deputy President, being a Judge, receives salary under this Act by virtue of sub-section (2) and he dies or retires as a Judge, the *Judges’ Pensions Act* 1968 applies to or in relation to him as if the appropriate current judicial salary in relation to him were increased by the amount that he would have received as salary under this Act by virtue of sub-section (2) if he had not died or retired and had continued to be the President or a Deputy President, as the case may be.

“(4) A member who—

- (a) is a presidential member but is not a Judge; or
- (b) is 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.

“(5) A member, other than a presidential member who is a Judge, shall be paid such allowances as are prescribed.

“(6) Sub-sections (4) and (5) have effect subject to the *Remuneration Tribunals Act* 1973.”

6. Section 10 of the Principal Act is repealed and the following sections are substituted:—

“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. Acting appointments.

“(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 is, or is expected to be—

- (a) in the case of a full-time member—absent from duty or from Australia; or
- (b) in the case of a part-time member—unavailable to perform the duties of his office,

the Governor-General may appoint a person qualified to be appointed as a non-presidential member—

- (c) in a case to which paragraph (a) applies—to act as a full-time non-presidential member during the absence; or
- (d) in a case to which paragraph (b) applies—to act as a part-time non-presidential member during the period of unavailability.

“(4) An appointment under sub-section (3) of a person to act as a non-presidential member shall, if the non-presidential member by reason of whose absence or unavailability the appointment is made is a senior non-presidential member, be expressed to be an appointment to act as a senior non-presidential member.

“(5) Where a person has been appointed under sub-section (2) or (3), the Minister 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 he resigns the appointment or 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 he resigns the appointment, the appointment is terminated by the Governor-General or a period of 12 months elapses 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 Deputy President who is acting as President may resign his acting appointment by writing signed by him and delivered to the Minister.

“(9) A person who is acting as a Deputy President or as a non-presidential member may resign his acting appointment by writing signed by him and delivered to the Governor-General.

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

“(11) 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.

Delegation.

“10A. (1) The President may, either generally or as otherwise provided by the instrument of delegation, by writing signed by him, delegate to a Deputy President any of his powers under this Act, other than his powers under section 56 and this power of delegation.

“(2) A power so delegated, when exercised by the delegate, shall, for the purposes of this Act, be deemed to have been exercised by the President.

“(3) A delegation may be made to a Deputy President under this section notwithstanding that a delegation to another Deputy President

is, or delegations to other Deputy Presidents are, in force under this section.

“(4) A delegation under this section does not prevent the exercise of a power by the President.”.

7. Section 13 of the Principal Act is amended by omitting sub-section (9) and substituting the following sub-section:— Removal from office.

“(9) The Governor-General may, with the consent of a member who is an eligible employee for the purposes of the *Superannuation Act* 1976, retire the member from office on the ground of incapacity.”.

8. Section 16 of the Principal Act is amended by omitting paragraph (c) and substituting the following paragraph:— Rights of public servant appointed as full-time member.

“(c) he shall be deemed, in respect of any service by him as a presidential member, to continue to be an eligible employee for the purposes of the *Superannuation Act* 1976; and”.

9. Section 17 of the Principal Act is repealed and the following section substituted:—

“17. (1) For the purposes of the *Superannuation Act* 1976, the removal under sub-section 13 (1) of this Act of a member from office on the ground of incapacity or the removal under sub-section 13 (4) of a member from office following his suspension from office on that ground, or the retirement under sub-section 13 (9) of a member from office, shall be deemed to be retirement on the ground of invalidity. Application of Superannuation Act.

“(2) 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, an eligible employee for the purposes of the *Superannuation Act* 1976, he shall be deemed, in respect of his service as a presidential member, to continue to be an eligible employee for the purposes of that Act.”.

10. Section 18 of the Principal Act is amended—

- (a) by omitting from sub-section (1) the words “had the status of a Judge of the Australian Industrial Court” and substituting the words “were a Judge for the purposes of that Act”;
- (b) by omitting from sub-sections (2) and (3) the figures “17 (3)” and substituting the figures “17 (2)”;
- (c) by omitting sub-section (4) and substituting the following sub-section:—

“(4) Where—

- (a) a presidential member makes an election in accordance with sub-section (3); and

- (b) he would, but for this sub-section, be entitled to benefit under Division 1, 2 or 4 of Part V, or under Division 3 of Part IX, of the *Superannuation Act* 1976,

sub-section 80 (1) of that Act applies in relation to him as if he were not entitled to that benefit.”.

Arrangement  
of business.

11. Section 20 of the Principal Act is amended by omitting sub-sections (2) and (3) and substituting the following sub-sections:—

“(2) Where the President gives a direction as to the persons who are to constitute the Tribunal for the purposes of a particular proceeding, he may—

- (a) at any time after the giving of the direction and before the commencement of the hearing of the proceeding; or
- (b) if, in the case of a proceeding before the Tribunal constituted by 2 or more members, one of those members ceases to be a member, or ceases to be available for the purposes of the proceeding, during the hearing of the proceeding or after the completion of the hearing but before the matter to which the proceeding relates is determined—at any time after the member so ceases to be a member or to be available,

revoke the direction and give a further direction under sub-section (1) as to the persons who are to constitute the Tribunal for the purposes of the proceeding.

