



Law and Justice Legislation Amendment Act (No. 1) 1995

No. 175 of 1995

**An Act to amend various Acts relating to law and justice,
and for related purposes**

[Assented to 16 December 1995]

The Parliament of Australia enacts:

Short title

1. This Act may be cited as the *Law and Justice Legislation Amendment Act (No. 1) 1995*.

Commencement

2.(1) Subject to subsection (2), this Act commences on the day on which it receives the Royal Assent.

(2) The items in Schedule 1 take effect on 1 July 1995 or the day on which this Act receives the Royal Assent, whichever is the later.

Amendments

3.(1) The Acts referred to in Schedule 1 are amended in accordance with the applicable items in that Schedule, and the other items in that Schedule have effect according to their terms.

(2) The Acts referred to in Schedule 2 are amended in accordance with the applicable items in that Schedule, and the other items in that Schedule have effect according to their terms.

(3) In addition to the amendments of the *Administrative Appeals Tribunal Act 1975* made by Schedules 1 and 2, that Act is amended in accordance with Schedule 3.

SCHEDULE 1

Subsection 3(1)

**AMENDMENTS RELATING TO THE ABOLITION OF THE
SECURITY APPEALS TRIBUNAL**

**PART 1—AMENDMENTS OF THE ADMINISTRATIVE
APPEALS TRIBUNAL ACT 1975**

1. Subsection 3(1):

Insert:

“ ‘**adduce**’ includes give;

‘**Commonwealth agency**’ means a Minister or an authority of the Commonwealth;

‘**security assessment**’ or ‘**assessment**’ has the same meaning as in the *Australian Security Intelligence Organization Act 1979*;”.

2. Subsection 19(2):

After paragraph (b) insert:

“(baa) Security Appeals Division;”.

3. Section 19:

After subsection (3A) insert:

“(3B) A non-presidential member must not be assigned to the Security Appeals Division if he or she is, or has been, the Director-General of Security or an officer, employee or agent of the Australian Security Intelligence Organization.”.

4. Section 19:

After subsection (5) add:

“(6) The following powers conferred on the Tribunal:

(a) the powers of review in respect of applications made under section 54 of the *Australian Security Intelligence Organization Act 1979*;

(b) the power under the *Archives Act 1983* to review a decision of the Australian Archives in respect of access to a record of the Australian Security Intelligence Organization;

may be exercised by the Tribunal only in the Security Appeals Division.”.

5. Section 21:

Before subsection (1) insert:

“(1AAA) This section does not apply in relation to proceedings in the Security Appeals Division.”.

SCHEDULE 1—continued

6. After section 21:

Insert:

Constitution of Security Appeals Division

“21AA.(1) This section applies to a proceeding in the Security Appeals Division but has effect subject to subsection 65(2) of the *Australian Security Intelligence Organization Act 1979*.

“(2) Subject to this section, the Security Appeals Division is to be constituted by a presidential member and 2 other members.

“(3) A presidential member must not participate in the proceeding if he or she is, or has been, the Director-General of Security or an officer, employee or agent of the Australian Security Intelligence Organization.

“(4) The presidential member referred to in subsection (2) is to preside at a hearing of the proceeding.

“(5) If the proceeding is a review of a security assessment, at least one of the 2 other members referred to in subsection (2) must:

- (a) if the matter to which the assessment related concerns employment or proposed employment in the Australian Public Service—be a former member of that Service; or
- (b) if the matter to which the assessment related concerns service or proposed service in the Defence Force—be a former member of that Force; or
- (c) if the matter to which the assessment related concerns the *Australian Citizenship Act 1948*, the *Migration Act 1958* or the *Passports Act 1938*—be a person with knowledge of, or experience in relation to, the needs and concerns of people who are or have been immigrants; or
- (d) if the matter to which the assessment related concerns employment under Commonwealth contractors—be a person with experience in relation to such employment; or
- (e) in any other case—be a person with knowledge of, or experience in relation to, matters of the kind to which the assessment related.

“(6) If, before the proceeding has been completed, one of the members constituting the Division for the purposes of the proceeding has ceased to be available for the purposes of the proceeding:

- (a) the proceeding is to be reheard by the Division as reconstituted in accordance with this section; and

SCHEDULE 1—continued

(b) on the rehearing, the members of the Division may have regard to any record of the proceeding in the Division as previously constituted, including a record of any evidence taken in the proceeding.”.

7. Section 21A:

Before subsection (1) insert:

“(1AA) This section does not apply in relation to proceedings in the Security Appeals Division.”.

8. Section 22:

Before subsection (1) insert:

“(1AA) This section does not apply in relation to proceedings in the Security Appeals Division.”.

9. Section 23:

Before subsection (1) insert:

“(1AA) This section does not apply in relation to proceedings in the Security Appeals Division.”.

10. Subsection 27(1):

After “enactment” insert “(other than the *Australian Security Intelligence Organization Act 1979*)”.

11. After section 27:

Insert:

Applications to Tribunal under Australian Security Intelligence Organization Act

“27AA.(1) An application under subsection 54(1) of the *Australian Security Intelligence Organization Act 1979* for review of a security assessment may be made by a person in respect of whom the assessment was made and who has, in accordance with Part IV of that Act, been given notice of the assessment.

“(2) An application under subsection 54(2) of the *Australian Security Intelligence Organization Act 1979* for review of the findings of the Tribunal on a review of a security assessment may be made by the person who applied for the review in which the findings were made.

“(3) If the Tribunal is satisfied that an application referred to in subsection (2) is justified, it may review its previous findings, and this Act applies in relation to such a review and the findings in such a review as if it were the review of an assessment.”.

SCHEDULE 1—continued

12. Subsection 28(1):

Omit “Where”, substitute “Subject to subsection (1AAA), if”.

13. After subsection 28(1):

Insert:

“(1AAA) Subsection (1) does not apply to a decision if the powers of the Tribunal in respect of an application for review of the decision are required by subsection 19(6) to be exercised in the Security Appeals Division.”.

14. Paragraphs 29(1)(a) and (b):

Add at the end “and”.

