



Administrative Review Tribunal Regulations 2024

I, the Honourable Sam Mostyn AC, Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following regulations.

Dated 12 September 2024

Sam Mostyn AC
Governor-General

By Her Excellency's Command

Mark Dreyfus KC
Attorney-General

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Part 1—Preliminary

1 Name

This instrument is the *Administrative Review Tribunal Regulations 2024*.

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. The whole of this instrument	At the same time as the <i>Administrative Review Tribunal Act 2024</i> commences.	14 October 2024

Note: This table relates only to the provisions of this instrument as originally made.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 Review Tribunal Act 2024*.

4 Definitions

Note: A number of expressions used in this instrument are defined in the Act, including the following:

- (a) eligible social services decision;
- (b) guidance and appeals panel application;
- (c) President;
- (d) second review;
- (e) Tribunal.

In this instrument:

Act means the *Administrative Review Tribunal Act 2024*.

Norfolk Island decision has the meaning given by section 27.

qualification requirements means the requirements in:

- (a) for appointment as President—subsection 205(3) of the Act; or
- (b) for appointment as Non-Judicial Deputy President—subsection 207(3) of the Act; or
- (c) for appointment as senior member—subsection 208(3) of the Act; or
- (d) for appointment as general member—subsection 208(4) of the Act.

Section 4

Secretary means the Secretary of the Department.

selection criteria means:

- (a) for appointment as President—the selection criteria mentioned in section 14; or
- (b) for appointment as Non-Judicial Deputy President, senior member or general member—the selection criteria mentioned in section 15; or
- (c) for appointment as Chief Executive Officer and Principal Registrar—the selection criteria mentioned in section 16.

Part 2—Guidance and appeals panel

5 Purpose of this Part

For the purposes of subsection 130(7) of the Act, this Part prescribes modifications of the Act as it applies in relation to a guidance and appeals panel application.

6 Tribunal may dismiss application if first review applicant dies or is bankrupt etc.

The Act applies in relation to a guidance and appeals panel application as if the following section were inserted after section 84 of the Act:

84A Tribunal may dismiss guidance and appeals panel application if first review applicant dies or is bankrupt etc.

- (1) This section applies if:
 - (a) a guidance and appeals panel application is taken to be made because of the referral of a decision of the Tribunal; and
 - (b) the person who applied to refer the decision of the Tribunal is not the person (the *first review applicant*) who made the application on which the decision of the Tribunal was made.
- (2) The Tribunal may dismiss the guidance and appeals panel application if:
 - (a) the first review applicant:
 - (i) dies; or
 - (ii) becomes bankrupt; or
 - (iii) is wound up or otherwise ceases to exist; or
 - (iv) becomes subject to any form of liquidation or administration (however described); and
 - (b) the Tribunal considers that the application cannot continue because of the event mentioned in paragraph (a).

Section 7

Part 3—Second review for certain social services decisions

7 Purpose of this Part

For the purposes of paragraph 131E(3)(b) of the Act, this Part prescribes modifications of the Act for the purposes of second review.

8 Tribunal may dismiss application if first review applicant dies or is bankrupt

The Act applies for the purposes of second review as if the following section were inserted before section 85 of the Act:

84B Tribunal may dismiss second review application if first review applicant dies or is bankrupt

- (1) This section applies if an application is made to the Tribunal for second review other than by the person (the *first review applicant*) who applied to the Tribunal for review of the related eligible social services decision.
- (2) The Tribunal may dismiss the application if:
 - (a) the first review applicant:
 - (i) if the related eligible social services decision is made under the *Child Support (Registration and Collection) Act 1988* or the *Student Assistance Act 1973*—becomes bankrupt; or
 - (ii) in any case—dies; and
 - (b) the Tribunal considers that the application cannot continue because of the event mentioned in paragraph (a).