“(3) In giving a direction as to the persons who are to constitute the Tribunal for the purposes of a particular proceeding, the President—

- (a) shall have regard to the degree of public importance or complexity of the matters to which that proceeding relates; and
- (b) shall have regard to the status of the position or office held by the person who made the decision that is to be reviewed by the Tribunal.”.

Constitution  
of Tribunal  
for exercise  
of powers.

12. Section 21 of the Principal Act is amended by omitting sub-section (1) and substituting the following sub-sections:—

“(1) Subject to sub-section (1A), the Tribunal shall, for the purpose of the exercise of its powers in relation to a matter, be constituted by—

- (a) a presidential member and 2 non-presidential members;
- (b) a presidential member alone;
- (c) 3 non-presidential members of whom at least one is a senior non-presidential member; or
- (d) a senior non-presidential member alone.

“(1A) For the purpose of the exercise of the powers of the Tribunal under sub-section 29 (4), (7) or (9), section 31, sub-section 35 (2) or 37 (2) or section 38 or 42A, the Tribunal shall be constituted—

- (a) where the hearing of the relevant proceeding has not commenced—
  - (i) if a direction has not been given under section 20 as to the members who are to constitute the Tribunal for the purposes of that proceeding—by a presidential member;
  - (ii) if such a direction has been given and the direction requires the Tribunal to be constituted by one member only—by that member; or
  - (iii) if such a direction has been given and the direction requires the Tribunal to be constituted by more than one member—by the member who is to preside at the hearing of that proceeding;
- (b) where the hearing of the relevant proceeding has commenced—by the members by whom the Tribunal is constituted for the purposes of that proceeding; or
- (c) where the exercise of the powers is related to the institution of a proceeding before the Tribunal—by a presidential member.”.

13. Section 22 of the Principal Act is repealed and the following sections are substituted:—

“21A. (1) At any time during the hearing of a proceeding before the Tribunal constituted in accordance with paragraph 21 (1) (b), (c) or (d) a party to the proceeding may make an application to the Tribunal as constituted for the purposes of that proceeding requesting that the Tribunal be reconstituted for the purposes of that proceeding. Recon-stitution of Tribunal in certain cases.

“(2) Upon the making of an application under sub-section (1), the Tribunal as constituted for the purposes of the proceeding shall, after receiving the submissions made in support of the application and any submissions made in opposition to the application, notify the President of the making of the application and furnish him with particulars of those submissions.

“(3) The President may, after taking the submissions into account, if he considers that the matters to which the proceeding relates are of such public importance as to justify him in so doing, give a direction varying the constitution of the Tribunal for the purposes of that proceeding so that—

- (a) in the case of a proceeding before the Tribunal constituted in accordance with paragraph 21 (1) (b) or (c)—the Tribunal is constituted in accordance with paragraph 21 (1) (a); or
- (b) in the case of a proceeding before the Tribunal constituted in accordance with paragraph 21 (1) (d)—the Tribunal is constituted in accordance with paragraph 21 (1) (a), (b) or (c).

“(4) Where a direction is so given, the Tribunal as reconstituted in accordance with the direction shall continue the proceeding and may either—

- (a) complete the proceeding; or
- (b) at any time remit the proceeding to the Tribunal as previously constituted for completion by the Tribunal as previously constituted.

“(5) Where the Tribunal as reconstituted so remits a proceeding to the Tribunal as previously constituted, the Tribunal as reconstituted may give directions in relation to the proceeding to the Tribunal as previously constituted and the Tribunal as previously constituted shall, in making a decision on the review, comply with those directions.

“(6) Where, by virtue of sub-section (4), a proceeding is continued by the Tribunal as reconstituted in accordance with a direction given under sub-section (3), 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.

“(7) Where, by virtue of sub-section (4), a proceeding is remitted by the Tribunal as reconstituted to the Tribunal as previously constituted, the Tribunal as previously constituted may, for the purposes of that proceeding, have regard to any record of the proceeding before the Tribunal as reconstituted including a record of any evidence taken under the proceeding.

Member  
presiding.

“22. (1) At the hearing of a proceeding before the Tribunal at which the Tribunal is constituted for the purposes of the proceeding by more than one member—

- (a) if the President is a member of the Tribunal as so constituted—he shall preside;
- (b) if the President is not a member of the Tribunal as so constituted, but a Deputy President is a member of the Tribunal as so constituted—that Deputy President shall preside; or
- (c) if the Tribunal is constituted only by non-presidential members—
  - (i) where one only of those non-presidential members is a senior non-presidential member—he shall preside;
  - (ii) where 2 or more of those non-presidential members are senior non-presidential members—one of those senior non-presidential members who is directed by the President to do so shall preside; or
  - (iii) where none of those non-presidential members is a senior non-presidential member—one of those non-presidential members who is directed by the President to do so shall preside.