15. Paragraph 29(1)(c):

Omit, substitute:

- “(c) except if paragraph (ca) or (cb) applies—must contain a statement of the reasons for the application; and
- (ca) in respect of an application made under subsection 54(1) of the *Australian Security Intelligence Organization Act 1979* for review of a security assessment—must be accompanied by:
 - (i) a copy of the assessment as given to the applicant; and
 - (ii) a statement indicating any part or parts of the assessment with which the applicant does not agree and setting out the grounds on which the application is made; and
- (cb) in respect of an application under subsection 54(2) of the *Australian Security Intelligence Organization Act 1979*—must be accompanied by a statement setting out the grounds on which the application is made;”.

16. After section 29A:

Insert:

Notice of application

“29B. If an application is duly made to the Tribunal for the review of a security assessment, the Tribunal must cause a copy of the application, and of the statement lodged with the application, to be given to the Director-General of Security and to the Commonwealth agency to which the assessment was given.”.

17. Section 30:

Before subsection (1) insert:

“(1AA) This section does not apply to a proceeding in the Security Appeals Division to which section 39A applies.”.

SCHEDULE 1—continued

18. Section 30A:

Before subsection (1) insert:

“(1AA) This section does not apply to a proceeding in the Security Appeals Division to which section 39A applies.”.

19. Section 31:

At the end of the section add:

“(2) This section does not apply to a proceeding in the Security Appeals Division to which section 39A applies.”.

20. Section 34:

Before subsection (1) insert:

“(1AA) This section does not apply to a proceeding in the Security Appeals Division to which section 39A applies.”.

21. Section 34A:

Before subsection (1) insert:

“(1AA) This section does not apply to a proceeding in the Security Appeals Division to which section 39A applies.”.

22. Section 35:

Before subsection (1) insert:

“(1AA) This section does not apply to a proceeding in the Security Appeals Division to which section 39A applies.”.

23. Paragraph 35(2)(a):

Add at the end “and”.

24. After paragraph 35(2)(a):

Insert:

“(aa) give directions prohibiting or restricting the publication of the names and addresses of witnesses appearing before the Tribunal; and”.

25. After section 35:

Insert:

Restriction on publication of evidence and findings in a proceeding before the Security Appeals Division

“35AA. For the purposes of a proceeding before the Security Appeals Division to which section 39A applies, the Tribunal may give directions prohibiting or restricting the publication of:

(a) evidence given before the Tribunal; or

SCHEDULE 1—continued

- (b) the names and addresses of witnesses before the Tribunal; or
- (c) matters contained in documents lodged with the Tribunal or received in evidence by the Tribunal; or
- (d) the whole or any part of its findings on the review.”.

26. Section 35A:

At the end of the section add:

“(2) This section does not apply to a proceeding in the Security Appeals Division to which section 39A applies.”.

27. Section 36:

Before subsection (1) insert:

“(1AA) This section does not apply to a proceeding in the Security Appeals Division to which section 39A applies.”.

28. Section 36A:

Before subsection (1) insert:

“(1AA) This section does not apply to a proceeding in the Security Appeals Division to which section 39A applies.”.

29. Section 36B:

Before subsection (1) insert:

“(1AA) This section does not apply to a proceeding in the Security Appeals Division to which section 39A applies.”.

30. Section 36C:

Before subsection (1) insert:

“(1AA) This section does not apply to a proceeding in the Security Appeals Division to which section 39A applies.”.

31. Section 36D:

Before subsection (1) insert:

“(1AA) This section does not apply to a proceeding in the Security Appeals Division to which section 39A applies.”.

32. Section 37:

Before subsection (1) insert:

“(1AAA) This section does not apply to a proceeding in the Security Appeals Division to which section 39A applies.”.

SCHEDULE 1—continued

33. Section 38:

At the end of the section add:

“(2) This section does not apply to a proceeding in the Security Appeals Division to which section 39A applies.”.

34. After section 38:

Insert:

Director-General of Security to lodge certain material with Tribunal

“38A.(1) If an application for review of a security assessment is made in a case in which the Attorney-General has given a certificate certifying in accordance with paragraph 38(2)(b) of the *Australian Security Intelligence Organization Act 1979*, the Director-General of Security must, within 30 days after receiving notice of the application, lodge with the Tribunal a copy of the certificate, together with a copy of the whole of the assessment.

“(2) The Tribunal must not, at any time, tell the applicant of the existence of, or permit the applicant to have access to any copy or particulars of, a certificate of the Attorney-General referred to in subsection (1) or any matter to which the certificate relates.”.

35. Section 39:

At the end of the section add:

“(2) This section does not apply to a proceeding in the Security Appeals Division to which section 39A applies.”.

36. After section 39:

Insert:

Procedure at certain hearings in Security Appeals Division

“39A.(1) If an application for a review of a security assessment is made to the Tribunal, the Tribunal is to review the assessment in accordance with this section.

“(2) The parties to the proceeding are the Director-General of Security and the applicant, but the Commonwealth agency to which the assessment is given is entitled to adduce evidence and make submissions.

“(3) It is the duty of the Director-General of Security to present to the Tribunal all relevant information available to the Director-General, whether favourable or unfavourable to the applicant.

SCHEDULE 1—continued

“(4) The presidential member who is to preside, or is presiding, at the hearing may, at any time, require either or both of the parties to attend or be represented before the member for the purpose of conferring with the member concerning the conduct of the review with a view to identifying the matters in issue or otherwise facilitating the conduct of the proceedings.

“(5) The proceedings are to be in private and, subject to this section, the Tribunal is to determine what people may be present at any time.

“(6) Subject to subsection (9), the applicant and a person representing the applicant may be present when the Tribunal is hearing submissions made or evidence adduced by the Director-General of Security or the Commonwealth agency to which the assessment was given.

“(7) The Director-General of Security or a person representing the Director-General, and a person representing the Commonwealth agency to which the assessment was given, may be present when the Tribunal is hearing submissions made or evidence adduced by the applicant.

“(8) The Minister administering the *Australian Security Intelligence Organization Act 1979* (the ‘**responsible Minister**’) may, by signed writing, certify that evidence proposed to be adduced or submissions proposed to be made by or on behalf of the Director-General of Security or the Commonwealth agency to which the assessment was given are of such a nature that the disclosure of the evidence or submissions would be contrary to the public interest because it would prejudice security or the defence of Australia.

