

**ADMINISTRATIVE REVIEW TRIBUNAL (CONSEQUENTIAL AND
TRANSITIONAL PROVISIONS NO. 1) 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 (Consequential and Transitional Provisions No. 1) Act 2024* (Act) deals with consequential and transitional matters arising from the enactment of the *Administrative Review Tribunal Act 2024* (ART Act), which establishes the Administrative Review Tribunal (ART) as the new, fit-for-purpose administrative review body to replace the Administrative Appeals Tribunal (AAT). The Act received Royal Assent on 1 June 2024 and has been proclaimed to commence at the same time as the ART Act, being 14 October 2024.

Schedule 16 to the Act sets out measures to effect the transition from the AAT to the ART. Item 51 of Schedule 16 enables the Minister to make rules prescribing matters required or permitted by the Act to be prescribed by the rules, or necessary or convenient to be prescribed for carrying out or giving effect to the Act. The rules may prescribe matters of a transitional nature relating to amendments or repeals made by the Act, or the enactment of the Act. The rules may modify provisions of the Act or the ART Act, provide for the application (with or without modifications) of provisions of the Act or the ART Act to matters to which they would otherwise not apply, or modify the operation of the Act (including in respect of specified matters only).

Section 4 of the *Acts Interpretation Act 1901* (Acts Interpretation Act) provides authority for legislative instruments, including rules such as the *Administrative Review Tribunal (Consequential and Transitional Provisions No. 1) Rules 2024* (Rules), to be made before the commencement of the relevant enabling legislation.

The Rules complement the transitional provisions in Schedule 16 to the Act. The Rules are technical in nature, and ensure that the transition from the AAT to the ART occurs smoothly and as intended. The purpose of the Rules is to:

- clarify that the *Administrative Appeals Tribunal Enterprise Agreement 2024-2027* (AAT Enterprise Agreement), as in force immediately before the transition time, continues to cover and apply to APS employees of the ART after the commencement of the ART (referred to as the ‘transition time’)
- modify the consultation requirements that apply to the exercise of powers under the ART Act to make practice directions, establish lists and assign jurisdictional area leaders, within a short period after the transition time
- clarify the transitional arrangements in relation to timeframes for making applications to the ART after the transition time
- clarify the transitional arrangements for applications to courts in relation to decisions made by the Immigration Assessment Authority (IAA) before the transition time, and
- modify, for a period of 6 months, the timeframe in which an application to the ART for review of a reviewable migration decision or reviewable protection decision, under section 347(3)(a) of the *Migration Act 1958* (Migration Act), must be made by an applicant who is in immigration detention.

AAT Enterprise Agreement

The AAT Enterprise Agreement currently applies to APS employees of the AAT. The Transitional Rules provide for the AAT Enterprise Agreement to continue to cover and apply to APS employees of the ART, including APS employees who are transferring from the AAT to the ART, and APS employees whose employment in the ART commences at or after the transition time. The Rules ensure that the AAT Enterprise Agreement continues to apply in relation to the ART in the exactly the same way it applies in relation to the AAT. This gives certainty that the terms and conditions of employment for all APS employees transferring to the ART will not change as a result of the transition.

Making practice directions, and establishing lists, shortly after the transition time

Section 236 of the ART Act provides for the Tribunal Advisory Committee (Committee), which consists of the President, the Principal Registrar, the jurisdictional area leaders and

other nominated members. Its functions include promoting the objective of the Tribunal, overseeing the caseload of the Tribunal, reviewing the Tribunal's performance, and overseeing trends and patterns across the jurisdictional areas.

Subsection 36(1) of the ART Act enables the President to make practice directions for the Tribunal. Subsection 36(3) provides that, before making a practice direction, the President must consult the Committee.

Subsection 196(1) of the Act establishes 8 jurisdictional areas of the Tribunal.

Subsection 196(2) enables the President to establish lists within jurisdictional areas.

Subsection 196(3) provides, before establishing a list, the President must consult the Committee.

