



New South Wales

Administrative Decisions Tribunal Legislation Amendment Act 2000 No 33

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New South Wales

Administrative Decisions Tribunal Legislation Amendment Act 2000 No 33

Act No 33, 2000

An Act to amend the *Administrative Decisions Tribunal Act 1997* with respect to internal reviews, the constitution and functions of the Tribunal, suppression orders and the application of rules of evidence; to clarify the right of aggrieved persons to apply to the Tribunal for reviews of decisions under the *Dangerous Goods Act 1975*; to amend consequentially the *Anti-Discrimination Act 1977*; and for other purposes. [Assented to 14 June 2000]

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Administrative Decisions Tribunal Legislation Amendment Act 2000*.

2 Commencement

This Act commences on a day or days to be appointed by proclamation.

3 Amendment of Administrative Decisions Tribunal Act 1997 No 76

The *Administrative Decisions Tribunal Act 1997* is amended as set out in Schedule 1.

4 Amendment of other Acts

The Acts specified in Schedule 2 are amended as set out in that Schedule.

Schedule 1 Amendment of Administrative Decisions Tribunal Act 1997

(Section 3)

[1] Section 24 Appeal Panel of the Tribunal

Omit section 24 (2). Insert instead:

- (2) An Appeal Panel must include:
 - (a) 1 presidential judicial member (whether or not the member is a Division member of the Division in which the decision under appeal was made), and
 - (b) 1 other judicial member who need not be a Division member of the Division in which the decision under appeal was made unless the presidential judicial member is not such a Division member, and
 - (c) 1 non-judicial member who is such a Division member.

[2] Section 53 Internal reviews

Insert “(the *internal reviewer*)” after “who is directed to do so by the administrator” in section 53 (3).

[3] Section 53 (3)

Omit “The individual”. Insert instead “The internal reviewer”.

[4] Section 53 (4)

Omit “individual dealing with the application”.
Insert instead “internal reviewer”.

[5] Section 53 (5)–(5B)

Omit section 53 (5). Insert instead:

- (5) **Review of the application**
Following the internal review of the decision, the internal reviewer may:
 - (a) affirm the decision, or

- (b) vary the decision, or
- (c) set aside the decision and make a decision in substitution for the decision that is set aside.

(5A) Reviewer has functions of administrator

In exercising a function under subsection (5), an internal reviewer is taken for all purposes to have the right to exercise the same functions under any relevant enactment or other law that the administrator had in making the decision being reviewed.

(5B) Reviewer to notify administrator of decision

An internal reviewer must notify the administrator of the result of, and the reasons for, his or her decision under subsection (5) as soon as is practicable after making the decision.

[6] Section 53 (6) and (9) (b)

Omit “14 days” wherever occurring. Insert instead “21 days”.

[7] Section 53 (7)

Omit “administrator” where firstly and secondly occurring.
Insert instead “internal reviewer”.

[8] Section 53 (7)

Omit “administrator” where lastly occurring.
Insert instead “reviewer”.

[9] Section 53 (8)

Omit the subsection. Insert instead:

(8) Status of decisions made on internal review

For the purposes of this Act, a reviewable decision that is affirmed, varied or set aside and substituted under subsection (5) is:

- (a) taken to have been made by the administrator (as affirmed, varied or substituted by the internal reviewer), and
- (b) taken to have been made on the date on which the applicant is given a notice under subsection (6).

[10] Section 73A

Insert after section 73:

73A Application of section 128 of Evidence Act 1995 to proceedings before Tribunal

Section 128 (Privilege in respect of self-incrimination in other proceedings) of the *Evidence Act 1995* is taken to apply to evidence given in proceedings before the Tribunal even when the Tribunal is not required to apply the rules of evidence in those proceedings.

[11] Section 75 Proceedings on hearing to be conducted in public

Omit section 75 (2) (b). Insert instead:

- (b) an order prohibiting or restricting:
 - (i) the disclosure of the name, address, picture or any other material that identifies, or may lead to the identification of, any person (whether or not a party to proceedings before the Tribunal or a witness summoned by, or appearing before, the Tribunal), or
 - (ii) the doing of any other thing that identifies, or may lead to the identification of, any such person,
- (b1) an order prohibiting or restricting the publication or broadcast of any report of proceedings before the Tribunal,

[12] Section 75 (2A) and (2B)

Insert after section 75 (2):

- (2A) The Tribunal cannot make an order under subsection (2) (b) in respect of any proceedings to which section 126 applies.
- (2B) The Tribunal may from time to time vary or revoke an order made under subsection (2).

[13] Section 126 Publication of names or identification of persons involved in proceedings

Insert before subsection (1):

(1A) This section applies only to the following:

- (a) proceedings in the Community Services Division of the Tribunal,
- (b) appeals to an Appeal Panel from a decision made by the Tribunal in the Community Services Division,
- (c) such other proceedings (or class or classes of proceedings) as may be prescribed by the regulations for the purposes of this section.

[14] Schedule 2 Composition and functions of Divisions

Insert in alphabetical order in clause 2 of Part 1:

Adoption of Children Act 1965

Child Protection (Prohibited Employment) Act 1998

[15] Schedule 3 Provisions relating to members of Tribunal

Insert after clause 8:

8A Former member whose term expires may complete unfinished matters

- (1) A former member may, despite the expiration of the period of the member's appointment, complete or otherwise continue to deal with any matters relating to proceedings before the Tribunal that have been heard or partly heard (or were otherwise the subject of deliberations) by the member before the expiration of that period.
- (2) While completing or otherwise dealing with matters referred to in subclause (1), the former member is taken to have and may exercise all the rights and functions of a member that the former member had immediately before the expiration of his or her period of appointment.

