

Handbook of ART Legal Procedure

Chapter 2: Conduct of a review

Current as at 28 August 2025

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2. CONDUCT OF THE REVIEW

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1. General powers of the Tribunal during the review

1.1 *De novo review*

The *Administrative Review Tribunal Act 2024* (Cth) (ART Act)¹ provides that for the purposes of reviewing a reviewable decision, the Tribunal may exercise all the powers and discretions that are conferred on the decision maker by an Act or an instrument made under an Act.²

According to the Revised Explanatory Memorandum to the ART Bill ('Revised EM'), s 54 allows the Tribunal to 'stand in the shoes' of the original decision-maker and when read in conjunction with s 105 it gives the Tribunal the power to make a decision accordingly.³ This is consistent with previous judicial authorities which were considering similar provisions in the now repealed *Administrative Appeals Tribunal Act 1975* (Cth) and on occasion described this as a Tribunal 'standing in the shoes' of the primary decision-maker.⁴

This is a core feature of *de novo* merits review - in contrast to judicial review, which concerns legal problems arising from a decision. A *de novo* review reconsiders and remakes the decision from the beginning. The Tribunal may consider all of the relevant evidence and circumstances (including the facts, laws and policy settings) to determine the correct or preferable decision.⁵

There are numerous judicial authorities holding that a merits review tribunal has no greater or different substantive powers than the primary decision-maker.⁶

1.2 *Case management powers and obligations*

Under s 9 of the ART Act, the Tribunal is required to pursue the objective of providing an independent mechanism of review that:

- (a) is fair and just; and
- (b) ensures that applications to the Tribunal are resolved as quickly, and with as little formality and expense as a proper consideration of the matters before the Tribunal permits; and

¹ All references to legislation in this chapter are to the *Administrative Review Tribunal Act 2024* (Cth) (No. 40, 2024) (ART Act) unless otherwise specified.

² s 54. This provision is equivalent to the chapeau paragraph in s 43(1) of the former *Administrative Appeals Tribunal Act 1975* (Cth) (Act No. 91, 1975) (AAT Act) (repealed by item 1, sch 17 to the *Administrative Review Tribunal (Consequential and Transitional Provisions No. 1) Act 2024* (Cth) (Act No. 38, 2024)).

³ Revised Explanatory Memorandum to the Administrative Review Tribunal Bill 2023 which became Act No.40 of 2024 ('Revised Explanatory Memorandum'), p 65.

⁴ *MIMA v VSAF of 2003* [2005] FCAFC 73 at [16]; *Re MIMA; Ex parte Miah* (2001) 206 CLR 57. See also *CCR16 v MIBP* [2017] FCCA 2790 at [46] where the Court, citing *SAAZ v Minister for Immigration* [2002] FCA 791, characterised a hearing before the former Administrative Appeals Tribunal (AAT) as a hearing *de novo* and the review which the Tribunal is to undertake is one involving its standing in the shoes of the delegate in considering afresh the visa application.

⁵ Revised EM, Act No.40 of 2024, p 65.

⁶ *Re Shortis and Secretary, Department of Community Services and Health* (1991) 13 AAR 544 at 548; *Re Uniway Pty Ltd and Chief Executive Officer of Customs* (1999) 29 AAR 289 at 295; *Re Western Australian International Education Marketing Group (Inc) and Australian Trade Commission* (2003) 77 ALD 192 at [46]; *Re Donald and ASIC* (2001) 64 ALD 717 at [28] and on appeal in the Full Court (2003) 77 ALD 449 at [30], [59]. While these judgments were considering the former AAT, the ART has also been established as a merits review Tribunal and the findings would equally apply to the ART.

- (c) is accessible and responsive to the diverse needs of parties to proceedings; and
- (d) improves the transparency and quality of government decision-making; and
- (e) promotes public trust and confidence in the Tribunal.⁷

The Tribunal as a whole is required to pursue these objectives, and it is intended that Members and staff consider these objectives as they discharge their functions.⁸ This would include the conduct and management of each individual review before the Tribunal.

Subject to the ART Act and rules, the Tribunal has discretion in terms of the procedure it adopts in a proceeding. In exercising this discretion, it must have regard to the circumstances of the proceeding.⁹ The Explanatory Memorandum explains that this discretion promotes flexibility in the way the Tribunal hears matters, so it can conduct proceedings in the most appropriate way for each matter before it, noting the diverse array of matters within its jurisdiction. For example, the Tribunal may determine that parties to a particular proceeding should be in separate rooms during case conferencing where an applicant has severe social anxiety and would be intimidated by the presence of a decision-maker.¹⁰

The Tribunal may also determine the scope of the review by limiting the questions of fact, the evidence and the issues that it considers.¹¹ This enables the Tribunal to decline a party's request to consider or make determinations of evidence or issues of law and fact which are not relevant. But it is not intended to allow the Tribunal to limit its own jurisdiction conferred by the ART Act or other legislation or to neglect to consider issues that are central to the decision under review.¹²

Further, subject to the ART Act and rules, the Tribunal must act with as little formality and technicality as a proper consideration of the matters before the Tribunal permits.¹³ Additionally, as far as practicable it must conduct each proceeding in a way that is accessible for the parties to the proceeding, taking into account the needs of the parties.¹⁴

'Accessible' is defined in the ART Act to mean 'enables persons to apply to the Tribunal and to participate effectively in proceedings in the Tribunal.'¹⁵ A note to this definition provides examples of areas where arrangements may be made in relation to accessibility as including: premises, facilities and technology; ease of locating and understanding information about the

⁷ While some of the objectives in s 9 reflect those in s 2A of the former AAT Act, s 9 clarifies the nature of 'accessibility', broadens the 'public confidence' objective and incorporates a new objective concerning government decision-making.

⁸ Revised Explanatory Memorandum, Act No.40 of 2024, p 35.

⁹ s 49. In terms of the Tribunal's procedure being within its discretion, this is equivalent to s 33(1)(a) of the former AAT Act. For reviews of decisions made under Part 5 of the Migration Act, Division 4 of Part 5 of the Migration Act prevails to the extent of any inconsistency with s 49: s 357A(2A)(a) of the Migration Act.

¹⁰ Revised Explanatory Memorandum, Act No.40 of 2024, p 63.

¹¹ s 53. This provision is equivalent to s 25(4A) of the former AAT Act. For reviews of decisions made under Part 5 of the Migration Act, Division 4 of Part 5 of the Migration Act prevails to the extent of any inconsistency with s 53: s 357A(2A)(c) of the Migration Act.

¹² Revised Explanatory Memorandum, Act No.40 of 2024, p 65.

¹³ s 50. This section is equivalent to s 33(1)(b) of the former AAT Act. For reviews of decisions made under Part 5 of the Migration Act, Division 4 of Part 5 of the Migration Act prevails to the extent of any inconsistency with s 50: s 357A(2A)(b) of the Migration Act.

