

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

THE SENATE

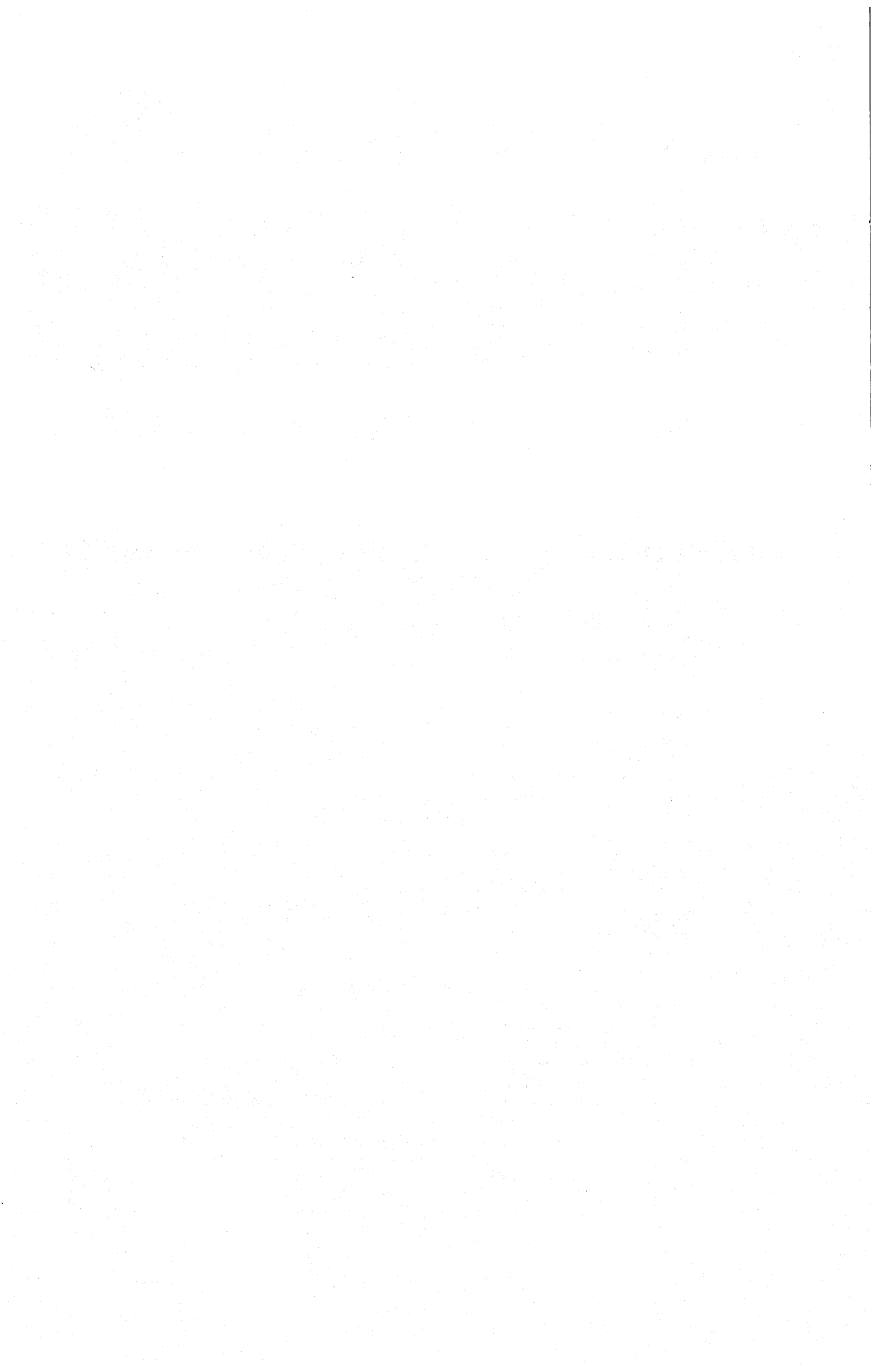
(Restored to Notice Paper)

**ADMINISTRATIVE APPEALS TRIBUNAL AMENDMENT BILL
1992 [1993]**

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1993

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

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(Restored to Notice Paper pursuant to resolution, 5 May 1993)

(MINISTER REPRESENTING THE MINISTER FOR JUSTICE, SENATOR BOLKUS)

A BILL

FOR

An Act to amend the *Administrative Appeals Tribunal Act 1975*, and for related purposes

The Parliament of Australia enacts:

Short title etc.