“(2) In a case where a direction is given under sub-section 20 (2) or section 21A varying the constitution of the Tribunal for the purposes of a proceeding or in a case to which paragraph 23 (1) (a) applies, any



necessary direction may be given under this section as to the member who is to preside at the hearing of the proceeding by the Tribunal as reconstituted or as constituted by the remaining member or members, as the case may be.”.

**14.** Section 23 of the Principal Act is amended by omitting sub-section (1) and substituting the following sub-section:—

Member of Tribunal ceasing to be available.

“(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—

- (a) if the parties agree and the President does not give a direction under section 20 reconstituting the Tribunal for the purposes of the proceeding, the hearing and determination, or the determination, of the proceeding may be completed by the Tribunal constituted by the remaining member or members; or
- (b) in any other case—the proceeding shall be reheard by the Tribunal as reconstituted in accordance with the directions of the President under section 20.”.

**15.** Section 25 of the Principal Act is amended—

- (a) by inserting after sub-section (3) the following sub-section:—

“(3A) Where an enactment makes provision in accordance with this section for the making of applications to the Tribunal for the review of decisions of a person made in the exercise of a power conferred on that person, that provision of that enactment applies also in relation to decisions made in the exercise of that power—

Tribunal may review certain decisions.

- (a) by any person to whom that power has been delegated;
- (b) in the case where the provision specifies the person by reference to his being the holder of a particular office or appointment—by any person for the time being acting in, or performing any of the duties of, that office or appointment; or
- (c) by any other person lawfully authorized to exercise that power.”;
- (b) by omitting from paragraph (a) of sub-section (6) the words and figures “sub-section 20 (1) has effect” and substituting the words and figures “sub-sections 20 (1) and 21A (3) have effect”;
- (c) by inserting in paragraph (b) of sub-section (6), after the figures “21,”, the figures and letter “21A,”; and
- (d) by inserting after sub-section (6) the following sub-section:—

“(6A) The operation of a provision of section 21A shall not be taken to be excluded or modified by an enactment unless the enactment makes express provision for the exclusion or modification of the operation of that provision.”

Tribunal  
may review  
decisions as  
provided by  
the Schedule.

**16. Section 26 of the Principal Act is amended—**

(a) by omitting the word “and” at the end of sub-paragraph (i) of paragraph (a) of sub-section (3);

(b) by omitting sub-paragraph (ii) of paragraph (a) of sub-section (3) and substituting the following sub-paragraphs:—

“(ii) provisions, having effect in relation to an application for the review of such a decision, of the kinds mentioned in paragraphs 25 (6) (a) and (b); and

(iii) a provision giving an opportunity for any such decision to be reconsidered, whether by the person by whom it was made or by another person, before an application is made for a review of the decision and, where a decision is so reconsidered and is altered as a result of the reconsideration, authorizing an application to the Tribunal to be made only in respect of the decision as so altered;”;

and

(c) by omitting sub-section (4) and substituting the following sub-sections:—

“(4) Where the regulations amend the Schedule in accordance with sub-section (3) by inserting a provision for review of decisions made in the exercise of powers conferred by an enactment, the regulations—

(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.

“(5) Where the regulations amend the Schedule in accordance with sub-section (3) by inserting a provision for review of decisions made in the exercise of powers conferred by an enactment—

(a) the amendment applies in respect of decisions made on or after the date on which the amendment takes effect; and

(b) if the regulations so provide, the amendment also applies, subject to the following provisions of this section, in respect of decisions made before that date other than a decision in respect of which a review in pursuance of an enactment—

(i) was completed before that date; or

- (ii) in the case of a review provided for by a provision of that enactment the operation of which has not been excluded by the regulations—is completed after that date.

“(6) Where an amendment of the Schedule made by the regulations applies in accordance with paragraph (5) (b) in respect of a decision made before the date on which the amendment took effect and a proceeding had been instituted or other action had been taken before that date to obtain a review of the decision in pursuance of an enactment, being a review that was not completed before that date—

- (a) if, by reason of a provision inserted in the Schedule by the regulations, the operation of the provision of that enactment that provided for the review of that decision has been excluded—the person who instituted the proceeding or took the other action shall be deemed to have duly made on that date an application to the Tribunal for a review of the decision; or
- (b) if, in a case to which paragraph (a) does not apply, before the completion of the review initiated by the proceeding or other action the person who instituted the proceeding or took the other action makes an application to the Tribunal for review of the decision—the review initiated by the proceeding or other action shall thereupon be deemed to be discontinued and no further proceeding or other action shall be instituted or taken for review of the decision otherwise than by the Tribunal.