¹⁴ s51. This provision nor any equivalent was in the AAT Act, so it is a new requirement for the Tribunal.

¹⁵ s 4. The term 'accessible' was not defined in the former AAT Act.

Tribunal and documents relating to proceedings; and adjustments that can reasonably be made to accommodate a person's needs, such as interpreter services for hearings.¹⁶

The Tribunal may, by order, give directions in relation to the procedure to be followed for a proceeding in the Tribunal.¹⁷ For more details, see the '[Orders](#)' section below.

2. Practice Directions

The ART Act gives the President the power to issue Practice Directions about a broad range of matters as follows:

- Tribunal operations;
- Tribunal procedure;
- the conduct of proceedings;
- the arrangement of Tribunal business;
- the places at which the Tribunal may sit;
- the use of technology to allow a person to participate remotely in a proceeding;
- giving information or producing or giving documents or things to the Tribunal for any purpose, or for the purposes of a Tribunal proceeding, including:
 - the form and manner in which information, documents or things may be produced or given; and
 - producing or giving additional copies of documents;
- dispute resolution processes;
- the sorting, prioritisation, allocation and treatment of applications for review and related matters;
- the accessibility of the Tribunal and the responsiveness of the Tribunal to the diverse needs of parties to proceedings; and
- any other matter that is required or permitted by the ART Act.¹⁸

¹⁶ Note to 'accessible' definition in s 4.

¹⁷ s 79(1).

¹⁸ s 36(1). While some elements of s 36(1) are equivalent to s 18B of the former AAT Act, matters relating to the use of technology, giving information and producing documents, dispute resolution processes, triaging and accessibility are new practice direction powers.

Practice Directions must be in writing¹⁹ and published,²⁰ but they are not legislative instruments²¹ and have no effect to the extent that they are inconsistent with the regulations or rules.²² A failure by the Tribunal to comply with practice directions does not affect the validity of anything done by the Tribunal.²³ If the Tribunal deals with a proceeding in a way that complies with the practice directions, the Tribunal is not required to take any other action in dealing with the proceeding.²⁴

The current Practice Directions are as follows:

- Common Procedures Practice Direction
- Child Support Practice Direction
- FOI Practice Direction
- Migration, Protection, Character Practice Direction
- Guidance and Appeals Panel Practice Direction
- Expert Evidence Practice Direction.

3. Rules

The Minister has the power to make rules prescribing matters either required or permitted by, or necessary or convenient to be prescribed for carrying out or giving effect to, the ART Act.²⁵ Before making rules affecting the practice, procedure or operations of the Tribunal, the Minister must consult the President.²⁶ The Tribunal may charge fees in accordance with the rules.²⁷ For more information on fees please see [Chapter 1: Starting a review](#).

4. Registrars

The ART Act provides that the President may, in certain circumstances, authorise registrars to perform or exercise a function or power of the Tribunal.²⁸

Registrars have the powers to perform functions of the Tribunal if:

¹⁹ s 36(2).

²⁰ s 36(7).

²¹ s 36(8).

²² s 36(4).

²³ s 36(5). This provision is equivalent to s 18B(2) of the former AAT Act.

²⁴ s 36(6). This provision is equivalent to s 18B(3) of the former AAT Act, which was presumably included to make it clear that the Tribunal does not have to issue formal orders or directions if it is applying a Practice Direction: as per L Holcombe, *Administrative Appeals Tribunal* (6th edition), LexisNexis, Sydney (online at November 2024) at [2.5].

²⁵ s 295(1).

²⁶ s 295(6).

²⁷ s 296.

²⁸ s 285. Under the former AAT Act the position of 'Registrar' is akin to that which is referred to as the 'Principal Registrar' in the ART Act. The powers of Registrars under the ART Act are specified in much greater detail than those of the 'Registrar' under s 24D of the former AAT Act.

- the President could authorise a staff member to perform or exercise the power under s 286,²⁹ namely:
 - giving written notice of the application to the applicant, primary decision-maker and any other person who is made a party to the proceeding;³⁰
 - giving written notice to existing parties if another person applies to become a party, the Tribunal is satisfied the person's interests are affected by the decision and the Tribunal considers it appropriate that the person becomes a party to the proceeding;³¹
 - giving written notice to the parties of a Tribunal case event;³²
 - giving written notice of an application to refer a Tribunal decision to the guidance and appeals panel (GAP) to the applicant, primary decision-maker and any other person who is made a party to the proceeding;³³
 - giving written notice to the agency head of an application in relation to an intelligence and security decision;³⁴ or
- the rules prescribe that a registrar may be authorised to perform or exercise the power; or
- the functions listed in the table in s 285.

The functions in the table in s 285 include but are not limited to: summoning a person to give evidence or produce documents,³⁵ management of proceedings,³⁶ the dispute resolution process,³⁷ dismiss an application where the parties consent, the decision is not reviewable or the fee is not paid within the time prescribed by the rules,³⁸ and taxing costs.³⁹

Unless otherwise specified, if the substantive hearing in a proceeding has commenced, the powers or functions of a registrar (as authorised by the President) can only be performed or exercised if the Tribunal as constituted also approves.⁴⁰

The power of a registrar to join a party to a proceeding, or remove a party who fails to appear at a Tribunal case event or comply with the ART Act or an order, must not be performed or exercised after the start of the hearing of the proceeding.⁴¹ Further, a

²⁹ These specific authorisations for staff did not exist in the equivalent provision (s 24P) of the former AAT Act.

³⁰ s 21(2).

³¹ s 22(3).

³² s 72. A 'Tribunal case event' is defined in s 4 as the hearing, or part of the hearing, of a proceeding; a directions hearing, or part of a directions hearing; or a dispute resolution process, or part of a dispute resolution process, under Subdiv C of Div 6 of Pt 4 in relation to the proceeding.

³³ s 126.

³⁴ s 139. 'Agency head' is defined in s 4 and depends on the nature of the decision involved.

³⁵ s 74.

³⁶ subdiv B of div 6 of pt 4.

³⁷ subdiv C of div 6 of pt 4.

³⁸ ss 96–98.

³⁹ s 115.

⁴⁰ s 281(1)(c).

⁴¹ s 285(2)(a).

registrar's functions or powers in relation to the following matters are restricted to circumstances where they relate to a decision agreed by the parties under s 103:⁴²

- exercise the powers and discretions that are conferred by a decision-maker by an Act or instrument (s 54);
- affirm, vary or set aside and substitute or remit the decision (s 105);
- order a stay of a decision or order that a decision comes into operation at a later time (ss 107 and 108);
- give each party the Tribunal's decision, statement of reasons and appeal/review rights (s 111).⁴³

The President's current authorisations for Registrars under the relevant provisions of the ART Act, the ART Rules and other enactments are set out in the *Administrative Review Tribunal (Authorised Persons) Instrument No.1 of 2024*.

