



Australian Capital Territory

# **Administrative Decisions (Judicial Review) Act 1989**

**A1989-33**

**Republication No 12**

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Authorised by the ACT Parliamentary Counsel

## About this republication

### The republished law

This is a republication of the *Administrative Decisions (Judicial Review) Act 1989* (including any amendment made under the *Legislation Act 2001*, part 11.3 (Editorial changes)) as in force on 1 September 2004. It also includes any amendment, repeal or expiry affecting the republished law to 1 September 2004.

The legislation history and amendment history of the republished law are set out in endnotes 3 and 4.

### Kinds of republications

The Parliamentary Counsel's Office prepares 2 kinds of republications of ACT laws (see the ACT legislation register at [www.legislation.act.gov.au](http://www.legislation.act.gov.au)):

- authorised republications to which the *Legislation Act 2001* applies
- unauthorised republications.

The status of this republication appears on the bottom of each page.

### Editorial changes

The *Legislation Act 2001*, part 11.3 authorises the Parliamentary Counsel to make editorial amendments and other changes of a formal nature when preparing a law for republication. Editorial changes do not change the effect of the law, but have effect as if they had been made by an Act commencing on the republication date (see *Legislation Act 2001*, s 115 and s 117). The changes are made if the Parliamentary Counsel considers they are desirable to bring the law into line, or more closely into line, with current legislative drafting practice.

This republication does not include amendments made under part 11.3 (see endnote 1).

### Uncommenced provisions and amendments

If a provision of the republished law has not commenced or is affected by an uncommenced amendment, the symbol **U** appears immediately before the provision heading. The text of the uncommenced provision or amendment appears only in the last endnote.

### Modifications

If a provision of the republished law is affected by a current modification, the symbol **M** appears immediately before the provision heading. The text of the modifying provision appears in the endnotes. For the legal status of modifications, see *Legislation Act 2001*, section 95.

### Penalties

The value of a penalty unit for an offence against this republished law at the republication date is—

- (a) if the person charged is an individual—\$100; or
- (b) if the person charged is a corporation—\$500.



Australian Capital Territory

# Administrative Decisions (Judicial Review) Act 1989

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R12  
01/09/04

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Australian Capital Territory

# Administrative Decisions (Judicial Review) Act 1989

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An Act relating to the review on questions of law of certain administrative decisions

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R12  
01/09/04

Administrative Decisions (Judicial Review) Act 1989  
Effective: 01/09/04-09/01/05

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**1 Short title**

This Act may be cited as the *Administrative Decisions (Judicial Review) Act 1989*.

**3 Interpretation**

(1) In this Act:

*decision to which this Act applies* means a decision of an administrative character made, proposed to be made or required to be made (whether in the exercise of a discretion or not) under an enactment, other than a decision specified in schedule 1.

*duty* includes a duty imposed on a person in his or her capacity as a public employee.

*enactment* means—

- (a) an Act, or a subordinate law (including part of an Act or of such a law); or
- (c) the *Australian Capital Territory (Planning and Land Management) Act 1988* (Cwlth), part 10, division 5; or
- (d) the *Canberra Water Supply (Googong Dam) Act 1974* (Cwlth).

*failure*, in relation to the making of a decision, includes a refusal to make the decision.

*judge* means a judge of the Supreme Court.

*order of review*, in relation to a decision, in relation to conduct engaged in for the purpose of making a decision or in relation to a failure to make a decision, means an order on an application made under section 5, 6 or 7 in respect of the decision, conduct or failure.

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**rules of court** means rules of court made under the *Supreme Court Act 1933*.

*Note 1* A definition applies except so far as the contrary intention appears (see *Legislation Act 2001*, s 155).

*Note 2* A reference to an Act includes a reference to the statutory instruments made or in force under the Act, including regulations (see *Legislation Act 2001*, s 104).

- (2) In this Act, a reference to the **making** of a decision includes a reference to—
- (a) making, suspending, revoking or refusing to make an order, award or determination; or
  - (b) providing, suspending, revoking or refusing to provide a certificate, direction, approval, consent or permission; or
  - (c) issuing, suspending, revoking or refusing to issue a licence, authority or other instrument; or
  - (d) imposing a condition or restriction; or
  - (e) making a declaration, demand or requirement; or
  - (f) retaining, or refusing to deliver up, an article; or
  - (g) doing or refusing to do any other act or thing;
- and a reference to a **failure to make** a decision shall be construed accordingly.
- (3) Where provision is made by an enactment for the making of a report or recommendation before a decision is made in the exercise of a power under that enactment or under another law, the making of such a report or recommendation shall be taken, for the purposes of this Act, to be the making of a decision.
- (4) In this Act—
- (a) a reference to a person aggrieved by a decision includes a reference—