“(7) For the purposes of any review by the Tribunal of a decision made before the date on which regulations amending the Schedule for the purpose of authorizing the review took effect—

- (a) the Tribunal may have regard to any record of proceedings relating to a review of that decision, being proceedings that had taken place before the application for the review by the Tribunal was made, including a record of any evidence that had been taken;
- (b) a person who has in his possession or under his control a document or other thing that was furnished to him in connexion with those proceedings shall, notwithstanding anything contained in any other enactment in force at the commencement of the *Administrative Appeals Tribunal Amendment Act 1977*, lodge that document or thing with the Tribunal; and
- (c) the President may give such directions, not inconsistent with this Act or the regulations, as he thinks appropriate in respect of any matter relevant to the conduct of the review by the Tribunal.

“(8) Regulations amending the Schedule may, for the purposes of any application of the amendments in respect of decisions made before the amendments took effect (being decisions in respect of which a provision of an enactment provides for review otherwise than by the Tribunal), insert in the Schedule provisions extending the period prescribed by sub-section 28 (1) for the making of a request for a statement as mentioned in that sub-section.”.

Person affected by decision may obtain reasons for the decision.

**17. Section 28 of the Principal Act is amended—**

- (a) by omitting from sub-section (1) the words “within the prescribed period”;
- (b) by omitting from sub-section (1) the words “and the reasons for the decision” and substituting the words “, referring to the evidence or other material on which those findings were based and giving the reasons for the decision”;
- (c) by inserting after sub-section (1) the following sub-sections:—

“(1A) A person to whom a request for a statement in relation to a decision is made under sub-section (1) may refuse to prepare and furnish the statement if—

- (a) in the case of a decision the terms of which were recorded in writing and set out in a document that was furnished to the applicant—the request was not made on or before the twenty-eighth day after the day on which that document was furnished to the applicant; or
- (b) in any other case—the request was not made within a reasonable time after the decision was made,

and in any such case the person to whom the request was made shall give to the applicant, within 14 days after receiving the request, notice in writing stating that the statement will not be furnished to him and giving the reason why the statement will not be so furnished.

“(1B) For the purposes of paragraph (1A) (b), a request for a statement in relation to a decision shall be deemed to have been made within a reasonable time after the decision was made if the Tribunal, on application by the person who made the request, declares that the request was made within a reasonable time after the decision was made.”; and

- (d) by omitting sub-section (3) and substituting the following sub-sections:—

“(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—

- (a) the person who made the decision shall forthwith notify the applicant in writing that the certificate has been given

and that, by reason of the certificate, the statement will not be furnished to him; and

- (b) sub-sections 36 (2) to (6), inclusive, apply in relation to any statement 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.

“(4) The applicant is not entitled to make a request under sub-section (1) if—

- (a) the decision sets out the findings on material questions of fact, refers to the evidence or other material on which those findings were based and gives the reasons for the decision, and a document setting out the terms of the decision has been furnished to him; or
- (b) a statement in writing setting out the findings on material questions of fact, referring to the evidence or other material on which those findings were based and giving the reasons for the decision has already been furnished to him.”

**18.** Section 29 of the Principal Act is repealed and the following section substituted:—

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

- (a) shall be in writing;
- (b) may be made in accordance with the prescribed form;
- (c) shall set out a statement of the reasons for the application; and
- (d) if the terms of the decision were recorded in writing and set out in a document that was furnished to the applicant or the decision is deemed to be made by reason of the operation of sub-section 25 (5)—shall be lodged with the Tribunal within the prescribed time.

Manner of  
applying for  
review.

“(2) Subject to sub-section (3), the prescribed time for the purposes of paragraph (1) (d) is the period commencing on the day on which the decision is made and ending on the twenty-eighth day after—

- (a) if the decision sets out the findings on material questions of fact and the reasons for the decision—the day on which a document setting out the terms of the decision is furnished to the applicant; or
- (b) if the decision does not set out those findings and reasons—
  - (i) if a statement in writing setting out those findings and reasons is furnished to the applicant otherwise than in pursuance of a request under sub-section 28 (1) not later than the twenty-eighth day after the day on which a document setting out the terms of the decision is furnished to the applicant—the day on which the statement is so furnished;

- (ii) if the applicant, in accordance with sub-section 28 (1), requests the person who made the decision to furnish a statement as mentioned in that sub-section—the day on which the statement is furnished or the applicant is notified in accordance with sub-section 28 (3) that the statement will not be furnished; or
- (iii) in any other case—the day on which a document setting out the terms of the decision is furnished to the applicant.

“(3) In the case of a decision that is deemed to be made by reason of the operation of sub-section 25 (5), the prescribed time for the purposes of paragraph (1) (d) is the period commencing on the day on which the decision is deemed to be made and ending—

- (a) in a case to which paragraph (b) does not apply—on the twenty-eighth day after that day; or
- (b) in the case where the person whose failure to do an act or thing within a particular period is deemed by sub-section 25 (5) to constitute the making of the decision makes or purports to make, after the expiration of that period, a decision either to do or not to do that act or thing, being a decision the terms of which were recorded in writing and set out in a document that was furnished to the applicant—on the twenty-eighth day after—
  - (i) if the decision sets out the findings on material questions of fact and the reasons for the decision—the day on which a document setting out the terms of the decision is furnished to the applicant; or
  - (ii) if the decision does not set out those findings and reasons—the day that would be ascertained under paragraph (2) (b) if sub-section (2) were applicable in relation to the decision.

