



AUSTRALIAN CAPITAL TERRITORY

Administrative Appeals Tribunal (Amendment) Act (No. 2) 1994

No. 58 of 1994

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Administrative Appeals Tribunal (Amendment) (No. 2) 1994

No. 58 of 1994

An Act to amend the Administrative Appeals Tribunal Act 1989

[Notified in ACT Gazette S197: 11 October 1994]

The Legislative Assembly for the Australian Capital Territory enacts as follows:

Short title

1. This Act may be cited as the *Administrative Appeals Tribunal (Amendment) Act (No. 2) 1994*.

Commencement

2. (1) The provisions of this Act (other than sections 9 and 28) commence on the day on which this Act is notified in the *Gazette*.

(2) Sections 9 and 28 commence on a day fixed by the Minister by notice in the *Gazette*.

(3) If sections 9 and 28 have not commenced before the end of the period of 6 months commencing on the day on which this Act is notified in the *Gazette*, those provisions, by force of this subsection, commence on the first day after the end of that period.

Principal Act

3. In this Act, “Principal Act” means the *Administrative Appeals Tribunal Act 1989*.¹

Interpretation

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

“(5) For the purposes of this Act, a document or statement is to be taken to be furnished to, or a notice or other notification is to be taken to be served on or given to, a natural person whose present or any previous place of residence or business is unknown if it is furnished, served or given in accordance with a direction of the Tribunal.

“(6) A reference in this Act to the hearing of a proceeding includes a reference to—

- (a) a directions hearing under subsection 32 (1A);
- (b) a hearing in respect of an application for an extension of time;
- (c) a hearing in respect of a request under section 41 in relation to an order staying or otherwise affecting the operation or implementation of a decision;
- (d) a hearing to determine a question relating to the Tribunal’s jurisdiction; or
- (e) a hearing to determine any other preliminary issue;

but does not include—

- (f) a conference under section 33; or
- (g) a mediation under section 33A.”.

Term of appointment

5. Section 7 of the Principal Act is amended by omitting subsection (6).

Arrangement of business

6. Section 18 of the Principal Act is amended by omitting subsection (1) and substituting the following subsections:

“(1) Subject to this Act and 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 any of the following:

- (a) the arrangement of the business of the Tribunal;
- (b) the persons who are to constitute the Tribunal for the purposes of a particular proceeding;
- (c) the procedure of the Tribunal generally.”.

Constitution of Tribunal

7. Section 19 of the Principal Act is amended—

- (a) by omitting subsection (1); and
- (b) by omitting from subsection (2) “34 (2) or 37 (2), (4) or (6) or section 38 or 43” and substituting “32 (1A), section 33B, subsection 34 (2) or 37 (2), (4) or (6), section 38, subsection 40 (2C) or section 41, 43, 43A or 43B”.

Reconstitution of Tribunal in certain cases

8. Section 20 of the Principal Act is amended—

- (a) by omitting from subsection (1) “constituted in accordance with subsection 19 (1)”;
- (b) by omitting from subsection (2) “submissions” and substituting “submissions”; and
- (c) by omitting from subsection (3) all the words after “proceeding” (second occurring) and substituting “in such manner as the President thinks fit”.

Insertion

9. After section 25 of the Principal Act the following sections are inserted:

Notice of decision and review rights

“25A. (1) A person who makes a reviewable decision shall take such steps as are reasonable in the circumstances to give to any person whose interests are affected by the decision notice in writing—

- (a) of the making of the decision; and
- (b) of the right of the last mentioned person to have the decision reviewed.

“(2) Subsection (1) does not apply—

- (a) to a decision that is deemed to be made because of the operation of subsection 24 (5); or

- (b) where the decision does not adversely affect the interests of any other person—to a decision not to impose a liability, penalty or any kind of limitation on a person.

“(3) In taking action under subsection (1) a person shall comply with the requirements of the Code of Practice in force under subsection 25B (1).

“(4) A failure to comply with this section does not affect the validity of a reviewable decision.

“(5) In this section—

‘reviewable decision’ means—

- (a) a decision that is reviewable by the Tribunal; or
- (b) a decision that is reviewable by—
 - (i) a person whose decision on review is reviewable by the Tribunal; or
 - (ii) a person whose decision on review, because of subparagraph (i), is a reviewable decision.

Code of Practice

“25B. (1) The Minister may, by notice published in the *Gazette*, determine a Code of Practice for the purpose of facilitating the operation of subsection 25A (1).

“(2) The Code of Practice is a disallowable instrument for the purposes of section 10 of the *Subordinate Laws Act 1989*.”.

Manner of applying for review

10. Section 27 of the Principal Act is amended—

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

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

- (b) by omitting from subsection (10) “except after a hearing at which” and substituting “unless”.