5. Orders

The Tribunal may, by order, give directions in relation to the procedure to be followed for a proceeding in the Tribunal.⁴⁴ It can do so as part of a directions hearing.⁴⁵ A non-exhaustive list of what these orders may do is set out in the ART Act as follows:

- require a party to give information or documents to the Tribunal or another party;⁴⁶
- require a party to give a statement of matters or contentions on which the party intends to rely to the Tribunal or another party;
- limit the issues on which expert evidence may be given;
- limit the number of experts to report on an issue;
- require parties to the proceeding to appoint a single person to provide expert evidence;
- limit the number of persons to be called to give evidence;
- limit the number of persons to appear at a dispute resolution process;

⁴² Decisions made with the agreement of the parties under s 103 are not applicable to review applications made under Part 5 of the Migration Act: s 336P(2)(j) of the Migration Act.

⁴³ s 285(2)(b).

⁴⁴ s 79(1). For reviews of decisions made under Part 5 of the Migration Act, the Tribunal must give the direction to the applicant by one of the methods specified in s 379A of the Migration Act or by a method prescribed for the purposes of giving documents to a person in immigration detention: s 374(2) of the Migration Act.

⁴⁵ s 80.

⁴⁶ For Part 5 Migration Act reviews, the previous power for the Tribunal to obtain information in these types of reviews was under ss 359 and 424 of the Migration Act. Those sections were repealed by the *Administrative Review Tribunal (Consequential and Transitional Provisions No. 1) Act 2024* (Cth) (No.38, 2024): items 153 and 228 of sch 2, pt 1.

- require expert witnesses to give evidence at the same time;
- limit the time for giving evidence or making oral submissions;
- limit the length of written submissions;
- limit the ability of a party to the proceeding to give information or documents to the Tribunal and any other party within a period before the start of the hearing; and
- require the decision-maker to give to the Tribunal or another party a statement setting out the grounds the decision-maker considers supports their position in relation to the review.⁴⁷

Subject to the ART Act, the power for the Tribunal to make an order includes the power to revoke or vary an order it has made.⁴⁸ The ART Act does not set out a prescribed way in which the Tribunal may revoke or vary an order. As such, it does not appear necessary to issue a new order to revoke or vary the original order, as long as the effect of the revocation or variation is clearly communicated to the applicant.

If the applicant fails to comply with the ART Act or an order of the Tribunal within a reasonable time, the Tribunal may dismiss the application.⁴⁹ The Tribunal may also dismiss an application if the applicant fails to proceed with the application within a reasonable time.⁵⁰ For more information on the power to dismiss for failure to proceed with the application, or comply with the Act or an order of the Tribunal, see Chapter 4.

6. Inviting the applicant to a hearing

6.1 When must parties be invited to a hearing

Although there is no express reference in the ART Act to the obligation to invite the party or parties to a hearing, taking s 55(1)(a), the requirement that the Tribunal ensure each party to a proceeding is given a reasonable opportunity to present their case, together with s 106⁵¹ which provides for the circumstances in which the Tribunal may make a decision without a hearing, it is implied. The circumstances in which a hearing is not required as set out in s 106 are:

- Where all of the parties consent to the proceeding being determined without the hearing of the proceeding, and it appears to the Tribunal that the issues for determination in the proceeding can be adequately determined in the absence of the parties to the proceeding;⁵²

⁴⁷ s 79(2)–(4). The power to give directions is similar to that in s 33(2A) of the former AAT Act, with one change being the inclusion of additional examples of directions that the Tribunal can make.

⁴⁸ s 86.

⁴⁹ s 100(b).

⁵⁰ s 100(a).

⁵¹ This provision is partly equivalent to s 34J of the former AAT Act, however it also extends the operation of that provision by providing an additional three sets of circumstances where the Tribunal may decide a matter without holding a hearing.

⁵² s 106(2).

- In cases where the only parties are the applicant and a non-participating party - where the decision is wholly in favour of the applicant, or the applicant requests the Tribunal make its decision without holding a hearing, and it appears to the Tribunal that the issues for determination in the proceeding can be adequately determined in the absence of the parties to the proceeding;⁵³
- Where a party fails to comply with the ART Act or an order of the Tribunal within a reasonable time, and it appears to the Tribunal that the issues for determination in the proceeding can be adequately determined in the absence of the parties to the proceeding;⁵⁴ or
- Where a party (other than a non-participating party) fails to appear at a Tribunal case event, and the Tribunal is satisfied the party received appropriate notice of the date, time and place of the case event, and it appears to the Tribunal that the issues for determination in the proceeding can be adequately determined in the absence of the parties to the proceeding.⁵⁵

For more information on decisions without hearings, see Chapter 4.

6.2 Hearing obligations

As part of the hearing obligation, the Tribunal must ensure that each party is given a reasonable opportunity to: present their case; access any information or documents to which the Tribunal proposes to have regard in reaching a decision in the proceeding⁵⁶; and make submissions and adduce evidence.⁵⁷ However, this does not apply to a non-participating party, or a party that is not participating in a Tribunal case event.⁵⁸

These general procedural fairness requirements are also subject to other provisions that restrict a party's or the public's access to hearings, information or documents. These include that hearings should generally be in public unless a Tribunal order or practice directions states otherwise (s 69), that the Tribunal may restrict the publication or disclosure of information in certain circumstances (s 70), restrictions on inspection of documents produced under summons (s 78), the operation of public interest certificates (s 91), and proceedings in the Intelligence and Security jurisdictional area (Part 6).⁵⁹ According to the Explanatory Memorandum, this reflects the fact that there are some circumstances where the operation of the principle of procedural fairness needs to take into account the circumstances of the parties or any persons connected to the proceeding and the related need to keep information confidential, such as for personal safety or national security reasons.⁶⁰

⁵³ s 106(3).

⁵⁴ s 106(4).

⁵⁵ s 106(5).

⁵⁶ This particular right does not apply in relation to a review of decision made under Part 5 of the Migration Act: s 357A(2B) of the Migration Act.

⁵⁷ s 55(1). This provision is similar to s 39(1) of the former AAT Act, with some changes so that under s 55(1), each party is given the opportunity to make submissions and adduce evidence rather than only make submissions in relation to documents that the Tribunal will have regard to in reaching a decision. For reviews of decisions made under Part 5 of the Migration Act, Division 4 of Part 5 of the Migration Act prevails to the extent of any inconsistency with s 55: s 357A(2A)(d) of the Migration Act.

⁵⁸ ss 55(2)-(3).

⁵⁹ s 55(3).

⁶⁰ Revised Explanatory Memorandum, p 67.