“(4) Where—

- (a) no time is prescribed for the lodging with the Tribunal of applications for review of a particular decision; or
- (b) no time is prescribed for the lodging with the Tribunal by a particular person of an application for a review of a particular decision,

and the Tribunal is of the opinion that the application was not lodged within a reasonable time after the decision was made, the Tribunal shall, subject to sub-section (6)—

- (c) in a case to which paragraph (a) applies—refuse to entertain an application for a review of the decision referred to in that paragraph; or
- (d) in a case to which paragraph (b) applies—refuse to entertain an application by the person referred to in that paragraph for a review of the decision so referred to.

“(5) In forming an opinion for the purposes of sub-section (4), the Tribunal shall have regard to—

- (a) the time when the applicant became aware of the making of the decision; and
- (b) in a case to which paragraph (4) (b) applies—the period or periods prescribed for the lodging by another person or other persons of an application or applications for review of the decision,

and may have regard to any other matters that it considers relevant.

“(6) Notwithstanding sub-section (4), the Tribunal may entertain an application referred to in that sub-section if it is of the opinion that there are special circumstances that justify it in doing so.

“(7) The Tribunal may, upon application in writing by a person, extend the time for the making by that person of an application to the Tribunal for a review of a decision (including a decision made before the commencement of this section).

“(8) The time for making an application for an extension of time may be extended under sub-section (7) although that time has expired.

“(9) Before determining an application for an extension of time, the Tribunal may, if it thinks fit, require the applicant to serve notice of the application on a specified person or persons, being a person or persons whom the Tribunal considers to be affected by the application.

“(10) If a person on whom a notice is served under sub-section (9), within the prescribed time after the notice is received by him, gives notice to the Tribunal, as prescribed, stating that he wishes to oppose the application, the Tribunal shall not determine the application except after a hearing at which the applicant and any person who so gave notice to the Tribunal are given a reasonable opportunity of presenting their respective cases.

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

**19. Section 30 of the Principal Act is amended—**

- (a) by omitting from sub-section (1) the word “The” (first occurring) and substituting the words “Subject to paragraph 42A (2) (b), the”; and
- (b) by omitting from paragraph (c) of sub-section (1) the words “any other person who was entitled to apply to the Tribunal for a review of the decision,” and substituting the words “any other person (including the Commonwealth or an authority of the Commonwealth) whose interests are affected by the decision and who”.

Parties to  
proceeding  
before  
Tribunal.

Conferences. **20.** Section 34 of the Principal Act is amended by adding at the end thereof the following sub-sections:—

“(3) At the hearing of a proceeding before the Tribunal, unless the parties otherwise agree, evidence shall not be given, and statements shall not be made, concerning any words spoken or act done at a conference held in accordance with sub-section (1) if the words spoken or act done related to any question to be determined by the Tribunal in the proceeding.

“(4) If—

- (a) a conference held in accordance with sub-section (1) in respect of a proceeding is presided over by a member of the Tribunal; and
- (b) a party to the proceeding who, or a representative of whom, was present at the conference notifies the Tribunal before, or at the commencement of, the hearing that he 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.”.

Hearings to be in public except in special circumstances.

**21.** Section 35 of the Principal Act is amended by adding at the end thereof the following sub-section:—

“(3) In considering—

- (a) whether the hearing of a proceeding should be held in private; or
- (b) whether publication, or disclosure to some or all of the parties, of evidence given before the Tribunal, or of a matter contained in a document lodged with the Tribunal or received in evidence by the Tribunal, should be prohibited or restricted,

the Tribunal shall take as the basis of its consideration the principle that it is desirable that hearings of proceedings before the Tribunal should be held in public and that evidence given before the Tribunal and the contents of documents lodged with the Tribunal or received in evidence by the Tribunal should be made available to the public and to all the parties, but shall pay due regard to any reasons given to the Tribunal why the hearing should be held in private or why publication or disclosure of the evidence or the matter contained in the document should be prohibited or restricted.”.



**22. Section 36 of the Principal Act is amended—**

- (a) by omitting sub-section (3) and substituting the following sub-section:—

“(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 President shall consider whether the information or the contents of the document should be disclosed to all or any of the parties to the proceeding and, if he considers that the information or the contents of the document should be so disclosed, the Tribunal shall make the information available or permit the document to be inspected accordingly.”;

- (b) by omitting from sub-section (4) the words “the Tribunal shall take as the basis of its consideration” and substituting the words “the President shall take as the basis of his consideration”; and
- (c) by inserting after sub-section (4) the following sub-section:—

“(4A) Nothing in this section prevents the disclosure of information or of the contents of a document to a member of the staff of the Tribunal in the course of the performance of his duties as a member of the staff of the Tribunal.”.