It is likely to be necessary for the President to make practice directions and establish lists very shortly after the transition time, to ensure there is certainty and transparency regarding the Tribunal's operations. However, during the period shortly after transition time, it may not be possible or practicable for the President to consult the Committee, if the membership of the Committee has not been finalised or the Committee has not commenced its operations by this time. To address this, the Rules modify the consultation requirement for the making of practice directions and the establishment of lists within the first 28 days after the transition time. The Rules provide that, for any practice directions made and lists established during this period, the President is required to consult the Committee within 3 months after doing so, rather than beforehand. This ensures that the President can exercise powers that are important for facilitating the smooth transition to the new Tribunal, while preserving an opportunity for the Committee's input to be considered shortly after commencement.

Assignment of jurisdictional area leaders shortly after the transition time

Subsection 197(1) of the ART Act provides that the Minister may, in consultation with the President, assign a Deputy President or the President to be a leader of one or more jurisdictional areas (referred to as a 'jurisdictional area leader'). Jurisdictional area leaders have leadership responsibilities in relation to their jurisdictional area.

The Minister may need to assign jurisdictional area leaders very shortly after transition time, so that jurisdictional areas can operate smoothly and effectively from the Tribunal's

commencement. Accordingly, the Rules provide that, for assignments made within 28 days after the transition time, the Minister is taken to meet the requirement to consult with the President of the ART if the Minister consulted the President of the AAT before the transition time. This ensures compliance with the substance of the consultation requirement, despite the office of the President of the ART not yet having formally commenced before the transition time. It does not substantively alter the consultation requirements, because the President of the AAT immediately before the transition time will become the President of the ART (see item 28 of Schedule 16 to the Act).

Time for making an application to the ART

Item 20 of Schedule 16 to the Act ensures that, if a person was entitled to make an application to the AAT immediately before the transition time, the person can make the application to the ART after the transition time. Subitem (2) has the effect that a person may make an application to the ART as if the old law continued to apply in relation to the time for making the application, but otherwise in accordance with the new law. The ‘old law’ means the law of the Commonwealth as in force from time to time before the transition time. The ‘new law’ means the law of the Commonwealth as in force from time to time after the transition time.

The Rules modify item 20 to make its intended operation as clear as possible. The Rules do not change the effect of item 20, but avoid doubt that the time limits under the old law continue to apply in relation to the making of applications under item 20.

Immigration Assessment Authority

Item 228 of Schedule 2 to the Act repeals Parts 7 and 7AA of the Migration Act. Part 7AA of the Migration Act provided for the review of fast track reviewable decisions at the IAA. Items 34 to 37 within Division 1 of Part 8 of Schedule 16 to the Act provides for transitional arrangements relating to the repeal of Part 7AA.

The Rules provide for additional transitional arrangements relating to decisions of the IAA.

The Rules ensure that, if a person was entitled immediately before the transition time to appeal or make an application to a court after the transition time in relation to a decision of the IAA, the person may appeal or make the application after the transition time. Court

proceedings in progress at the transition time can continue after the transition time, and will not be affected by the transition. In both cases, the appeal or application can be made, and the court proceedings can occur, in the same way as it would have before the transition time. A court can remit the decision for reconsideration by the ART, instead of the IAA. Where this occurs, the proceeding on remittal will be a proceeding for review of a reviewable protection decision.

Time for applying to the ART for review of a reviewable migration decision or reviewable protection decision

Sections 347 and 347A of the Migration Act, as inserted by item 136 of Schedule 2 to the Act, enable an application to be made to the ART for review of a reviewable migration decision or a reviewable protection decision. Paragraph 347(3)(a) provides that, if the applicant is in immigration detention on the day the applicant is notified of the decision, the application must be made within 7 days after the day the applicant is notified of the decision.

The Rules have the effect of temporarily modifying the period within which applications of this kind must be made. During a period of 6 months starting at the transition time, the period within which an application to the ART for review of a reviewable migration decision or a reviewable protection decision is, if the applicant is in immigration detention on the day the applicant is notified of the decision, 7 working days (rather than 7 calendar days) after the day the applicant is notified of the decision.

