



AUSTRALIAN CAPITAL TERRITORY

# **Administrative Appeals Tribunal (Amendment) Act 1996**

**No. 70 of 1996**

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AUSTRALIAN CAPITAL TERRITORY

## **Administrative Appeals Tribunal (Amendment) Act 1996**

No. 70 of 1996

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### **An Act to amend the *Administrative Appeals Tribunal Act 1989* and for related purposes**

*[Notified in ACT Gazette S328: 20 December 1996]*

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 1996*.

#### **Commencement**

2. (1) Sections 1, 2 and 3 commence on the day on which this Act is notified in the *Gazette*.

(2) The remaining provisions commence on a day, or respective days, fixed by the Minister by notice in the *Gazette*.

(3) If a provision referred to in subsection (2) has not commenced before the end of the period of 6 months commencing on the day on which this Act is notified in the *Gazette*, that provision, by force of this subsection, commences 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*.<sup>1</sup>

## **Interpretation**

**4.** Section 3 of the Principal Act is amended—

(a) by adding at the end of the definition of “Registrar” in subsection (1) “and includes a Deputy Registrar”;

(b) by omitting from the definition of “Tribunal” in subsection (1) “Australian Capital Territory”;

(c) by inserting in subsection (1) the following definitions:

“ ‘approved form’ means the form approved by the President under section 62A;

‘proceeding’, in relation to the Tribunal, includes a proceeding—

(a) on an application to the Tribunal for review of a decision;

(b) on an application to the Tribunal under subsection 26 (4);

(c) on an application to the Tribunal for review of a decision by the Registrar;

(d) on any other application to the Tribunal under this or any other Act;

(e) on a request under subsection 20A (1);

(f) by way of a directions hearing under subsection 32 (1A);

(g) by way of a hearing to determine a question relating to the Tribunal’s jurisdiction;

(h) in respect of any matter referred to the Tribunal for inquiry or review under this Act or another Act; and

(j) on an incidental application to the Tribunal made in the course of, or in connection with, an application or proposed application, or a matter, referred to in paragraph (a), (b), (c), (d), (e), (f), (g) or (h);”; and

(d) by omitting subsection (6).

## **Establishment of Tribunal**

**5.** Section 4 of the Principal Act is amended by omitting “Australian Capital Territory”.

### **Insertion**

6. After section 7 of the Principal Act the following section is inserted:

#### **Extension of term of office**

“7A. (1) Before the expiry of the term of office of a member, the Executive may, by instrument, extend the term for a specified period.

“(2) Before the expiry of a term of office of a member which has been extended under subsection (1) or this subsection, the Executive may, by instrument, further extend the term for a specified period.

“(3) This section does not authorise the Executive to extend or to extend further the term of office of a member who could not be appointed for that term under section 7.”.

#### **Oath or affirmation of office**

7. Section 11 of the Principal Act is amended by omitting “the Schedule” and substituting “Schedule 1”.

### **Divisions**

8. Section 17 of the Principal Act is amended—

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

“(1) The Tribunal shall have—

(a) a General Division;

(b) a Land and Planning Division; and

(c) such other Divisions as are created by the regulations.”;

(b) by omitting from subsection (2) “Where the regulations create Divisions, the” and substituting “The”; and

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

“(4) Unless the contrary intention appears, the provisions of this Act apply to each Division of the Tribunal.”.

### **Substitution**

9. Section 19 of the Principal Act is repealed and the following sections are substituted:

#### **Conduct of proceedings**

“19. (1) A proceeding arising from the *Land (Planning and Environment) Act 1991* shall be conducted in the Land and Planning Division of the Tribunal.

“(2) Any other proceeding shall be conducted in the General Division of the Tribunal or such other Division, if any, as is prescribed.