Certain documents and information not required to be disclosed.

**23. Sections 37 and 38 of the Principal Act are repealed and the following sections substituted:—**

“36A. (1) Where, at the hearing of a proceeding before the Tribunal, a person is asked a question in the course of giving evidence, the Attorney-General may inform the Tribunal that, in his opinion, the answering of the question would be contrary to the public interest for a specified reason or reasons, being a reason or reasons mentioned in sub-section 36 (1).

Certain questions not required to be answered.

“(2) Where the Attorney-General so informs the Tribunal that, in his opinion, the answering by a person of a question would be contrary to the public interest, that person is excused from answering the question unless—

- (a) in the case where the reason specified is, or the reasons specified include, a reason referred to in paragraph 36 (1) (a) or (b)—the Court, on an appeal under section 44 or a reference under section 45, decides that the answering of the question would not be contrary to the public interest; or
- (b) in any other case—the President considers that the question should be answered.

“(3) For the purposes of this Act, the question whether the answering by a person of a question would be contrary to the public interest is a question of law.

“(4) The Attorney-General may appear before the Tribunal personally, or may be represented before the Tribunal by a barrister, solicitor or other person, for the purpose of informing the Tribunal of his opinion in accordance with this section or he may inform the Tribunal of his opinion by causing a certificate in writing signed by him setting out his opinion to be sent to the Tribunal.

Lodging of material documents with Tribunal.

“37. (1) A person who has made a decision that is the subject of an application for a review by the Tribunal shall, within the prescribed time after receiving notice of the application, lodge with the Tribunal such number of copies as is prescribed of—

- (a) a statement setting out the findings on material questions of fact, referring to the evidence or other material on which those findings were based and giving the reasons for the decision; and
- (b) 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.

“(2) Where the Tribunal is of the opinion that particular other documents or that other documents included in a particular class of documents may be relevant to the review of the decision by the Tribunal, the Tribunal may cause to be served on the person a notice in writing stating that the Tribunal is of that opinion and requiring the person to lodge with the Tribunal, within a time specified in the notice, the prescribed number of copies of each of those other documents that is in his possession or under his control, and a person on whom such a notice is served shall comply with the notice.

“(3) This section has effect notwithstanding any rule of law relating to privilege or the public interest in relation to the production of documents.

“(4) Regulations prescribing the numbers of copies of statements or other documents that are to be lodged under sub-section (1) may prescribe different numbers of copies in relation to different classes of statements or other documents or in relation to different classes of decisions.

Power of Tribunal to obtain additional statements.

“38. Where the Tribunal considers that a statement referred to in paragraph 37 (1) (a) that is lodged by a person with the Tribunal does not contain adequate particulars of findings on material questions of fact, an adequate reference to the evidence or other material on which those findings were based or adequate particulars of the reasons for a decision, the Tribunal may order that person to lodge with the Tribunal, within a time specified in the order, an additional statement or additional statements containing further and better particulars in relation to matters specified in the order with respect to those findings, that evidence or other material or those reasons.”

24. Section 40 of the Principal Act is amended by omitting sub-section (2) and substituting the following sub-sections:— Powers of Tribunal.

“(1A) For the purposes of the hearing of a proceeding before the Tribunal, the Registrar or a Deputy Registrar shall, if directed to do so by the President, or by another member of the Tribunal who is to preside, or presides, at the hearing, 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.

“(2) The member who presides at the hearing of a proceeding before the Tribunal—

- (a) may require a person appearing before the Tribunal at that hearing to give evidence either to take an oath or to make an affirmation; and
- (b) may administer an oath or affirmation to a person so appearing before the Tribunal.”.

25. Section 41 of the Principal Act is repealed and the following section substituted:—

“41. (1) Subject to this section, the making of an application to the Tribunal for a review of a decision does not affect the operation of the decision or prevent the taking of action to implement the decision. Order directing stay of decision or of action to implement decision.

“(2) The Tribunal or a presidential member may, on request being made, as prescribed, by a party to a proceeding before the Tribunal relating to a decision, if the Tribunal or presidential member is of the opinion that it is desirable to do so after taking into account the interests of any persons who may be affected by the review, order that the operation of the decision be suspended, or that proceedings under the decision be stayed, or both, until the application for review has been determined.

“(3) The Tribunal or a presidential member shall not make an order under sub-section (2) unless the person who made the decision has been given a reasonable opportunity to make a submission to the Tribunal or to that presidential member, as the case may be, in relation to the matter.

“(4) During the period in relation to which an order made under sub-section (2) applies—

- (a) in the case of an order suspending the operation of a decision—the decision does not prevent a person from doing any act or thing that he could lawfully have done if the decision had not been given; or
- (b) in the case of an order that proceedings under a decision be stayed—no action shall be taken to implement the decision.”.

