



Administrative Review Tribunal (Consequential and Transitional Provisions No. 1) Rules 2024

I, Mark Dreyfus KC, Attorney-General, make the following rules.

Dated 10 October 2024

Mark Dreyfus KC
Attorney-General

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Part 1—Preliminary

1 Name

This instrument is the *Administrative Review Tribunal (Consequential and Transitional Provisions No. 1) Rules 2024*.

2 Commencement

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

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this instrument	The later of: (a) the start of the day after this instrument is registered; and (b) the time that item 51 of Schedule 16 to the <i>Administrative Review Tribunal (Consequential and Transitional Provisions No. 1) Act 2024</i> commences.	

Note: This table relates only to the provisions of this instrument as originally made.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

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

3 Authority

This instrument is made under the *Administrative Review Tribunal (Consequential and Transitional Provisions No. 1) Act 2024*.

4 Definitions

Note: A number of expressions used in this instrument are defined in Schedule 16 to the Act, including the following:

- (a) AAT;
- (b) ART;
- (c) IAA;
- (d) new Act;
- (e) old law;
- (f) transition time.

In this instrument:

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.

Part 2—General transitional provisions

5 AAT Enterprise Agreement

- (1) From the transition time, the AAT Enterprise Agreement:
 - (a) continues to cover and apply to APS employees who:
 - (i) it covered and applied to immediately before the transition time; and
 - (ii) at the transition time, are APS employees in the ART; and
 - (b) covers and applies to APS employees in the ART at the classification levels covered by the AAT Enterprise Agreement whose employment in the ART commences at or after the transition time; and
 - (c) covers and applies to the Principal Registrar as the Agency Head (within the meaning of the *Public Service Act 1999*) of the APS employees in the ART; and
 - (d) has effect in relation to the ART as if:
 - (i) a reference to the AAT were a reference to the ART; and
 - (ii) a reference to the Registrar of the AAT were a reference to the Principal Registrar.
- (2) Subsection (1) does not:
 - (a) prevent the variation or termination of the AAT Enterprise Agreement in accordance with law; or
 - (b) prevent the terms and conditions of employment of APS employees in the ART from being varied after the transition time:
 - (i) in accordance with those terms and conditions; or
 - (ii) by or under a law; or
 - (c) affect the operation of section 58 of the *Fair Work Act 2009*.

Note: Section 58 of the *Fair Work Act 2009* deals with the interaction between one or more enterprise agreements

6 Practice directions made shortly after the transition time

- (1) This section applies to a practice direction made under subsection 36(1) of the new Act within 28 days after the transition time.
- (2) Subsection 36(3) of the new Act does not apply to the making of the practice direction.
- (3) The President of ART must consult the Tribunal Advisory Committee within 3 months after making the practice direction.

7 Lists established shortly after the transition time

- (1) This section applies to a list established under paragraph 196(2)(a) of the new Act within 28 days after the transition time.
- (2) Subsection 196(3) of the new Act does not apply to the establishment of the list.
- (3) The President of the ART must consult the Tribunal Advisory Committee within 3 months after establishing the list.

8 Assignment of jurisdictional area leaders shortly after the transition time

- (1) This section applies to any assignment of a jurisdictional area leader made in the exercise of the power under subsection 197(1) of the new Act within 28 days after the transition time.
- (2) For the purposes of subsection 197(1) of the new Act, the Minister is taken to have consulted the President of the ART if the Minister consulted the President of the AAT in relation to the assignment before the transition time.

9 Time for making applications to ART

- (1) This section is made for the purposes of subitem 51(2) of Schedule 16 to the Act.
- (2) Item 20 of that Schedule has effect as if that item were modified by substituting subitem (6) with the following subitem:
- (6) To avoid doubt:
 - (a) subitem (5) has effect subject to subitem (3); and
 - (b) subitems (3) to (5) do not affect the operation of paragraph (2)(a).

Part 3—Immigration Assessment Authority

10 Appeals and applications to courts relating to IAA decisions

- (1) This section is made for the purposes of subitem 51(2) of Schedule 16 to the Act.
- (2) This section applies if, immediately before the transition time, a person is entitled to appeal or make an application to a court in relation to a decision of the IAA.
- (3) The person may appeal or make the application to the court after the transition time as if the old law continued to apply in relation to the making of the appeal or application.
- (4) For the purposes of 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.
- (5) To avoid doubt and for the purposes of the appeal or making the application, 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 1958* by Schedule 2 to the *Administrative Review Tribunal (Consequential and Transitional Provisions No. 1) Act 2024*.

11 Court proceedings relating to IAA decisions

- (1) This section is made for the purposes of subitem 51(2) of Schedule 16 to the Act.
- (2) This section applies to a proceeding in a court that:
 - (a) relates to a decision made by the IAA; and
 - (b) either:
 - (i) commenced, but is not finalised, before the transition time; or
 - (ii) relates to an appeal or application made to the court after the transition time in accordance with section 10 of this instrument.
- (3) Anything the court could have done in relation to the IAA before the transition time, including remitting the decision for reconsideration, may be done in relation to the ART.

Note: For remittals of an IAA decision to the ART, see section 12.

12 Remittals of IAA decisions to the ART

- (1) This section:
 - (a) is made for the purposes of subitem 51(2) of Schedule 16 to the Act; and
 - (b) applies if a court remits a decision of the IAA to the ART after the transition time in accordance with section 11 of this instrument.
- (2) No fee is payable for the review by the ART of the decision.
- (3) 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 1958* as in force at the time of the remittal) under Part 5 of that Act.

Part 4—Review of reviewable migration decision or reviewable protection decision

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

- (1) This section is made for the purposes of subitem 51(2) of Schedule 16 to the Act.
- (2) 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.
- (3) This section ceases to be in force at the end of the period of 6 months starting at the transition time.