ADMINISTRATIVE REVIEW TRIBUNAL RULES 2024

EXPLANATORY STATEMENT

Issued by authority of the Attorney-General

in compliance with section 15J of the *Legislation Act 2003*

PURPOSE AND OPERATION OF THE INSTRUMENT

The *Administrative Review Tribunal Act 2024* (the Act) establishes the Administrative Review Tribunal (Tribunal) as a new, fit-for-purpose federal administrative review body which will replace the Administrative Appeals Tribunal. The Act received Royal Assent on 3 June 2024 and has been proclaimed to commence on 14 October 2024.

Section 295 of the Act provides that the Minister may make rules prescribing matters that are required or permitted to be prescribed by the rules, or necessary or convenient for carrying out or giving effect to the Act.

Section 4 of the *Acts Interpretation Act 1901* (Acts Interpretation Act) provides authority for legislative instruments, including rules like the *Administrative Review Tribunal Rules 2024* (Rules), to be made before the commencement of the relevant enabling legislation. Subsection 4(2) of the Acts Interpretation Act enables the Minister to make the Rules as if the Act has already commenced.

The purpose of the Rules is to:

- set out the timeframes for applying to the Tribunal for review of a decision
- set out requirements for the processes by which decision-makers may issue notices electing not to participate in a kind of proceeding or a Tribunal case event
- set out the witness fees and allowances payable for compliance with a summons
- identify certain kinds of Tribunal decisions in relation to which a person cannot apply for referral to the Tribunal's guidance and appeals panel
- prescribe the matters which decision-makers must have regard to when giving notices of decision

- identify additional powers and functions conferred on the Tribunal by Commonwealth legislation and prescribe that the President may authorise members, registrars and staff members to exercise or perform those functions or powers, and
- set out the fees for making applications to the Tribunal for review of a decision, and applications to the President to refer a decision of the Tribunal to the guidance and appeals panel.

Timeframes for applying for review

Subsection 18(1) of the Act provides that an application to the Tribunal for review of a decision must be made within a period prescribed by the Rules. Part 2 of the Rules prescribe the relevant timeframes to apply for review (except for matters for which specific timeframes to apply for review are set out in other legislation). The general rule is that the period for making an application for review of a decision starts on the day the decision is made, and ends 28 days after the applicant is given notice of the decision. The Rules set out how the period is calculated in a variety of circumstances, including if the applicant is given a statement of reasons for the decision, if the applicant has requested but has not received a statement of reasons, and if the applicant applies to the Tribunal to obtain an adequate statement of reasons. The Rules also set out how the period is calculated in circumstances where a decision is taken to be made because a timeframe for making the decision has expired. The Rules are broadly equivalent to the requirements for timeframes for making applications to the AAT under subsections 29(2) and (3) of the AAT Act with updates to reflect modern drafting practices and a simplified, more user-friendly structure.

Election notices and participation notices

Section 60 of the Act provides that decision-makers may elect not to participate in a kind of proceeding or in certain kinds of Tribunal case events in relation to a kind of proceeding. Section 61 prescribes the circumstances in which a decision-maker who elects not to participate is a non-participating party to a proceeding or Tribunal case event, including that any requirements prescribed by the Rules are satisfied.

Sections 62 and 63 provide that a non-participating party may be allowed, or ordered, to participate by the Tribunal in individual proceedings, in certain circumstances. Section 64 provides that the Rules may provide for or in relation to the operation of sections 60 to 63, and the operation of Part 4 of the Act in relation to parties who are or who have been non-participating parties to proceedings or Tribunal case events.

Division 1 of Part 3 of the Rules set out requirements for giving election notices, such as the matters that must be included in an election notice, to whom an election notice must be given, and how an election notice must be published. The Rules also set out requirements relating to participation notices, such as matters that must be included in a participation notice, who must be notified of a participation notice and the factors that the Tribunal may consider when deciding whether or not to allow or order a decision-maker to participate in a proceeding or Tribunal case event.

Witness fees and allowances

Section 74 of the Act allows the Tribunal to issue a summons to a person to provide information, or produce a document or thing, that is relevant to a proceeding in the Tribunal. Section 77 of the Act provides that a person required to give information or produce or give a document or thing to the Tribunal is to be paid, in accordance with the Rules, any fees, and any allowances for expenses, prescribed by the Rules. Division 2 of Part 3 of the Rules prescribe the relevant fees and allowances, and set out who must pay, the time when fees and allowances must be paid, and the Tribunal's powers to make orders in relation to fees and allowances. The Rules largely replicate the arrangements for witness fees in the AAT as prescribed by the Administrative Appeals Tribunal Regulation 2015 (AAT Regulation), with some minor modifications and clarifications (such as a new maximum amount for certain fees for attending the Tribunal).

Guidance and appeals panel

Part 5 of the Act provides for the operation of the guidance and appeals panel within the Tribunal. Under section 123(1) of the Act, a person may make an application to the President to refer a decision of the Tribunal to the guidance and appeals panel. The President may make the referral, under section 128 of the Act, if the President is satisfied that the Tribunal decision raises an issue of significance to administrative decision-making or may contain a material error of fact or law. Subsection 123(6) of the Act provides that subsection 123(1) does not apply in relation to a decision of a kind prescribed by the Rules.

Division 3 of Part 3 of the Rules identifies certain kinds of decisions, relating to complex taxation, business and regulatory matters, to which the appeals mechanism available through the guidance and appeals panel under subsection 123(1) of the Act does not apply. This is because arguments on appeal in these kinds of matters will predominantly be legal ones, and because of the volume of evidence and complexity of proceedings both on initial review and

on appeal. Parties to these matters have access to judicial review, which will generally be a more appropriate forum to resolve errors. Noting the complexity involved in these Tribunal decisions, the time and cost involved in the President's consideration of applications for referral to the guidance and appeals panel is not proportionate to the limited benefits likely to be offered by a guidance and appeals panel review of the relevant decision.

The effect of this is that parties to proceedings for review of these decisions are unable to make an application to the President to refer the Tribunal's decision on review to the guidance and appeals panel. The President may still refer applications for review of these decisions to the guidance and appeals panel under section 122 of the Act if satisfied they raise an issue of significance to administrative decision-making.

Matters to which decision-makers must have regard when giving notices of decision

The Act requires decision-makers to take reasonable steps to give notice of a reviewable decision to any person whose interests are affected by the decision. The notice must include notice of the right to have the decision reviewed, including the right to apply to the Tribunal. Section 267(3) provides that, in giving a notice of a decision, the decision-maker must have regard to the matters prescribed by the Rules. This requirement applies for all notices of decision, regardless of whether the notice is given under subsection 266(4) of the Act or through requirements set out in other legislation. Part 4 of the Rules identify the matters that a decision-maker must have regard to in giving a notice of decision, such as the type of matters that should be clearly explained in a notice. The Rules largely replicate, with some important changes (such as a new requirement for notices to be given in an accessible manner), the matters set out in in the *Administrative Appeals Tribunal (Code of Practice) Determination 2017*.

Authorisations for performing and exercising Tribunal functions and powers

Where an Act or instrument confers a function or power on the 'Tribunal', the function or power is conferred on the Tribunal as constituted for a particular matter. However, the Act allows the President to authorise members, registrars or staff members to perform or exercise certain functions and powers conferred on the Tribunal. This recognises that, although the Tribunal as constituted will generally have control over how a proceeding is conducted, there may be circumstances where it is appropriate to draw on other members, registrars or staff to resolve a matter as efficiently as possible, including prior to the constitution of the Tribunal for a particular proceeding.

The Act sets out the powers and functions in the Act that members, registrars and staff members can be authorised to exercise and perform. Paragraphs 283(b), 284(b) and 285(b) of the Act allow the Rules to prescribe additional powers and functions that the President may authorise members, registrars and staff to perform. Division 1 of Part 5 of the Rules identify a range of functions and powers conferred on the Tribunal by other Acts, and the Rules themselves, that the President may authorise members, registrars or staff members to perform.

Application fees

Section 296(1) of the Act enables the Tribunal to charge fees in accordance with the Rules. The Rules set out the fees for making applications to the Tribunal, other than fees for certain applications made under the Migration Act, which will continue to be dealt with under the Migration Regulations 1994 (Migration Regulations). Division 2 of Part 5 of the Rules deal with fee amounts, concessional fees, fee exemptions, the timeframe for paying fees, and refunds. The Rules largely replicate the equivalent fee arrangements in the AAT, with some minor modifications. The Rules also set out fees relating to a new kind of application that a person can make under the Act, being an application to the President to refer a decision of the Tribunal to the guidance and appeals panel under subsection 123(1) of the Act. These fees are very similar to the fees for other kinds of applications to the Tribunal, with some minor differences.

CONSULTATION

Subsection 295(6) of the Act provides that, before making rules affecting the practice, procedure or operations of the Tribunal, the Minister must consult the President of the Tribunal. Item 52 of Schedule 16 to the *Administrative Review Tribunal (Consequential and Transitional Provisions No.1) Act 2024* (the Consequential Act 1) disapplies subsection 295(6) of the Act in relation to rules made before the commencement of the Tribunal, instead providing that the Minister must consult with the President of the AAT in relation to these rules. The Attorney-General satisfied this requirement by consulting on the draft Rules with the President in September 2024. Public consultation on the draft Rules (except for the provisions relating to exclusions from the guidance and appeals panel) was undertaken between 23 July 2024 and 5 August 2024. Consultation was undertaken via a survey hosted on the Attorney-General's Department's website, and 2 targeted consultation

sessions with key civil society stakeholders, including representatives from the legal assistance sector, expert bodies and academia.

During the development of the draft Rules from May to August 2024, consultation was also undertaken with the Administrative Review Taskforce's Legislation and Policy Interdepartmental Committee, which includes (among other agencies) the Administrative Appeals Tribunal, the Department of the Treasury, the Department of Home Affairs, the Department of Employment and Workplace Relations and the Department of Social Services.