“(9) If such a certificate is given:

- (a) the applicant must not be present when the evidence is adduced or the submissions are made; and
- (b) a person representing the applicant must not be present when the evidence is adduced or the submissions are made unless the responsible Minister consents.

“(10) If a person representing the applicant is present when evidence to which a certificate given under subsection (8) relates is adduced or submissions to which such a certificate relates are made, the representative must not disclose any such evidence or submission to the applicant or to any other person.

Penalty: Imprisonment for 2 years.

Note: Subsection 4B(2) of the *Crimes Act 1914* allows a court to impose an appropriate fine instead of, or in addition to, a term of imprisonment.

“(11) If the Director-General of Security so requests, the Tribunal must do all things necessary to ensure that the identity of a person giving evidence on behalf of the Director-General of Security is not revealed.

SCHEDULE 1—continued

“(12) The Tribunal must first hear evidence adduced, and submissions made, by or on behalf of the Director-General of Security and any evidence or submissions that the Commonwealth agency to which the assessment was given may wish to adduce or make.

“(13) The Tribunal must next permit the applicant, if he or she so desires, to adduce evidence before, and make submissions to, the Tribunal.

“(14) The Tribunal may, on its own initiative and at any stage of the proceedings, invite a person to give evidence, or cause a person to be summoned to give evidence.

“(15) If a person invited or summoned to give evidence under subsection (14) is an officer or employee of the Australian Security Intelligence Organization or of the Commonwealth agency to which the assessment was given, subsection (8) applies as if any evidence to be given by the person were evidence proposed to be adduced by or on behalf of the Director-General of Security or that agency, as the case may be.

“(16) If:

- (a) a party presents his or her case to the Tribunal; and
- (b) after that case has been presented, the other party adduces evidence; and
- (c) the Tribunal thinks that, because of evidence adduced by the other party, the first-mentioned party should be further heard;

the Tribunal must give the first-mentioned party an opportunity of adducing further evidence but must not give to the applicant any particulars of any evidence to which a certificate given under subsection (8) relates.

“(17) A member of the Tribunal may ask questions of a witness before the Tribunal and the presidential member presiding may require a witness to answer any such question.

“(18) If the applicant fails within a reasonable time:

- (a) to proceed with the application; or
- (b) to comply with a direction by the Tribunal in relation to the application;

a presidential member or senior member, on behalf of the Tribunal, may dismiss the application without proceeding to review the security assessment.

Certain documents and information not to be disclosed in proceedings before Security Appeals Division

“39B.(1) This section applies to a proceeding in the Security Appeals Division to which section 39A applies.

SCHEDULE 1—continued

“(2) If the Attorney-General certifies, by signed writing, that the disclosure of information with respect to a matter stated in the certificate, or the disclosure of the contents of a document, would be contrary to the public interest:

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

the following provisions of this section have effect.

“(3) A person who is required by or under this Act to disclose the information or to produce the document to the Tribunal for the purposes of a proceeding is not excused from the requirement, but the Tribunal must, subject to subsections (4), (5) and (7) and section 46, do all things necessary to ensure:

- (a) that the information or the contents of the document are not disclosed to anyone other than a member of the Tribunal as constituted for the purposes of the proceeding; and
- (b) in respect of a document produced to the Tribunal—that the document is returned to the person by whom it was produced.

“(4) Subsection (3) does not apply in relation to disclosure to the Director-General of Security or his or her representative if the reason stated in the certificate is the reason referred to in paragraph (2)(a).

“(5) If:

- (a) the Attorney-General has certified in accordance with subsection (2) that the disclosure of information or of the contents of a document would be contrary to the public interest but the certificate does not state a reason referred to in paragraph (2)(a) or (b); and
- (b) the presidential member presiding is satisfied that the interests of justice outweigh the reason stated by the Attorney-General;

the presidential member may authorise the disclosure of the information, or of the contents of the document to, the applicant.

SCHEDULE 1—continued

“(6) In considering whether information or the contents of a document should be disclosed as mentioned in subsection (5):

- (a) the presidential member must take as the basis of his or her consideration the principle that it is desirable, in the interest of ensuring that the Tribunal performs its functions effectively, that the parties should be made aware of all relevant matters; but
- (b) the presidential member must pay due regard to any reason stated 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.

“(7) This section does not prevent the disclosure of information or of the contents of a document to a member of the Tribunal’s staff in the course of the performance of his or her duties as a member of the Tribunal’s staff.

“(8) This section excludes the operation, apart from this section, 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 a proceeding.

“(9) If the Attorney-General has given a certificate under subsection (2) in respect of a document, this section applies in relation to a document that is a copy of the first-mentioned document as if the copy were the original document.

“(10) For the purposes of this section, if the Director-General of Security, in accordance with subsection 38A(1), has lodged with the Tribunal a certificate of the Attorney-General given under subsection 38(2) of the *Australian Security Intelligence Organization Act 1979*, the certificate is taken to be a certificate certifying to the Tribunal that the disclosure of the information to which the certificate relates would be contrary to the public interest because it would prejudice security.

“(11) It is the duty of the Tribunal, even though there may be no relevant certificate under this section, to ensure, so far as it is able to do so, that, in or in connection with a proceeding, information is not communicated or made available to a person contrary to the requirements of security.”.

37. Section 43:

Before subsection (1) insert:

“(1A) This section has effect subject to section 43AAA and to subsection 65(3) of the *Australian Security Intelligence Organization Act 1979*.”.

SCHEDULE 1—continued

38. After section 43:

Insert:

Findings of Tribunal in certain proceedings before Security Appeals Division

“43AAA.(1) This section applies to a review conducted by the Security Appeals Division.

“(2) Upon the conclusion of a review, the Tribunal must make and record its findings in relation to the security assessment, and those findings may state the opinion of the Tribunal as to the correctness of, or justification for, any opinion, advice or information contained in the assessment.

“(3) The Tribunal must not make findings in relation to an assessment that would, under section 61 of the *Australian Security Intelligence Organization Act 1979*, have the effect of superseding any information that is, under subsection 37(2) of that Act, taken to be part of the assessment unless those findings state that, in the Tribunal’s opinion, the information is incorrect, is incorrectly represented or could not reasonably be relevant to the requirements of security.