6.3 Public and private hearings

The hearing of the following proceedings must be held in private:

- the review of a reviewable protection decision under Part 5 of the Migration Act;⁶¹
- a proceeding in relation to an intelligence and security decision;⁶²
- first reviews of decisions made under the *Social Security (Administration) Act 1999* (Cth);⁶³
- reviews of decisions made under the *A New Tax System (Family Assistance) (Administration) Act 1999* (Cth);⁶⁴
- reviews of decisions made under the *Child Support (Registration and Collection) Act 1988* (Cth);⁶⁵
- reviews of paid parental leave decisions made under the *Paid Parental Leave Act 2010* (Cth);⁶⁶
- reviews of decisions made under the *Student Assistance Act 1973* (Cth);⁶⁷ and
- review of a taxation decision where a party has requested that a hearing be in private under s 14ZZE of the *Taxation Administration Act 1953* (Cth).

Otherwise, hearings must be in public unless the practice directions or the Tribunal orders otherwise.⁶⁸ In considering whether to make such an order, the Tribunal must have regard to the following:

- the principle that it is desirable that hearings of proceedings in the Tribunal are held in public;
- the principle that it is desirable that evidence given before the Tribunal is made available to the public;
- the principle that it is desirable that evidence given before the Tribunal and the contents of documents given to the Tribunal are made available to all the parties to the proceeding;

⁶¹ s 367B of the Migration Act.

⁶² s 148(3). This does not apply in relation to a proceeding in relation to an 'exempt security record decision', as that term is defined in s 4.

⁶³ s 168 of the *Social Security (Administration) Act 1999* (Cth). This does not apply where the Tribunal is constituted as the Guidance and Appeals Panel (GAP).

⁶⁴ s 121 of the *A New Tax System (Family Assistance) (Administration) Act 1999* (Cth). This does not apply where the Tribunal is constituted as the GAP.

⁶⁵ s 95K of the *Child Support (Registration and Collection) Act 1988* (Cth). This does not apply where the Tribunal is constituted as the GAP.

⁶⁶ s 232 of the *Paid Parental Leave Act 2010* (Cth). This does not apply where the Tribunal is constituted as the GAP.

⁶⁷ s 315A of the *Student Assistance Act 1973* (Cth). This does not apply where the Tribunal is constituted as the GAP.

⁶⁸ s 69. This provision is similar to ss 35(1) and (2) of the former AAT Act, although s 69 also provides that the practice directions may prescribe when a hearing must be in private.

- any reasons in favour of making an order, including:
 - the circumstances of the parties to the proceeding and other persons connected to the proceeding;
 - the harm (if any) that is likely to occur to a person if the order is not made; and
- any other matters that the Tribunal considers relevant.⁶⁹

The Tribunal must give written notice to the parties (apart from any non-participating parties) of the date, time and place of any Tribunal case event, including a hearing.⁷⁰ Parties may appear in person or through a representative, unless the Tribunal orders a party to appear personally.⁷¹

If the Tribunal is satisfied that a party received appropriate notice of the date, time and place of a Tribunal case event, and the party fails to appear, the Tribunal may:

- proceed with a case event in the absence of that party;⁷²
- order that the party ceases to be a party to the proceeding (unless the party is the applicant or a non-participating party);⁷³ or
- dismiss the application if the party is the applicant.⁷⁴

If the Tribunal removes a party for failing to appear, the Tribunal may order them to be reinstated as a party on application by the party or on their own initiative.⁷⁵ The Explanatory Memorandum provides an example of a party repeatedly failing to appear at Tribunal case events and the Tribunal removing them from the proceeding, but later reinstating them after it becomes apparent that the party was unable to attend because of a serious illness.⁷⁶

According to the Explanatory Memorandum, the power to dismiss an application under s 99 ought to be exercised sparingly, having regard to the Tribunal's obligation to ensure that parties have an opportunity to present their case. Its purpose is to promote applicants' attendance at Tribunal case events and provides a mechanism to dismiss applications if the applicant is not engaging with the process.⁷⁷ For more information on dismissal for failure to appear, see Chapter 4.

⁶⁹ s 71(2). This provision is similar to s 35(5) of the former AAT Act, with some additional matters specified as requiring consideration regarding the circumstances of the parties and other persons connected to the proceeding, the harm that is likely to occur and the confidential nature of the information.

⁷⁰ s 72. There is no equivalent provision to this in the former AAT Act. For reviews of decisions made under Part 5 of the Migration Act, the Tribunal must give the notice to the applicant by one of the methods specified in s 379A of the Migration Act or by a method prescribed for the purposes of giving documents to a person in immigration detention: s 374(1) of the Migration Act.

⁷¹ s 73.

⁷² s 81. This provision is equivalent to s 40(1)(b) of the former AAT Act.

⁷³ s 83(1)-(2). There is no equivalent provision to this in the former AAT Act.

⁷⁴ s 99. This provision is equivalent to s 42A(2) of the former AAT Act.

⁷⁵ s 83(5).

⁷⁶ Revised Explanatory Memorandum, Act No.40 of 2024, p 85.

⁷⁷ Revised Explanatory Memorandum, Act No.40 of 2024, p 94.

7. Adjournments

The Tribunal may adjourn a case event from time to time.⁷⁸ A case event may need to be adjourned or rescheduled due to a request by a party or because the Tribunal is unable to proceed for a variety of reasons. The granting of an adjournment is a discretionary power, but one which must be exercised reasonably and by reference to the facts and circumstances of the individual case. A failure to grant an adjournment in circumstances that will result in the applicant not receiving a fair hearing will lead to the setting aside of its decision.⁷⁹

The Common Procedures Practice Direction includes specific directions about how requests for adjournments should be made and the circumstances in which they may or may not be granted.

8. Giving and Receiving Documents

A document or thing that is required or permitted by the ART Act or any other law to be produced or given to the Tribunal, or to a person for the purposes of a Tribunal proceeding, must be produced or given in accordance with any requirements in the practice directions and the rules.⁸⁰

The Common Procedures Practice Direction includes specific directions about how documents or things are to be given to the Tribunal.

9. Summons

If the Tribunal has reasonable grounds to believe that a person has information, or a document or thing, relevant to a Tribunal proceeding, the Tribunal may, in writing, summon the person to appear before the Tribunal to give evidence and/or to produce any document or thing on the day, time and place specified in the summons.⁸¹ The day specified must be at least 14 days after the day the summons is given to the person, unless the person being summoned consents to a shorter period.⁸² The Tribunal can issue a summons at the request of a party or on its own initiative.⁸³ If a person complies with a summons to produce a document or thing early, the person is not required to appear before the Tribunal unless the summons or another summons requires them to, or the Tribunal orders them to appear.⁸⁴

The methods of service of a summons are contained in s 28A of the *Acts Interpretation Act 1901* (Cth).