IMPACT ANALYSIS

The Office of Impact Analysis advised that a Regulatory Impact Statement is not required as the Rules are unlikely to have more than a minor regulatory impact, as the changes will not affect businesses, individuals or community organisations (OBPR22-03440).

STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

The Rules are compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the legislative instrument

The Rules would support the operation of the Act and the establishment of the Tribunal as a new, fit-for-purpose federal administrative review body which replaces the AAT.

The Rules support the Act by:

- setting out the timeframes for applying to the Tribunal for review of a decision
- setting out requirements for the processes by which decision-makers may issue notices electing not to participate in a kind of proceeding or a Tribunal case event
- prescribing witness fees and allowances payable for compliance with a summons
- identifying certain kinds of Tribunal decisions in relation to which a person cannot apply for referral to the Tribunal's guidance and appeals panel
- prescribing the matters which decision-makers must have regard to when giving notices of decision

- identifying additional powers and functions conferred on the Tribunal by Commonwealth legislation and prescribe that the President may authorise members, registrars and staff members to exercise or perform those functions or powers, and
- setting out the fees for making applications to the Tribunal for review of a decision, and applications to the President to refer a decision of the Tribunal to the guidance and appeals panel.

Human rights implications

The Rules engage the following rights:

- the right to an effective remedy in Article 2(3) of the International Covenant on Civil and Political Rights (ICCPR)
- the right to a fair and public hearing in Article 14 of the ICCPR.

The right to an effective remedy contained in Article 2(3) of the ICCPR

Article 2(3) of the ICCPR provides that States shall undertake to ensure the right to an effective remedy for any violation of rights or freedoms recognised by the ICCPR. It includes the right to have a remedy determined by competent judicial, administrative or legislative authorities.

The Rules promote the right to an effective remedy by providing for procedural requirements, such as timeframes for making applications and for giving election notices and participation notices, that facilitate the effective operation of an administrative review tribunal.

The right to a fair hearing in Article 14 of the ICCPR

Article 14(1) of the ICCPR protects the right that all persons are treated equally before courts and tribunals. It further provides that every person, in the determination of rights and obligations in a suit at law, is entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. The extent to which Article 14(1) applies to administrative review proceedings (whether such proceedings constitute a 'suit at law') is not fully settled. To the extent it may apply, the Rules promote the right to a fair hearing, by expanding on the procedural framework for reviews in the Tribunal.

The Rules provide for the payment of an application fee for reviews of a decision in certain circumstances. Requiring the payment of fees is a limitation on a person's right to a fair hearing that is reasonable, necessary and proportionate in the circumstances. Payment of a fee

is a legitimate objective to reflect the cost of the service provided by the Tribunal, reflects standard practice for similar bodies, and is subject to exceptions to promote access to justice. The Rules identify circumstances in which a reduced fee, or no fee at all, is payable. For example, a reduced fee is payable if a standard application fee would cause financial hardship for the applicant.

The Rules identify certain kinds of Tribunal decisions relating to taxation, business and regulatory matters for which an applicant cannot apply to the President for referral to the guidance and appeals panel. To the extent that the Rules limit the right to a fair hearing in respect of these kinds of matters, this is reasonable, necessary and proportionate in the circumstances. These kinds of matters are often complex and fact-rich, and the likely time and cost involved in the President's consideration of applications for referral is not proportionate to the limited benefits likely to be provided by a guidance and appeals panel review of the decision. Judicial review is a more appropriate forum for appeal for such decisions. At present, there is no ability for these decisions to be reviewed a second time within the Tribunal.

Conclusion

The Rules are compatible with human rights and freedoms recognised or declared in the international instruments listed in the definition of human rights in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*. To the extent that measures in the Rules limit those rights and freedoms, such limitations are reasonable, necessary and proportionate.

NOTES ON SECTIONS

PART 1 – Preliminary

Section 1 – Name

This section provides that the title of the Rules is the Administrative Review Tribunal Rules 2024.

Section 2 – Commencement

This section provides for the Rules to commence at the same time as the Act. Section 4 of the Acts Interpretation Act provides authority for legislative instruments, including these Rules, to be made before the commencement of the relevant enabling legislation.

Section 3 – Authority

This section provides that the Rules are made under the Act.

Section 4 – Definitions

This section defines the following terms.

Act means the *Administrative Review Tribunal Act 2024*.

original decision-maker, in relation to an application under section 123 of the Act to the President to refer a decision of the Tribunal to the guidance and appeals panel, means the decision-maker of the reviewable decision that the Tribunal's decision relates to.

small business entity has the same meaning as in the *Income Tax Assessment Act 1997*.

small business taxation decision means a decision made:

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

The note provides that the following terms are defined in the Act and have the same meaning for the purposes of the Rules:

- decision-maker
- election notice
- Principal Registrar

- second review
- statement of reasons
- Tribunal case event.

PART 2 – Timeframes for applying for review

Section 18(1) of the Act provides that an application to the Tribunal for review of a decision must be made within a period prescribed by the Rules. Subsection 18(3) of the Act provides that Rules made for the purpose of subsection 18(1) must not prescribe a period ending before the day that is 28 days after the day the decision is made. In accordance with table item 6 at section 36 of the *Acts Interpretation Act 1901*, if a period of time is expressed to begin after a specified day, then the period of time does not include that day. In accordance with these provisions of the Act, this Part of the Rules prescribes the relevant timeframes to apply for review, distinguishing between decisions for which notice is given in writing and decisions taken to be made because a timeframe has expired.

Section 131J of the Act provides that despite any contrary intention in any other law, the timeframe to apply for second review for such decisions is the time prescribed under subsection 18(1) of the Act. This means that timeframes to apply for second review are calculated in accordance with these Rules.

These Rules do not apply to matters for which specific timeframes to apply for review are set out in other legislation. This includes, for example, reviewable migration and protection decisions under the Migration Act, decisions under tax legislation or first reviews of social services decisions.

Section 5 – When to apply – notice of decision given in writing

This section is made under subsection 18(1) of the Act and applies in relation to an application for review of a decision other than decision taken to be made by the operation of section 16 of the Act or a provision of another Act or legislative instrument, if the applicant is given notice of the decision in writing. If an applicant has not received written notice of a decision, and the timeframe to apply for review is not set out under section 6 of the Rules or another Act or instrument, section 20 of the Act applies such that the Tribunal must determine whether the application was made within a reasonable time.

This section of the Rules is structured on the basis that a notice of a decision and any statement of reasons cannot be given earlier than the day that the decision is made and the period for applying for review cannot end on a day that is less than 28 days after notice of the decision is given, in accordance with section 18(3) of the Act.

This section is equivalent to subsection 29(2) of the AAT Act, with updates to reflect modern drafting practices, and a simplified, more user-friendly structure.

This section restructures the approach taken by subsection 29(2) of the AAT Act by providing a general rule in relation to timeframes to apply for review from provision of notice of the decision, with exceptions if statements of reasons are subsequently given or requested. The effect is that this section is structured in a broadly chronological manner from the point of a notice of a decision.

Timeframe to apply when an applicant is given notice of decision in writing

Subsection (3) prescribes the general rule, being that the timeframe to apply for review begins on the day that the decision under review is made, and ends on the day that is 28 days after the day the applicant is given the notice of the decision. This could be earlier than when the decision is received by the applicant, if, for example, the notice of decision is sent by post. This ensures that an application can be made as soon as the decision under review is made, but the timeframe of 28 days does not begin until the day after the applicant is given the written notice of decision. Subsection (3) is therefore equivalent to the timeframes articulated in subparagraph 29(2)(b)(iii) of the AAT Act.

Timeframe to apply when an applicant is given a statement of reasons

Subsection (4) prescribes the applicable timeframe when a statement of reasons is given for the decision under review. Where a person is given a statement of reasons for a decision, the timeframe to apply for review of that decision commences on the day the decision is made and ends 28 days after the day on which the person was given a statement of reasons. This ensures that prospective applicants have an opportunity to obtain and understand the decision maker's reasons for the reviewable decision, before deciding whether to apply for review.

This subsection applies in a number of scenarios in which an applicant may receive a statement of reasons, including if they are given the statement:

- at the time that they are given notice of the decision

- in accordance with a request under section 268 of the Act
- after they are given the notice of decision and other than in accordance with a request under section 268 of the Act, and
- after proceedings under section 270 of the Act.

Timeframe to apply if a statement of reasons is requested but not provided

Subsection (5) prescribes that if the applicant requests a statement of reasons for a decision under section 268 of the Act and is given written notice that the request is refused, the timeframe to apply for review of the decision ends on the day that is 28 days after the applicant is given the notice that the request is refused. This ensures that prospective applicants are not disadvantaged if the request for reasons is refused.

The effect of this subsection is equivalent to paragraph 29(2)(b)(ii) of the AAT Act, however, under the AAT Act, a person is only required to be notified that a request for reasons is refused if the reason for the refusal is because some or all of the information contained within the statement of reasons is covered by a public interest certificate. In accordance with subsection 269(11) of the Act, a decision-maker must explain why a request for reasons has been refused unless it has been refused because the person already has a statement of reasons for the decision. The operation of the Act and the Rules together ensures that applicants have adequate time to apply for review of a decision after a request for reasons is refused for any reason other than that they have already been given a statement of reasons.

Timeframe to apply if applicant applies to Tribunal to obtain adequate statement of reasons

Subsection (6) outlines the applicable timeframe to apply for review if a person applies under section 271 of the Act for a decision about whether a statement of reasons contains adequate information about a matter, and the Tribunal decides that the statement of reasons does not contain adequate information about the matter. The period ends on the day that is 28 days after the day the applicant is given an additional statement containing adequate information about the matter. This subsection does not apply to applications for an adequate statement of reasons if the applicant received the statement of reasons after applying for review of the decision (see paragraph 271(1)(b) of the Act). This subsection reinforces the position, as noted above, that applicants should have an opportunity to understand the reasons for a reviewable decision before the timeframe for applying for review expires, and should not be disadvantaged if a statement of reasons does not contain adequate information.