- (i) to a person whose interests are adversely affected by the decision; and
    - (ii) in the case of a decision by way of the making of a report or recommendation—to a person whose interests would be adversely affected if a decision were, or were not, made in accordance with the report or recommendation; and
  - (b) a reference to a person aggrieved by conduct that has been, is being, or is proposed to be engaged in for the purpose of making a decision, or by a failure to make a decision, includes a reference to a person whose interests are, or would be, adversely affected by the conduct or failure; and
  - (c) a reference to conduct engaged in for the purpose of making a decision includes a reference to the doing of any act or thing preparatory to the making of the decision, including the taking of evidence or the holding of an inquiry or investigation.
- (5) For the purposes of a schedule—
- (a) a decision made, proposed to be made or required to be made by a person acting as the delegate of another person, or by a person otherwise lawfully authorised to act on behalf of another person, shall be taken to be a decision by that other person; and
  - (b) a decision made, proposed to be made or required to be made by a person for the time being acting in, or performing any of the duties of, an office or appointment shall be taken to be a decision by the holder of that office or appointment.
- (6) Where a person has nominated an address in Australia at which documents may be served on the person, a document or statement that is required by this Act to be given to the person may be sent to that address.



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#### **4 Act to operate notwithstanding anything in existing laws**

This Act has effect notwithstanding anything contained in any enactment in force at the commencement of this Act.

#### **5 Applications for review of decisions**

- (1) A person who is aggrieved by a decision to which this Act applies that is made after the commencement of this Act may apply to the Supreme Court for an order of review in respect of the decision on any 1 or more of the following grounds:
  - (a) that a breach of the rules of natural justice occurred in connection with the making of the decision;
  - (b) that procedures that were required by law to be observed in connection with the making of the decision were not observed;
  - (c) that the person who purported to make the decision did not have jurisdiction to make the decision;
  - (d) that the decision was not authorised by the enactment under which it was purported to be made;
  - (e) that the making of the decision was an improper exercise of the power conferred by the enactment under which it was purported to be made;
  - (f) that the decision involved an error of law, whether or not the error appears on the record of the decision;
  - (g) that the decision was induced or affected by fraud;
  - (h) that there was no evidence or other material to justify the making of the decision;
  - (j) that the decision was otherwise contrary to law.
- (2) The reference in subsection (1) (e) to an *improper exercise* of a power includes a reference to—

- (a) taking an irrelevant consideration into account in the exercise of a power; and
  - (b) failing to take a relevant consideration into account in the exercise of a power; and
  - (c) an exercise of a power for a purpose other than a purpose for which the power is conferred; and
  - (d) an exercise of a discretionary power in bad faith; and
  - (e) an exercise of a personal discretionary power at the direction or behest of another person; and
  - (f) an exercise of a discretionary power in accordance with a rule or policy without regard to the merits of the particular case; and
  - (g) an exercise of a power that is so unreasonable that no reasonable person could have so exercised the power; and
  - (h) an exercise of a power in such a way that the result of the exercise of the power is uncertain; and
  - (j) any other exercise of a power in a way that constitutes abuse of the power.
- (3) The ground specified in subsection (1) (h) shall not be taken to be made out unless—
- (a) the person who made the decision was required by law to reach that decision only if a particular matter was established, and there was no evidence or other material (including facts of which he or she was entitled to take notice) from which he or she could reasonably be satisfied that the matter was established; or
  - (b) the person who made the decision based the decision on the existence of a particular fact, and that fact did not exist.

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**6 Applications for review of conduct related to making of decisions**

- (1) Where a person has engaged, is engaging, or proposes to engage, in conduct for the purpose of making a decision to which this Act applies, a person who is aggrieved by the conduct may apply to the Supreme Court for an order of review in respect of the conduct on any 1 or more of the following grounds:
- (a) that a breach of the rules of natural justice has occurred, is occurring, or is likely to occur, in connection with the conduct;
  - (b) that procedures that are required by law to be observed in respect of the conduct have not been, are not being, or are likely not to be, observed;
  - (c) that the person who has engaged, is engaging, or proposes to engage, in the conduct does not have jurisdiction to make the proposed decision;
  - (d) that the enactment under which the decision is proposed to be made does not authorise the making of the proposed decision;
  - (e) that the making of the proposed decision would be an improper exercise of the power conferred by the enactment under which the decision is proposed to be made;
  - (f) that an error of law had been, is being, or is likely to be, committed in the course of the conduct or is likely to be committed in the making of the proposed decision;
  - (g) that fraud has taken place, is taking place, or is likely to take place, in the course of the conduct;
  - (h) that there is no evidence or other material to justify the making of the proposed decision;
  - (j) that the making of the proposed decision would be otherwise contrary to law.