⁷⁸ s 82. This provision is equivalent to s 40(1)(c) of the former AAT Act.

⁷⁹ *SBLF v MIAC* [2008] FCA 1219; *Khalil v MHA* [2019] FCAFC 151 at [31]–[34]: as per L Holcombe, *Administrative Appeals Tribunal* (6th edition), LexisNexis, Sydney (online at November 2024) at [13.56].

⁸⁰ s 290. This provision is substantially equivalent to s 68 of the former AAT Act.

⁸¹ s 74(1). This provision is equivalent to s 40A(1) of the former AAT Act.

⁸² s 74(2). There is no equivalent provision to this in the former AAT Act.

⁸³ s 74(3). There is no equivalent provision to this in the former AAT Act.

⁸⁴ s 74(5)–(6). These provisions are equivalent to s 40A(3) of the former AAT Act.

A person required by the ART Act or under another law to give information, or produce or give a document or thing to the Tribunal is to be paid any fees and allowances for expenses prescribed by the rules.⁸⁵ A person who fails to comply with a summons commits an offence unless it is not reasonably practicable for them to comply.⁸⁶ A person is not excused from complying with a summons only because they think that the amount paid to them is not sufficient.⁸⁷

A party may inspect or take a copy of a document or a thing produced under summons in the circumstances permitted by a practice direction or as permitted by the Tribunal, unless:

- there is a public interest certificate issued under s 91 that relates to disclosure of the document or thing;
- disclosure is prohibited or restricted by the ART Act or another Act or instrument; or
- a party objects.⁸⁸

If a party objects, the objection must be in writing or a method specified in a practice direction and must contain reasons for the objection. The Tribunal must then decide whether the document or thing can be inspected or copied.⁸⁹

As is apparent from the terms of s 74(1), the key elements of the test for issuing a summons are that there are *reasonable grounds to believe* that a person has information, a documents or thing that is *relevant* to a Tribunal proceeding. The Federal Court has explained (in the context of the former AAT's summons power) that '[a] party seeking to inspect documents does not need to establish, on the basis of probabilities, that the documents will establish anything...Rather, the test is whether the documents relate to the proceedings such that there is a real possibility that they may assist in the resolution of issues in the proceedings.'⁹⁰

The former AAT has also explained that in terms of relevance, 'all that need be established is that the material sought could reasonably be expected to throw light on some of the issues in the principal proceedings. It is not enough if their relevance can only be speculated upon.' Further, as part of the exercise of the discretion to issue a summons, 'regard must also be had to the burden placed upon the person from whom the books, documents or things are sought and that must be weighed against the public interest in the administration of justice that requires all material relevant to the issues to be available to the parties and to the [tribunal].'⁹¹

⁸⁵ s 77(1). This provision is substantially equivalent to s 67 of the former AAT Act.

⁸⁶ s 116. This provision is equivalent to s 61(1) of the former AAT Act. The penalty is specified as imprisonment for 6 months or 30 penalty units, or both (which is less than the penalty under the former AAT Act).

⁸⁷ Note 2 to s 74.

⁸⁸ s 78(1)–(4). There is no equivalent provision to this in the former AAT Act.

⁸⁹ s 78(5)–(6). There is no equivalent provision to this in the former AAT Act.

⁹⁰ *Comcare v Maganga* (2008) 101 ALD 68; [2008] FCA 285 at [37].

⁹¹ *Re Marnotta Pty Ltd and Secretary, Department of Health and Ageing* [2004] AATA 800 at [42].

10. Evidence

The Tribunal is not bound by the rules of evidence, but may inform itself on any matter in such manner as it considers appropriate.⁹² According to the Explanatory Memorandum, while the Tribunal is not bound by the rules of evidence, it may have regard to those rules where it is appropriate. The rules of evidence are well-established and understood, and can provide a useful point of reference in determining how information before the Tribunal can be treated.⁹³

The Tribunal may take evidence, including on oath or by affirmation, inside or outside of Australia.⁹⁴ At a hearing or directions hearing, the Tribunal may require a person appearing to give evidence to take an oath or make an affirmation that the evidence the person will give will be true. A member or staff member may administer an oath or affirmation.⁹⁵ Further, if a person takes an oath or affirmation, they can tender evidence in the form of a written statement, and verify that statement by oath or affirmation.⁹⁶

A person might commit an offence if the person knowingly gives false or misleading evidence in a material particular or omits a matter or thing, without which the evidence is misleading in a material particular.⁹⁷

A person required by the ART Act or under another law to give information, such as a witness, is to be paid any fees and allowances for expenses prescribed by the rules.⁹⁸

11. Death, bankruptcy, liquidation, administration and winding up

If an individual applicant dies or becomes bankrupt, or a corporate applicant is wound up or ceases to exist, or becomes subject to any form of liquidation or administration, and the Tribunal considers that the applicant cannot continue with the substantive application, certain persons may apply to continue with the substantive application. The persons specified are a legal personal representative, executor, administrator, liquidator or trustee of the applicant for the substantive application, or a person whose interests are affected by the decision. If such an application is made, the Tribunal may give such orders that appear to be appropriate in the circumstances, either on request or on its own initiative.⁹⁹ This may be an order that the application should continue, with the person who has requested continuation being substituted as the applicant, and any other orders as are necessary to progress the matter.¹⁰⁰

If the Tribunal considers there is no relevant person who can continue with the substantive application, or no application to continue with the substantive application is made within three

⁹² s 52. This provision is equivalent to s 33(1)(c) of the former AAT Act.

⁹³ Revised Explanatory Memorandum, Act No.40 of 2024, p 65.

⁹⁴ s 75. This provision is equivalent to ss 40(1)(a) and 40(4)(a) of the former AAT Act.

⁹⁵ s 76(1)–(2). These provisions are equivalent to ss 40(2) and (3) of the former AAT Act.

⁹⁶ s 76(3). There is no equivalent provision to this in the former AAT Act.

⁹⁷ s 118. The penalty is specified as imprisonment for 12 months or 60 penalty units, or both.

⁹⁸ s 77(1). This provision is substantially equivalent to s 67 of the former AAT Act.

⁹⁹ s 84(1)–(3). There is no equivalent provision to s 84 generally in the former AAT Act.

¹⁰⁰ Revised Explanatory Memorandum, Act No.40 of 2024, p 85.

months after the Tribunal becomes aware of the death, bankruptcy, liquidation etc, then the Tribunal may dismiss the substantive application.¹⁰¹

12. Withdrawals

An applicant can withdraw their application at any time by giving written notice to the Tribunal or notifying the Tribunal in any other manner specified in practice directions.¹⁰²

There are currently no practice directions for the purpose of s 95(1)(b). Accordingly, the applicant can only withdraw their application by giving written notice to the Tribunal. There are no statutory or prescribed forms for this purpose; however the written withdrawal would need to provide sufficient information to identify the relevant application, the person withdrawing and their authority to do so if they are not the applicant (for example a representative).