“(4) Subject to subsection (5), the Tribunal must cause copies of its findings to be given to the applicant, the Director-General of Security, the Commonwealth agency to which the assessment was given and the Attorney-General.

“(5) The Tribunal may direct that the whole or a particular part of its findings, so far as they relate to a matter that has not already been disclosed to the applicant, is not to be given to the applicant or is not to be given to the Commonwealth agency to which the assessment was given.

“(6) Subject to any direction by the Tribunal, the applicant is entitled to publish, in any manner that he or she thinks fit, the findings of the Tribunal so far as they have been given to him or her.

“(7) The Tribunal may attach to a copy of findings to be given to the Director-General under this section, any comments the Tribunal wishes to make on matters relating to procedures or practices of the Australian Security Intelligence Organization that have come to the Tribunal’s attention as a result of a review.

“(8) The Tribunal must give the Minister a copy of any comments attached as mentioned in subsection (7).”.

39. Paragraph 46(1)(a):

Omit “and 36B(2)”, substitute “, 36B(2) and 39B(3)”.

SCHEDULE 1—continued

40. Subsection 46(2):

Omit “or 36B(1)”, substitute “, 36B(1) or 39B(2)”.

41. Paragraph 46(3)(a):

Omit “or 36B(1)(a)”, substitute “, 36B(1)(a), or 39B(2)(a)”.

42. Section 66:

Add at the end:

“Note: Section 81 of the *Australian Security Intelligence Organization Act 1979* contains additional provisions relating to secrecy that apply to members and officers of the Tribunal.”.

43. Before section 70:

Insert:

Costs in certain proceedings in Security Appeals Division

“69B.(1) If:

- (a) a person makes an application under section 54 of the *Australian Security Intelligence Organization Act 1979* to the Tribunal for a review of an adverse or qualified security assessment in respect of the person; and
- (b) the applicant was, in the opinion of the Tribunal, successful, or substantially successful, in the application for review; and
- (c) the Tribunal is satisfied that it is appropriate to do so in all the circumstances of the case;

the Tribunal may order that the costs reasonably incurred by the applicant in connection with the application, or any part of those costs that is determined by the Tribunal, be paid by the Commonwealth.

“(2) For the purposes of section 69A, the Commonwealth is taken to be a party to the proceeding referred to in subsection (1) of this section.”.

44. Transitional

A person who was a non-presidential member of the Security Appeals Tribunal immediately before the commencement of this item:

- (a) is taken to be a non-presidential member of the Administrative Appeals Tribunal for the period beginning on the day of commencement of this item and ending on the day on which his or her term of office as a non-presidential member of the Security Appeals Tribunal would have ended if the amendments made by this Schedule had not been made; and
- (b) is taken to have been assigned to the Security Appeals Division of the Administrative Appeals Tribunal.

SCHEDULE 1—continued

**PART 2—AMENDMENT OF THE ADMINISTRATIVE
DECISIONS (JUDICIAL REVIEW) ACT 1977**

45. Schedule 1:

Add at the end:

“(w) decisions of the Administrative Appeals Tribunal (other than decisions made on review of decisions of the Australian Archives) made on a review that is required by the *Administrative Appeals Tribunal Act 1975* to be conducted by the Security Appeals Division of that Tribunal.”.

**PART 3—AMENDMENTS OF THE AUSTRALIAN SECURITY
INTELLIGENCE ORGANIZATION ACT 1979**

46. Section 35:

Omit the definitions of “Deputy President”, “member”, “non-presidential member”, “President” and “presidential member”.

47. Section 35 (definition of “Tribunal”):

Omit the definition, substitute:

“ ‘Tribunal’ means the Administrative Appeals Tribunal.”.

48. Subparagraph 36(1)(b)(ii):

Omit “entry permit”, substitute “visa”.

49. Subparagraph 36(1)(b)(iii):

Omit, substitute:

“(iii) a person who holds a special category visa or is taken by subsection 33(2) of the *Migration Act 1958* to have been granted a special purpose visa.”.

50. Subsection 37(5):

Omit “under Division 4”, substitute “to the Tribunal under section 54”.

51. Division 3 of Part IV:

Repeal.

52. Section 54:

Repeal, substitute:

Applications to Tribunal

“54.(1) An application may be made to the Tribunal for a review of an adverse or qualified security assessment.

SCHEDULE 1—continued

“(2) At any time after the completion of a review by the Tribunal of a security assessment (other than a review of a security assessment made for the purposes of subsection 202(1) of the *Migration Act 1958*), an application may be made for a review of the findings of the Tribunal on the ground that the applicant has fresh evidence of material significance that was not available at the time of the previous review.”.

53. Sections 55 to 60A:

Repeal.

54. Sections 62 and 63:

Repeal.

55. Subsection 65(3):

Omit “Sections 60 and 61”, substitute “Sections 43 and 43AAA of the *Administrative Appeals Tribunal Act 1975* and section 61 of this Act”.

56. Division 5 of Part IV:

Repeal.

57. Heading to Division 6 of Part IV:

Omit.

58. Sections 72 to 80:

Repeal.

59. Sections 82 and 83:

Repeal.

60. Saving and transitional provisions:

(1) If, before the commencement of this item, an application had been duly made to the Security Appeals Tribunal under Division 4 of Part IV of the *Australian Security Intelligence Organization Act 1979* but the Tribunal had not determined the application:

- (a) the application is taken to be an application duly made to the Administrative Appeals Tribunal; and
- (b) in determining the application, the Administrative Appeals Tribunal may have regard to any record of the proceedings in respect of the application before the Security Appeals Tribunal, including a record of any evidence taken in the proceedings.