### **Exercise of powers of Tribunal**

“19A. (1) The Tribunal’s powers may be exercised in relation to a proceeding—

- (a) if no direction has been given under section 18 as to the members who are to constitute the Tribunal for the proceeding—by the President or a member authorised by the President for the purpose of this paragraph;
- (b) if a direction has been given under section 18 as to the members who are to constitute the Tribunal for the proceeding but the hearing has not commenced—
  - (i) if the direction requires the Tribunal to be constituted by 1 member only—by the President or that member; or
  - (ii) in any other case—by the President or the member who is to preside at the hearing;
- (c) in relation to the giving of directions as to the procedure to be followed at a hearing (whether during a directions hearing under subsection 32 (1A) or otherwise) or to the exercise of power under subsection 28 (2), section 30, subsection 32 (1A), 34 (2), 37 (6A) or 37 (2) or (6), section 38, subsection 40 (2C) or sections 41, 44A or 59—by the member presiding at the hearing of the proceeding, the Tribunal or the President; or
- (d) in any other case—by the member or members who constitute the Tribunal for the purposes of the proceeding.

“(2) Nothing in subsection (1) affects the operation of subsection 36 (3).”.

### **Reconstitution of Tribunal in certain cases**

**10.** Section 20 of the Principal Act is amended—

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

“(1A) The President may, of his or her own motion or on application in accordance with subsection (1), give a direction varying the constitution of the Tribunal for the purposes of a proceeding in such manner as the President sees fit if the President considers it appropriate to do so having regard to the public importance of the matters to which the proceeding relates or their complex factual or legal nature.”;

- (b) by omitting subsection (3) and substituting the following subsection:

“(3) Where the President is given particulars of submissions under subsection (2), the President shall consider those submissions before giving, or refusing to give, a direction under subsection (1A).”;

- (c) by omitting from subsection (4) “so given” and substituting “given under subsection (1A)”; and
- (d) by omitting from subsection (6) “(3)” and substituting “(1A)”.

### **Insertion**

**11.** After section 20 of the Principal Act the following section is inserted:

#### **Questions of law**

“20A. (1) The Tribunal may, of its own motion or on application by a party, request the President to reconstitute the Tribunal to give a ruling on a question of law or on a question that, in the opinion of the requesting Tribunal, is a question of law.

“(2) Where the Tribunal reconstituted in accordance with a request under subsection (1) gives a ruling on a question of law (including the question whether a particular question is a question of law), the requesting Tribunal is bound by the ruling.

“(3) The question of whether a particular question is one of law shall be decided in accordance with the opinion of the Tribunal reconstituted in accordance with a request under subsection (1).

“(4) A Tribunal reconstituted in accordance with a request under subsection (1) shall be constituted by 1 or more of the following:

- (a) the President;
- (b) the Deputy President;
- (c) a senior member who is enrolled as a legal practitioner of the High Court, of another federal court, of the Supreme Court or of the Supreme Court of a State or of another Territory who has been so enrolled for not less than 5 years.

“(5) Nothing in this section limits the President’s power to reconstitute the Tribunal under section 20.”.

**Tribunal may review certain decisions**

**12.** Section 24 of the Principal Act is amended—

(a) by inserting after subsection (4) the following subsection:

“(4A) In a proceeding in relation to a decision of the Minister or Executive under the *Land (Planning and Environment) Act 1991*, the Tribunal may review any decision of a concurring authority within the meaning of that Act.”; and

(b) by inserting in subsection (6) “19A,” after “19.”.

**Person affected by decision may obtain reasons for decision**

**13.** Section 26 of the Principal Act is amended—

(a) by omitting from subsection (4) “, as prescribed” and substituting “in the approved form”; and

(b) by omitting from subsection (12) “as prescribed” and substituting “in the approved form”.

**Manner of applying for review**

**14.** Section 27 of the Principal Act is amended—

(a) by omitting from paragraph (1) (b) “prescribed” and substituting “approved”;

(b) by inserting after subsection (7) the following subsection:

“(7A) An application under subsection (7) may be in accordance with the approved form.”;

(c) by omitting subsection (10) and substituting the following subsections:

“(10) If a person on whom a notice is served under subsection (9) gives notice to the Tribunal within 14 days after service, or such further time as the Tribunal allows, stating that he or she wishes to oppose the application, the Tribunal shall not determine the application unless the applicant and any person who gave that notice are given a reasonable opportunity of presenting their cases.