1.(1) This Act may be cited as the *Administrative Appeals Tribunal Amendment Act 1992 [1993]*.

5 (2) In this Act, “**Principal Act**” means the *Administrative Appeals Tribunal Act 1975*¹.

Commencement

2. This Act commences on the day on which it receives the Royal Assent.

Interpretation

3. Section 3 of the Principal Act is amended by adding at the end the following subsection:

“(5) For the purposes of this Act:

- (a) a document or statement is taken to be furnished to a person, or a notice or other notification is taken to be served on or given to a person, being a person who is not a company and whose present or any previous place of residence or business is unknown, if it is furnished, served or given in accordance with a direction given by the Tribunal; and
- (b) paragraph (4)(b) applies in relation to the document, statement, notice or notification if, in accordance with that direction, it is posted by a pre-paid letter.”.

Arrangement of business

4.(1) Section 20 of the Principal Act is amended by omitting subsection (1) and substituting the following subsections:

“(1) Subject to this Act and to the regulations, the President is responsible for ensuring the orderly and expeditious discharge of the business of the Tribunal.

“(1A) Without limiting the operation of subsection (1), the President may give directions as to:

- (a) the arrangement of the business of the Tribunal; and
- (b) the persons who are to constitute the Tribunal for the purposes of a particular proceeding; and
- (c) the places at which the Tribunal may sit; and
- (d) procedure of the Tribunal generally; and
- (e) procedure of the Tribunal at a particular place.”.

(2) A direction by the President under subsection 20(1) of the Principal Act that was in force immediately before the commencement of this section is taken, after that commencement, to have been given by the President under that subsection of the Principal Act as amended by this Act.

Constitution of Tribunal for exercise of powers

5. Section 21 of the Principal Act is amended:

- (a) by inserting after paragraph (1)(aa) the following paragraphs:

“(ab) 3 Deputy Presidents;

“(ac) 2 Deputy Presidents and one non-presidential member;”;

- (b) by omitting from subsection (1A) “or 42A” and substituting “, 42A or 42B”.

Reconstitution of Tribunal in certain cases

6. Section 21A of the Principal Act is amended:

(a) by omitting from subsection (1) “paragraph 21(1)(a)” and substituting “paragraph 21(1)(ab), (ac), (a)”;

5 (b) by omitting paragraphs (3)(aa), (a) and (b) and substituting the following paragraphs:

“(a) in the case of a proceeding before the Tribunal constituted in accordance with paragraph 21(1)(ab)—the Tribunal is constituted in accordance with paragraph 21(1)(aa); or

10 (b) in the case of a proceeding before the Tribunal constituted in accordance with paragraph 21(1)(ac)—the Tribunal is constituted in accordance with paragraph 21(1)(aa) or (ab); or

15 (c) in the case of a proceeding before the Tribunal constituted in accordance with paragraph 21(1)(a)—the Tribunal is constituted in accordance with paragraph 21(1)(aa), (ab) or (ac); or

20 (d) in the case of a proceeding before the Tribunal constituted in accordance with paragraph 21(1)(b) or (c)—the Tribunal is constituted in accordance with paragraph 21(1)(aa), (ab), (ac) or (a); or

25 (e) in the case of a proceeding before the Tribunal constituted in accordance with paragraph 21(1)(d)—the Tribunal is constituted in accordance with paragraph 21(1)(aa), (ab), (ac), (a), (b) or (c).”.

Member Presiding

7. Section 22 of the Principal Act is amended by inserting after paragraph (1)(aa) the following paragraph:

30 “(ab) if a presidential member who is a Judge is not a member of the Tribunal as so constituted but 2 or more Deputy Presidents are members of the Tribunal as so constituted—one of those Deputy Presidents who is directed by the President to do so is to preside;”.

Manner of applying for review

35 8. Section 29 of the Principal Act is amended by inserting after subsection (1) the following subsection:

40 “(1A) If, in an application, a person does not furnish an address at which documents in relation to the proceeding may be served, any address of the person shown in the application, or later notified to the Tribunal as an address for service, is taken to be an address furnished by the person at which such documents may be served.”.

9. After section 29 of the Principal Act the following section is inserted:

Applications—payment of fees

“29A.(1) Subject to subsection (2), an application to the Tribunal, whether for a review of a decision or otherwise, is not taken to be made unless the prescribed fee (if any) in respect of the application is paid. 5

“(2) An application in respect of which a fee is waived under the regulations, whether at the time of lodgment or later, is taken to be made at the time it is lodged with the Tribunal.”.