Procedure of Tribunal

11. Section 32 of the Principal Act is amended—

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

“(1A) The Tribunal may hold a directions hearing in relation to a proceeding.”;
- (b) by omitting from paragraph (2) (a) “by the President” (first occurring) and substituting “by the Tribunal at a directions hearing under subsection (1A), by the President”;
- (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—

 - (a) require any person who is a party to the proceeding to provide further information in relation to the proceeding;
 - (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;
 - (c) require any person who is a party to the proceeding to provide a statement of the matters or contentions on which reliance is intended to be placed at the hearing; or
 - (d) require the person who made the decision to lodge—
 - (i) specified documents;
 - (ii) any document within a specified period; or
 - (iii) a specified number of copies of any document;and provide that, until any further direction to the contrary is given, compliance with section 37 is not required.”;
 - (d) by omitting from subsection (3) all the words after “any time” and substituting “by a direction given in accordance with subsection (2)”;
 - (e) by inserting in subsection (4) “or class of proceeding” after “proceeding” (last occurring).

Conferences

- 12. Section 33 of the Principal Act is amended—
 - (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.”;

- (c) by omitting from subsection (3) “subsection (1) if the words spoken or act done related to any question to be determined by the Tribunal in the proceeding” and substituting “this section”; and
- (d) by omitting from paragraph (4) (a) “subsection (1)” and substituting “this section”.

Insertion

13. After section 33 of the Principal Act the following sections are inserted:

Mediation

“33A. (1) Where an application is made to the Tribunal for a review of a decision, the President may, if he or she thinks it is desirable to do so and the parties consent, direct that the proceeding or any part of it, or any matter arising out of the proceeding, be referred to a mediator for mediation.

“(2) A direction may be given under subsection (1) whether or not a conference under section 33 has been held in relation to the proceeding.

“(3) At the hearing of a proceeding before the Tribunal, unless the parties otherwise agree, evidence shall not be given, and statements shall not be made, concerning any words spoken or act done at a mediation held under subsection (1).

“(4) 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 43B (2) or (3) or dismissing the application under subsection 43 (1) or (2).

Decisions on material lodged

“33B. Where—

- (a) the Tribunal is satisfied that a proceeding may be determined on the material that has been lodged with the Tribunal without hearing the parties; and
- (b) the parties consent to the proceeding being so determined;

the Tribunal may determine the proceeding without holding a hearing.”.

Hearings to be in public except in special circumstances

14. Section 34 of the Principal Act is amended by inserting after subsection (1) the following subsection:

“(1A) Where—

- (a) a hearing is required by this section to be in public; and
- (b) a person participates in the hearing by a means allowed under section 34A;

the Tribunal shall take such steps as are necessary and reasonable to ensure the public nature of the hearing is preserved.”.

Insertion

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

Participation by telephone etc.

“34A. A person presiding over a conference or conducting a mediation, or the Tribunal hearing a proceeding, may allow a person to participate by telephone, closed-circuit television or other means of communication.”.

Lodging material documents

16. Section 37 of the Principal Act is amended—

- (a) by omitting from subsection (1) “such number of copies as is prescribed” and substituting “2 copies”;
- (b) by inserting after subsection (1) the following subsection:

“(1A) The Tribunal may direct a person to lodge a specified number of copies of a document in addition to those required under subsection (1) within a specified time.”; and
- (c) by omitting subsection (8).

Powers of Tribunal

17. Section 40 of the Principal Act is amended—

- (a) by omitting subsection (2) and substituting the following subsections:

“(2) For the purposes of the hearing of a proceeding before the Tribunal, the Registrar or a Deputy Registrar shall, if directed to do so by the President or by the member of the Tribunal who is to preside or presides at the hearing, summon a person to appear

before the Tribunal at that hearing or on another date specified in the summons—

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

“(2A) A presidential member, a senior member or the member presiding at a hearing may give a party to the proceeding leave to inspect a document produced under a summons.

“(2B) A person shall be taken to have complied with a summons under paragraph (2) (c) if the person delivers the documents to the Registrar before the date specified in the summons.

“(2C) The Tribunal may set aside a summons issued under subsection (2).”;

- (b) by omitting from paragraph (3) (a) “and”;
- (c) by adding at the end of paragraph (3) (b) “and”; and
- (d) by adding at the end of subsection (3) the following paragraph:
 - “(c) may, if a person participates by a means allowed under section 34A, 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.”.