“(10A) A notice under subsection (10)—

(a) shall be in writing; and

(b) may be in accordance with the approved form.”;

(d) by omitting from subsection (11) “or a Deputy Registrar”; and

(e) by omitting from subsection (11) “prescribed” and substituting “approved”.



**Parties to proceeding before Tribunal**

**15.** Section 28 of the Principal Act is amended—

- (a) by inserting in paragraph (1) (d) “, (2A) or (2B)” after “(2)”;
- (b) by omitting from subsection (2) “, as prescribed,” and substituting “in writing”; and

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

“(2A) Where—

- (a) a person applies for the review of a decision referred to in subsection 275 (1) or (2) of the *Land (Planning and Environment) Act 1991*; or
- (b) a person applies for the review of a decision referred to in section 276 of that Act;

a person to whom notice of the application has been given under section 278 or 279 of that Act may apply in writing to the Tribunal to be made a party to the proceedings and, on such an application being made, the Tribunal shall, by order, make the person a party to the proceedings.

“(2B) Where, in a proceeding in relation to a decision under the *Land (Planning and Environment) Act 1991*, a decision of a concurring authority within the meaning of that Act is substantially at issue in the proceeding, the authority may apply in writing to the Tribunal to be made a party to the proceedings and, on such an application being made, the Tribunal shall, by order, make the authority a party to the proceedings.

“(2C) An application under subsection (2), (2A) or (2B) may be in accordance with the relevant approved form.”.

**Procedure of Tribunal**

**16.** Section 32 of the Principal Act is amended by omitting subsection (2).

**Certain documents and information not required to be disclosed and questions not required to be answered**

**17.** Section 35 of the Principal Act is amended—

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

“(2A) If the Attorney-General of a State or another Territory certifies in writing that the disclosure of information concerning a specified matter, or the disclosure of any matter contained in a document, would be contrary to the public interest—

- (a) because it would involve the disclosure of deliberations or decisions of the Cabinet or Executive, or of a Committee of the Cabinet or Executive, of the State or Territory; or
- (b) for any other reason specified in the certificate that could form the basis for a claim by the Crown in right of the State or Territory in a judicial proceeding that the information or the matter contained in the document should not be disclosed;

subsections (3) to (9) have effect.”;

- (b) by omitting from subsection (4) “or (2)” (first occurring) and substituting “, (2) or (2A)”;
- (c) by omitting from subsection (4) “or (2) (a) or (b)” and substituting “, (2) (a) or (b) or (2A) (a) or (b)”;
- (d) by omitting from subsection (5) “Minister or the Commonwealth Attorney-General” (first and second occurring) and substituting “relevant official”;
- (e) by omitting from subsection (5) “or (2)” (first occurring) and substituting “, (2) or (2A)”;
- (f) by omitting from subsection (5) “or (2) (a) or (b)” and substituting “, (2) (a) or (b) or (2A) (a) or (b)”;
- (g) by omitting from subsection (5) “Minister or the Commonwealth Attorney-General” (last occurring) and substituting “relevant official”;
- (h) by omitting from subsection (7) “Minister or the Commonwealth Attorney-General” and substituting “relevant official”;
- (j) by omitting from subsection (7) “or (2)” and substituting “, (2) or (2A)”;
- (k) by omitting from subsection (8) “Minister or the Commonwealth Attorney-General” and substituting “relevant official”;

- (m) by omitting from paragraph (8) (a) “or (2) (a) or (b)” and substituting “, (2) (a) or (b) or (2A) (a) or (b)”;
- (n) by omitting from subsection (9) “Minister or the Commonwealth Attorney-General” (wherever occurring) and substituting “relevant official”; and
- (p) by adding at the end the following subsection:
  - “(10) In this section—  
‘relevant official’ means the Minister, the Commonwealth Attorney-General or the Attorney-General of a State or another Territory.”.