Part 4—Appointment of members and Principal Registrar

Division 1—Assessment process

9 Requirements for assessment process

- (1) For the purposes of subparagraphs 205(2)(b)(iii), 207(2)(b)(iii), 208(2)(b)(iii) and 227(2)(b)(iii) of the Act, the following requirements are prescribed for an assessment process in relation to an appointment:
 - (a) the Department must publish an invitation for applications for the appointment in accordance with section 10 of this instrument;
 - (b) the assessment panel for the appointment must allow applications for the appointment to be made for at least 2 weeks after the invitation for applications for the appointment is published on the Department’s website;
 - (c) the Department must make information available to potential applicants for the appointment in accordance with section 11 of this instrument;
 - (d) the assessment panel for the appointment must not assess a person as suitable for the appointment unless:
 - (i) the person applies for the appointment; and
 - (ii) if the appointment is as a Non-Judicial Deputy President—the panel considers whether the person could meet the requirement in paragraph 207(3)(a) of the Act; and
 - (iii) the panel shortlists the person for interview based on the person’s application; and
 - (iv) the panel interviews the person; and
 - (v) the panel seeks at least one referee report in relation to the person; and
 - (vi) if the appointment is as a Non-Judicial Deputy President, senior member or general member and the person is a member—the panel seeks a referee report from another member with appropriate seniority and knowledge of the applicant’s work; and
 - (vii) the panel assesses the person against the selection criteria for the appointment (see Division 2 of this Part);
 - (e) the assessment panel for the appointment must give the Minister a report in accordance with section 12 of this instrument.
- (2) For the purposes of subparagraphs 205(2)(b)(iii), 207(2)(b)(iii), 208(2)(b)(iii) and 227(2)(b)(iii) of the Act, an assessment process in relation to an appointment must be completed within 18 months before the appointment.

Note 1: The assessment must be done by a panel established under section 209 of the Act (see paragraphs 205(2)(b), 207(2)(b), 208(2)(b) and 227(2)(b) of the Act).

Note 2: The assessment process must be merit-based (see subparagraphs 205(2)(b)(i), 207(2)(b)(i), 208(2)(b)(i) and 227(2)(b)(i) of the Act).

10 Invitations for applications to be published

For the purposes of paragraph 9(1)(a), the invitation for applications for an appointment must be published:

- (a) for at least 2 weeks on the Department’s website; and
- (b) in at least one other way accessible to the public.

Section 11

Note: For paragraph (b), publication in a way accessible to the public could include publication in national media, on the APSJobs website or on another publicly accessible website. The APSJobs website could in 2024 be viewed at <http://www.apsjobs.gov.au>.

11 Information to be available to potential applicants

For the purposes of paragraph 9(1)(c), the Department must make the following information available to potential applicants for an appointment:

- (a) the selection criteria for the appointment;
- (b) the qualification requirements (if any) for the appointment;
- (c) information on remuneration for the appointment;
- (d) information on the assessment process for the appointment;
- (e) if the appointment is as a Non-Judicial Deputy President, senior member or general member:
 - (i) the code of conduct; and
 - (ii) the performance standard.

Note: For example, the Department may make the information available to potential applicants on its website.

12 Assessment panel reports

Outcome of assessment process

- (1) For the purposes of paragraph 9(1)(e), the assessment panel's report in relation to an assessment process for an appointment as President must set out the outcome of the assessment process, including:
 - (a) identification of applicants interviewed; and
 - (b) identification of applicants interviewed who were assessed as suitable for the appointment and the reasons for that outcome.
- (2) For the purposes of paragraph 9(1)(e), the assessment panel's report in relation to an assessment process for an appointment as Non-Judicial Deputy President, senior member, general member or Chief Executive Officer and Principal Registrar must set out the outcome of the assessment process, including:
 - (a) identification of applicants interviewed; and
 - (b) for any applicants interviewed who were assessed by the panel as suitable for the appointment:
 - (i) identification of the applicant and the reasons for that outcome; and
 - (ii) if any person who is part of the panel did not support the assessment of the applicant as suitable—the person's reasons for not supporting that assessment; and
 - (c) for any applicants interviewed who were assessed by the panel as not suitable for the appointment—identification of the applicant and the reasons for that outcome.