If an applicant validly withdraws their application, the Tribunal is taken to have dismissed the application.¹⁰³ For more information on withdrawals, see Chapter 4.

13. Parties and their representatives

13.1 Parties and their obligations

Subject to some exceptions, if an application for review is made, the Tribunal must give written notice of the application to the applicant, (primary) decision-maker¹⁰⁴ and any other person who is made a party by an Act or instrument.¹⁰⁵ If the Tribunal considers that another person's interests may be affected by the decision, the Tribunal may give to that person, or require the applicant to give to that person, written notice of the application and the person's right to apply to become a party to the proceeding.¹⁰⁶

The following are parties to a proceeding:

- (a) the applicant;
- (b) the decision-maker;

¹⁰¹ s 84(4).

¹⁰² s 95(1). This provision is equivalent to ss 42A(1A), (1AA) and (1B) of the former AAT Act.

¹⁰³ s 95(2).

¹⁰⁴ 'Decision maker' is defined in s 14. It provides for circumstances in which the decision maker has ceased to hold or occupy the relevant office, appointment or position, and also clarifies that a decision made by a delegate is taken to be made by the person or body the power is conferred on by an Act or instrument.

¹⁰⁵ ss 21(1) and (2). For reviews of a reviewable migration decision or a reviewable protection decision under Part 5 of the Migration Act, the requirements to give written notice to the decision-maker and other persons who are made a party do not apply: ss 336P(2)(a)–(b) of the Migration Act. For character related reviews under ss 501 and 501CA of the Migration Act, these requirements also do not apply, and instead the Tribunal must give written notice of the application to the applicant and the Secretary of the Department: s 500(6D) of the Migration Act. For reviews of intelligence and security decisions, in addition to these requirements the agency head must also be notified of an application, who must then in turn notify each relevant body: s 139. Section 21 is equivalent to s 29AC of the former AAT Act.

¹⁰⁶ ss 21(1) and (3). This requirement does not apply for reviews of a reviewable migration decision or a reviewable protection decision under Part 5 of the Migration Act: s 336P(2)(c) of the Migration Act. For character related reviews under ss 501 and 501CA of the Migration Act, this requirement does not apply, and instead the Tribunal must give written notice of the application to the applicant and the Secretary of the Department: s 500(6D) of the Migration Act. Section 21 is equivalent to s 29AC of the former AAT Act.

(c) any other person who applies to the Tribunal to become a party, where the Tribunal is satisfied their interests are affected by the decision and considers it appropriate that they become a party. If such a person becomes a party, the Tribunal must give written notice of this to the other parties;¹⁰⁷ and

(d) any other person who is automatically deemed to be a party under other legislation.¹⁰⁸

In a proceeding for review of a decision, the (primary) decision-maker, any person representing the decision-maker, and any other party,¹⁰⁹ must use their best endeavours to assist the Tribunal to achieve the Tribunal's objective in s 9. The decision-maker and any person representing the decision maker must also assist the Tribunal to make the correct or preferable decision.¹¹⁰

The Attorney General of the Commonwealth may become a party to a proceeding by providing written notice to the Tribunal, and may also cease to be a party by giving written notice.¹¹¹

13.2 *Non-participating parties*

A primary decision maker may give a written 'election notice' to the Tribunal that they do not wish to participate in a kind of Tribunal proceeding or case event (other than a directions hearing),¹¹² unless the proceeding or case event is prescribed by the rules. If such an election is given, that decision maker is a 'non-participating party' to the proceeding or case event if the proceeding is not a GAP proceeding, any conditions prescribed by the rules are satisfied, and the Tribunal has not decided (under s 62) or ordered (under s 63) that the person is to participate in the proceeding or case event.¹¹³

The Minister who administers the Migration Act is taken to be a non-participating party to a proceeding for review of a reviewable migration decision or a reviewable protection decision under Part 5 of the ART Act.¹¹⁴ Likewise, for reviews of decisions of Services Australia and the Child Support Registrar under social services legislation (with the exception of a second review), the decision-maker is taken to have given an election notice that they will not be a participant.¹¹⁵

Under s 62, if a non-participating party gives the Tribunal a written 'participation notice', the Tribunal must decide whether or not the party is to participate in the proceeding or case

¹⁰⁷ s 22. This provision is equivalent to s 30 of the former AAT Act. A person cannot apply to become a party to the proceeding for review of a reviewable migration decision or a reviewable protection decision under Part 5 of the Migration Act: s 348A(2) of the Migration Act.

¹⁰⁸ See for example s 95D of the *Child Support (Registration and Collection) Act 1988* (Cth).

¹⁰⁹ The obligation for non-participating parties (and their representatives) is limited to action the party is required to take under the ART Act or the Tribunal in relation to the proceeding: s 56(3).

¹¹⁰ s 56. This provision is similar to ss 33(1AA) and (1AB) of the former AAT Act, but now includes reference to the 'correct or preferable decision'.

¹¹¹ s 59. This provision is equivalent to s 30A of the former AAT Act.

¹¹² s 60. This provision does not apply in relation to a proceeding for review of an intelligence and security decision: s 147. It has no equivalent provision in the former AAT Act.

¹¹³ s 61. There is no equivalent provision in the former AAT Act.

¹¹⁴ s 348A(1) of the Migration Act.

¹¹⁵ s 111C of the *A New Tax System (Family Assistance) (Administration) Act 1999* (Cth); s 94 of the *Child Support (Registration and Collection) Act 1988* (Cth); s 224B of the *Paid Parental Leave Act 2010* (Cth); s 142B of the *Social Security (Administration) Act 1999* (Cth); and s 311B of the *Student Assistance Act 1973* (Cth).

event.¹¹⁶ Under s 63, a non-participating party may give written submissions in relation to the proceeding or a case event. Further, if the Tribunal considers it would assist in progressing the proceeding or in making the correct or preferable decision, it may order a non-participating party to appear at a case event, give written submissions in relation to the proceeding or a case event, or participate in the proceeding.¹¹⁷ The rules may also provide for or in relation to elections in relation to participation.¹¹⁸

However, in relation to a proceeding for review of a decision under Part 5 of the Migration Act, the Minister cannot give a 'participation notice' to the Tribunal under s 62 and cannot give written submissions under s 63(1).¹¹⁹

13.3 Representatives

A party to a Tribunal proceeding may choose another person to represent them.¹²⁰ A person required or permitted to appear before the Tribunal may also choose another person to represent them with the permission of the Tribunal.¹²¹ However, the Tribunal may order that a person is not to be represented if the representative has a conflict of interest, is not acting in the best interests of the person, representation presents a safety risk to any person, representation presents an unacceptable privacy risk to any person, or the representative is otherwise impeding the Tribunal.¹²² A party can choose another representative, as can a person required to appear before the Tribunal, with the Tribunal's permission.¹²³

In a review of a reviewable migration or protection decision under Part 5 of the Migration Act, a representative is not entitled to examine or cross-examine any person appearing before the Tribunal to give evidence.¹²⁴

The power of the Tribunal to remove a representative is intended to balance the potential benefit to parties of having representation with the need to set reasonable limits where the representative is not assisting the Tribunal, particularly in circumstances where the representative is not subject to any separate professional standards. The Tribunal may use this power to remove a representative, for example, in a child support matter where a representative is a new partner of the party, and they present a privacy or safety risk to the other party.¹²⁵

¹¹⁶ If an election notice has been given, it continues to apply to other proceedings or case events of the kind not covered by the participation notice: see Notes to ss 62(1) and 62(1A). There is no equivalent provision to s 62 in the former AAT Act.