Operation and implementation of a decision that is subject to review

18. Section 41 of the Principal Act is amended—

- (a) by omitting from subsection (2) “or a presidential member” and “or presidential member” (wherever occurring);
- (b) by omitting from subsection (3) “or a presidential member”;
- (c) by omitting from subsection (4) “or a presidential member”;
- (d) by omitting from paragraph (4) (a) “or presidential member”;
- (e) by omitting from paragraph (4) (b) “or presidential member”;
- (f) by omitting from subsection (5) “or a presidential member” and “or presidential member” (wherever occurring);

- (g) by inserting in paragraph (6) (b) “, subject to subsection (7),” after “effect”; and
- (h) by omitting subsections (7) and (8) and substituting the following subsection:
 - “(7) An order in force under subsection (2) (including an order that has been varied under subsection (3)) ceases to have effect if the application for review is dismissed under subsection 43 (2).”.

Power to dismiss application or strike out party

19. Section 43 of the Principal Act is amended—

- (a) by inserting after subsection (1) the following subsection:
 - “(1A) If a person who made an application for the review of a decision notifies the Tribunal in writing that the person wishes to discontinue the application or to have the application dismissed, the Tribunal may dismiss the application for review without proceeding to review the decision.”;
- (b) by omitting from subsection (2) “preliminary conference held in relation to the application under section 33” and substituting “conference under section 33, or a mediation under section 33A, held in relation to the application,”; and
- (c) by adding at the end the following subsections:
 - “(3) For the purposes of subsection (2), a person shall be taken to appear in person or by a representative if the person or the person’s representative (as the case may be) participates in the conference, mediation or hearing by a means allowed under section 34A.
 - “(4) If—
 - (a) a person makes an application to the Tribunal for a review of a decision; and
 - (b) it appears to the Tribunal that the decision is not reviewable by the Tribunal;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 reasonable time—
 - (a) to proceed with the application; or

- (b) to comply with a direction by the Tribunal in relation to the application;

the Tribunal may dismiss the application without proceeding to review the decision.

“(6) If, under this Act, the Tribunal dismisses an application, the proceeding to which the application relates shall be taken to be concluded unless it is reinstated under subsection (9) or (10).

“(7) The Tribunal shall not exercise a power under subsection (2) unless satisfied that appropriate notice was given to the person who failed to appear of the time and place of the conference, mediation or hearing, as the case may be.

“(8) If the Tribunal dismisses an application, 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.

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

“(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 of its own motion, reinstate the application and give such directions as appear to it to be appropriate in the circumstances.”.

Insertion

20. After section 43 of the Principal Act the following sections are inserted:

Power of Tribunal where a proceeding is frivolous or vexatious

“43A. (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 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 proceeding, direct that the person who made the application shall not, without leave of the Tribunal, make a subsequent application to the Tribunal of any kind specified in the direction.

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

“(3) The Tribunal may revoke or vary a direction given under paragraph (1) (b).

Power of Tribunal if parties reach agreement

“43B. (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;
- (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 subsection (2) or (3), as the case requires.

“(2) If the agreement is as 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 that part of the proceeding or the matter arising out of the proceeding, as the case may be, to which the agreement relates.”.

Insertion

21. After section 44 of the Principal Act the following section is inserted:

Correction of errors

“44A. The Tribunal may correct an error in an order or decision of the Tribunal that arises from a clerical mistake or an accidental slip or omission.”.

Appeals to Supreme Court from decisions of the Tribunal

22. Section 46 of the Principal Act is amended by adding at the end the following subsection:

“(6) If the Supreme Court or 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.”.

Protection of members, mediators, barristers and witnesses

23. Section 51 of the Principal Act is amended by inserting after subsection (1) the following subsection:

“(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 Judge of the Supreme Court.”.

Failure to comply with summons

24. Section 52 of the Principal Act is amended by omitting the penalty provision and substituting the following:

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

Penalty: \$5,000 or imprisonment for 6 months, or both.”.

Contempt of Tribunal

25. Section 55 of the Principal Act is amended—

(a) by omitting from paragraph (a) “or” (last occurring);

(b) by adding at the end of paragraph (b) “or”; and

(c) by inserting after paragraph (b) the following paragraph:

“(c) do any other act or thing that would, if the Tribunal were a court of record, constitute a contempt of that court.”.

Lodging of documents

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

“(2) Subject to such requirements (if any) as are prescribed, a document may be lodged under subsection (1) by means of electronic transfer.”.

Saving—directions under subsection 18 (1)

27. A direction under subsection 18 (1) of the Principal Act in force immediately before the day on which section 6 of this Act commences continues in force on and after that day as if it were a direction under subsection 18 (1A) of the Principal Act as amended by section 6 of this Act.

Application—new section 25A

28. Section 25A of the Principal Act as amended by this Act applies in relation to decisions made on or after the day on which section 9 of this Act commences.

NOTE

1. Reprinted as at 30 June 1991. See also Act No. 118, 1991; No. 91, 1993; Nos. 8 and 10, 1994.

[Presentation speech made in Assembly on 16 June 1994]

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