Consideration of qualification requirements

- (3) For the purposes of paragraph 9(1)(e), the assessment panel's report in relation to an assessment process for an appointment as a Non-Judicial Deputy President, senior member or general member may include information on whether the panel

considers that an applicant assessed by the panel as suitable for the appointment could meet the qualification requirements for the appointment.

13 List of persons on assessment panel to be published

For the purposes of subsection 209(2) of the Act, within 28 days after an assessment panel gives the Minister a report in accordance with section 12 of this instrument, the Department must publish on its website the names of the persons who were part of the panel.

Section 14

Division 2—Selection criteria

14 Selection criteria—President

The selection criteria for appointment as President are:

- (a) if the applicant is not a Judge of the Federal Court—suitability for appointment as a Judge of the Federal Court; and
- (b) outstanding expertise in, and experience in the practice of, administrative law; and
- (c) commitment to, and ability to support, the objective in section 9 of the Act; and
- (d) demonstrated understanding of the diverse needs of parties to proceedings; and
- (e) leadership and management skills, including the following:
 - (i) ability to lead the Tribunal, with a focus on high-quality performance, financial sustainability and innovation;
 - (ii) ability to inspire and support members and staff members;
 - (iii) commitment to providing a diverse, safe and respectful workplace.

15 Selection criteria—Non-Judicial Deputy Presidents, senior members and general members

The selection criteria for appointment as a Non-Judicial Deputy President, senior member or general member are:

- (a) commitment to, and ability to support, the objective in section 9 of the Act; and
- (b) the following, at appropriate levels for the appointment:
 - (i) decision-making and reasoning skills;
 - (ii) ability to conduct hearings and other Tribunal case events;
 - (iii) writing and communication skills;
 - (iv) ability to be responsive to the diverse needs of parties to proceedings;
 - (v) professionalism, independence, integrity and collegiality;
 - (vi) productivity, diligence and resilience;
 - (vii) understanding of, and commitment to, diverse, safe and respectful workplaces; and
- (c) if the appointment is as Non-Judicial Deputy President or senior member—leadership and management skills, at an appropriate level for the appointment; and
- (d) any other selection criteria relevant to the operational needs of the Tribunal the Minister considers appropriate after consultation with the President.

16 Selection criteria—Chief Executive Officer and Principal Registrar

The selection criteria for appointment as Chief Executive Officer and Principal Registrar are:

- (a) leadership, including the following:
 - (i) ability to set a strategic direction and inspire people to work towards it;

- (ii) high standard of personal integrity and commitment to organisational integrity and accountability;
- (iii) commitment to fostering a strong organisational culture and a diverse, safe and respectful workplace;
- (iv) ability to identify and respond to possible challenges and opportunities;
- (v) high level of judgement; and
- (b) management skills, including the following:
 - (i) ability to lead a large and complex organisation and achieve results within appropriate frameworks across diverse functions;
 - (ii) understanding of best-practice organisational governance;
 - (iii) extensive experience in public administration and strong knowledge of the obligations of agency heads under the *Public Governance, Performance and Accountability Act 2013* and the *Public Service Act 1999*;
 - (iv) ability to foster strong working relationships, including with members; and
- (c) commitment to accessible administrative review of decisions made under legislation, including the following:
 - (i) understanding of the work of the Tribunal and the administrative review process or capacity to quickly develop that understanding;
 - (ii) commitment to the objective in section 9 of the Act;
 - (iii) understanding of the diverse needs of parties to proceedings; and
- (d) any other selection criteria relevant to the operational needs of the Tribunal the Minister considers appropriate after consultation with the President.

Division 3—Assessment panels

Subdivision A—Composition of assessment panels

17 Assessment panels—President

- (1) For the purposes of paragraph 209(3)(b) of the Act, an assessment panel established in relation to the appointment of a person as President must be composed of the following persons:
 - (a) the Secretary or a person nominated by the Secretary;
 - (b) the Chief Justice of the Federal Court or a person nominated by the Chief Justice of the Federal Court;
 - (c) a person nominated by the Minister.
- (2) For the purposes of paragraph 209(3)(c) of the Act, the person mentioned in paragraph (1)(a) of this section is to chair the assessment panel.