Procedure of Tribunal

10. Section 33 of the Principal Act is amended: 10

(a) by inserting after subsection (1) the following subsection:

“(1A) The President may authorise a member to hold a directions hearing in relation to a proceeding.”;

(b) by omitting from paragraph (2)(a) “by the President” (first occurring) and substituting “by a person holding a directions hearing in relation to the proceeding, by the President”; 15

(c) by inserting after subsection (2) the following subsection:

“(2A) Without limiting the operation of this section, a direction as to the procedure to be followed at or in connection with the hearing of a proceeding before the Tribunal may: 20

(a) require any person who is a party to the proceeding to provide further information in relation to the proceeding; or

(b) require the person who made the decision to provide a statement of the grounds on which the application will be resisted at the hearing; or 25

(c) require any person who is a party to the proceeding to provide a statement of matters or contentions upon which reliance is intended to be placed at the hearing.”.

Conferences

11. Section 34 of the Principal Act is amended: 30

(a) by omitting from subsection (1) “after consideration of any material that has been lodged by the parties”;

(b) by omitting subsection (2) and substituting the following subsection:

“(2) The President may also direct that such a conference is to be held in the case of applications made to the Tribunal for a review of a decision of a kind specified in the direction.”; 35

(c) by omitting from subsection (3) all the words after “in accordance with” and substituting “this section”;

(d) by omitting from paragraph (4)(a) “subsection (1)” and substituting “this section”.

12. After section 34 of the Principal Act the following section is inserted:

Mediation

5 “34A.(1) Where an application is made to the Tribunal for a review of a decision, the President may, if he or she thinks it desirable to do so and the parties consent, direct that the proceeding, or any part of the proceeding or any matter arising out of the proceeding, be referred to a mediator for mediation.

10 “(2) A mediator is to be a member or officer of the Tribunal directed by the President to mediate in the particular case.

“(3) A direction may be given under subsection (1) whether or not a conference under section 34 has also been held in relation to the proceeding.

“(4) If, in the course of a mediation:

15 (a) agreement is reached between the parties or their representatives as to the terms of a decision of the Tribunal in the proceeding or in relation to the part of the proceeding or the matter arising out of the proceeding that would be acceptable to the parties; and

20 (b) the terms of the agreement are reduced to writing, signed by or on behalf of the parties and lodged with the Tribunal; and

(c) the Tribunal is satisfied that a decision in those terms or consistent with those terms would be within the powers of the Tribunal;

25 the Tribunal may, if it appears to it to be appropriate to do so, act in accordance with whichever of subsection (5) or (6) is relevant in the particular case.

“(5) If the agreement reached is to the terms of a decision of the Tribunal in the proceeding, the Tribunal may, without holding a hearing of the proceeding, make a decision in accordance with those terms.

30 “(6) If the agreement relates to a part of the proceeding or a matter arising out of the proceeding, the Tribunal may, in its decision in the proceeding, give effect to the terms of the agreement without dealing at the hearing of the proceeding with the part of the proceeding or the matter arising out of the proceeding, as the case may be, to which the agreement relates.

35 “(7) Except at the hearing of a proceeding before the Tribunal where the parties otherwise agree, evidence of anything said or act done at a mediation is not admissible in any court or in any proceedings before a person authorised by a law of the Commonwealth or of a State or Territory, or by the consent of the parties, to hear evidence.

“(8) A person who mediates in respect of a proceeding may not be a member of the Tribunal as constituted for the purposes of the proceeding other than for the purpose of the Tribunal making a decision in accordance with subsection (5) or (6) or dismissing under subsection 42A(1) or (2) the application giving rise to the proceeding.”.

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Hearings to be in public except in special circumstances

13. Section 35 of the Principal Act is amended by inserting after subsection (1) the following subsection:

“(1A) If, at a time a hearing is in public, a person participates in the hearing by a means allowed under section 35A, the Tribunal is to take such steps as are reasonably necessary to ensure that the public nature of the hearing is preserved.”.

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14. After section 35 of the Principal Act the following section is inserted:

Participation by telephone etc.

“35A. A person holding a directions hearing or presiding over a conference mentioned in section 34, a mediator conducting a mediation under section 34A and the Tribunal in the hearing of a proceeding may allow a person to participate by:

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- (a) telephone; or
- (b) closed-circuit television; or
- (c) any other means of communication.”.

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Powers of Tribunal etc.