26. After section 42 of the Principal Act the following section is inserted:—

Power of Tribunal to dismiss application or strike out party.

“42A. (1) Where all the parties to an application before the Tribunal for a review of a decision consent, the Tribunal may dismiss the application without proceeding to review the decision or, if the Tribunal has commenced to review the decision, without completing the review.

“(2) If a party to a proceeding before the Tribunal in respect of an application for the review of a decision (not being the person who made the decision) fails either to appear in person or to appear by a representative at a preliminary conference held in relation to the application under section 34 or at the hearing of the proceeding, the Tribunal may—

- (a) where the only other party to the proceeding is the person who made the decision—dismiss the application without proceeding to review the decision; or
- (b) in any other case—direct that the person who failed to appear shall cease to be a party to the proceeding.”.

Review by Tribunal.

**27.** Section 43 of the Principal Act is amended by omitting subsection (2) and substituting the following sub-section:—

“(2) Subject to sections 35 and 36, the Tribunal shall give reasons in writing for its decision and those reasons shall include its findings on material questions of fact and a reference to the evidence or other material on which those findings were based.”.

**28.** After section 43 of the Principal Act the following section is inserted:—

Return of documents at completion of proceeding.

“43A. (1) Where—

- (a) a proceeding before the Tribunal has concluded; and
- (b) the time within which an appeal from the decision of the Tribunal in the proceeding may be instituted, or, if that time has been extended, the period of the extension, has expired but no such appeal has been instituted,

the President may cause a document furnished to the Tribunal for the purposes of the proceeding to be returned to the person by whom it was furnished.

“(2) Where the Federal Court of Australia causes a document sent to that Court in accordance with paragraph 46 (1) (a) in connexion with a proceeding before that Court to be returned to the Tribunal, the President may cause the document to be returned to the person by whom it was furnished to the Tribunal.”.

29. (1) Section 44 of the Principal Act is amended—

(a) by omitting from sub-sections (1) and (2) the words “, in such manner and within such time as are prescribed,”;

(b) by inserting after sub-section (2) the following sub-section:—

“(2A) An appeal by a person under sub-section (1) or (2) shall be instituted—

(a) not later than the twenty-eighth day after the day on which a document setting out the terms of the decision of the Tribunal is furnished to the person or within such further time as the Federal Court of Australia (whether before or after the expiration of that day) allows; and

(b) in such manner as is prescribed by rules of court made under the *Federal Court of Australia Act 1976.*”;

(c) by adding at the end of sub-section (3) the words “and that jurisdiction may be exercised by that Court constituted as a Full Court and shall be exercised by the Court so constituted if the decision of the Tribunal was given by the Tribunal constituted by a presidential member or by members at least one of whom was a presidential member”; and

(d) by adding at the end thereof the following sub-section:—

“(6) The institution of an appeal to the Federal Court of Australia from a decision of the Tribunal does not affect the operation of the decision or prevent the taking of action to implement the decision but—

(a) the Court or a Judge may, by order, on such conditions (if any) as it or he thinks fit, suspend the operation of the decision; and

(b) the Court or a Judge may order, on such conditions (if any) as it or he thinks fit, a stay of all or any proceedings under the decision.”.

(2) The amendments made by sub-section (1) apply in relation to decisions of the Administrative Appeals Tribunal given before the commencement of this section as well as in relation to decisions given after that commencement.

30. Section 45 of the Principal Act is amended by omitting sub-sections (1) and (2) and substituting the following sub-sections:—

“(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 Federal Court of Australia for decision but—

(a) in the case of a proceeding before the Tribunal constituted by 2 or more members at which a presidential member presides—a question shall not be so referred without the concurrence of that presidential member; or

Appeal to  
Federal  
Court of  
Australia  
from  
decisions of  
the Tribunal.

Reference of  
questions of  
law to  
Federal  
Court of  
Australia.

- (b) in the case of a proceeding before the Tribunal at which a presidential member does not preside—a question shall not be so referred without the concurrence of the President.

“(2) The Federal Court of Australia has jurisdiction to hear and determine a question of law referred to it under this section and that jurisdiction shall be exercised by that Court constituted as a Full Court.”.

Sending of documents to, and disclosure of documents by, Federal Court of Australia.

**31.** Section 46 of the Principal Act is amended—

- (a) by inserting in paragraph (b) of sub-section (3), before the words “the parties”, the words “some or all of”;
- (b) by omitting from sub-section (3) the words “the parties to the proceeding before the Court to inspect the document” and substituting the words “the document to be inspected accordingly”; and
- (c) by adding at the end thereof the following sub-section:—
- “(4) Nothing in this section prevents the disclosure of information or of the contents of a document to an officer of the Court in the course of the performance of his duties as an officer of the Court.”.

Composition of Council.