18 Assessment panels—Non-Judicial Deputy President, senior member or general member

- (1) This section applies in relation to an assessment panel established in relation to the appointment of a person as a Non-Judicial Deputy President, senior member or general member.
- (2) For the purposes of paragraph 209(3)(b) of the Act, the assessment panel must be composed of the following persons:
 - (a) the Secretary or a person nominated by the Secretary;
 - (b) the President or a person nominated by the President;
 - (c) a person nominated by the Minister.
- (3) For the purposes of paragraph 209(3)(c) of the Act, the person mentioned in paragraph (2)(a) of this section is to chair the assessment panel.

19 Assessment panels—Chief Executive Officer and Principal Registrar

- (1) For the purposes of paragraph 209(3)(b) of the Act, an assessment panel established in relation to the appointment of a person as Chief Executive Officer and Principal Registrar must be composed of the following persons:
 - (a) the Secretary or a person nominated by the Secretary;
 - (b) the President or a person nominated by the President;
 - (c) a person nominated by the Minister.
- (2) For the purposes of paragraph 209(3)(c) of the Act, the person mentioned in paragraph (1)(a) of this section is to chair the assessment panel.

20 Assessment panels—no employees under the *Members of Parliament (Staff) Act 1984*

For the purposes of paragraph 209(3)(b) of the Act, a person must not be part of an assessment panel if the person is employed under the *Members of Parliament (Staff) Act 1984*.

Subdivision B—Operation of assessment panels

21 Assessment panels—conflict of interests

- (1) This section is made for the purposes of paragraph 209(3)(c) of the Act.

Disclosure

- (2) If a person (other than the Secretary) who is part of an assessment panel for an appointment has an interest that conflicts or could conflict with the person's participation in the assessment process, the person must disclose the nature of the interest to the Secretary.
- (3) Subsection (2) does not limit any other obligation of the person.

Management

- (4) If:
- (a) a person (other than the Secretary) is part of an assessment panel for an appointment; and
 - (b) the person considers that the person has a conflict of interest that could materially affect the person's capacity to make an unbiased assessment of an applicant for the appointment;
- the person may choose not to participate in the assessment of the applicant.
- (5) If the Secretary considers that a person (other than the Secretary) who is part of an assessment panel for an appointment has a conflict of interest that would materially affect the person's capacity to make an unbiased assessment of an applicant for the appointment, the Secretary may direct the person not to participate in the assessment of the applicant.

22 Delegation

- (1) The Secretary may, in writing, delegate the Secretary's functions or powers under section 21 to an SES employee, or acting SES employee, in the Department.
- (2) In performing a delegated function or exercising a delegated power, the delegate must comply with any written directions of the Secretary.

23 Assessment panels—conflict of interests for Secretary

- (1) This section is made for the purposes of paragraph 209(3)(c) of the Act.

Disclosure

- (2) If the Secretary is part of an assessment panel for an appointment and has an interest that conflicts or could conflict with the Secretary's participation in the assessment process, the Secretary must disclose the nature of the interest to the Minister.
- (3) Subsection (2) does not limit any other obligation of the Secretary.

Section 24

Management

- (4) If:
- (a) the Secretary is part of an assessment panel for an appointment; and
 - (b) the Secretary considers that the Secretary has a conflict of interest that could materially affect the Secretary's capacity to make an unbiased assessment of an applicant for the appointment;
- the Secretary may choose not to participate in the assessment of the applicant.
- (5) If:
- (a) the Secretary is part of an assessment panel for an appointment; and
 - (b) the Minister considers that the Secretary has a conflict of interest that would materially affect the Secretary's capacity to make an unbiased assessment of an applicant for the appointment;
- the Minister may direct the Secretary not to participate in the assessment of the applicant.