(2) If, before the commencement of this item, the Minister administering the *Australian Security Intelligence Organization Act 1979* had required the Security Appeals Tribunal under subsection 65(1) of that Act to conduct an inquiry or review and give a report to that Minister:

SCHEDULE 1—continued

- (a) if the Security Appeals Tribunal had not completed the inquiry or review before the commencement of this item:
- (i) the requirement is taken to be a requirement made of the Administrative Appeals Tribunal; and
 - (ii) the person who has custody of the records of the Security Appeals Tribunal relating to the inquiry or review (including a record of any evidence taken in the inquiry or review) must give those records to the President of the Administrative Appeals Tribunal; and
 - (iii) for the purposes of the conduct of the inquiry or review by the Administrative Appeals Tribunal, that Tribunal may have regard to those records; or
- (b) if the Security Appeals Tribunal had completed the inquiry or review but had not reported to the Minister—despite the amendments made by this Part, Part IV of the *Australian Security Intelligence Organization Act 1979* as in force immediately before the commencement of this item continues in force for the purpose only of enabling the Security Appeals Tribunal to make such a report.
- (3) Subject to subitem (4), if, on the day on which this item commences, had the amendments of the *Australian Security Intelligence Organization Act 1979* made by this Part not been made, an obligation:
- (a) would have been imposed by subsection 83(1) of that Act on the President of the Security Appeals Tribunal to prepare and furnish to the Minister a report concerning the general operation of the provisions of Part 4 of that Act relating to that Tribunal during a year that ended before that commencement; or
 - (b) would have been so imposed concerning the general operation of those provisions during a period of less than a year that occurred before that commencement if that period had been a year;
- section 83 of that Act continues to apply as if that section had not been repealed for the purpose only of the making of that report and the laying of that report before each House of the Parliament.
- (4) For the purposes of section 83 of the *Australian Security Intelligence Organization Act 1979* as it continues to apply because of subitem (3):
- (a) references in that section to the President of the Tribunal are taken to be references to the President of the Administrative Appeals Tribunal; and

SCHEDULE 1—continued

- (b) references in that section to the Minister are taken to be references to the Minister administering the *Administrative Appeals Tribunal Act 1975*; and
 - (c) to the extent (if any) to which that section continues to apply because of paragraph (3)(b), the period referred to in that paragraph is taken to be a year.
- (5) If, before the commencement of this item:
- (a) the Minister administering the *Australian Security Intelligence Organization Act 1979* had requested the Inspector-General of Intelligence and Security under subsection 65(1A) of that Act to inquire into a matter or a specified aspect of a matter and to report to the Minister the results of the inquiry; and
 - (b) the Inspector-General had not completed the inquiry or had completed the inquiry but had not reported the results of the inquiry;
- the request is taken to have been made for the purpose of determining whether it was desirable to make a requirement of the Administrative Appeals Tribunal under subsection 65(1) of the *Australian Security Intelligence Organization Act 1979* as amended by this Part.

PART 4—AMENDMENT OF THE MIGRATION ACT 1958

61. Subsection 202(5):

Omit, substitute:

“(5) Despite subsection 29(7) of the *Administrative Appeals Tribunal Act 1975*, the Tribunal must not extend beyond the period of 28 days referred to in subsection 29(2) of that Act the time within which a person may apply to the Tribunal for a review of an adverse security assessment made for the purposes of subsection (1) of this section.”

SCHEDULE 2

Subsection 3(2)

OTHER AMENDMENTS

Administrative Appeals Tribunal Act 1975

1. Subsection 3(1) (definition of “officer of the Tribunal”):

After “the Registrar” insert “, a District Registrar, a Conference Registrar”.

2. Subsection 3(1) (definition of “Tribunal”):

Omit, substitute:

“ ‘Tribunal’:

- (a) means the Administrative Appeals Tribunal established by this Act; and
- (b) in relation to a proceeding, means the Administrative Appeals Tribunal so established as constituted for the purposes of the proceeding; and
- (c) includes a member, or an officer of the Tribunal, exercising powers of the Tribunal.”.

3. Subsection 3(1):

Insert:

“ ‘Conference Registrar’ means a Conference Registrar of the Tribunal;

‘District Registrar’ means a District Registrar of the Tribunal;

‘proceeding’, in relation to the Tribunal, includes:

- (a) an application to the Tribunal for review of a decision; and
- (b) an application to the Tribunal under subsection 28(1AC); and
- (c) an application to the Tribunal for review of a decision by the Registrar, a District Registrar or a Deputy Registrar taxing any costs ordered by the Tribunal to be paid; and
- (d) an application to the Tribunal for a costs certificate under section 10A of the *Federal Proceedings (Costs) Act 1981*; and
- (e) an application to the Tribunal under subsection 62(2) of the *Freedom of Information Act 1982*; and
- (f) any other application to the Tribunal under this Act or any other Act; and
- (g) any matter referred to the Tribunal for inquiry and/or review under this Act or any other Act; and
- (h) an incidental application to the Tribunal made in the course of, or in connection with, an application or proposed application, or a matter, referred to in a preceding paragraph.”.

SCHEDULE 2—continued

4. Section 5:

Omit “and such number of other members as are appointed in accordance with this Act”, substitute “, the other presidential members, the senior members, and the other members, appointed in accordance with this Act”.

5. Subsection 21(1):

Omit, substitute:

“(1) Subject to subsections (1AA), (1AB) and (1A) and to any other provision made in this Act or in any other enactment with respect to the constitution of the Tribunal in relation to a particular proceeding, the Tribunal is, for the purposes of a proceeding, to be constituted by not more than 3 members.

“(1AA) The Tribunal as constituted for the purposes of a proceeding must not include more than one presidential member who is a judge.

“(1AB) If the Tribunal as constituted for the purposes of a proceeding consists of more than one member neither or none of whom is a presidential member, at least one of the members must be a senior member.”.

6. Subsection 21(1A):

Omit “35(2) or 37(1A), (1C) or (2) or section 38, 42A or 42B,”, substitute “34A(4), 35(2) or 37(1A), (1C) or (2), section 38, 42A or 42B, subsection 42C(1) or section 69A or 69B,”.

7. Subsection 21A(3):

Omit, substitute:

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

8. Subsection 23(2):

Omit.

9. After section 23:

Insert:

Disagreement where Tribunal constituted by 2 members

“23A. If the Tribunal is constituted, for the purposes of a proceeding, by 2 members and the members do not agree on the decision to be made in the proceeding, the proceeding is to be reheard by the Tribunal as reconstituted in accordance with the directions of the President under section 20.