15. Section 40 of the Principal Act is amended:

- (a) by omitting subsection (1A) and substituting the following subsections:

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“(1A) Subject to subsection (1B), for the purposes of the hearing of a proceeding before the Tribunal, the member presiding at the hearing, the Registrar, or a Deputy Registrar may summon a person to appear before the Tribunal at that hearing:

- (a) to give evidence; or
- (b) to give evidence and produce any books, documents or things in the possession, custody or control of the person or persons named in the summons that are mentioned in the summons; or
- (c) to produce any books, documents or things in the possession, custody or control of the person or persons named in the summons that are mentioned in the summons.

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“(1B) A summons under subsection (1A) may require a person to appear at a directions hearing to produce books, documents or things instead of at the hearing before the Tribunal.

5 “(1C) A person (other than a presidential member or a senior member) who, under subsection (1A), may summon a person to appear before the Tribunal must not refuse a request to do so unless the refusal is authorised by a presidential member or a senior member.

“(1D) A presidential member or senior member may give a party to a proceeding leave to inspect a document produced under a summons.

10 “(1E) A person named in a summons for production of a book, document or thing may produce the book, document or thing at the Registry where the summons was issued before the date of the hearing or directions hearing, as the case may be, and, unless the Tribunal otherwise directs, is not required to attend that hearing unless the person is also required to give evidence at that hearing.”;

15 (b) by adding at the end of subsection (2) the following word and paragraph:

20 “; and (c) if a person participates by a means allowed under section 35A, may make such arrangements as appear to the member to be appropriate in the circumstances in relation to administering an oath or affirmation to the person.”;

(c) by adding at the end the following subsection:

25 “(7) The application of this section extends to a directions hearing, a conference mentioned in section 34 or a mediation under section 34A (an ‘**incidental proceeding**’) as if it were a proceeding before the Tribunal and a power that under this section is conferred on the Tribunal or a member of the Tribunal for the purpose of reviewing a decision may be exercised for the purposes of an incidental proceeding by the person holding the directions hearing or the conference, or the mediator, as the case may be.”.

30 **Discontinuance, dismissal, reinstatement etc. of application**

16. Section 42A of the Principal Act is amended:

(a) by inserting after subsection (1) the following subsections:

35 “(1A) A person who has made an application to the Tribunal for a review of a decision may, in writing lodged with the Tribunal, at any time notify the Tribunal to the effect that the application is discontinued or withdrawn.

“(1B) If notification is so given, the Tribunal is taken to have dismissed the application without proceeding to review the decision.”;

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- (b) by omitting from subsection (2) “preliminary conference held in relation to the application under section 34” and substituting “directions hearing, a conference mentioned in section 34, or a mediation under section 34A, held in relation to the application,”;
- (c) by omitting paragraph (2)(a) and substituting the following paragraph: 5
- “(a) if the person who failed to appear is the applicant—dismiss the application without proceeding to review the decision; or”;
- (d) by adding at the end the following subsections:
- “(3) For the purposes of subsection (2), a person is taken to appear 10
in person or by a representative at a directions hearing, conference,
mediation or hearing of a proceeding if the person or the person’s
representative, as the case may be, participates in it by a means
allowed under section 35A.
- “(4) If: 15
- (a) a person makes an application to the Tribunal for a review of
a decision; and
- (b) the person is unable to show, within such time as is prescribed
after being notified in writing by the Registrar or a Deputy
Registrar that the decision does not appear to be reviewable by 20
the Tribunal, that the decision is so reviewable;
- the Tribunal may dismiss the application without proceeding to
review the decision.
- “(5) If an applicant for a review of a decision fails within a 25
reasonable time:
- (a) to proceed with the application; or
- (b) to comply with a direction by the Tribunal in relation to the
application;
- a presidential member or senior member, on behalf of the Tribunal,
may dismiss the application without proceeding to review the 30
decision.
- “(6) If, under this Act, the Tribunal dismisses an application or an
application is dismissed on its behalf, the proceeding to which the
application relates, unless it is reinstated under subsection (9) or (10),
is taken to be concluded. 35
- “(7) Before exercising its powers under subsection (2), the
Tribunal must be satisfied that appropriate notice was given to the
person who failed to appear of the time and place of the directions
hearing, conference, mediation or hearing, as the case may be.

5 “(8) If the Tribunal, under subsection (2), has dismissed an application (other than an application in respect of a proceeding in which an order has been made under subsection 41(2)), the person who made the application may, within 28 days after receiving notification that the application has been dismissed, apply to the Tribunal for reinstatement of the application.