CONSULTATION

The Attorney-General's Department conducted targeted consultation on the draft Rules between June to October 2024. In particular, the following agencies were consulted:

- the AAT, in relation to all of the matters covered by the Rules
- the Department of Home Affairs, in relation to the provisions dealing with IAA decisions and timeframes for applications, and
- the Australian Public Service Commission, and the Community and Public Sector Union delegates of the AAT, in relation to the provisions dealing with the AAT Enterprise Agreement.

As the rules are technical in nature, more extensive consultation was not required.

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

Overview of the legislative instrument

The Rules form part of a package of Acts and instruments that would abolish the AAT and establish the ART, a new federal administrative review body that is user focused, efficient, accessible, independent and fair.

The Rules supplement the Act by setting out additional arrangements to facilitate the smooth transition to the ART. In particular, the Rules:

- clarify that the *Administrative Appeals Tribunal Enterprise Agreement 2024-2027* (AAT Enterprise Agreement), as in force immediately before the transition time, continues to cover and apply to APS employees of the ART after the commencement of the ART (referred to as the ‘transition time’)
- modify the consultation requirements that apply to the exercise of powers under the ART Act to make practice directions, establish lists and assign jurisdictional area leaders, within a short period after the transition time
- clarify the transitional arrangements in relation to timeframes for making applications to the ART after the transition time
- clarify the transitional arrangements relating to applications to courts in relation to decisions made by the Immigration Assessment Authority (IAA) before the transition time, and
- modify, for a period of 6 months, the timeframe in which an application to the ART for review of a reviewable migration decision or reviewable protection decision, under section 347(3)(a) of the *Migration Act 1958* (Migration Act), must be made by an applicant who is in immigration detention.

The Act supports the ART Act by repealing the *Administrative Appeals Tribunal Act 1975* (AAT Act), making consequential amendments across 138 Commonwealth Acts and providing for the smooth transition from the AAT to the ART.

The Rules are compatible with human rights. The Rules advance the right to an effective remedy, a fair and public hearing, the right to work and the right to the enjoyment of just and favourable conditions of work.

Human rights implications

The measures in the Rules engage the following human rights:

- the right to work and rights in work in Articles 6(1) and 7 of the International Covenant on Economic, Social and Cultural Rights (ICESCR)
- right to an effective remedy and a fair and public hearing in Articles 2(3) and 14 of the International Covenant on Civil and Political Rights (ICCPR) and the right to a fair and public hearing in Article 14 of the ICCPR.

The right to work and the right to the enjoyment of just and favourable conditions of work

Article 6(1) of the ICESCR guarantees the right to work, which includes the right of everyone to the opportunity to gain their living by work which they freely choose or accept. Article 7 recognises the right of everyone to the enjoyment of just and favourable conditions of work.

The Rules promote these rights by providing for the continued application of the providing for the AAT Enterprise Agreement to continue to cover and apply to APS employees of the ART, including APS employees who are transferring from the AAT to the ART, and APS employees whose employment in the ART commences at or after the transition time. This gives certainty to APS employees transferring to the ART that the terms and conditions of their employment will not change as a result of the transition.

The right to an effective remedy and the right to a fair and public hearing

Article 2(3) of the ICCPR requires that a person whose rights or freedoms are violated shall have an effective and enforceable remedy determined by competent judicial, administrative or legislative authorities. Article 14(1) of the ICCPR provides that all persons shall be equal before the courts and tribunals. It further provides that everyone is entitled, in the

determination of their ‘rights and obligations in a suit at law’, to a ‘fair and public hearing by a competent, independent and impartial tribunal established by law’.

The provisions in Part 3 of the Rules promote these rights by ensuring that individuals who had an entitlement to appeal or make an application to a court in relation to a decision of the IAA are not disadvantaged as a result of the transition to the ART, and may exercise their entitlement after the transition time. In addition, the Rules ensure that ongoing court proceedings in relation to a decision of the IAA may continue after the transition time.

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*.