### **Public interest questions under section 35**

**18.** Section 36 of the Principal Act is amended by omitting from subsection (3) all the words after “35 (8) (b)” and substituting “shall be exercised by the Tribunal constituted by a presidential member and such other members (if any) as the President directs”.

### **Lodging material documents**

**19.** Section 37 of the Principal Act is amended—

- (a) by omitting from subsection (1) “28 days” and substituting “the defined period”;
- (b) by omitting subsection (1A);
- (c) by omitting subsection (2) and substituting the following subsections:

“(2) The Tribunal may, on application by a party to a proceeding or of its own motion, make an order directing that copies of the relevant documents referred to in subsection (1) be lodged with the Tribunal within a specified shorter period after the person who made the decision receives or received notice of the application if, in the opinion of the Tribunal—

- (a) a party to the proceeding would suffer hardship or be otherwise prejudiced if the defined period were not shortened; or
- (b) it is in the public interest that the proceeding be expedited.

“(2A) A request under subsection (2) shall be in writing in accordance with the approved form unless the Tribunal or a presidential member directs or allows otherwise.

“(2B) Nothing in subsection (2) affects the operation of paragraph 32 (2A) (d).”;

- (d) by omitting from subsection (3) “period of 28 days” (wherever occurring) and substituting “defined period”;
- (e) by omitting from subsection (4) “upon request being made, as prescribed,” and substituting “on application in accordance with the approved form”;
- (f) by omitting from subsection (4) “a period of 28 days” and substituting “the defined period”;
- (g) by omitting from subsection (6) “the prescribed number of” and substituting “2”;
- (h) by inserting after subsection (6) the following subsection:

“(6A) The Tribunal may direct a person to lodge, within a specified time, a specified number of copies of a document in addition to those required under subsection (1) or (6).”; and
- (j) by adding at the end the following subsection:

“(8) In this section—  
‘defined period’, in relation to a proceeding, means—  
(a) where the proceeding arises under the *Land (Planning and Environment) Act 1991*—14 days;  
or  
(b) in any other case—28 days.”.

### **Powers of Tribunal**

- 20.** Section 40 of the Principal Act is amended—
- (a) by omitting from subsection (2) “or a Deputy Registrar”;
  - (b) by omitting from subsection (2) paragraphs (b) and (c) and substituting the following paragraphs:

“(b) to give evidence and produce any document or thing in the possession, custody or control of the person that is mentioned in the summons; or  
(c) to produce any document or thing in the possession, custody or control of the person that is mentioned in the summons.”;
  - (c) by omitting subsection (2A) and substituting the following subsections:

“(2A) A summons under subsection (2) shall be in accordance with the form in Schedule 2.

“(2AB) The Tribunal may give a party to a proceeding leave, subject to any specified condition, to—

- (a) inspect a document or thing produced under a summons; and
- (b) make copies of such a document for the purpose of the proceeding.”; and
- (d) by omitting from subsection (2B) “documents” and substituting “document or thing”.

### **Operation and implementation of a decision that is subject to review**

**21.** Section 41 of the Principal Act is amended—

- (a) by omitting from subsections (2) and (3) “request being made, as prescribed,” and substituting “application”; and
- (b) by inserting after subsection (3) the following subsections:

“(3A) A request under subsection (2) or (3) shall be in writing in accordance with the approved form unless the Tribunal or a presidential member directs otherwise.

“(3B) The Registrar shall, on receiving a request under subsection (2) or (3), cause notice of the request to be given to the other parties to the proceeding.

“(3C) Notice under subsection (3B) shall be given—

- (a) if the request under subsection (2) or (3) is lodged in writing with the Registrar—by causing a copy of the request to be given to the other parties to the proceeding; or
- (b) in any other case—in such other manner as the Tribunal or a presidential member directs.”.