SCHEDULE 2—continued

Reconstituted Tribunal may have regard to record of previous proceeding

“23B. If a proceeding is reheard by the Tribunal, the Tribunal may, for the purposes of the proceeding, have regard to any record of the proceeding before the Tribunal as previously constituted including a record of any evidence taken in the proceeding.”.

10. Subsection 24N(1):

Before “Deputy” insert “District Registrars, Conference Registrars,”.

11. After subsection 24N(1):

Insert:

“(1A) The Conference Registrars are appointed by the President.

“(1B) A person who holds an office of District Registrar, Deputy Registrar or Conference Registrar may be appointed to another of those offices without the appointment affecting his or her appointment to the first-mentioned office.”.

12. Subsection 24N(2):

Before “Deputy” insert “District Registrars and”.

13. Subsections 24N(3) and (5):

Before “Deputy” insert “District Registrars, Conference Registrars,”.

14. Section 24P:

Before “Deputy” insert “District Registrars, Conference Registrars,”.

15. After section 25:

Insert:

Restriction on powers of decision-maker after application for review is made

“26.(1) Subject to section 42D, after an application is made to the Tribunal for a review of a decision, the decision may not be altered otherwise than by the Tribunal on the review unless:

- (a) the enactment that authorised the making of the application expressly permits the decision to be altered; or
- (b) the parties to the proceeding, and the Tribunal, consent to the making of the alteration.

“(2) A reference in subsection (1) to the alteration of a decision is a reference to:

SCHEDULE 2—continued

- (a) the variation of a decision; or
- (b) the setting aside of a decision; or
- (c) the setting aside of a decision and the making of a decision in substitution for the decision set aside.”.

16. Subsection 29(11):

After “The Registrar” insert “, a District Registrar”.

17. After section 34A:

Insert:

Circumstances in which hearing may be dispensed with

“34B. If:

- (a) it appears to the Tribunal that the issues for determination on the review of a decision can be adequately determined in the absence of the parties; and
 - (b) the parties consent to the review being determined without a hearing;
- the Tribunal may review the decision by considering the documents or other material lodged with or provided to the Tribunal and without holding a hearing.”.

18. Subsection 36D(5):

- (a) After “the Registrar” insert “, a District Registrar, a Conference Registrar”.
- (b) After “as Registrar” insert “, District Registrar, Conference Registrar”.

19. Subsection 37(1):

Omit, substitute:

“(1) Subject to this section, a person who has made a decision that is the subject of an application for a review by the Tribunal must, within 28 days after receiving notice of the application (or within such further period as the Tribunal allows), lodge with the Tribunal 2 copies 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 the person’s possession or under the person’s control and is considered by the person to be relevant to the review of the decision by the Tribunal.

SCHEDULE 2—continued

“(1AA) The Tribunal may direct a person who is required to lodge with the Tribunal 2 copies of a statement or other document or part of a document under subsection (1) to lodge with the Tribunal such number of additional copies, and within such period, as the Tribunal determines and, if the Tribunal gives such a direction, the person must comply with it.

“(1AB) Subject to any other Act, the President may, in relation to a particular decision or class of decisions, direct that the person who is obliged to lodge with the Tribunal the statement referred to in paragraph (1)(a) may, in lieu of lodging the statement, lodge with the Tribunal, within the period applicable under subsection (1), 2 copies of the document setting out the reasons for the decision that is the subject of the application for review.

“(1AC) If a person has, in accordance with a direction given under subsection (1AB), lodged with the Tribunal 2 copies of the document setting out the reasons for a decision, the Tribunal may at any later time direct the person to lodge with the Tribunal, within such period as the Tribunal determines, a statement in accordance with paragraph (1)(a).

“(1AD) If a person who has made a decision that is the subject of an application for a review by the Tribunal has given to a party to the proceeding a statement in relation to the decision under subsection 28(1), the reference in paragraph (1)(a) to a statement is taken to be a reference to the statement given under subsection 28(1).

“(1AE) A person who is required under subsection (1) or (1AB) to lodge 2 copies of a statement or other document or part of a document with the Tribunal under this section within a particular period must also give a copy of the statement or other document or part of a document within that period to each other party to the proceeding.

“(1AF) If:

- (a) a person who has made a decision that is the subject of an application for a review by the Tribunal would, apart from this subsection, be required under paragraph (1)(b) to lodge 2 copies of a document or a part of a document with the Tribunal in respect of the application; and
- (b) within the period applicable under subsection (1) the person:
 - (i) applies to the Tribunal for a direction under subsection 35(2) in relation to the document or part of the document and lodges with the Tribunal, together with the application for the direction, 2 copies of the document or part of the document; and
 - (ii) serves a copy of the application for the direction on each party to the application for review;

SCHEDULE 2—continued

the person is not required to comply with paragraph (1)(b) in relation to the document or part of the document unless and until the Tribunal, after hearing the application for the direction, directs the person to do so.

“(1AG) Subsection (1AF) does not affect the obligation of a person referred to in that subsection to comply with paragraph (1)(b) in relation to any document or part of a document to which that subsection does not apply.”.

20. Subsection 40(1A):

After “the Registrar,” insert “a District Registrar”.

21. After section 42C:

Insert:

Power to remit matters to decision-maker for further consideration

“42D.(1) At any stage of a proceeding for review of a decision, the Tribunal may remit the decision to the person who made it for reconsideration of the decision by the person.

“(2) If a decision is so remitted to a person, the person may reconsider the decision and may:

- (a) affirm the decision; or
- (b) vary the decision; or
- (c) set aside the decision and make a new decision in substitution for the decision set aside.

“(3) If the person varies the decision:

- (a) the application is taken to be an application for review of the decision as varied; and
- (b) the person who made the application may either:
 - (i) proceed with the application for review of the decision as varied; or
 - (ii) withdraw the application.

“(4) If the person sets the decision aside and makes a new decision in substitution for the decision set aside:

- (a) the application is taken to be an application for review of the new decision; and
- (b) the person who made the application may either:
 - (i) proceed with the application for review of the new decision; or
 - (ii) withdraw the application.”.