The legislative note at subsection 5(6) clarifies that a person may apply to the Tribunal to extend the period during which they may apply for review of a decision under section 19 of the Act. This option would be available for persons in circumstances not captured explicitly by the rules. For example, a person who applies for a statement of reasons under section 270 of the Act or an adequate statement of reasons under section 271 of the Act and is unsuccessful in that application could apply for an extension of time to make an application for review of a decision under section 19 of the Act, if the relevant timeframe to apply has expired.

Section 6 – When to apply – decisions taken to be made because timeframe expires

This section applies to applications for review of a decision that is taken to be made by section 16 of the Act or a provision of another Act or legislative instrument. This section applies to decisions deemed to have been made due to the expiration of a timeframe within which a decision-maker was required to have made a decision or to do a thing, and the decision is not made or the thing not done. This section is equivalent to subsection 29(3) of the AAT Act, with updates to reflect modern drafting practices and a simplified, more user-friendly structure. This section also provides the applicable timeframes for applying for review of all such decisions, whether deemed to be made under section 16 of the Act or under other legislation, in line with and supported by corresponding amendments to legislation outlined in the Administrative Review Tribunal (Miscellaneous Measures) Bill 2024. The effect of this is that if other legislation deems a reviewable decision to be made in certain circumstances, it does not need to set out a timeframe to apply for review of that decision, because section 18 of the Act and this section of the Rules will apply. The change supports the goal of harmonisation and simplification and ensures consistency.

Subsection (3) replicates the timeframe to apply for review of deemed decisions contained in paragraph 29(3)(a) of the AAT Act by prescribing that the period commences on the day the decision is taken to be made, and ends on the day 28 days after the day the decision is taken to be made.

Subsection (4) prescribes the applicable timeframe where a decision is made or purported to be made after the decision is taken to be made, and the applicant is given notice of the subsequent decision in writing. This subsection provides that the period commences on the day the decision is taken to be made, and ends at the end of the period that would apply to the subsequent decision as calculated in accordance with section 5. As per the general rule in

subsection 5(3), this would be 28 days after the written notice of decision is given to the applicant, but if the exceptions in subsections 5(4), (5) or (6) apply, the timeframe is calculated in accordance with those subsections. This is equivalent to subparagraph 29(3)(b)(ii) of the AAT Act, with updates to reflect modern drafting practices and the updated structure of the rules.

Example

Person A requests internal review of a decision to refuse to grant a license on 1 January. The relevant legislation provides that the Licence Agency must complete an internal review within 60 days after the request is made, or the decision under review is taken to be confirmed. The period expires on 3 March. Person A does not receive a response from Licence Agency and the decision to refuse to grant a licence is taken to be confirmed. Person A has 28 days, beginning on 4 March, to apply to the Tribunal for review (expiring 1 April).

On 10 March, Licence Agency notifies Person A that they have completed the internal review, and decided to affirm the decision to refuse the licence. Under subsection 6(4), Person A now has until 8 April to make an application for review for that decision, being 28 days after the day on which the notice of decision was given.

The legislative note at subsection 6(4) clarifies that a person may apply to the Tribunal to extend the period during which the person may apply for review of a decision under section 19 of the Act.

PART 3 – Proceedings

Division 1 – Elections not to participate in kind of proceeding or Tribunal case event

Section 60 of the Act provides that decision-makers may elect not to participate in a kind of proceeding or in certain kinds of Tribunal case events in relation to a kind of proceeding in the Tribunal. Section 61 of the Act prescribes the circumstances in which a decision-maker who elects not to participate is a non-participating party to a proceeding or Tribunal case event, including that any requirements prescribed by the Rules are satisfied. Sections 62 and 63 of the Act provide that a non-participating party may be allowed, or ordered, to participate by the Tribunal in individual proceedings, in certain circumstances. Section 64 provides that the Rules may provide for or in relation to the operation of sections 60 to 63,

and the operation of Part 4 of the Act in relation to parties who are or who have been non-participating parties to proceedings or Tribunal case events.

Section 7 – Election notices

Election notices in relation to a kind of proceeding

Paragraph 60(1)(a) of the Act provides that decision-makers for a reviewable decision may give the Tribunal written notice that they do not wish to participate in a kind of proceeding in the Tribunal. This section sets out the requirements for issuing a valid election notice.

Subsection 7(2) of the Rules provides that the election notice must identify the kind of proceeding it applies to and, if that proceeding is for review of a reviewable decision, the legislative provision under which the decision is made. For example, an election notice might specify that it applies in relation to 'proceedings for review of decisions made under section 10 of the *Administrative Decisions Act 2000*'.

The legislative note at subsection (2) provides an example of a kind of proceeding, being a proceeding identified by reference to a period of time within which the proceeding starts. For example, an election notice may relate to proceedings for review of decisions made under a particular legislative provision, commencing on 1 July of a particular year. If the election notice does not nominate a time period for the kind of proceeding, it will come into effect in accordance with section 8 of the Rules.

Election notices in relation to a kind of Tribunal case event

Paragraph 60(1)(b) of the Act provides that decision-makers for a reviewable decision may give the Tribunal written notice that they do not wish to participate in a kind of Tribunal case event in relation to a kind of proceeding in the Tribunal. Subsection (3) provides that election notices of this type must identify the kind of proceeding and the kind of Tribunal case event to which they apply. Tribunal case event is defined at section 4 of the Act to mean:

- the hearing, or part of the hearing, of the proceeding; or
- a directions hearing, or part of a directions hearing, in relation to the proceeding;
- a dispute resolution process, or part of a dispute resolution process, under Subdivision C of Division 6 of Part 4 in relation to the proceeding.

The legislative note at subsection (3) clarifies that election notices cannot be given in relation to directions hearing or part of a directions hearing as per paragraph 60(1)(b) of the Act. For

example, a decision-maker may elect not to participate in some dispute resolution processes, such as conferences, but wish to participate in others, such as conciliations, in relation to reviews of decisions made under a certain legislative provision unless the Tribunal orders otherwise under sections 62 or 63 of the Act. This is intended to maximise the flexibility of the framework in order for decision-makers to determine where their participation is of most assistance to the Tribunal, and where their absence may usefully enhance informality, accessibility and efficiency of case events.

Incidental proceedings

Subsections (4) and (5) clarify that if an election notice is issued for proceedings that are reviews of a reviewable decision, or certain Tribunal case events in reviews of reviewable decisions, the decision-maker must also give the Tribunal notice that they do not wish to participate in any proceeding related to an incidental application to the Tribunal made in the course of, or in connection with, the review proceeding or case event.

Section 8 – Conditions to be satisfied for a person to be a non-participating party

Paragraphs 61(1)(e) and 61(1A)(e) of the Act provide that the rules may prescribe any conditions that must be satisfied for a decision-maker to be a non-participating party in a kind of proceeding or a kind of Tribunal case event in a kind of proceeding.

This section provides that is a condition for the purposes of paragraphs 61(1)(e) and 61(1A)(e) that the election notice is given at least 14 days before the start of the proceeding. The effect of this is that election notices can only apply prospectively, to new applications, and not to proceedings on foot. In accordance with items 2 and 7 in the table at section 36 of the Acts Interpretation Act, the period commences on the day that the notice is given but would not apply to proceedings commenced on the fourteenth day. For example, if a decision-maker gives an election notice in relation to proceedings for reviews of decisions under section 10 of the *Administrative Decisions Act 2000* on 1 January, it would apply to proceedings commenced on or after 15 January. Alternatively, a decision-maker can specify a later date of effect in the election notice.

This ensures that existing matters are not disrupted. It also ensures that the Tribunal and decision-makers have adequate time to accommodate changes arising to procedure as a result of the election notice.

Section 9 – Additional circumstances in which a person is a non-participating party

Subsection 61(3) of the Act prescribes that a person is a non-participating party in the circumstances prescribed by the Rules.

This section prescribes that a non-participating party continues to be a non-participating party to a proceeding (subsection (1)) or Tribunal case event in relation to a proceeding (subsection (2)) if they withdraw an election notice during the proceeding, or within 14 days before the start of the proceeding. The effect of this is that the withdrawal of an election notice takes effect 14 days after the Tribunal is notified of the withdrawal, or any later date nominated in the notice, and only applies prospectively to new applications and not to proceedings already on foot. Consistent with section 8 above, this ensures there is adequate certainty and transparency as to whether a decision-maker is expected to participate in a proceeding or Tribunal case event in relation to which they have previously issued an election notice. Until the withdrawal takes effect, the decision-maker will be expected not to participate in proceedings and case events to which they are a non-participating party. They may, however, seek leave of the Tribunal to participate in existing proceedings and case events under section 62 of the Act.

Section 10 – Publication

Paragraph 64(2)(b) of the Act provides that rules may be made for the publication of election or participation notices. This section mandates that if the Tribunal is given an election notice, the Chief Executive Officer and Principal Registrar (Principal Registrar) must publish a copy of the election notice. Publication of election notices will ensure there is transparency and clarity for users of the Tribunal and the public as to the precise terms of the election notice.

Similar to other publication requirements across the Act, including subsection 202(4) which refers to the requirement that the President must publish the performance standard for non-judicial members, the rules do not prescribe a particular mode of publication. It is intended that the publication requirement apply only to current notices. Nothing in the rules precludes decision-makers or the Tribunal from also communicating arrangements for participation of decision-makers in other ways, such as on their websites, in notices of decision or in communication with individual prospective applicants.