24 Assessment panels—majority decisions

For the purposes of paragraph 209(3)(c) of the Act, an assessment panel may only assess an applicant as suitable for an appointment if at least 2 of the persons who are part of the panel support the assessment.

25 Assessment panels not subject to direction by the Minister

- (1) For the purposes of subsection 209(2) of the Act, the persons who are part of an assessment panel for an appointment are not subject to direction by the Minister in relation to the panel's assessment of whether or not a person is suitable for the appointment.
- (2) Subsection (1) is subject to subsection 23(5) and section 26.

26 Assessment panels—replacement of persons

- (1) This section is made for the purposes of subsection 209(2) of the Act.
- (2) If, for any reason, a person (the *original panellist*) who is part of an assessment panel for an appointment cannot participate, or continue to participate, in the assessment process for the appointment, the Minister may determine that a different person is part of the panel in place of the original panellist.
- (3) If the Minister makes a determination under subsection (2), the panel must continue the assessment process.
- (4) To avoid doubt, if the panel has done any thing in relation to the assessment process before the making of the determination, the panel is not required to do that thing again after the making of the determination.

Part 5—Norfolk Island

27 Review of decisions under Norfolk Island enactments

For the purposes of paragraph 297(2)(a) of the Act, an application may be made to the Tribunal, in accordance with section 17 of the Act, for review of the following decisions (a *Norfolk Island decision*) made in the exercise of powers conferred by a Norfolk Island enactment:

Norfolk Island decisions	
Item	Decision
1	A decision under subsection 10(2) of the <i>Absentee Landowners Levy Act 1976</i>
2	A decision under section 8 of the <i>Animals (Importation) Act 1983</i>
3	A decision under any of the following provisions of the <i>Apiaries Act 1935</i> : (a) paragraph 3A(1)(c) or (2)(a); (b) subsection 4(2); (c) subsection 12(6)
4	A decision under any of the following provisions of the <i>Associations Incorporation Act 2005</i> : (a) section 11; (b) subsection 29(4); (c) section 37; (d) section 50
5	A decision under section 3, 4 or 5 of the <i>Birds Protection Act 1913</i>
6	Any of the following decisions under the <i>Bookmakers and Betting Exchange Act 1998</i> : (a) a decision under section 8; (b) a decision under subsection 11(1) or (2); (c) a decision under subsection 12(1) or (2); (d) a decision under subsection 13(1) or (2); (e) a decision under section 34; (f) a decision mentioned in subsection 44(1) or (2)
7	A decision under section 6, 7 or 8 of the <i>Brands and Marks Act 1949</i>
8	A decision mentioned in any of the following provisions of the <i>Building Act 2002</i> : (a) subsection 43(1); (b) paragraph 43(2)(a); (c) paragraph 43(2)(b)
9	A decision under section 7 or 19 of the <i>Business Names Act 1976</i>
10	A decision under the <i>Business Transactions (Administration) Act 2006</i>
11	A decision under subsection 9(2) of the <i>Business Transactions (Levy Imposition) Act 2006</i>
12	A decision mentioned in subsection 58(2) or (3) of the <i>Companies Act 1985</i>
13	Any of the following decisions under the <i>Crown Lands Act 1996</i> : (a) a decision under subsection 14(1); (b) a decision related to a request made under subsection 26(1); (c) a decision under section 28