[16] Schedule 5 Savings and transitional provisions

Insert at the end of clause 1 (1):

Administrative Decisions Tribunal Legislation Amendment Act 2000

[17] Schedule 5

Insert in Schedule 5, with appropriate Part and clause numbers:

**Part Provisions consequent on enactment of
Administrative Decisions Tribunal Legislation
Amendment Act 2000**

Definitions

In this Part:

amending Act means the *Administrative Decisions Tribunal Legislation Amendment Act 2000*.

**Amending Act does not apply to or affect existing proceedings
and other matters under this Act**

- (1) The amending Act does not apply to or affect:
- (a) any internal review that has not been completed (or a right to seek an internal review arising) under section 53 of this Act immediately before the commencement of Schedule 1 [5] to the amending Act, and
 - (b) any appeal to an Appeal Panel that has not been heard or completed (or any right to so appeal arising) immediately before the commencement of Schedule 1 [1] to the amending Act, and
 - (c) any order made under section 75 (2) (b) of this Act before the commencement of Schedule 1 [11] to the amending Act that is in force immediately before that commencement, and

- (d) an offence under section 126 of this Act that was committed or is alleged to have been committed (or any proceedings for any such offence that were commenced but have not been finally determined) before the commencement of Schedule 1 [13] to the amending Act, and
 - (e) any application to the Tribunal for a review under the *Dangerous Goods Act 1975* that has not been heard or completed (or any right to so apply arising) immediately before the commencement of Schedule 2.2 to the amending Act.
- (2) Accordingly, any rules, regulations or other law that would have been applicable to a matter referred to in subclause (1) (a)–(e) had the amending Act not been enacted continue to apply to that matter as if the amending Act had not been enacted.

Pending proceedings in a Division of ADT on re-allocation of function

- (1) This clause applies to proceedings:
- (a) that are pending in the General Division of the ADT immediately before the commencement of Schedule 1 [14] to the amending Act, and
 - (b) that relate to applications made to the ADT under the *Adoption of Children Act 1965* or the *Child Protection (Prohibited Employment) Act 1998*.
- (2) Proceedings to which this clause apply are to be determined in the General Division in accordance with the provisions of Part 4 of Schedule 2 to this Act as in force immediately before the commencement of Schedule 1 [14] to the amending Act.

Schedule 2 Amendment of other Acts

(Section 4)

2.1 Anti-Discrimination Act 1977 No 48

Section 110A Publication of proceedings etc

Omit the section.

2.2 Dangerous Goods Act 1975 No 68

Section 29

Omit the section. Insert instead:

29 Reviews by Administrative Decisions Tribunal of decisions concerning licences and permits

- (1) A person who is aggrieved by any of the following decisions may apply to the Administrative Decisions Tribunal for a review of the decision:
 - (a) a decision of a relevant decision-maker under this Act or the regulations relating to a licence,
 - (b) a decision of a relevant decision-maker under this Act or the regulations relating to a permit.
- (2) For the purposes of an application to the Tribunal under this section, a relevant decision-maker is taken to have refused an application to the decision-maker for the issue, renewal or transfer of a licence or permit if the application has not been granted within 1 month (or, if another period is prescribed by the regulations, within that other period) after the application is duly made.
- (3) An application under subsection (1) must be made within 28 days after the directly aggrieved person is notified of the decision.

- (4) Section 48 (Notice of decision and review rights to be given by administrators) of the *Administrative Decisions Tribunal Act 1997* is taken to require a relevant decision-maker to notify only a directly aggrieved person.
- (5) Section 53 (Internal reviews) of the *Administrative Decisions Tribunal Act 1997* does not apply to a decision of the kind referred to in subsection (1). Accordingly, section 55 (1) (d) of that Act does not apply to any such decision.
- (6) If an application is made to the Tribunal under subsection (1) by an aggrieved person who is not a directly aggrieved person, the Tribunal must notify the directly aggrieved person of the application (or may order the relevant decision-maker to notify the person of the application) as soon as is reasonably practicable after the application is made.
- (7) Without limiting section 67 (Parties to proceedings before Tribunal) of the *Administrative Decisions Tribunal Act 1997*, the Tribunal may do any one or more of the following:
 - (a) join an aggrieved person as a party to proceedings in the Tribunal brought by any other aggrieved person in respect of the same decision,
 - (b) allow an aggrieved person to make submissions to the Tribunal concerning a decision under review in proceedings brought by another aggrieved person and take those submissions into account in determining the proceedings.
- (8) In this section:

aggrieved person, in relation to a decision relating to a licence or permit, means:

 - (a) a directly aggrieved person, or
 - (b) any other person aggrieved by the decision as referred to in subsection (1).

directly aggrieved person, in relation to a decision relating to a licence or permit, means:

 - (a) the person who holds (or held) the licence or permit, or
 - (b) a person who has applied for the licence or permit.

relevant decision-maker, in relation to a decision relating to a licence or permit, means the person or body authorised by or under this Act or the regulations to make the decision.

[Minister's second reading speech made in—
Legislative Assembly on 31 May 2000
Legislative Council on 8 June 2000]