10 “(9) If it considers it appropriate to do so, the Tribunal may reinstate the application and give such directions as appear to it to be appropriate in the circumstances.

15 “(10) If it appears to the Tribunal that an application has been dismissed in error, the Tribunal may, on the application of a party to the proceeding or on its own initiative, reinstate the application and give such directions as appear to it to be appropriate in the circumstances.”.

20 **17.** After section 42A of the Principal Act the following sections are inserted:

Power of Tribunal where a proceeding is frivolous or vexatious

25 “42B.(1) Where an application is made to the Tribunal for the review of a decision, the Tribunal may, at any stage of the proceeding, if it is satisfied that the application is frivolous or vexatious:

- (a) dismiss the application; and
- (b) if the Tribunal considers it appropriate, on the application of a party to the proceedings, direct that the person who made the application must not, without leave of the Tribunal, make a subsequent application to the Tribunal of a kind or kinds specified in the direction.

30 “(2) A direction given by the Tribunal under paragraph (1)(b) has effect despite any other provision of this Act or a provision of any other Act.

“ (3) The Tribunal may discharge or vary such a direction.

30 Power of Tribunal if parties reach agreement

“42C.(1) If, at any stage of a proceeding for a review of a decision:

- (a) agreement is reached between the parties or their representatives as to the terms of a decision of the Tribunal in the proceeding or in relation to a part of the proceeding or a matter arising out of the proceeding that would be acceptable to the parties (other than an agreement reached in the course of a mediation under section 34A); and
- (b) the terms of the agreement are reduced to writing, signed by or on behalf of the parties and lodged with the Tribunal; and

(c) the Tribunal is satisfied that a decision in those terms or consistent with those terms would be within the powers of the Tribunal; the Tribunal may, if it appears to it to be appropriate to do so, act in accordance with whichever of subsection (2) or (3) is relevant in the particular case.

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“(2) If the agreement reached is to the terms of a decision of the Tribunal in the proceeding, the Tribunal may make a decision in accordance with those terms without holding a hearing of the proceeding or, if a hearing has commenced, without completing the hearing.

“(3) If the agreement relates to a part of the proceeding or a matter arising out of the proceeding, the Tribunal may in its decision in the proceeding give effect to the terms of the agreement without, if it has not already done so, dealing at the hearing of the proceeding with the part of the proceeding or the matter arising out of the proceeding, as the case may be, to which the agreement relates.”.

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Appeals to Federal Court of Australia from decisions of the Tribunal

18. Section 44 of the Principal Act is amended by adding at the end the following subsection:

“(6) If the Federal Court of Australia makes an order remitting a case to be heard and decided again by the Tribunal, the Tribunal need not be constituted for the hearing by the person or persons who made the decision to which the appeal relates.”.

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Protection of members, mediators, barristers and witnesses

19. Section 60 of the Principal Act is amended by inserting after subsection (1) the following subsection:

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“(1A) A mediator has, in the performance of his or her duties as a mediator under this Act, the same protection and immunity as a Justice of the High Court.”.

Failure to comply with summons

20. Section 61 of the Principal Act is amended by adding at the end the following subsection:

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“(2) A person served, as prescribed, with a summons under this Act to produce a book, document or thing must not, without reasonable excuse, fail to comply with the summons.

Penalty: \$1,000 or imprisonment for 3 months.”.

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21. After section 62A of the Principal Act the following section is inserted:

Extended operation of certain provisions

“62B. Sections 61, 62 and 62A apply in relation to a directions hearing, a conference mentioned in section 34 or a mediation under section 34A as if it were a proceeding before the Tribunal.”.

5 Lodging of documents

22. Section 68 of the Principal Act is amended by adding at the end the following subsection:

“(2) Subject to such requirements (if any) as are prescribed, such documents may be lodged by means of electronic transfer.”.

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NOTE

1. No. 91, 1975, as amended. For previous amendments, see Nos. 37, 60, 89, 91, 157, 162, 163 and 209, 1976; Nos. 30, 57, 58 and 111, 1977; Nos. 65 and 109, 1978; Nos. 19 and 143, 1979; No. 110, 1980; Nos. 19 and 61, 1981; Nos. 26 and 80, 1982; No. 91, 1983; Nos. 63 and 72, 1984; Nos. 65 and 193, 1985; No. 48, 1986; Nos. 38, 63, 109 and 120, 1988; No. 157, 1989; No. 111, 1990; Nos. 122 and 136, 1991; and No. 94, 1992.