### **Power to dismiss application or strike out party**

**22.** Section 43 of the Principal Act is amended by inserting after subsection (5) the following subsection:

“(5A) The Tribunal may direct that a person shall cease to be a party to a proceeding if the person fails to comply with a direction of the Tribunal within the time specified by the Tribunal or, if no time is specified, within a reasonable time, unless—

- (a) the person is the person who made the decision being reviewed; or
- (b) the only other party to the proceeding is the person who made the decision.”.

### **Review by Tribunal**

23. Section 44 of the Principal Act is amended—

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

“(1A) Where the Tribunal is constituted from the Land and Planning Division, it shall endeavour to give its decision within 14 days after the completion of the hearing of a proceeding.”; and

(b) by omitting from subsection (6) “or a Deputy Registrar”.

### **Return of documents or things at completion of proceeding**

24. Section 45 of the Principal Act is amended—

(a) by omitting from subsection (1) “any other object” and substituting “thing”; and

(b) by omitting from subsection (2) “object” and substituting “thing” (wherever occurring).

### **Sending of documents or things to, and disclosure of documents by, the Supreme Court**

25. Section 49 of the Principal Act is amended—

(a) by omitting from paragraph (1) (a) “all documents or objects that were” and substituting “any document or thing that was”;

(b) by omitting from paragraph (1) (b) “documents or objects” and substituting “document or thing”; and

(c) by omitting from subsection (2) “any of the documents” and substituting “a document”.

### **Insertion**

26. After section 51 of the Principal Act the following sections are inserted:

#### **Service of summons on witness**

“51A. (1) A summons shall be served on a witness—

(a) personally;

(b) by sending it to the witness’s last known place of residence or employment by a form of post that requires a signature on receipt; or

(c) by leaving it with a responsible adult at the witness’s last known place of residence or employment.

“(2) The summons shall be accompanied by—

(a) an undertaking to appear for the signature of the person and return to the Tribunal by the date specified in the undertaking; and

- (b) a form to be completed by the person to claim his or her reasonable costs and expenses of attendance at the hearing.

“(3) Service of a summons on a witness may be proved by the oath of the person who served it or by affidavit.

#### **Witnesses entitled to claim expenses**

“51B. (1) Any notice (however described and whether written or oral) requiring a person to appear as a witness at a hearing shall be accompanied by a form to be completed by the person to claim his or her reasonable costs and expenses of attendance at the hearing.

“(2) A person is not entitled to refuse to comply with such a notice because it was not accompanied by that form.”.

#### **Failure to comply with summons**

27. Section 52 of the Principal Act is amended—

- (a) by omitting from subsections (1) and (2) “, as prescribed,”; and
- (b) by omitting from subsection (2) “book,”.

#### **Refusal to be sworn or to answer questions**

28. Section 53 of the Principal Act is amended—

- (a) by inserting in paragraph (c) “or thing” after “document”; and
- (b) by omitting from paragraph (c) “under this Act served as prescribed”.

#### **Insertion**

29. After section 56 of the Principal Act the following section is inserted:

#### **Seal of the Tribunal**

“56A. (1) The seal of the Tribunal shall be of a design approved by the President and shall include the letters and words ‘ACT Administrative Appeals Tribunal’.

“(2) The seal of the Tribunal shall be kept in such custody as the President directs.

“(3) The Registrar, or a person authorised by the Tribunal or President, shall seal or stamp with the seal of the Tribunal any judgment, order, notice, warrant, writ, summons, certificate or process, or any copy of any of those documents, made, given or issued by the Tribunal or the Registrar.”.

#### **Tribunal officers**

30. Section 57 of the Principal Act is amended—

- (a) by omitting from subsection (2) “Government Service” and substituting “Australian Capital Territory Public Service”; and

- (b) by omitting subsections (3), (4) and (5) and substituting the following subsection:

“(3) An office referred to in subsection (1) shall be held by any public servant for the time being performing the duties of a corresponding Australian Capital Territory Public Service office referred to in subsection (2).”.