Section 27

Norfolk Island decisions	
Item	Decision
14	A decision under any of the following provisions of the <i>Electricity (Licensing and Registration) Act 1985</i> : (a) subsection 9(4); (b) section 13 or 14
15	Any of the following decisions under the <i>Environment Act 1990</i> : (a) a decision to reject a claim made under section 91; (b) a decision under subsection 128(1)
16	A decision under section 8 or subsection 14(2) of the <i>Financial Institutions Levy Act 1985</i>
17	A decision under section 6 or 7 of the <i>Fuel Levy Act 1987</i>
18	A decision under section 5 of the <i>Land Administration Fees Act 1996</i>
19	A decision under any of the following provisions of the <i>Land Titles Act 1996</i> : (a) paragraph 138(1)(a), (b) or (c); (b) paragraph 146(2)(f)
20	A decision under subsection 79(1) of the <i>Land Valuation Act 2012</i>
21	A decision under the <i>Liquor Act 2005</i> in relation to any of the following: (a) an application for the disqualification of a licensee or licensed premises; (b) an application for the appointment of a nominee of a licensee; (c) an application for any of the following actions to be taken in relation to a licence or permit: (i) grant; (ii) variation; (iii) relocation; (iv) transfer; (v) renewal; (vi) surrender; (vii) suspension; (viii) cancellation
22	A decision under section 7, 11 or 18 of the <i>Lotteries and Fundraising Act 1987</i>
23	A decision under any of the following provisions of the <i>Migratory Birds Act 1980</i> : (a) subsection 4(3), 7(2), 9(3) or 15(1); (b) paragraph 15(2)(a)
24	A decision under the <i>Norfolk Island Broadcasting Act 2001</i> other than a decision made under subsection 10(6) of that Act
25	A decision under section 2A or 3A of the <i>Norfolk Island National Park and Norfolk Island Botanic Garden Act 1984</i>
26	A decision mentioned in paragraph 78(1)(a), (b) or (c) of the <i>Planning Act 2002</i>
27	A decision mentioned in paragraph 31(a), (b), (c) or (d) of the <i>Public Reserves Act 1997</i>
28	A refusal to give a certificate under section 15 of the <i>Roads Act 2002</i>
29	A refusal to give a written notice under section 11 of the <i>Subdivision Act 2002</i>
30	A decision under section 7 or 17 of the <i>Tourist Accommodation Act 1984</i>
31	A decision under section 4 of the <i>Tourist Accommodation (Ownership) Act 1989</i>
32	Any of the following decisions under the <i>Trees Act 1997</i> : (a) a decision under section 9 to:

Norfolk Island decisions

Item Decision

- (i) refuse to grant a permit; or
 - (ii) endorse conditions on a permit;
 - (b) a decision under section 12 to refuse to register a plantation;
 - (c) a decision under section 17 to refuse to grant a timber licence;
 - (d) a decision under section 18 to endorse conditions on a timber licence
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28 Modification of operation of Act

Certain references to instruments include references to Norfolk Island enactments

- (1) Subsection (2) applies, for the purposes of paragraph 297(2)(b) of the Act, if:
 - (a) the Act or an instrument made under the Act (the **ART Act or instrument**) applies a rule (within the ordinary meaning of the word); and
 - (b) the rule includes a reference to an instrument made under an Act (however described); and
 - (c) the rule applies differently in relation to a Norfolk Island decision from the way the rule applies in relation to a decision made under an instrument made under an Act; and
 - (d) the reason for the difference is that (apart from this subsection) the reference to an instrument made under an Act does not include a reference to a Norfolk Island enactment.
- (2) The ART Act or instrument applies, in relation to the Norfolk Island decision, as if the reference in the rule to an instrument made under an Act included a reference to a Norfolk Island enactment (whether the enactment under which the decision is made, or another Norfolk Island enactment, as the case requires).

Example 1: Section 16 of the Act provides that, for the purposes of an instrument that provides for an application to be made to the Tribunal, a decision is taken to be made if a timeframe expires without a decision having been made. This subsection extends that rule to Norfolk Island enactments for Norfolk Island decisions.

Example 2: Section 54 of the Act confers on the Tribunal all the powers and discretions conferred on a decision-maker by an instrument made under an Act. This subsection ensures that the Tribunal can exercise powers and discretions under Norfolk Island enactments in relation to Norfolk Island decisions.

- (3) To avoid doubt, subsection (2) applies whether or not the rule explicitly refers to a decision.

Reference to Secretary of the Department

- (4) For the purposes of paragraph 297(2)(b), subsection 291(2) of the Act applies, in relation to a Norfolk Island decision, as if a reference to the Secretary of the Department were a reference to the Secretary of the Department administered by the Minister who administers the *Norfolk Island Act 1979*.