Section 11 – Participation notices

Section 62 of the Act provides that a non-participating party may give notice to the Tribunal that they intend to participate in a proceeding and the Tribunal must then decide whether to allow their participation. Paragraph 64(2)(a) of the Act provides that the Rules may provide for requirements for the giving of participation notices.

Participation notice must include reasons

In order to assist the Tribunal's consideration of requests from non-participating parties to participate in a proceeding or Tribunal case event, subsection (1) prescribes that participation notices must identify the reason or reasons why the non-participating party wishes to participate. This is because, although election notices are self-effecting, provided they are validly given, a participation notice will only lead to the participation of the party if the Tribunal agrees. In fairness to applicants, and in the interest of clarity and predictability of how proceedings will run, it is expected that decision-makers will generally only issue participation notices if there is some unusual feature of the particular proceeding or case event that makes it particularly important for the decision-maker to participate.

Other parties must be notified of a participation notice

Subsection (2) provides that if a non-participating party to a proceeding or Tribunal case event gives the Tribunal a participation notice, the party must give a copy of the notice to each of the other parties to the proceeding. This ensures that other parties to the proceeding have adequate notice of the decision-maker's intention to participate, and gives them the opportunity to be heard in relation to the notice, if they wish to do so. The manner in which other parties may be given an opportunity to be heard is left to the Tribunal's discretion, noting the discretion must be exercised in line with general requirements of procedural fairness.

Section 12 – Participation of non-participating parties

Factors the Tribunal may consider when deciding whether to allow a decision-maker to participate

This section prescribes a non-exhaustive list of illustrative factors that the Tribunal may consider when deciding whether or not to allow or order a decision-maker to participate in a proceeding or Tribunal case event under section 62 or subsection 63(2) of the Act.

Subsection (1) sets out considerations for the Tribunal when deciding whether to allow a non-participating party to participate under subsection 62 after the non-participating party has issued an election notice.

Subsection (2) sets out considerations for the Tribunal when deciding whether to order the non-participating party to appear before the Tribunal at a Tribunal case event, give the Tribunal written submissions, or participate in the proceeding or case event under subsection 63(2).

The considerations include:

- whether the decision-maker's participation would assist the Tribunal in achieving its objectives as per section 9 of the Act
- the circumstances of the parties to the proceeding,
- whether the proceeding is likely to be complex or is likely to involve a significant conclusion of law, have potential significant implications for Commonwealth policy or administration, or could likely be resolved through dispute resolution, and
- any other matter the Tribunal considers relevant.

In relation to a decision whether to allow a non-participating party to participate under section 62 of the Act, the Tribunal may also consider the timeliness of the participation notice. For example, if the proceeding is already well underway at the time the participation notice is given, the Tribunal may take that into account, along with any disruption or delay that may be caused to the proceeding.

The 'circumstances of the parties to the proceeding' is intended to cover a broad range of circumstances, such as whether a party could be financially or practically disadvantaged by the participation of the decision-maker or whether a party is particularly vulnerable.

This section is included to provide guidance to parties and the Tribunal in relation to the kinds of considerations that may be relevant to the Tribunal's decision whether to order or allow a non-participating party to participate, particularly to assist with framing reasons for decision under subsection 11(1) and to guide parties making any submissions to the Tribunal in respect of participation, noting the election and participation notice framework is a new feature of the Act. It does not limit the Tribunal's discretion to consider any factor that may be relevant to its decision in any individual proceeding.

Parties to be notified of the Tribunal's decision

Subsection (3) requires that the Tribunal give written notice to the parties in the proceeding of its decision under section 62 of the Act to allow or not allow a non-participating party to participate, or any order for a non-participating party to participate under section 63 of the Act. In line with the approach to other notification requirements under the Act, subsection (4) clarifies that failure to comply with this technical requirement does not invalidate the decision or order.

Division 2 – Witness fees and allowances

The Act establishes the framework by which the Tribunal can compel a person to give information or produce a document or thing that is relevant to a proceeding to the Tribunal, which includes by summons (section 74). Section 77 of the Act provides that a person required by the Act, or another Act or instrument, to give information or produce or give a document or thing to the Tribunal is to be paid, in accordance with the rules, any fees, and any allowances for expenses, prescribed by the rules. This Division sets out the fees and allowances that are payable to a person who is issued a summons in relation to a proceeding in the Tribunal.

This Division largely replicates the effect of Part 4 of the AAT Regulation, which provides for witness fees and allowances in the AAT, with some minor changes identified below. Unlike the AAT Regulation, the Rules do not prescribe different fees and allowances for compliance with a summons issued under certain provisions of the Migration Act. This is because those provisions of the Migration Act will be repealed by the Consequential Act 1, and the Tribunal will instead rely on the summons power in section 74 of the Act. As a result, the fees and allowances for compliance with a summons during reviews of decisions made under Migration Act will be those set out below.

Section 13 – Entitlement to fees and allowances

Fees for compliance with summons

Subsection (1) prescribes the fees payable for compliance with a summons under section 74(1) of the Act to give evidence. It ensures that a person is compensated for the time they spend appearing before the Tribunal.

Paragraph (1)(a) provides that if the person has an occupation and is remunerated in that occupation by wages, salary or fees, the person is to be paid the amount of wages, salary or fees that are not paid to the person because the person appears before the Tribunal.

Paragraph (1)(b) provides that, in any other case, the person is to be paid a reasonable amount, up to a maximum of $75 for each day on which the person appears before the Tribunal. This amount is equivalent to the witness fee in family law proceedings in the Federal Circuit and Family Court of Australia. This ensures that, even if a person's appearance before the Tribunal does not cause them to lose wages, a salary or fees (because they are not employed or paid in this way), the person is still compensated for their time. The fee is calculated by reference to a 'reasonable amount' to enable the party requesting the summons and the person who is summoned to agree to an amount that is appropriate in the circumstances. The maximum amount is a new feature which promotes certainty and consistency in fees that are paid on this basis.

Allowances for compliance with summons

Subsection (2) prescribes allowances for compliance with a summons under subsection 74(1) of the Act.

Paragraph (2)(a) prescribes allowances for compliance with a summons for a person to give evidence to the Tribunal by appearing before the Tribunal. The allowances relate to a person's travel to appear before the Tribunal. The following allowances are payable:

- A reasonable amount for travel between the person's usual place of employment or residence and the place where the person appears before the Tribunal.
- A reasonable amount for meals and accommodation, where the person is required to be absent overnight from their usual place of residence. This would apply if, for example, a person is required to travel to a different city and stay there overnight.

Paragraph (2)(b) prescribes allowances for compliance with a summons for a person to produce a document or thing to the Tribunal. The person is to be paid an amount representing the person's reasonable expenses incurred in producing the document or thing. This could cover, for example, reasonable expenses for preparing or printing documents to be produced to the Tribunal. This paragraph is equivalent to subsection 13(6) of the AAT Regulation, but makes it expressly clear that the allowance covers the production of documents, not just other things.

The allowances provided by paragraphs (2)(a) and (b) are calculated by reference to what is 'reasonable', rather than by reference to specific amounts, to ensure there is flexibility for the party requesting the summons and the person who is summoned to agree on an amount that is appropriate in the circumstances. This would generally be the actual expenses incurred, provided they are reasonable. As explained below, if the parties cannot agree on an amount, the person who is summoned may, under subsection 14(5), apply to the Tribunal to determine the amount to be paid.

Section 14 – Fees and allowances

Circumstances in which a person is not to be paid

Subsection (1) identifies the circumstances in which a person is not to be paid a fee or allowance in relation to a proceeding.

Paragraph (1)(a) provides that fees and allowances are not to be paid to a person who is a party to the proceeding, unless the Tribunal orders otherwise. This means that the default position is that fees and allowances are only payable to witnesses who are not already participating in the proceeding as a party. However, the Tribunal has a discretion to allow for exceptions.

Paragraph (1)(b) provides that allowances under paragraph 13(2)(a) – that is, allowances covering a reasonable amount for travel, meals and accommodation – are not payable if the person is given the equivalent in kind by the person who would otherwise have been required to pay the allowance. An in-kind contribution could include access to pre-paid travel, meals or allowances. For example, if the party requesting the summons arranges a pre-paid taxi fare for the witness to attend the Tribunal, the party does not need to pay an additional allowance covering the same trip.

Who must pay

Subsections (2) and (3) identify who must pay a fee or allowance mentioned in subsections 13(1) and (2).

Responsibility for paying a fee or allowance depends on who requests the summons. Subsection (2) has the effect that, if the person was summoned at the request of a party under paragraph 74(3)(a) of the Act, the requesting party is responsible for paying the fee or allowance. In any other case – that is, if the person is summoned on the Tribunal's own

initiative under paragraph 74(3)(b) of the Act – the Commonwealth must pay the fee or allowance.

Subsection (2) gives the Tribunal a power to order that a fee or allowance should be paid, in whole or part, by the Commonwealth. This is a broad discretion that would enable the Tribunal to make an order having regard to, for example, the particular circumstances of the proceeding and the parties. For example, if a party to a proceeding is experiencing financial hardship such that they may not be able to pay the fee or allowance to a person that they have requested to summons, the Tribunal could issue the summons on its own initiative or make an order under subsection (2) such that the Commonwealth pays the relevant fee or allowance. It is expected that, if a witness is required to enable a person to effectively present their case, the Tribunal will exercise its discretion to ensure that they are able to do so.

When fees and allowances must be paid

Subsection (4) identifies when fees and allowances must be paid. It ensures that fees and allowances are paid in a timely manner.

Paragraph (4)(a) deals with fees for compliance with a summons. It provides that the person who is summoned must be paid the fee as soon as practicable after the person has complied with the summons.

Paragraph (4)(b) deals with allowances for compliance with a summons. It provides that the person who is summoned must be paid the allowance when the person is given the summons, or within a reasonable time before the day the person is required to comply with the summons.