¹¹⁷ s 63. This provision is similar to s 39AA of the former AAT Act, except that it applies to any non-participating party. An order under s 63(2) can only be made by the President or a Deputy President in relation to such a proceeding: s 348A(4) of the Migration Act.

¹¹⁸ s 64. However, any such rules made do not apply in relation to a proceeding for review of a decision made under Part 5 of the Migration Act: s 348A(5) of the Migration Act.

¹¹⁹ s 348A(3) of the Migration Act.

¹²⁰ s 66(1). This provision is equivalent to s 32(1) of the former AAT Act, with some changes to allow for representation in entire proceedings rather than just at a hearing.

¹²¹ s 66(2). This provision is equivalent to s 32(4) of the former AAT Act.

¹²² s 66(3). There is no equivalent provision to this in the former AAT Act.

¹²³ Note to s 66.

¹²⁴ s 366D of the Migration Act.

¹²⁵ Revised Explanatory Memorandum, p 75.

A Member of the Tribunal or a person who ceased to be a Member of the Tribunal in the previous 12 months (or a longer period prescribed by a State or Territory law) cannot appear as a representative without the permission of the President.¹²⁶

For reviews under the Migration Act, there are also restrictions on providing ‘immigration assistance’, which includes representing a visa applicant or cancellation review applicant in proceedings before the Tribunal in relation to the visa application or cancellation review application.¹²⁷

13.4 *Litigation supporters*

The Tribunal may appoint a ‘litigation supporter’ for a party to a proceeding in the Tribunal if it considers that the party does not have decision-making ability, and the appointment is necessary, taking into account the availability and suitability of other measures that would allow the party to participate in the proceeding.¹²⁸ In considering whether to make such an order it is to be presumed that a party to a proceeding has decision-making ability, and this presumption is not rebutted solely on the basis that a party has a disability.¹²⁹ According to the Explanatory Memorandum, decision-making ability refers to the ability of a person to make a particular decision with the provision of relevant and appropriate support at a time when the decision needs to be made.¹³⁰

The Tribunal must also consider the party’s will and preferences, or likely will and preferences, in relation to whether the Tribunal should appoint a person to be a litigation supporter, and who it should appoint. If the party’s will and preference, or likely will and preferences, cannot be ascertained, the Tribunal must consider the personal and social wellbeing of the party.¹³¹ The Explanatory Memorandum indicates that a litigation supporter should only be appointed by the Tribunal where a party does not have any other options available to them for participating in the proceeding, including through the provision of other supports.¹³²

The Tribunal may appoint a person to be a litigation supporter for a party if the person is at least 18, has no conflict of interest in representing the party, consents to the appointment, the Tribunal considers that they are able to fulfil the duties of a litigation supporter (set out below), and any conditions prescribed by the rules are satisfied.¹³³ A person can be appointed as litigation supporter whether or not the party has a guardian or representative appointed under a different law.¹³⁴

If a party to a proceeding in the Tribunal has a litigation supporter, the party may participate in the proceeding either with the support of the litigation supporter wherever possible or otherwise by the litigation supporter. Further, the litigation supporter must do anything required

¹²⁶ s 217. There is no equivalent provision to this in the former AAT Act.

¹²⁷ ss 276 and 280 of the Migration Act.

¹²⁸ s 67(1). The former AAT Act did not provide for the appointment of a litigation supporter.

¹²⁹ s 67(1A)–(1B).

¹³⁰ Revised Explanatory Memorandum, Act No.40 of 2024, p 75.

¹³¹ s 67(2).

¹³² Revised Explanatory Memorandum, Act No.40 of 2024, p 75.

¹³³ s 67(3).

¹³⁴ s 67(4).

to be done, and may do anything permitted to be done, by the party in relation to the proceeding by an Act or an instrument.¹³⁵

In terms of duties, a litigation supporter must give effect to the party's will and preferences, or likely will and preferences, in relation to the proceeding. However, if doing so would pose a serious risk to the party's personal and social wellbeing, or the party's will and preferences (or likely will and preferences) cannot be ascertained, they must instead act in a manner that promotes the party's personal and social wellbeing.¹³⁶ According to the Explanatory Memorandum, the goal of these duties is to preserve the party's autonomy to the greatest extent possible and ensuring the litigation supporter is acting in the party's best interests.¹³⁷

A litigation supporter may resign by giving the Tribunal a written resignation.¹³⁸ The Tribunal may also remove a party's litigation supporter by order if:

- (a) the party requests a different person be appointed; or
- (b) the Tribunal considers that the party has decision-making ability; or
- (c) the Tribunal considers that the litigation supporter has a conflict of interest in representing the party, the litigation supporter has not complied with their statutory duties (outlined above), representation of the party by the litigation supporter presents a safety risk or unacceptable privacy risk to any person, or the litigation supporter is otherwise impeding the Tribunal.¹³⁹

The rules may also provide for matters relating to litigation supporters, including costs and the service of documents.¹⁴⁰

13.5 Interpreters

A person appearing at a case event may request the Tribunal to appoint an interpreter. The Tribunal must comply with such a request unless the Tribunal considers that the person does not require an interpreter for the purposes of communication with the Tribunal, or understanding evidence and submissions given to the Tribunal.¹⁴¹

In the absence of a request, the Tribunal must, on its own initiative, appoint an interpreter for the purposes of communication between the person and the Tribunal if the Tribunal considers that a person appearing at a case event requires an interpreter for the purposes of communication with the Tribunal, or understanding evidence and submissions given to the Tribunal.¹⁴²

¹³⁵ s 67(5).

¹³⁶ ss 67(7)–(8).

¹³⁷ Revised Explanatory Memorandum, Act No.40 of 2024, p 76.

¹³⁸ s 67(9).

¹³⁹ s 67(10).

¹⁴⁰ ss 67(11)–(12).