NOTES ON SECTIONS

PART 1 – PRELIMINARY

Section 1 - Name

This section provides that the title of the Rules is the *Administrative Review Tribunal (Consequential and Transitional Provisions No. 1) Rules 2024* (Rules).

Section 2 – Commencement

This section provides for the Rules to commence on the later of:

- the start of the day after this instrument is registered, or
- the time that item 51 of Schedule 16 to the *Administrative Review Tribunal (Consequential and Transitional Provisions No. 1) Act 2024* (Act) commences.

Section 3 – Authority

This section provides that the Rules are made and given authority under the Act.

Section 4– Definitions

This section defines the following terms.

AAT Enterprise Agreement means the Administrative Appeals Tribunal Enterprise Agreement 2024-2027 approved under the *Fair Work Act 2009* on 19 January 2024, and in force immediately before the transition time.

Act means the *Administrative Review Tribunal (Consequential and Transitional Provisions No. 1) Act 2024*.

Jurisdictional area leader has the same meaning as in the new Act.

Principal Registrar has the same meaning as in the new Act.

Tribunal Advisory Committee has the same meaning as in the new Act.

The Note in this section provides for a number of expressions that are defined in Schedule 16 of the Act and have the same meaning for the purposes of the Rules, including the following:

- *AAT* means the Administrative Appeals Tribunal

- ***ART*** means the Administrative Review Tribunal
- ***IAA*** means the Immigration Assessment Authority
- ***New Act*** means the *Administrative Review Tribunal Act 2024*
- ***Old law*** means the law of the Commonwealth as in force from time to time before the transition time.
- ***Transition time*** means the time the new Act commences.

PART 2 – GENERAL TRANSITIONAL PROVISIONS

Section 5 – AAT Enterprise Agreement

The AAT Enterprise Agreement sets out the terms and conditions for employment for APS employees of the AAT. At the transition time, APS employees of the AAT will transfer to the Tribunal (see item 10 of Sch 16 to the Act). The AAT Enterprise Agreement came into operation in January 2024, with the intention that it would continue to apply in relation to the ART following the abolition of the AAT and the commencement of the ART.

This section of the Rules clarifies that the AAT Enterprise Agreement will continue to apply to APS employees who transfer to the ART, as well as any APS employees who join the Tribunal after the transition time. This gives APS employees of the ART certainty and clarity regarding terms and conditions of their employment. The intention of the provision is to ensure that the AAT Enterprise Agreement continues to apply in relation to the ART in the exactly the same way it applies in relation to the AAT.

Subsection (1) provides for the AAT Enterprise Agreement, as in force immediately before the transition time, to continue to cover and apply to APS employees of the ART. The AAT Enterprise Agreement would apply to APS employees who are transferring from the AAT to the ART, and APS employees whose employment in the ART commences at or after the transition time. It would also cover and apply to the Principal Registrar as the Agency Head (within the meaning of the *Public Service Act 1999* (Public Service Act)) of the APS employees in the ART. In addition, the AAT Enterprise Agreement would have effect as if a reference to the AAT were a reference to the ART, and a reference to the Registrar of the AAT were a reference to the Principal Registrar of the ART.

Paragraph (2)(a) clarifies that subsection (1) does not prevent the variation or termination of the AAT Enterprise Agreement in accordance with law.

Paragraph (2)(b) clarifies that subsection (1) does not prevent the terms and conditions of employment of APS employees in the ART from being varied in accordance with those terms and conditions or under a law. Paragraphs (2)(a) and (b) do not themselves enable (in the sense of 'positively authorise') the variation of staff members' terms and conditions or the AAT Enterprise Agreement. A variation would need to be made in accordance with an

existing legal mechanism. For example, the Principal Registrar, as the Agency Head, could make a determination in accordance with subsection 24(1) of the Public Service Act.

Paragraph (2)(c) clarifies that subsection (1) does not affect the operation of section 58 of the *Fair Work Act 2009*. The note under paragraph 5(2)(c) explains that section 58 of the *Fair Work Act 2009* deals with the interaction between one or more enterprise agreements.