Tribunal may make orders relating to the payment of a fee or allowance

Subsection (5) applies when the party who requests a summons and the person who is summoned cannot agree on the amount of a fee or allowance that must be paid for compliance with the summons. This could occur, for example, because there is a disagreement as to what constitutes a ‘reasonable’ amount for a fee under paragraphs (1)(b) or an allowance paragraph (2)(a) or (2)(b). In this circumstance, the person who is summoned may make an application for the Tribunal to determine the amount of fees or allowances to be paid. The Tribunal must determine the amount to be paid by applying the rules set out in this Division. This ensures there is an independent mechanism for resolving disagreement between parties and ensuring fees and allowances can be paid to witnesses.

Division 3 – Guidance and Appeals Panel

Part 5 of the Act provides for the operation of the guidance and appeals panel within the Tribunal. The President may refer an application for review of a decision to the guidance and appeals panel if satisfied that it raises an issue of significance to administrative decision-making (under section 122 of the Act). The President may also refer a decision of the Tribunal to the guidance and appeals panel for a further review, upon application by a party if satisfied that it raises an issue of significance to administrative decision-making or the decision may have been materially affected by an error of fact or law (under subsection 123(1) of the Act).

Subsection 123(6) of the ART Act provides that subsection 123(1) does not apply in relation to a decision of a kind prescribed by the rules. Where subsection 123(1) does not apply, applications cannot be made to the President to refer a decision of the Tribunal to the guidance and appeals panel, meaning that the guidance and appeals panel cannot review these Tribunal decisions.

Section 15 – Applications for referral to the guidance and appeals panel cannot be made for certain decisions

This section prescribes the decisions made under certain Acts, or legislative instruments under those Acts, to which subsection 123(1) of the Act does not apply.

This section provides that subsection 123(1) of the Act does not apply to reviews of decisions made under the following legislation:

- *Australian Securities and Investments Commission Act 2001*
- *Corporations Act 2001*
- *Customs Act 1901*
- *Customs Tariff Act 1995*
- *National Consumer Credit Protection Act 2009*
- *Personal Property Securities Act 2009*
- *Superannuation Industry (Supervision) Act 1993*, or
- Under a taxation law (within the meaning of the *Income Tax Assessment Act 1997*).

The guidance and appeals panel appeal pathway is intended to ensure that errors in Tribunal decisions are able to be addressed efficiently and inexpensively. It gives the Tribunal an

opportunity to identify, and correct, errors affecting its decisions, that may not be identified on judicial review either because they relate to questions of fact or because parties are not willing or able to participate in court proceedings. This in turn will assist to prevent further errors occurring.

At paragraph 835 of the revised explanatory memorandum to the Act, it is contemplated that complex taxation matters and certain regulatory matters may be more appropriately dealt with through judicial review rather than by way of the appeal pathway to the guidance and appeals panel. The decisions made under Acts identified in this section meet this description. They are fact-rich, complex and often made by Deputy Presidents or senior members. Arguments on appeal in these proceedings will predominantly be legal ones, with a high volume of evidence and complexity of proceedings both on initial review and on appeal. Parties to these matters have access to judicial review, which will generally be a more appropriate forum to resolve errors. Noting the complexity involved in these Tribunal decisions, the time and cost involved in the President's consideration of applications for referral to the guidance and appeals panel is not proportionate to the limited benefits likely to be offered by a guidance and appeals panel review of the relevant decision.

It remains open to the President to refer an application for review of these decisions to the guidance and appeals panel under section 122 of the Act. For example, if an application for review of a decision under a taxation law raises an issue of significance to administrative decision-making, the President can refer it to the guidance and appeals panel before the Tribunal makes its decision on the application and the decision of the guidance and appeals panel will be a guidance decision.

PART 4 – Notice and information about administrative decisions

Part 4 of the Rules prescribes the matters that a decision-maker must have regard to when giving a notice of decision.

Subsection 266(4) of the Act requires decision-makers to take reasonable steps to give notice of a decision to a person whose interests are affected by the decision. The notice must include notice of the right (if any) to have the decision reviewed, including, for a reviewable decision, the right to apply to the Tribunal for review of the decision. This requirement applies in relation to every decision in a 'review pathway' (as defined in subsection 266(3) of the Act), where any decision in the review pathway is or could be a reviewable decision.

Subsection 266(6) identifies exceptions to the requirement, including if another Act or instrument under an Act requires notice to be given of review rights for the decision (see paragraph 266(6)(a)).

Subsection 267(3) provides that, in giving notice of a decision, the decision-maker must have regard to any matters prescribed by the rules. The requirement to have regard to the matters prescribed by the rules applies for all reviewable decisions in a review pathway, regardless of whether the notice is required under section 266(4) of the Act, or under another Act or instrument.

This Part of the Rules prescribes the matters that a decision-maker must have regard to when giving a notice of a decision under subsection 267(3). This Part sets out best-practice considerations for giving notices of decision, including in relation to the manner of giving notices and the content of notices.

This Part is based on the Code of Practice made under subsection 27B(1) of the AAT Act, which sets out detailed criteria about the content of decision notices and requires decision-makers to publish decision notices in certain circumstances. However, there are some changes to improve the clarity of the drafting, consolidate or simplify some requirements, and prescribe additional matters.

Section 16 – Decision-maker must have regard to matters when giving notice of decisions in certain review pathways

Subsection (1) provides that, for the purposes of subsection 267(4) of the Act, decision-makers must have regard to the matters set out in subsections (2) to (6).

Subsection (2)

Subsection (2) provides that a notice of a decision should be in plain language and be as clear and simple as possible. A notice should be written, structured and presented in a way that enables the recipient to easily comprehend the notice, and therefore understand the decision that has been made and what steps they may take in relation to the decision.

Subsection (3)

Subsection (3) provides that a notice of a decision should be given in an accessible manner. This is a new feature that was not included in the Code of Practice. The purpose of this

subsection is to ensure that a decision-maker, when giving a notice of a decision, considers the accessibility needs of the recipient.

This subsection deals with the 'giving' of a notice of decision, which encompasses the method of providing the notice to the recipient, and the format of the notice. The term 'accessible' is not defined, and should be interpreted broadly. What amounts to giving a notice in an accessible manner depends on the context of the notice, including the type of decision to which it relates, and the circumstances and needs of the recipient. Giving a notice in an accessible manner could include, for example, to the maximum extent possible:

- providing the notice in a format (for example, a hard-copy letter or an email) that the recipient can easily access
- ensuring that electronic documents meet digital accessibility standards, and
- providing information in the language the recipient is most likely to understand.

Subsection (4)

Subsection (4) deals with the content of a notice of a decision. It sets out a list of the matters that a notice of a decision should clearly explain.

The purpose of this subsection is to ensure that decision-makers have regard to the need for a notice of a decision to clearly set out the matters listed in paragraphs (4)(a) through (h) in a manner the recipient can understand. A notice of a decision should not simply identify these matters; it should 'clearly explain' them. This is a new feature not previously included in the Code of Practice. It means that the notice should describe these matters in a way that is most likely to enable the recipient to understand the information and make informed decisions on the basis of the notice.

This subsection is not intended to prescribe the structure for a notice of a decision (that is, the order or format in which the specified matters should be presented). A decision-maker can incorporate into a notice a clear explanation of the specified matters as they see fit.

In setting out the matters a notice of decision should explain, subsection (4) largely replicates the matters specified in the Code of Practice, with some additions identified below.

Paragraph (4)(a) provides a notice of decision should clearly explain the legislative provision under which the decision was made. This is a new feature not previously included in the Code of Practice. It is intended to ensure that the recipient understands the particular

decision-making power that the decision-maker has exercised in making the decision. For example, if a notice relates to a decision to refuse to accredit a lighthouse, made in an exercise of the power under section 27 of the *Lighthouse Accreditation Act 1993*, the notice should include this information. This information will be helpful if the recipient of the notice wishes to obtain further information about the decision or apply for review of the decision.

Paragraph (4)(b) provides a notice of decision should clearly explain who the decision-maker is. Subsection 14(1) of the Act clarifies that the decision-maker for a decision is the person who makes the decision. Subsection (7) clarifies that, where a decision has been made by a delegate, the decision is taken to have been made by the person or body on whom the function or power was conferred by an Act or instrument. This means that a notice should identify the person or body on whom the function or power was conferred on by an Act, regardless of whether the decision was made by a delegate of that person or body. For example, if a decision to refuse to accredit was made in the exercise of a power conferred on the Director-General for Lighthouses, the notice of the decision should include that the decision was made by the Director-General for Lighthouses.

Paragraph (4)(c) provides that a notice of a decision should clearly explain how a person can obtain further information about the decision. For example, a notice could refer to contact details for the relevant Commonwealth agency, details about administrative processes that may be available for obtaining information, or another source (such as a website or online portal) where further information is available.

Paragraph 4(c) also covers information about:

- how a person can request a statement of reasons about a decision if one has not already been given, and
- if a statement of reasons for the decision has been given – the steps a person can take if the person is not satisfied with the statement of reasons (this is a new feature not previously included in the Code of Practice).

This reflects the fact that a person whose interests are affected by a decision may request the decision-maker to give the person a statement of reasons for the decision (see section 268 of the Act). The notice should explain how this can be done, for example by providing a point of contact or link to a webform that would allow a person to request reasons for the decision. If

the person is not satisfied with a statement of reasons, they could, for example, apply to the Tribunal to obtain an adequate statement of reasons (see section 271 of the Act).

Paragraph (4)(d) provides that a notice of a decision should clearly explain if a person can seek access to documents or information about the decision under the *Freedom of Information Act 1982* (FOI Act), and how that access can be sought (for example, how to make an application). The FOI Act gives persons the right to request access to certain kinds of government-held information. A notice should also clearly explain if there are mechanisms under other Acts – such as processes provided by the statutory scheme under which a decision has been made, or internal agency processes – for seeking documents or information about the decision.

