



Administrative Appeals Tribunal Amendment (Small Business Taxation Division) Regulations 2019

I, General the Honourable Sir Peter Cosgrove AK MC (Ret'd), Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following regulations.

Dated 21 February 2019

Peter Cosgrove
Governor-General

By His Excellency's Command

Christian Porter
Attorney-General

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1 Name

This instrument is the *Administrative Appeals Tribunal Amendment (Small Business Taxation Division) Regulations 2019*.

2 Commencement

- (1) Each provision of this instrument specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. Sections 1 to 4 and anything in this instrument not elsewhere covered by this table	The day after this instrument is registered.	26 February 2019
2. Schedule 1, Part 1	1 March 2019.	1 March 2019
3. Schedule 1, Part 2	2 July 2019.	2 July 2019

Note: This table relates only to the provisions of this instrument as originally made.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

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

3 Authority

This instrument is made under the *Administrative Appeals Tribunal Act 1975*.

4 Schedules

Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

Schedule 1—Amendments

Part 1—Small business taxation decisions

Administrative Appeals Tribunal Regulation 2015

1 Section 5

Insert:

small business taxation decision means a decision made:

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

2 At the end of Part 2

Add:

8A Small Business Taxation Division

The Small Business Taxation Division is prescribed for the purposes of paragraph 17A(g) of the Act.

3 Paragraph 20(1)(a)

After “subsection”, insert “(1A) or”.

4 After subsection 20(1)

Insert:

Lower application fee for small business taxation decisions

- (1A) The fee of \$500 is prescribed in respect of an application for review of a small business taxation decision (other than an application referred to in subsection (2)).

5 Subsection 20(2) (heading)

After “*certain*”, insert “*other*”.

6 Subsection 20(3)

After “referred to in subsection (1)”, insert “, (1A)”.

7 Paragraph 20(3)(a)

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

8 Subsection 23(3)

Omit all the words after “under subsection (2)”, substitute:

must be:

- (a) unless paragraph (b) applies—equal to the highest prescribed fee that would, apart from subsection (2), be payable in respect of any of the applications; or
- (b) if one of the applications is for review of a small business taxation decision—equal to the prescribed fee that would be payable in respect of an application for review of a small business decision to which subsection 20(2) did not apply.

9 After paragraph 25(1)(c)

Insert:

- (ca) if the Tribunal considers that subsection 20(1A) applies in relation to the application—the fee prescribed by that subsection; or

10 After section 25

Insert:

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

- (1) If:
 - (a) an applicant paid the fee mentioned in subsection 20(1A) on the basis that a decision related to a small business entity; and
 - (b) the Tribunal considers that the decision did not relate to a small business entity;then the Tribunal may make an order declaring that the prescribed fee in respect of the application is:
 - (c) the fee prescribed by subsection 20(1); or
 - (d) if the Tribunal considers that subsection 20(2) applies in relation to the application—the fee prescribed by that subsection; or
 - (e) if the circumstances in section 21 exist—the fee prescribed by subsection 20(3).
- (2) If the applicant paid less than the fee declared by the Tribunal, the amount payable by the applicant is reduced by the amount paid.

Note: For refunds of excess amounts, see item 4 of the table in section 26.

Consequence if fee not paid

- (3) The Tribunal is not required to deal with the application unless, and until, the fee is paid.
- (4) For the purposes of paragraph 69C(1)(b) of the Act, the time by which the fee must be paid is the end of the 6 weeks starting on the day the order is made.

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

11 Section 26 (table items 6 and 7, column headed “Fee”)

After “subsection 20(1)”, insert “or (1A)”.

Part 2—Indexation of application fees

Administrative Appeals Tribunal Regulation 2015

12 At the end of subsection 20(1A)

Add:

Note: The fee is indexed under section 27.

13 Subsection 27(1)

Omit “1 July 2019 and”.

14 Subsection 27(1)

Omit “following that day”.

15 Subsection 27(1)

Omit “and (2) (a *fee provision*)”, substitute “, (1A) and (2)”.