Section 6 – Practice directions made shortly after the transition time

Subsection 36(1) of the ART Act enables the President to make practice directions for the Tribunal. Subsection 36(3) of the ART Act provides that, before making a practice direction, the President must consult the Committee. The Committee is established under section 236 and consists of the President, the Principal Registrar, the jurisdictional area leaders and other nominated members. Its functions include promoting the objective of the Tribunal, overseeing the caseload of the Tribunal, reviewing the Tribunal's performance, and overseeing trends and patterns across the jurisdictional areas.

The President may need to make practice directions very shortly after the commencement of the Tribunal, to ensure there is certainty and transparency in the way the Tribunal operates. It may not be possible for the President to consult the Committee shortly after the transition time, if the Committee does not meet or commence its operations immediately after the transition time. It would be highly undesirable to delay making the practice directions until consultation with the Committee can occur, as this would cause uncertainty for parties whose cases are being managed or heard by the Tribunal in the period immediately after transition.

This section of the Transitional Rules modifies the requirement for the President to consult with the Committee in relation to the making of practice directions. Subsection (1) provides that the section applies to any practice directions made within 28 days after the transition time. The effect of subsections (2) and (3) is that the President is not required to consult the Committee before making a practice direction during this period. Instead, the President is required to consult the Committee within 3 months of making the practice direction.

This section facilitates the smooth transition to the new Tribunal, by ensuring that the President can make practice directions very shortly after the transition time and provide

certainty to parties in the Tribunal during this period, while preserving the opportunity for the Committee's input to be considered shortly after the transition.

Section 7 – Lists established shortly after the transition time

Subsection 196(1) of the Act establishes 8 jurisdictional areas of the Tribunal. Jurisdictional areas are the overarching organisational structure of the Tribunal. Subsection 196(2) enables the President to create lists within jurisdictional areas. Lists may group similar types of decisions or matters together at the discretion of the President. Subsection 196(3) provides that the President must consult with the Committee before establishing a list.

The President may need to establish lists within jurisdictional areas very shortly after the commencement of the Tribunal, so that the Tribunal can operate in accordance with the President's intended structure as soon as possible after commencement. It may not be possible for the President to consult the Committee shortly after the transition time, if the Committee does not meet or commence its operations immediately after the transition time. It would be highly undesirable to delay the establishment of lists until consultation with the Committee can occur, as this would cause uncertainty for parties whose cases are being managed or heard by the Tribunal in this early period and inhibit the President's ability to assign members to lists.

This section of the Transitional Rules modifies the requirement for the President to consult with the Committee in relation to the establishment of lists. Subsection (1) provides that the section applies to any list established within 28 days after the transition time. The effect of subsections (2) and (3) is that the President is not required to consult the Committee before establishing a list during this period. Instead, the President is required to consult the Committee within 3 months of establishing the list

This section facilitates the smooth transition to the new Tribunal, by ensuring that effective Tribunal structural arrangements can be in place as soon as practicable from the Tribunal's commencement, while preserving the opportunity for the Committee's input to be considered shortly after transition time.

Section 8 – Assignment of jurisdictional area leaders shortly after the transition time

Subsection 197(1) of the ART Act provides that the Minister may, in consultation with the President, assign either the President or a Non-Judicial Deputy President appointed on a salaried basis to be a leader of one or more jurisdictional areas (that is, a jurisdictional area leader). Jurisdictional area leaders have leadership responsibilities in relation to their jurisdictional area (see the functions of jurisdictional area leaders under subsection 197(5) of the Act).

The Minister may need to assign jurisdictional area leaders very shortly after transition time, so that jurisdictional areas can operate smoothly and effectively from the Tribunal's commencement. Accordingly, subsection (1) and (2) have the effect that, for assignments made within 28 days after the transition time, the Minister is taken to meet the requirement to consult with the President of the ART if the Minister consulted the President of the AAT before the transition time. This ensures technical compliance with the consultation requirement, despite the office of the President of the ART not yet having commenced before the transition time. It does not substantively alter the consultation requirements, because the President of the AAT immediately before the transition time will become the President of the ART (see item 28 of Schedule 16 to the Act).