### **Substitution**

31. Section 59 of the Principal Act is repealed and the following section substituted:

#### **Witness fees and travelling expenses**

“59. (1) A person who attends for the purpose of giving evidence before the Tribunal pursuant to a summons is entitled to receive such fees and travelling expenses as the Tribunal directs in accordance with the scale and conditions applicable in relation to persons who attend as witnesses before the Supreme Court.

“(2) Fees and travelling expenses under subsection (1) are payable—

- (a) if the summons was issued at the request of a party—in accordance with the direction of the Tribunal; or
- (b) if the summons was not issued at the request of a party—by the Territory.

“(3) The directions the Tribunal may make under paragraph (2) (a) include a direction that the Territory pay all or part of the relevant fees and travelling allowance.”.

#### **Fees and charges—determination**

32. Section 59A of the Principal Act is amended by omitting from subsection (1) “published in the *Gazette*”.

#### **Fees and charges—review of decisions**

33. Section 59E of the Principal Act is amended—

- (a) by omitting from paragraph (1) (a) “remission or refund of” and substituting “refusal to remit or refund”;
- (b) by omitting from paragraph (1) (b) “deferral of” and substituting “refusal to defer”; and
- (c) by omitting from paragraph (1) (c) “waiver of” and substituting “refusal to waive”.



### **Lodging of documents**

**34.** Section 61 of the Principal Act is amended by omitting subsection (2) and substituting the following subsections:

“(2) After the date fixed by the President by notice published in the *Gazette*, and subject to any requirement approved by the President, a document may be lodged under subsection (1) by means of electronic transfer.

“(3) A requirement approved under subsection (2) shall be published in the *Gazette*.

“(4) The Registrar shall acknowledge in writing the receipt of an application under subsection 26 (6), 27 (1) or (7), 28 (2), 37 (2) or 41 (2) or (3) that is lodged in writing.”.

### **Insertion**

**35.** After section 61 of the Principal Act the following section is inserted:

### **Retaining documents**

“61A. (1) The Tribunal shall retain the documents relating to a proceeding for a period of not less than 7 years commencing on the date on which the latest document relating to the proceeding was signed.

“(2) The Tribunal shall not dispose of an order, direction or decision of the Tribunal.”.

### **Insertion**

**36.** After section 62 of the Principal Act the following section is inserted:

### **Power of President to approve forms**

“62A. The President may approve forms for the purposes of this Act.”.

### **Schedule**

**37.** The heading to the Schedule to the Principal Act is omitted and the following heading substituted:

“**SCHEDULE 1**”.

### **Insertion**

**38.** After the Schedule to the Principal Act the Schedule set out in the Schedule to this Act is inserted.

### **Repeal—Administrative Appeals Tribunal Regulations**

**39.** The Administrative Appeals Tribunal Regulations are repealed.

**Consequential amendment—*Interpretation Act 1967***

**40.** Section 14 of the *Interpretation Act 1967* is amended by omitting from the definition of “Administrative Appeals Tribunal” in subsection (1) “Australian Capital Territory”.

**SCHEDULE**

Section 38

SCHEDULE TO BE INSERTED IN PRINCIPAL ACT

**SCHEDULE 2**

Subsection 40 (2A)

ACT ADMINISTRATIVE APPEALS TRIBUNAL

SUMMONS

Application No.            of [year].

Between [Applicant] and [Respondent].

To:    [name and address of person summoned]

- \*    You are summoned in these proceedings to attend and give evidence at [place] on [date] at [time].
- \*    You are summoned in these proceedings to attend and give evidence at [place] on [date] at [time] and to produce the following document or thing:
- \*    You are summoned in these proceedings to produce the following document or thing at [place] on or before [date] at [time]:

Date:

Registrar/Deputy Registrar

ACT Administrative Appeals Tribunal

\*    *strike out where inapplicable*

**NOTE**

**Principal Act**

1.    Reprinted as at 31 July 1995.

*[Presentation speech made in Assembly on 26 September 1996]*

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