Paragraph (4)(e) provides that a notice of a decision should clearly explain how a person can seek review of the decision. This ensures that the person understands their review rights and what steps they can take to have the decision reviewed. A notice of a decision should clearly explain the following matters, to the extent that they are relevant:

- the kind of review available (for example, internal review or external Tribunal review)
- how a person can apply for review (for example, for external Tribunal review, by completing the relevant application form on the Tribunal's website)
- if an application period for the review must be made within a period – the start and end of the period (for example, if the general rule under subsection 5(3) of the Rules applies in relation to the decision, the notice would specify that a person can apply for review from the time the decision is made until 28 days after the day the person is given the notice of the decision)
- if a fee is payable for the review – the amount of the fee, when the fee is payable and whether there are any fee waivers, concessions or refunds available
- how the person or body that may conduct the review can be contacted (for example, for Tribunal review, how the person may contact the Tribunal), and
- where the person can seek further information about how the person can have the decision reviewed (for example, an agency or Tribunal website that sets out additional information).

Paragraph (4)(f) provides that a notice of a decision should identify how a person can make a complaint in relation to the decision. This could include, for example, how a person can make a complaint to the relevant agency or the Commonwealth Ombudsman.

Paragraph (4)(g) provides that a notice of a decision should clearly explain any legal, financial or other forms of advice and assistance that may be available to a person whose interests are affected by the decision. The types of advice or assistance identified in a notice will depend on the context, including the type of decision and the circumstances of the recipient. The decision-maker should turn their mind to what kinds of advice or assistance would be most relevant or useful for the recipient of the notice. For example, it may be helpful to explain where a person can access legal or non-legal assistance, such as advocacy services, or interpretation services if relevant. If it is not possible or practicable to provide comprehensive information about the range of relevant services that may be available, a notice could identify key examples or explain where the person can obtain more information about services that may be available.

Paragraph (4)(h) provides that a notice of a decision should clearly explain any other matters that the decision-maker considers appropriate in the circumstances. A decision-maker should turn their mind to what additional information may assist a person to understand the decision or the next steps they can take.

Subsection (5)

Subsection (5) clarifies that it is possible for a notice of decision to explain a matter mentioned in subsection (4) by providing an electronic link or website address that can be used to access that explanation. For example, rather than setting out lengthy information about fee arrangements for making an application for review, a notice could instead direct the person's attention to a website (such as a Tribunal or agency website) that provides detailed information about this matter. This gives decision-makers flexibility to consider the most appropriate and efficient way to convey important information about a decision to the recipient. The note under subsection (5) explains that whether it is appropriate to explain a matter by providing an electronic link or website address will depend on the circumstances, including the type of decision and the circumstances of the recipient. For example, if a notice is given to a recipient from a cohort that may not have access to the internet, it may be more appropriate to explain the matters in the notice itself, rather than referring the person to a website that includes the information.

Subsection (6)

Subsection (6) identifies circumstances in which a decision-maker should publish a notice of decision. The circumstances are if:

- one or more of the persons whose interests are affected by the decision are not readily identifiable
- there is a large number of persons whose interests are affected by the decision, or
- the cost of giving a notice of the decision to each person whose interests are affected by the decision would be substantial.

In these circumstances, it may be appropriate to publish a notice to ensure that persons who are affected by the decision can be made aware of the decision and their rights to seek review of the decision.

The manner in which the notice is published is a matter for the decision-maker. The decision-maker should publish the notice on the internet, or in another way they consider appropriate, such as in a newspaper or magazine that is likely to be accessible to persons who are affected by the decision. The decision-maker may also decide in all the circumstances, having considered subsection (6), that the notice should not be published.

For example, if a decision relates to a project that affects a large number of residents of particular region, it may not be possible or practicable to identify and give a notice of the decision to all of the residents individually. Instead, a notice could be published in a local newspaper or on a news website that is likely to be accessible to residents of that region.

PART 5 - MISCELLANEOUS

Division 1 – Performing and exercising functions and powers of the Tribunal

This Division prescribes certain functions and powers conferred on the Tribunal under Commonwealth legislation, and the Rules, which the President may authorise members, registrars or staff members of the Tribunal to perform or exercise.

Where an Act or instrument confers a function or power on the ‘Tribunal’, the function or power is generally conferred on the Tribunal as constituted for a particular proceeding. A new feature of the Act is that the President may authorise members, registrars or staff members (‘authorised persons’) to perform or exercise functions or powers conferred on the

Tribunal. Division 4 of Part 11 of the Act sets out the arrangements for authorisations. An authorised person may perform or exercise functions or powers of the Tribunal at any time before the start of the hearing of the proceeding, but may only do so with the agreement of the Tribunal as constituted once the hearing has commenced.

Paragraphs 284(1)(c), 285(1)(c) and 286(a) of the Act list the functions and powers in the Act that the President may authorise members, registrars and staff members to perform or exercise. However, other legislation, and the rules, also confer functions and powers on the Tribunal. Paragraphs 284(1)(b), 285(1)(b) and 285(b) of the Act provide that the President may also authorise members, registrars or staff members to perform or exercise functions or powers prescribed by the rules. The purpose of this Division is to list the functions and powers of the Tribunal in other legislation and the rules that the President can authorise members, registrars and staff to exercise or perform.

As with the functions and powers identified in the Paragraphs 284(1) (c), 285(1)(c) and 286(a) of the Act, the functions and powers that a person can be authorised to perform or exercise under this Division steadily increase in accordance with the person's level of seniority. Functions and powers which are administrative in nature may be performed or exercised by staff members generally. Functions and powers which are more complex, or involve an exercise of discretion, may be performed or exercised by registrars. Functions and powers which involve a greater degree of analysis or a significant exercise of discretion should only be performed or exercised by members.

The effect of paragraphs 284(1)(a) and 285(1)(a) of the Act is that, if a staff member may be authorised to perform or exercise a function or power, it follows that a member or registrar may be authorised to perform or exercise the function or power. If a registrar may be authorised to perform or exercise a function or power, it follows that a member may also be authorised to perform or exercise the function or power.

Accordingly, the tables in this Division do not contain duplications of the functions or powers which can be exercised by registrars or staff members.

The Rules do not automatically authorise a person to exercise or perform the functions or powers identified in this Division. There must also be a valid authorisation by the President in place.

Section 17 – Authorisations for members

This section identifies, for the purposes of paragraph 284(1)(b) of the Act, functions and powers which the President may authorise members to perform or exercise.

General authorisations

The table under subsection (1) sets out a list of functions and powers conferred on the Tribunal under Commonwealth legislation that the President may authorise members to perform or exercise.

Limited authorisations

The table under subsection (2) sets out a list of functions and powers conferred on the Tribunal under Commonwealth legislation that the President may only authorise a member to perform if they are making a decision agreed to by the parties under section 103 of the Act. This subsection operates in the same way as subsections 284(2) of the Act, which enables certain functions and powers under the Act to be performed or exercised by members only if relates to the performance or exercise of a function or power by the member under section 103.

Other than when the power is exercised under section 103, the powers listed in the table should only be exercised by the Tribunal as constituted, as they relate to the making of the decision on the review of a reviewable decision. Exercise of these powers would generally follow the Tribunal conducting a hearing, considering the material before it and arriving at its decision on the review. When making a decision under section 103, however, the Tribunal must have received the terms of the decision as agreed between the parties in writing and must be satisfied that the decision is within the power of the Tribunal to make. It is not necessary to conduct a hearing to make a decision under section 103.

Procedurally, however, section 103 requires the Tribunal to make a decision on the review. That is, to affirm, vary, set aside and substitute or set aside and remit the decision of the decision-maker. As such, the exercise of the power under section 103 requires, or may require, an exercise of the powers or functions listed in the table under subsection (2). Accordingly, it is appropriate, and efficient, for authorised persons to perform or exercise them where the decision is as agreed by the parties.

Section 18 – Authorisations for registrars

This section identifies, for the purposes of paragraph 285(1)(b) of the Act, functions and powers which the President may authorise registrars to perform or exercise.

General authorisations

- The table under subsection (1) sets out a list of functions and powers conferred on the Tribunal under Commonwealth legislation that the President may authorise members to perform or exercise.
- Subsection (2) provides that the President may authorise registrars to determine, for the purposes of section 348 of the Migration Act, whether an application to the Tribunal for review of a reviewable migration decision or a reviewable protection decision is properly made under section 347 or 347A of the Migration Act.

Section 347 of the Migration Act (as amended by the Consequential Act 1) provides for applications for review of reviewable migration decisions and reviewable protection decisions, and imposes certain formal and procedural requirements in respect of such applications. Section 347A specifies who may apply for review of certain kinds of reviewable migration decisions, and in what circumstances. Section 348 of the Migration Act imposes a duty on the Tribunal to review a decision in respect of which an application is properly made under sections 347 and 347A. Subsection 18(2) of the Rules enables the President to authorise registrars to perform the implicit function of determining, for this purpose, whether an application is properly made. Determining whether an application is properly made is an exercise of considering the objectively determinable criteria set out in the relevant provisions of the Migration Act – whether the application was submitted within the time limit; whether the fee has been paid, whether the requisite information is included, et cetera. Allowing registrars to determine whether an application has engaged the jurisdiction of the Tribunal, rather than occupying the time of members, will significantly improve the efficiency of the Tribunal in this high-volume jurisdiction.

Subsection (3) provides that a registrar may be authorised to perform or exercise the following functions and powers conferred on the Tribunal under the following provisions of Rules:

- section 14, which enables the Tribunal to make certain orders relating to fees and allowances payable for compliance with a summons, and

- sections 25 and 26, which enable the Tribunal to make orders declaring which application fee applies in certain circumstances where the Tribunal considers that an applicant has paid an incorrect fee.