Section 9 – Time for making applications to the ART

Item 20 of Schedule 16 to the Act provides that, if the person was entitled to make an application to the AAT immediately before the transition time, the person can make the application to the ART after the transition time. Subitem (2) has the effect that a person may make an application to the ART as if the old law continued to apply in relation to the time for making the application, but otherwise in accordance with the new law. The 'old law' means the law of the Commonwealth as in force from time to time before the transition time. The 'new law' means the law of the Commonwealth as in force from time to time after the transition time.

Subitems 20(3), (4), (5) and (6) set out the manner in which the ART must deal with an application made under subitem 20(2). The starting point is that the ART must, as far as possible, deal with the application under the new law. However, this is subject to a

requirement that the Tribunal must deal with the application in a manner that it considers is fair and efficient.

This section provides that item 20 of Schedule 16 to the Act has effect as if that item were modified by substituting subitem 20(6) with a new subitem 20(6).

The new subsection 20(6)(a) replicates the effect of old subsection 20(6), by providing that, to avoid doubt, subitem 20(5) has effect subject to subitem 20(3).

The new subitem (6)(b) inserts a clarification about the interaction between paragraph 20(2)(a) and subitems (3) to (5) of item 20. It provides that, to avoid doubt, subitems 20(3) to (5) do not affect the operation of paragraph 20(2)(a). This does not change the intended operation of paragraph 20(2)(a). However, it makes it clear that the time limits under the old law continue to apply in relation to the making of applications under item 20. Subitems (3) to (5) do not affect this. If there is a difference between the old law and the new law in relation to the time period in which an application must be made, the ART does not have a discretion to apply the new law.

The effect of this is that if a person was able to apply to the AAT before transition time, they can apply to the ART after transition time, but the time limits in the old law apply. This ensures that the time limits in notices of decision issued before commencement are correct, providing certainty for applicants and the Tribunal.

PART 3 – IMMIGRATION ASSESSMENT AUTHORITY

Item 228 of Schedule 2 to the Act repeals Parts 7 and 7AA of the Migration Act. Part 7AA of the Migration Act provided for the review of fast track reviewable decisions at the IAA.

Items 34 to 37 within Division 1 of Part 8 of Schedule 16 to the Act provides for transitional arrangements relating to the repeal of Part 7AA.

This Part of the Rules provides for additional transitional arrangements relating to decisions of the IAA. These Rules are made for the purposes of 51(2) of Schedule 16 to the Act.

The Rules ensure that, if a person was entitled immediately before the transition time to appeal or make an application to a court after the transition time in relation to a decision of the IAA, the person may appeal or make the application after the transition time. Court

proceedings in progress at the transition time can continue after the transition time, and will not be affected by the transition. In both cases, the appeal or application can be made, and the court proceedings can occur, in the same way as it would have before the transition time. A court can remit the decision for reconsideration by the ART, instead of the IAA.

Section 10 – Appeals and applications to courts relating to IAA decisions

This section preserves a person’s entitlement to appeal or make an application to a court in relation to a decision of the IAA that was made before the transition time.

Subsections (2) and (3) have the effect that, if, immediately before the transition time, a person was entitled to appeal or make an application to a court in relation to a decision of the IAA, the person may appeal or make the application after the transition time. The ‘old law’ – defined in item 1 of Schedule 16 to the Act as the law of the Commonwealth as in force from time to time before the transition time – applies to the making of the appeal or application.

This means that the Migration Act, as in force before the transition time, would apply in relation to the appeal or application in the same way as it would have applied to the appeal or application before the transition time. For example, Part 8 (judicial review) and Part 8A (restrictions on court proceedings) of the Migration Act as in force before the transition time would continue to apply to the appeal or application. This includes provisions relating to time limits (sections 477, 477A and 486A), the persons who can make the application (section 478) and the jurisdiction of the courts.

Subsection (4) provides that, for the appeal or application, anything the court could have done in relation to the IAA before the transition time may be done in relation to the ART. This subsection relates to the court’s powers in relation to dealing with the making of the appeal or application itself, whereas subsection 10(3) is concerned with the court’s powers in resolving the matter.

