Administrative Decisions Review Act 1997 No 76

Chapter 1 Preliminary

1 Name of Act

This Act is the *Administrative Decisions Review Act 1997*.

2 Commencement

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

3 Objects of Act

The objects of this Act are as follows:

(a) to provide a preliminary process for the internal review of administratively reviewable decisions before the administrative review of such decisions by the Tribunal under this Act,

(b) to require administrators making administratively reviewable decisions to notify persons of decisions affecting them and of any review rights they might have and to provide reasons for decisions of administrators on request,

(c) to foster an atmosphere in which administrative review by the Tribunal is viewed positively as a means of enhancing the delivery of services and programs,

(d) to promote and effect compliance by administrators with legislation enacted by Parliament for the benefit of the citizens of New South Wales.

4 Definitions

(1) In this Act:

*administrative review jurisdiction* of the Tribunal—see section 9.

*administratively reviewable decision*—see section 7.

*administrator*—see section 8.

*decision*—see section 6.

*enabling legislation* means legislation (other than this Act or any statutory rules made under this Act) that:

(a) provides for applications to be made to the Tribunal with respect to a specified matter or class of matters, or

(b) otherwise enables the Tribunal to exercise functions with respect to a specified matter or class of matters.
function includes a power, authority or duty, and exercise a function includes perform a duty.

interested person means a person who is entitled under enabling legislation to make an application to the Tribunal for an administrative review under this Act of an administratively reviewable decision.

internal review means an internal review conducted under section 53.

legislation means an Act or a statutory rule.

lodge a document includes file a document.

President means the President of the Tribunal.

procedural rules has the same meaning as in the Civil and Administrative Tribunal Act 2013.

Tribunal means the Civil and Administrative Tribunal.

(2) A reference in this Act to the exercise by the Tribunal of its functions in relation to enabling legislation includes a reference both to its functions under the enabling legislation and its functions under this Act in relation to the enabling legislation.

(3) A reference (however described) in this Act to a decision made under enabling legislation is taken, in relation to an administratively reviewable decision, to include a reference to any decision made in the exercise of functions identified by the enabling legislation.

(4) Notes included in this Act do not form part of this Act.

5 (Repealed)

6 Meaning of “decision”

(1) General meaning A decision includes any of the following:

(a) making, suspending, revoking or refusing to make an order or determination,

(b) giving, suspending, revoking or refusing to give a certificate, direction, approval, consent or permission,

(c) issuing, suspending, revoking or refusing to issue a licence, authority or other instrument,

(d) imposing a condition or restriction,

(e) making a declaration, demand or requirement,

(f) retaining, or refusing to deliver up, an article,

(g) doing or refusing to do any other act or thing.

(2) Decision made under enabling legislation For the purposes of this Act, a decision is made under enabling legislation if it is made in the exercise (or purported exercise) of a function conferred or imposed by or under the enabling legislation.
(3) **Decisions made without power** For the purposes of this Act (and without limiting subsection (2)), a decision that purports to be made under enabling legislation is taken to be a decision made under the enabling legislation even if the decision was beyond the power of the decision-maker to make it.

(4) **Failure to make decision on basis that beyond power** For the purposes of this Act (and without limiting subsection (2)), a refusal of a decision-maker to make a decision under enabling legislation because the decision-maker considers that the decision concerned cannot lawfully be made under the enabling legislation is taken to be a decision made under the enabling legislation to refuse to make the decision requested.

(5) **Failure to make a timely decision taken to be failure to make a decision** For the purposes of this Act, a failure by a decision-maker to make a decision within the period specified by the enabling legislation concerned for making the decision is taken to be a decision by the decision-maker at the end of the period to refuse to make the decision.