Limited authorisations

The table under subsection (4) sets out a list of functions and powers conferred on the Tribunal under Commonwealth legislation that the President may only authorise a registrar to perform if they are making a decision agreed to by the parties under section 103 of the Act. See the explanation of the equivalent provision in relation to members (subsection 17(2)) above.

Section 19– Authorisations for staff members

This section identifies, for the purposes of paragraph 286(b) of the Act, functions and powers which the President may authorise staff members to perform or exercise.

The table under subsection (1) sets out a list of functions and powers conferred on the Tribunal under Commonwealth legislation that the President may authorise staff members to perform or exercise.

Subsection (2) enables the President to authorise staff members to perform or exercise the function conferred on the Tribunal under subsection 12(3) of the Rules. Section 12(3) requires the Tribunal to give notice to the parties of a proceeding if the Tribunal makes certain kinds of decisions or orders relating to a participation notice issued by a non-participating party to the proceeding.

Division 2 – Fees

Subsection 296(1) of the Act provides that the Tribunal may, on behalf of the Commonwealth, charge fees in accordance with the rules. Paragraphs 296(2)(a) and (b) provide that the rules may provide for fees to be payable in respect of applications to the Tribunal and applications to the President.

Fees to apply to the Tribunal

Division 2 sets out the framework for fees for applications to the Tribunal, other than fees for certain applications made under the Migration Act which are dealt with under the Migration Regulations.

Division 2 largely reflects the fees framework for the AAT set out in the AAT Regulation, with some minor changes identified below. It deals with the following matters:

- fee amounts and their indexation
- concessional circumstances in which a person is eligible to pay a reduced fee
- types of decisions for which no fee is payable for an application for review
- the timeframe for paying fees
- circumstances in which only one fee may be payable for multiple applications
- circumstances in which a fee may be refunded, and
- the ability for persons to seek review of certain fee-related decisions.

Fees to apply to the President

Division 2 also sets out the framework for fees relating to a new kind of application that a person can make under the Act, being an application to the President to refer a decision of the Tribunal to the guidance and appeals panel under section 123 of the Act. These fees are very similar to the fees for other kinds of applications to the Tribunal, and Division 2 deals with the same matters in relation to these fees.

Subdivision A – Purpose and scope of operation of this Division

Section 20 – Purpose of this Division

This section explains that Division 2 sets out, for the purposes of paragraphs 296(2)(a) and (b) of the Act, fees payable in respect of:

- applications to the Tribunal, and
- applications to the President to refer a decision of the Tribunal to the guidance and appeals panel under section 123 of the Act.

Section 21 – Scope of operation of this Division

This section clarifies that Division 2 does not apply in relation to a 'reviewable migration decision' or 'reviewable protection decision', within the meaning of those terms in the Migration Act. Fees for applications for review of those kinds of decisions are prescribed in the Migration Regulations.

Subdivision B – Applications to the Tribunal

This Subdivision sets out the fee amounts for applications to the Tribunal. The fees prescribed by this Subdivision are the same as the fees for applying to the AAT in the 2024-25 financial year, as prscribed and indexed under the AAT Regulation.

It is appropriate to charge fees to reflect the provision of a service by the Tribunal – namely, conducting a review of the decision to which the application relates. The application fees under this Subdivision have a relationship with the cost of the service being provided. For the 2024-25 financial year, it is estimated that the average cost to the Tribunal for conducting a review of a decision will be significantly higher than the highest application fee under this Subdivision.

Section 22 – Fees for applications to the Tribunal

This section sets out the main four categories of fees for applying to the Tribunal: standard application fees, lower fees for small business taxation decisions, lower fees for certain other taxation decisions, and concessional fees.

Standard application fee

Subsection (1) prescribes a standard application fee of $1,121. This applies to the following kinds of applications to the Tribunal:

- an application to the Tribunal for review of a decision (other than an application for which a lower fee applies under this section, or for which no fee is payable under section 30)
- an application to the Tribunal to obtain a statement of reasons for a reviewable decision under subsection 270(2) of the Act, and
- an application to the Tribunal to make a declaration that a notice of a decision refusing to grant access to a document following a freedom of information request does not contain adequate particulars, under subsection 62(2) of the FOI Act.

This fee is indexed under section 33.

Lower application fees

Subsections (2) and (3) prescribe lower application fees for applications for review of certain kinds of decisions. These subsections maintain the fee arrangements for applications of this kind in the AAT.

Subsection (2) provides for a lower application fee of $602 for an application for review of a 'small business taxation decision', which is defined in section 4 as a decision made under a taxation law and in relation to a small business entity.

Subsection (3) provides for a lower application fee of $111 for an application for review of certain other taxation decisions:

- a reviewable objection decision under Part IVC of the *Taxation Administration Act 1953* (Taxation Administration Act) where the applicant considers the amount of tax in dispute is less than $5,000, or
- a decision refusing a request for an extension of time within which to make a taxation objection under section 14ZX of the Taxation Administration Act.

These fees are indexed under section 33.

Fee in concessional circumstances

Subsection (4) prescribes an application fee of $100 (instead of the amount that would otherwise apply) if any of the concessional circumstances listed in subsection 29(1) exist. See the explanation of subsection 29(1) below. This fee is not indexed under section 33.

Section 23 – No additional fee for application referred to the guidance and appeals panel

This section clarifies that no fee is payable in respect of an application that a person is taken to have made to the Tribunal under subsection 130(2) of the Act.

Section 123 of the Act provides that a person may apply to the President to refer a decision of the Tribunal to the guidance and appeals panel. If the President decides to refer the matter to the guidance and appeals panel, the effect of subsection 130(2) is that the person who applied to refer the Tribunal decision to the guidance and appeals panel is taken to have applied to the Tribunal for review of a decision.

This section clarifies that, if a person is taken to have made an application to the Tribunal in this circumstance, this does not enliven a requirement to pay a fee under Subdivision B. That is, no additional fee is payable if the President decides to refer a Tribunal decision to the guidance and appeals panel. (However, see Subdivision C for fees payable for an application to the President for referral of a Tribunal decision to the guidance and appeals panel).

Section 24 – Consequence if application not accompanied by prescribed fee

This section sets out what happens if a person does not pay the prescribed fee when making an application to the Tribunal.

Subsection (1) provides that if an application is not accompanied by the prescribed fee, the Tribunal is not required to deal with the application unless, and until, the fee is paid.

Section 98 of the Act provides that the Tribunal may dismiss an application if a fee payable in respect of the application is not paid by the time prescribed by the rules. Subsection 24(2) of the Rules provides that, for the purposes of section 98 of the Act, the fee must be paid within 6 weeks from the day the application is made. If the applicant does not pay the prescribed fee by this time, the Tribunal may dismiss the application under section 98 of the Act.

Section 25 – Consequences if the Tribunal considers that the amount in dispute is not less than $5,000

This section applies if an applicant pays a lower application fee under subsection 22(3) because the applicant considers that the amount of tax in dispute is less than $5,000.

Subsection (1) provides that, if the Tribunal considers that the amount of tax in dispute is not less than $5,000, the Tribunal may make an order declaring what the correct prescribed fee for the application is. Depending on the circumstances, the Tribunal may declare that the prescribed fee for the application is the standard application fee under subsection 22(1), the lower application fee under subsection 22(2), or the concessional fee under subsection 22(4).

Subsection (2) clarifies that the amount payable by an applicant under such an order is reduced by the amount that the applicant has already paid.

Subsection (3) provides that the Tribunal is not required to deal with the application unless, and until, any remaining amount of the correct fee is paid.

Subsection (4) provides that, for the purposes of section 98 of the Act, the fee must be paid within 6 weeks from the day the Tribunal's order in relation to the correct fee is made. If the fee is not paid by that time, the Tribunal may dismiss the application under section 98 of the Act.

Section 26 – Consequences if the Tribunal considers that an applicant is not a small business entity

This section applies if an applicant pays a lower application fee for an application for review of a small business taxation decision under subsection 22(2), because the applicant considered that the decision for review related to a small business entity.

Subsection (1) provides that, if the Tribunal considers that the decision did not relate to a small business entity, the Tribunal may make an order declaring what the correct prescribed fee for the application is. Depending on the circumstances, the Tribunal may declare that the prescribed fee for the application is the standard application fee under subsection 22(1), the lower application fee under subsection 22(3), or the concessional fee under subsection 22(4).

Subsection (2) clarifies that the amount payable by an applicant under such an order is reduced by the amount that the applicant has already paid.

Subsection (3) provides that the Tribunal is not required to deal with the application unless, and until, any remaining amount of the correct fee is paid.

Subsection (4) provides that, for the purposes of section 98 of the Act, the fee must be paid within 6 weeks from the day the Tribunal's order in relation to the correct fee is made. If the fee is not paid by that time, the Tribunal may dismiss the application under section 98 of the Act.

Subdivision C – Applications to the President

Under section 123 of the Act, a person may apply to the President to refer a decision of the Tribunal to the guidance and appeals panel. This is a new feature of the Act. This Subdivision sets out the fee amounts for applications to the President.

Section 27 – Fees for application to the President

This section prescribes the fees for making an application to the President to refer a decision of the Tribunal to the guidance and appeals panel under section 123 of the Act. The fees follow a similar structure to the fees for applications to the Tribunal: an applicant must pay a standard application fee, unless the concessional circumstances in section 29 exist (in which case the fee is $100) or the application relates to a kind of decision for which no fee is payable (see section 30).

Standard application fee

Subsection (1) prescribes a standard fee of $1,121. The fee is indexed under section 33. This is the same amount as the standard application fee for applications to the Tribunal under section 22(1).