¹⁴¹ ss 68(1)–(2). The interpreter provision is equivalent to s 366C of the Migration Act however it now applies to all proceedings in the Tribunal.

¹⁴² s 68(3). The power of the Tribunal to appoint an interpreter in any other circumstance it considers appropriate is not limited by these provisions: s 68(5).

The Tribunal may only appoint an interpreter if the person has no conflict of interest in acting as an interpreter.¹⁴³

The Tribunal may require an interpreter appointed by the Tribunal to take an oath or make an affirmation, which may be administered by a member or a staff member. The oath or affirmation is that the interpretation the interpreter will give will be true.¹⁴⁴

14. Directions Hearings

The Tribunal is empowered to hold a directions hearing.¹⁴⁵ This power can be exercised by a registrar if authorised by the President.¹⁴⁶ After the substantive hearing of the proceeding has commenced, an authorised person can only conduct a directions hearing if approved by the Tribunal as constituted.¹⁴⁷

According to the Explanatory Memorandum, the purpose of a directions hearing is to clearly outline for all parties what actions they must take to progress the matter and prepare for a hearing, including the timeframes they must do things by. During a directions hearing, the Tribunal might deal with issues relating to:

- the progress of an application including any failure to comply with requirements to lodge documents or other material
- access to documents required to be produced under summons, and
- the conduct of the hearing.¹⁴⁸

15. Dispute resolution process

Dispute resolution process is defined to mean a procedure or service for the voluntary resolution of disputes, and includes conferencing, mediation, neutral evaluation, conciliation, and a procedure or service specified in the practice directions. Arbitration and court procedures or services are expressly excluded from the definition.¹⁴⁹

The Tribunal has the power to make orders directing that the proceeding (or any part of it or matter arising out of it) be referred to a dispute resolution process at any time during a proceeding. It may direct that such a process be conducted by a member or a registrar (if authorised in writing by the President¹⁵⁰).¹⁵¹ It may also direct that it be conducted by a person engaged by the Tribunal for this purpose, being a person who the Principal Registrar is

¹⁴³ s 68(4).

¹⁴⁴ ss 68(6)–(7).

¹⁴⁵ s 80. This provision is equivalent to s 33(1A) of the former AAT Act.

¹⁴⁶ s 285. If taking place after the start of the substantive hearing of the proceeding, this must also be approved by the Tribunal as constituted: s 281(1)(c).

¹⁴⁷ s 281(1)(c).

¹⁴⁸ Revised Explanatory Memorandum, Act No.40 of 2024, p 84.

¹⁴⁹ s 4. This definition replicates the definition of alternative dispute resolution process in s 3 of the former AAT Act, but omits 'case appraisal' which is substantively the same as a 'neutral evaluation'.

¹⁵⁰ ss 284–285.

¹⁵¹ s 87(1).

satisfied, having regard to the person's qualifications and experience, is a suitable person to conduct the relevant kind of dispute resolution process.¹⁵² After the substantive hearing of the proceeding has commenced, an authorised person can only conduct a dispute resolution process if approved by the Tribunal as constituted.¹⁵³

However, the Tribunal must not direct that a GAP proceeding, or any part of or matter arising out of a GAP proceeding, be referred to a dispute resolution process other than conferencing.¹⁵⁴

The parties appearing must act in good faith in relation to the conduct of the dispute resolution process.¹⁵⁵ A non-participating party is not required to appear at a dispute resolution process unless the Tribunal orders then to do so.¹⁵⁶ According to the Explanatory Memorandum, this clarifies that the Tribunal can undertake a dispute resolution process, such as conferencing, with a single party in order to assist with case management and better understand the issues in the review. It may also undertake a dispute resolution process, such as conferencing or mediation, with the parties other than the decision-maker if the decision-maker is a non-participating party. For example, a mediation between the parties to a review of a child support decision.¹⁵⁷

Any evidence given at, or for the sole purpose of,¹⁵⁸ a dispute resolution process is not admissible in other legal proceedings, unless the parties (other than a non-participating party) agree to the evidence being admitted in a Tribunal proceeding. Also, a report prepared by a person conducting a dispute resolution process in the form of a neutral evaluation can be admitted in a Tribunal proceeding unless a party notifies the Tribunal that they object to this before the substantive hearing.¹⁵⁹

If a member of the Tribunal as constituted conducts a dispute resolution process in relation to the proceeding, they must no longer take part in the proceeding if a party notifies the Tribunal as soon as practicable after the dispute resolution process that they object to the member participating.¹⁶⁰

16. Relevant legislation

Title	Reference number	Legislation Bulletin
<u>Administrative Appeals Tribunal Act 1975 (Cth) (repealed)</u>	No. 91, 1975	

¹⁵² ss 87(1), 90.

¹⁵³ s 281(1)(c).

¹⁵⁴ s 87(3). As the GAP did not exist under the former AAT Act, there is no equivalent provision in that Act.

¹⁵⁵ s 87(2). This provision is similar to s 34A(3) of the former AAT Act except that it reflects that not all parties to a proceeding may be present at the dispute resolution process.

¹⁵⁶ Note to s 87(1).

¹⁵⁷ Revised Explanatory Memorandum, Act No.40 of 2024, p 87.

¹⁵⁸ According to the Explanatory Memorandum, this is to ensure that anything that occurs that is incidental to a dispute resolution process, or occurs with the common understanding that it is not solely applicable that process, may remain admissible: Revised Explanatory Memorandum, Act No.40 of 2024, p 88.

¹⁵⁹ s 88. This provision is similar to s 34E of the former AAT Act, although s 88 clarifies that the protection extends to things done or said, or information disclosed, for the purpose of a dispute resolution process.

¹⁶⁰ s 89. This provision is substantially similar to s 34F of the former AAT Act.

<u>Administrative Review Tribunal Act 2024 (Cth)</u>	No. 40, 2024	
<u>Administrative Review Tribunal Rules 2024 (Cth)</u>		
<u>Administrative Review Tribunal (Consequential and Transitional Provisions No. 1) Act 2024 (Cth)</u>	No. 38, 2024	
<u>A New Tax System (Family Assistance) (Administration) Act 1999 (Cth)</u>	No. 80, 1999	
<u>Child Support (Registration and Collection) Act 1988 (Cth)</u>	No. 3, 1988	
<u>Paid Parental Leave Act 2010 (Cth)</u>	No. 104, 2010	
<u>Migration Act 1958 (Cth)</u>	No. 62, 1958	
<u>Social Security (Administration) Act 1999 (Cth)</u>	No. 191, 1999	
<u>Student Assistance Act 1973 (Cth)</u>	No. 155, 1973	
<u>Taxation Administration Act 1953 (Cth)</u>	No. 1, 1953	

Last updated/reviewed: 21 March 2025