SCHEDULE 2—continued

22. Subsection 43(4):

After “the Registrar” insert “, a District Registrar”.

23. After subsection 43(5B):

Insert:

“(5C) Despite subsections (5A) and (5B), if:

- (a) the Tribunal has made an order under subsection 41(2) staying the operation or implementation of the decision under review; and
- (b) the order was in force immediately before the decision given by the Tribunal on the review;

then, unless the Tribunal or the Federal Court of Australia otherwise orders, the operation or implementation of the Tribunal’s decision is stayed until:

- (c) subject to paragraph (d), the end of the period within which a party to the proceeding before the Tribunal may appeal from the decision to the Federal Court of Australia under subsection 44(1) (including any further time for bringing the appeal that is allowed by the Federal Court before the end of that period); or
- (d) if such an appeal is brought—the appeal is determined.”.

24. Before section 43A:

Insert:

Correction of errors in decisions or statement of reasons

“43AA.(1) If, after the making of a decision by the Tribunal, the Tribunal is satisfied that there is an obvious error in the text of the decision or in a written statement of reasons for the decision, the Tribunal may direct the Registrar to alter the text of the decision or statement in accordance with the directions of the Tribunal.

“(2) If the text of a decision or statement is so altered, the altered text is taken to be the decision of the Tribunal or the reasons for the decision, as the case may be.

“(3) Examples of obvious errors in the text of a decision or statement of reasons are where:

- (a) there is an obvious clerical or typographical error in the text of the decision or statement of reasons; or
- (b) there is an inconsistency between the decision and the statement of reasons.

“(4) The powers of the Tribunal under this section may be exercised by the President or by the member who presided at the proceeding to which the decision relates.”.

SCHEDULE 2—continued

25. After subsection 44(2A):

Insert:

“(2B) In the interest of justice, the grounds on which the Federal Court of Australia may allow further time under paragraph (2A)(a) include, but are not limited to, the following grounds:

- (a) if the Tribunal made an oral statement as to the reasons for the decision and afterwards gave a written statement of reasons for the decision—the written statement contains reasons that were not mentioned in the oral statement;
- (b) the text of the decision or a statement of reasons for the decision has been altered under section 43AA.”.

26. Section 65:

Repeal, substitute:

Officers of Tribunal

“65. In relation to a proceeding, the officers of the Tribunal have such respective duties, powers and functions as are given by this Act or by the President.”.

27. After section 66:

Insert:

Application of confidentiality provisions in other Acts

“66A. If:

- (a) a provision of an enactment (other than this Act) prohibits the disclosure, whether absolutely, in certain circumstances only or subject to conditions, of information by persons who:
 - (i) are included in a particular class of persons; and
 - (ii) acquired the information in the course of their duties under the enactment; and
- (b) a person who is or has been a member, an officer of the Tribunal or a member of the staff of the Tribunal has acquired or acquires any such information in the course of his or her duties as such a member, officer or member of the staff;

that provision applies to the person as if he or she were included in the particular class of persons and acquired the information in the course of duties under the enactment.”.

28. Subsection 68(1):

Omit “the office of the Registrar or of a Deputy Registrar”, substitute “a registry of the Tribunal”.

SCHEDULE 2—continued

29. After section 68:

Insert:

Calculation of short periods of time

“68A. If the period of time for doing anything under this Act or any other Act, or in accordance with a direction of the Tribunal, in relation to a proceeding is a period of less than 7 days, any day on which the Registry of the Tribunal in which the relevant application was lodged is not open to the public is not to be counted in working out whether the period has ended.”.

30. After section 69:

Insert:

Procedure for taxing costs

“69A.(1) If:

- (a) the Tribunal has, under this Act or any other Act, ordered a party to a proceeding to pay to another party to the proceeding reasonable costs incurred by the other party; and
- (b) the parties are unable to agree as to the amount of those costs;

the President may give such directions as he or she thinks appropriate for the costs:

- (c) to be taxed or settled by the Tribunal; or
- (d) to be taxed by the Registrar, a District Registrar or a Deputy Registrar.

“(2) If the Registrar, a District Registrar or a Deputy Registrar has taxed under paragraph (1)(d) the amount to be paid to a party to a proceeding by another party to the proceeding, either of those parties may apply to the Tribunal for review of the amount so taxed.

“(3) If such an application is made, the Tribunal must review the amount taxed and may:

- (a) affirm the amount; or
- (b) set aside the amount and substitute another amount; or
- (c) set aside the amount and remit the matter to the Registrar, District Registrar or Deputy Registrar, as the case may be, to be taxed in accordance with the directions of the Tribunal.

“(4) An amount that a party to a proceeding is required under an order made by the Tribunal to pay to another party to the proceeding is recoverable by the other party as a debt due to the other party by the first-mentioned party.”.

SCHEDULE 2—continued

31. After subparagraph 70(2)(a)(i):

Insert:

“(ia) prescribing fees to be payable in respect of the taxation of costs ordered by the Tribunal to be paid; and”.

Note 1: The heading to section 24N of the *Administrative Appeals Tribunal Act 1975* is altered by omitting “Deputy Registrars” and substituting “Officers”.

Note 2: The heading to section 24P of the *Administrative Appeals Tribunal Act 1975* is altered by inserting “District Registrars, Conference Registrars,” before “Deputy”.

Estate Duty Assessment Act 1914

32. Subsection 48A(4):

After “the Registrar” insert “, a District Registrar”.

Federal Court of Australia Act 1976

33. Section 53A:

Add at the end:

“(2) The Rules of Court may make provision for the registration of awards made in an arbitration carried out under an order made under subsection (1).”.

34. After section 53A:

Insert:

Power of arbitrator to refer question of law to the Court

“53AA.(1) If:

- (a) any proceedings in the Court, or any part of them or any matter arising out of them, has been referred under subsection 53A(1) to an arbitrator for arbitration; and
- (b) the arbitrator has not made an award in respect of the arbitration; and
- (c) a party to the arbitration has requested the arbitrator to apply to the Court for leave to refer to the Court a question of law arising in the arbitration;

the arbitrator may apply to the Court or a Judge for leave to refer the question to the Court.