It is appropriate to charge fees to reflect the provision of a service by the President – namely, considering whether to refer the decision to the guidance and appeals panel. The fee amount has a relationship with the cost of the service being provided. For the 2024-25 financial year, it is estimated that the average cost to the Tribunal for dealing with an application to the President will be higher than the $1,121 fee.

Unlike applications to the Tribunal, there is not a separate, lower application fee for applications to the President relating to small business taxation decisions or certain other taxation decisions. A person cannot apply to apply to the President to refer a decision of this kind to the guidance and appeals panel (see paragraph 15(b) of the Rules).

The fee does not apply for an application referred to in section 30 (that is, an application relating to a Tribunal decision on review of specified kinds of decisions).

Fee in concessional circumstances

Subsection (2) prescribes a fee of $100 if the concessional circumstances in subsection 29(1) exist. See the explanation of subsection 29(1) below.

Section 28 – Consequence if application not accompanied by prescribed fee

This section sets out what happens if a person does not pay the prescribed fee when making an application to the President.

Subsection (1) provides that if an application is not accompanied by the prescribed fee, the President is not required to deal with the application unless, and until, the fee is paid.

Paragraph 128(3)(a) of the Act provides that the President must not refer the Tribunal decision to the guidance and appeals panel if a fee payable in relation to the application is not paid by the time prescribed by the rules. Subsection 28(2) of the Rules provides that, for the purposes of paragraph 128(3)(a) of the Act, the time by which the fee must be paid is the end of the 28 days starting on the day the application is made. The President may, in special circumstances, extend this period. If the fee is not paid by this time, the President must not refer the decision to the guidance and appeals panel.

Subdivision D – General provisions

This Subdivision sets out a number of matters that apply in relation to applications to both the Tribunal and the President. It sets out the concessional circumstances in which a fee of $100 applies, the types of decisions for which an application fee is not payable, the process for determining that only one fee is payable in respect of multiple applications, the circumstances in which an applicant is entitled to a refund, the formula for indexing fees, and fee-related decisions which are reviewable by the Tribunal.

Section 29 – Concessional circumstances

This section identifies the concessional circumstances in which an applicant qualifies for a reduced fee of $100 instead of the fee that would otherwise be payable for their application to the Tribunal or the President. This section largely replicates the concessional circumstances set out in section 21 of the AAT Regulation, with minor changes to reflect modern drafting practices.

An applicant qualifies for a reduced fee of $100 if any of the following circumstances exist:

- the applicant has been granted legal aid for the matter to which the fee relates under a legal aid scheme or service established under a law of the Commonwealth or of a State or Territory, or approved by the Attorney General
- the applicant is the holder of a health care card, pensioner concession card, Commonwealth seniors health card, or any other card that certifies the holder's entitlement to Commonwealth health concessions (noting that the 'holder' of a card does not include a dependent of the person who is issued the card)
- the applicant is serving a sentence of imprisonment or is otherwise detained in a public institution, or is in immigration detention (within the meaning of the Migration Act)
- the applicant is younger than 18
- the applicant is receiving youth allowance or Austudy payments under the *Social Security Act 1991* or benefits under the ABSTUDY scheme, or
- the Principal Registrar makes an order that, having regard to the applicant's income, expenses, liabilities and assets, the Principal Registrar considers that the payment of an amount would cause, or has caused, financial hardship to the applicant.

Section 30 – Decisions for which application fee is not payable

The table in this section identifies the kinds of decisions for which an application fee is not payable. No fee is payable in respect of:

- an application to the Tribunal for review of a decision mentioned in the table, or
- an application to the President to refer a decision of the Tribunal to the guidance and appeals panel, if the Tribunal's decision was made on review of a decision mentioned in the table.

The table largely replicates the list of decisions for which no fee is payable in the AAT under section 22 of the AAT Regulation, subject to minor changes. The new additions are:

- item 10 (a decision under section 27 of the *Lands Acquisition Act 1989*) – fees have not previously been payable for applications of this kind, but the exemption has been moved from the *Lands Acquisition Act 1989* to the Rules, and
- item 21 (a decision that is a reviewable objection decision under Part IVC of the *Taxation Administration Act 1953* which relates to an application made by the applicant under section 340-5 of Schedule 1 to that Act) – where the Australian Taxation Office has previously paid fees on behalf of persons who have made an application of this kind.

Items 3, 4, 13, 18, and 19 refer to 'ART review' and/or 'second review'. These items relate to certain social services decisions for which two tiers of review are available in the Tribunal: ART review (within the meaning of the relevant Act under which the decision is made), and second review (within the meaning of section 131D(1) of the Act). These items preserve the fee exemptions that exist in the AAT for applications for review of these kinds of decisions.

Section 31 – Multiple applications

This section allows the Principal Registrar to order that only one fee is payable in respect of 2 or more applications to the Tribunal or the President. This section replicates the effect of section 23 of the AAT Regulation, except that it also deals with applications to the President, and enables the Principal Registrar to order that only one fee is payable in respect of multiple applications lodged by different applicants (not only multiple applications lodged by the same applicant).

The effect of subsections (1) and (2) is that the Principal Registrar may order that only one fee is payable in relation to multiple applications to the Tribunal or the President where:

- the applications relate to either the same applicant, or different applicants where the Principal Registrar considers that, having regard to the relationship between the applicants, it is reasonable to treat the applicants as relating to the same applicant
- all of the applications are made to either the Tribunal or to the President, and
- the Principal Registrar considers that the applications may be conveniently heard before the Tribunal or considered by the President at the same time.

The ability for the Principal Registrar to order that one fee is payable in respect of multiple applications by different applicants is a new feature. It extends the ability to order that one fee is payable to circumstances where applications are lodged by different applicants but the Principal Registrar considers it reasonable to treat the applications as relating to the same applicant. This could include if 2 applicants are legally separate persons, but there is a close relationship between the 2 applicants (for example, one applicant is a person and the second applicant is a small business owned and operated by the person).

If the Principal Registrar makes an order that only one fee is payable in relation to multiple applications for which different fees would otherwise be payable, subsection (3) provides the fee to be paid is equal to the highest fee that would otherwise be payable in respect of any of the applications. An exception is if one of the applications is for review of a small business decision, in which case the fee to be paid is the fee for an application of that kind under subsection 22(2).

Section 32 – Refunds

This section identifies the circumstances in which a person is entitled to a refund in relation to a fee they have paid.

A person is entitled to a full refund if:

- a person paid a fee, but the fee was not payable (see item 1)
- a person paid a fee for an application to the Tribunal, but the person is not entitled to apply for review (see item 3), or the decision is not subject to review by the Tribunal (see item 4)
- a person paid a fee for an application to the President, but the person is not entitled to make the application (see item 5) or the decision cannot be referred to the guidance and appeals panel (see item 6).

If a person pays a fee but was liable to pay a lower fee, the person is entitled to a refund of the difference between the fee paid and the lower fee (see item 2).

If a person pays a fee in relation to more than one application and the Principal Registrar makes an order under section 31 that only one fee is payable, the person is entitled to a refund of the difference between the fee paid and the fee that the Principal Registrar orders is payable (see item 7).

A person may be entitled to a partial refund depending on the outcome of their proceeding in the Tribunal. If a person pays a fee for an application to the Tribunal, and the Principal Registrar certifies that a proceeding in respect of the application has terminated in a manner favourable to the applicant, the person is entitled to a refund of the difference between the fee paid and $100 (see items 8 and 9).

A new feature is that, if a person pays a fee for an application to the President to refer a Tribunal decision to the guidance and appeals panel, a person may be entitled to a partial refund of this fee depending on the outcome of their proceeding in the guidance and appeals panel. If a person pays a fee for an application to the President, the President refers the decision of the Tribunal to the guidance and appeals panel, and the Principal Registrar certifies that the subsequent proceeding in the guidance and appeals panel has terminated in a manner favourable to the person, the person is entitled to a refund of the difference between the fee paid for their application to the President and $100 (see items 10 and 11). The entitlement to a refund does not relate to the outcome of the person's application to the President, but rather to the outcome of the proceeding by the guidance and appeals panel if the President refers the decision to the guidance and appeals panel. That is, no refund is payable simply because the President decides to refer a decision to the guidance and appeals panel. A refund is only payable if, following the referral, the subsequent proceeding of the guidance and appeals panel terminates in a manner favourable to the person.

Refunds for an application to the Tribunal, and a subsequent application to the President to refer the Tribunal's decision to the guidance and appeals panel, are treated separately. If a person is entitled to a refund for an application to the President, this does not enliven a separate entitlement to a refund of the person's original application to the Tribunal for review.

Section 33 – Annual increase in fees

This section sets out the formula for calculating annual increases to fees prescribed by the Rules. It replicates the formula for annual increases in fees in the AAT. The fees are increased annually in accordance with upwards movement in the All Groups Consumer Price Index published by the Australian Statistician. It is appropriate for fees to increase in line with increases to the costs associated with the provision of services by the Tribunal.

Section 34 – Review by Tribunal – certain fee payment decisions

This section identifies the types of fee-related decisions made by the Principal Registrar under the Rules that are reviewable by the Tribunal.

Subsection (1) provides that a person may apply to the Tribunal for review of the following kinds of decisions by the Principal Registrar:

- in relation to concessional fees – a decision under paragraph 29(1)(f) not to make an order that the Principal Registrar considers that the payment of a fee would cause, or has caused, financial hardship to the applicant, and
- a decision under section 31 not to order that only one fee is payable in relation to multiple applications (that is, where an applicant seeks an order that one fee is payable, but the Principal Registrar refuses to make the order).

Subsections (2) and (3) provides that, if the Principal Registrar makes a decision of this kind, the Principal Registrar must provide to the person liable to pay the fee a notice of the decision, a statement of reasons, and a notice of the person's right to seek review of the decision.

Subsection (4) clarifies that a failure by the Principal Registrar to provide a notice of the person's right to seek review does not affect the validity of the decision.