**32.** Section 49 of the Principal Act is amended—

- (a) by omitting paragraph (b) of sub-section (1) and substituting the following paragraph:—
- “(b) the Commonwealth Ombudsman holding office under the *Ombudsman Act 1976*;”;
- (b) by omitting from paragraph (d) of sub-section (1) the figure “7” and substituting the figure “10”.

Annual report.

**33.** Section 58 of the Principal Act is amended by omitting from sub-section (3) the figures “1976” and substituting the figures “1977”.

**34.** Section 66 of the Principal Act is repealed and the following section substituted:—

Confidential information not to be disclosed.

“66. (1) A person who is, or has been, a member or an officer of the Tribunal is not competent, and shall not be required, to give evidence to a court relating to a matter if—

- (a) the giving of the evidence would be contrary to an order of the Tribunal in force under sub-section 35 (2) or under a similar provision of an enactment other than this Act;
- (b) an application has been made to the Tribunal for an order under that sub-section, or under such a similar provision, concerning the matter to which the evidence would relate and the Tribunal has not determined that application; or
- (c) a certificate by the Attorney-General is in force certifying that the disclosure of information concerning the matter to which the evidence would relate would be contrary to the public interest

for a reason referred to in sub-section 36 (1) and, where the certificate does not specify a reason referred to in paragraph 36 (1) (a) or (b), the Tribunal has not made information concerning that matter available to the parties to a proceeding before the Tribunal and, in the case of information contained in a document, has not permitted the parties to such a proceeding to inspect the document.

“(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 a document furnished to the Tribunal in connexion with a proceeding if—

- (a) the production of the document would be contrary to an order of the Tribunal in force under sub-section 35 (2) or under a similar provision of an enactment other than this Act;
- (b) an application has been made to the Tribunal for an order under that sub-section, or under such a similar provision, in relation to the document and the Tribunal has not determined that application; or
- (c) a certificate by the Attorney-General is in force certifying that the production of the document would be contrary to the public interest for a reason referred to in sub-section 36 (1) and, where the certificate does not specify a reason referred to in paragraph 36 (1) (a) or (b), the Tribunal has not permitted the parties to a proceeding before the Tribunal to inspect the document.

“(3) A person who is, or has been, a member of the Tribunal shall not be required to give evidence to a court in relation to any proceedings before the Tribunal.

“(4) 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.’.

35. After section 67 of the Principal Act the following section is inserted:—

“67A. A notice that is required or permitted by this Act to be served on or given to the person who made a decision may be served on or given to— Giving of notices.

- (a) the Permanent Head of the Department administered by the Minister who administers—
  - (i) the enactment under which the decision was given; or
  - (ii) if that enactment was made in pursuance of a power contained in another enactment—that other enactment; or
- (b) if a provision of the regulations or of any other enactment prescribes the holder of a particular office as a person on or to

whom notices may be served or given under this Act in relation to a class of decisions in which that decision is included—the holder of that office.”.

**Regulations.** 36. Section 70 of the Principal Act is amended by adding at the end thereof the following sub-section:—

- “(2) Without limiting the generality of sub-section (1)—
- (a) the regulations may make provision—
- (i) prescribing fees to be payable in respect of applications to the Tribunal; and
- (ii) for or in relation to the refund, in whole or in part, of fees so paid where the proceeding terminates in a manner favourable to the applicant; and
- (b) regulations prescribing fees may—
- (i) prescribe fees in respect of a particular class or classes of applications only; and
- (ii) prescribe different fees in respect of different classes of applications.”.

**The Schedule.**

37. The Schedule to the Principal Act is amended—
- (a) by inserting in sub-clause (2) of clause 1, after the word “Act”, the words “or the Regulations, as the case may be,”;
- (b) by omitting from the heading to Part III the words “AIR NAVIGATION ACT” and substituting the words “AIR NAVIGATION REGULATIONS”; and
- (c) by omitting Part XV.

**Formal amendments.**

38. The Principal Act is amended as set out in the Schedule.

## SCHEDULE

Section 38

### FORMAL AMENDMENTS

1. The following provisions of the Principal Act are amended by omitting the word “Australia” (wherever occurring) and substituting the words “the Commonwealth”:

Sub-sections 3 (1) (definition of “authority of Australia”), 18 (5) and 27 (1), paragraphs 28 (2) (c), 36 (1) (c) and 67 (2) (b) and sub-sections 67 (3) and 69 (2).

2. The Principal Act is further amended as set out in the following table:—

| Provision           | Amendment  |
|---------------------|--|
| Sub-section 3 (1)   | Omit the definition of “Territory”.                                |
| Section 4           | Omit “other than Papua New Guinea”.                                |
| Section 24          | Omit “other than Papua New Guinea”.                                |
| Sub-section 56 (10) | Omit “Australian” (wherever occurring), substitute “Commonwealth”. |



**NOTES**

1. Act No. 58, 1977; assented to 16 June 1977.
2. Act No. 91, 1975. For previous amendments *see* Acts Nos. 89, 91, 157, 162, 163 and 209, 1976.