

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Note: This table relates only to the provisions of this instrument as originally made.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Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.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)”.