Subsection (5) clarifies that a decision of the IAA made before the transition time continues after the transition time to be a decision of the IAA, despite the repeal of Part 7AA of the Migration Act by Schedule 2 to the Act. This makes it clear that the character of a decision of the IAA does not change after the transition time for the purposes of the making of an appeal or application to the court. This means, for example, that the decision of the IAA would

continue to be a ‘privative clause decision’ for the purposes of section 474(2) the Migration Act after the transition time, because it would continue to be ‘a decision of an administrative character made, proposed to be made, or required to be made, as the case may be, under’ the Migration Act. It also avoids doubt in relation to the law applying to the decision for the purposes of the application or appeal, which is the ‘old law’ applying to the decision under Part 7AA.

Section 11 – Court proceedings relating to IAA decisions

This section clarifies the court’s powers in proceedings relating to decisions of the IAA.

Subsection (2) provides that this section applies to a proceeding in a court that relates to a decision made by the IAA, that either:

- commenced before the transition time, but has not been finalised, or
- relates to an appeal or application made to the court after the transition time in accordance with section 9.

Subsection (3) makes it clear that anything the court could have done in relation to the IAA before the transition time may be done in relation to the ART. For example, if the court could have remitted a decision to the IAA for reconsideration, it will be able to remit the decision to the ART for reconsideration.

Section 12 – Remittals of IAA decisions to the ART

This section deals with the circumstance in which a court remits a decision of the IAA to the ART after the transition time, in accordance with section 10.

Section (2) provides that no fee is payable for the review of the ART of the decision. This preserves the existing arrangement that no fee is payable if a court remits a decision of the IAA to the IAA.

Section (3) provides that the proceeding for the review by the ART is taken to be a proceeding for review of a reviewable protection decision, within the meaning of the Migration Act, as in force at the time of the remittal. The term ‘reviewable protection decision’ is defined in section 338A of the Migration Act, as inserted by item 133 of

Schedule 2 to the Act. The law that the ART applies to the remittal of the decision is the law that is in force at the time of the remittal.

This has the effect that a remitted proceeding is to be treated in all respects as if it were a review of a reviewable protection decision under the new law. This is consistent with the arrangement under items 35, 36 and 37, within Division 1 of Part 8 of Schedule 16 to the Act whereby certain fast track applicants, fast track reviewable decisions and excluded fast track review applicants progress on the same pathway as other reviewable protection decisions to the ART.

PART 4 – REVIEW OF REVIEWABLE MIGRATION DECISION OR REVIEWABLE PROTECTION DECISION

Section 13 – Time for application to the ART for review of reviewable migration decision or reviewable protection decision

Sections 347 and 347A of the Migration Act, as inserted by item 136 of Schedule 2 to the Act, enable an application to be made to the ART for review of a reviewable migration decision or a reviewable protection decision. Paragraph 347(3)(a) provides that, if the applicant is in immigration detention on the day the applicant is notified of the decision, the application must be made within 7 days after the day the applicant is notified of the decision.

This section of the Rules modifies, for a period of 6 months starting at the transition time, the timeframe within which an application of this kind must be made.

Subsection (1) clarifies that this section is made for the purposes of subitem 51(2) of Schedule 16 to the Act. This section prescribes a matter of a transitional nature relating to amendments and repeals made by item 136 of Schedule 2 to the Act.

Subsection (2) provides that paragraph 347(3)(a) of the *Migration Act 1958*, as inserted by item 136 of Schedule 2 to the Act, applies as if the reference in that paragraph to 7 days were a reference to 7 working days. Subsection (3) provides that this section ceases to be in force at the end of the period of 6 months starting at the transition time.

This means that, during a period of 6 months starting at the transition time, the period within which an application to the ART for review of a reviewable migration decision or a reviewable protection decision is, if the applicant is in immigration detention on the day the

applicant is notified of the decision, 7 working days (rather than calendar days) after the day the applicant is notified of the decision.