“(2) If the Chief Judge considers that the matter to which the application for leave relates is of sufficient importance to justify the giving of a direction under this subsection, the Chief Judge may direct that the jurisdiction of the Court in that matter is to be exercised by a Full Court.

SCHEDULE 2—continued

“(3) The Court or Judge must not grant leave unless satisfied that the determination of the question of law by the Court might result in substantial savings in costs to the parties to the arbitration.

Application to the Court for review of award on a question of law or for costs to be taxed

“53AB.(1) If:

- (a) any proceedings in the Court, or any part of them or any matter arising out of them, has been referred under subsection 53A(1) to an arbitrator for arbitration; and
- (b) the arbitrator has made an award in respect of the arbitration; and
- (c) the award has been registered with the Court under the Rules of Court;

the following provisions of this section apply.

“(2) A party to the award may apply to the Court for a review, on a question of law, of the award.

“(3) If the Chief Judge considers that the matter to which an application made under subsection (2) relates is of sufficient importance to justify the giving of a direction under this subsection, the Chief Judge may direct that the jurisdiction of the Court in that matter is to be exercised by a Full Court.

“(4) On a review of an award on a question of law, the Court may:

- (a) determine the question of law; and
- (b) make such orders as it thinks appropriate, including:
 - (i) an order affirming the award; or
 - (ii) an order varying the award; or
 - (iii) an order setting aside the award and remitting the award to the arbitrator for reconsideration in accordance with the directions of the Court; or
 - (iv) an order setting aside the award and determining the matter to which the award related.

“(5) A party to the award may apply to the Court or a Judge for an order that the costs payable by the party in respect of the arbitration be taxed in accordance with the Rules of Court.

“(6) The person who made the application is not liable to pay in respect of the costs of the arbitration an amount that is more than the amount of the costs as taxed under an order made under subsection (5).”.

35. After subsection 54(1):

Insert:

SCHEDULE 2—continued

“(1A) Subsection (1) does not apply to an award made in an arbitration carried out under an order made under subsection 53A(1) unless the award has been registered with the Court under the Rules of Court.”.

Federal Proceedings (Costs) Act 1981

36. Title:

Omit “**and courts of certain Territories**”, substitute “, **courts of certain Territories and the Administrative Appeals Tribunal**”.

37. Subsection 3(1) (definition of “costs certificate”):

Omit “or 10(2) or (3)”, substitute “, 10(2) or (3) or 10A(2)”.

38. After section 10:

Insert:

Costs certificates—Administrative Appeals Tribunal

“10A.(1) Subject to this Act, if a review by the Administrative Appeals Tribunal of a decision has to be reheard because of section 23 or 23A of the *Administrative Appeals Tribunal Act 1975*, the Tribunal may, on the application of any party to the proceeding other than the person who made the decision that was subject to the review, grant to that party a costs certificate in respect of the application for review.

“(2) The certificate that may be granted to a person under subsection (1) is a certificate stating that, in the Tribunal’s opinion, it would be appropriate for the Attorney-General to authorise a payment under this Act to the person in respect of the costs incurred by the person in relation to the proceeding before the Tribunal.

“(3) An appeal does not lie to any court from a refusal of the Tribunal to grant a costs certificate.”.

39. Subsection 18(1):

After “court” (wherever occurring) insert “or tribunal”.

40. After subsection 18(2):

Insert:

“(2A) The Attorney-General must not authorise payment under this Act in respect of a costs certificate granted by the Administrative Appeals Tribunal under subsection 10A(2) of an amount that exceeds the prescribed maximum amount in relation to that Tribunal.”.

SCHEDULE 2—continued

41. Schedule:

At the end of the Schedule add:

“Administrative Appeals Tribunal 2000”.

Fringe Benefits Tax Assessment Act 1986

42. Subsection 133(4):

After “the Registrar” insert “, a District Registrar”.

Income Tax Assessment Act 1936

43. Subsection 265(4):

After “the Registrar” insert “, a District Registrar”.

Judiciary Act 1903

44. Subsection 77F(3):

Omit.

Pay-roll Tax Assessment Act 1941

45. Subsection 70(4):

After “the Registrar” insert “, a District Registrar”.

Pay-roll Tax (Territories) Assessment Act 1971

46. Subsection 69(4):

After “the Registrar” insert “, a District Registrar”.

Safety, Rehabilitation and Compensation Act 1988

47. Subsection 67(13):

After “the Registrar” insert “, a District Registrar”.

48. After subsection 67(13):

Add:

“(14) For the purposes of section 69A of the *Administrative Appeals Tribunal Act 1975*, the responsible authority is taken to be a party to the proceeding before the Administrative Appeals Tribunal.”.

SCHEDULE 3

Subsection 3(3)

**ADDITIONAL AMENDMENTS OF THE ADMINISTRATIVE
APPEALS TRIBUNAL ACT 1975**

1. The following provisions are amended by omitting “he” (wherever occurring) and substituting “he or she”:
Subsections 7(1A), (1B) and (2), 9(1) and 10(5) and (6), section 14, subsections 19(4), 20(2), 22(1), 25(6) and (7), 29(10), 30A(2), 34(1) and (4) and 40(3) and (4), section 50, subsections 53(1), 56(5) and (10), section 62 and subsections 64(1) and 69(2).
2. The following provisions are amended by omitting “his” (wherever occurring) and substituting “his or her”:
Section 7A, subsections 10(3), (9) and (11) and 10A(1), section 10B, subsections 11(1), 13(1) and (7) and 14(1), section 15, subsections 25(3A), 28(1AA) and 30(2), section 36A, subsection 37(2), section 39, subsection 46(4), sections 52 and 54, subsection 60(1), sections 62A and 63 and subsection 67(1).
3. The following provisions are amended by omitting “him” (wherever occurring) and substituting “him or her”:
Subsections 10(9), 10A(1) and 13(7), section 15, subsections 21A(2), 28(1A), (2) and (4), 29(10), 30(2), 36(1) and 40(3), section 54, subsection 55(2) and section 62.
4. Section 61 is amended by omitting from subsection (1) “himself” and substituting “himself or herself”.

*[Minister's second reading speech made in—
Senate on 7 December 1994
House of Representatives on 1 December 1995]*