- (2) The reference in subsection (1) (e) to an *improper exercise* of a power includes a reference to—
- (a) taking an irrelevant consideration into account in the exercise of a power; and
  - (b) failing to take a relevant consideration into account in the exercise of a power; and
  - (c) an exercise of a power for a purpose other than a purpose for which the power is conferred; and
  - (d) an exercise of a discretionary power in bad faith; and
  - (e) an exercise of a personal discretionary power at the direction or behest of another person; and
  - (f) an exercise of a discretionary power in accordance with a rule or policy without regard to the merits of the particular case; and
  - (g) an exercise of a power that is so unreasonable that no reasonable person could have so exercised the power; and
  - (h) an exercise of a power in such a way that the result of the exercise of the power is uncertain; and
  - (j) any other exercise of a power in a way that constitutes abuse of the power.
- (3) The ground specified in subsection (1) (h) shall not be taken to be made out unless—
- (a) the person who proposes to make the decision is required by law to reach that decision only if a particular matter is established, and there is no evidence or other material (including facts of which he or she was entitled to take notice) from which he or she can reasonably be satisfied that the matter is established; or

- (b) the person proposed to make the decision on the basis of the existence of a particular fact, and that fact does not exist.

## **7 Applications in respect of failures to make decisions**

### (1) Where—

- (a) a person has a duty to make a decision to which this Act applies; and
- (b) there is no law that prescribes a period within which the person is required to make that decision; and
- (c) the person has failed to make that decision;

a person who is aggrieved by the failure of the firstmentioned person to make the decision may apply to the Supreme Court for an order of review in respect of the failure to make the decision on the ground that there has been unreasonable delay in making the decision.

### (2) Where—

- (a) a person has a duty to make a decision to which this Act applies; and
- (b) a law prescribes a period within which the person is required to make that decision; and
- (c) the person has failed to make that decision before the end of that period;

a person who is aggrieved by the failure may apply to the Supreme Court for an order of review in respect of the failure to make the decision within that period on the ground that the firstmentioned person has a duty to make the decision notwithstanding that the period has expired.

**8 Jurisdiction of Supreme Court**

The Supreme Court has jurisdiction to hear and determine applications made to the Supreme Court under this Act.

**9 Effect of Act on other rights**

- (1) The rights conferred by sections 5, 6 and 7 on a person to seek a review—
  - (a) are in addition to, and shall not derogate from, the rights of the person to seek a review by other means; and
  - (b) shall be disregarded for the purposes of the *Ombudsman Act 1989*, section 6 (6).
- (2) Notwithstanding subsection (1)—
  - (a) the Supreme Court or any other court may, in a proceeding instituted otherwise than under this Act, refuse to grant an application for review in relation to a matter if an application for review of that matter has been made to the Supreme Court under section 5, 6 or 7; and
  - (b) the Supreme Court may, in its discretion, refuse to grant an application for review of a matter under section 5, 6 or 7 if—
    - (i) the applicant has sought a review by a court including the Supreme Court of the matter otherwise than under this Act; or
    - (ii) adequate provision is made by a law other than this Act under which the applicant is entitled to seek a review of that matter; or
    - (iii) the matter to which the application relates arises under the *Land (Planning and Environment) Act 1991* or the *Heritage Objects Act 1991* and is a matter being reviewed, or for which application has been made for review, under a law other than this Act, whether on the

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application of the person who has made application to the Supreme Court for review of the matter under this Act or any other person.

(3) In this section:

*review* includes a review by way of reconsideration, rehearing, appeal, the grant of an injunction or of a prerogative or statutory writ or the making of a declaratory or other order.

## **10 Manner of making applications**

(1) An application to the Supreme Court for an order of review—

(a) shall be made in such manner as is prescribed by rules of court; and

(b) shall set out the grounds of the application; and

(c) shall be lodged with the registry of the Supreme Court and, in the case of an application in relation to a decision the terms of which were recorded in writing and set out in a document that was provided to the applicant, including such a decision that a person purported to make after the end of the period within which it was required to be made, shall be so lodged within the application period or within such further time as the Supreme Court (whether before or after the end of the application period) allows.

(2) Any other application to the Supreme Court under this Act shall be made as prescribed by rules of court.

(3) The application period for the purposes of subsection (1) (c) is the period commencing on the day on which the decision is made and ending on the 28th day after—

(a) if the decision sets out the findings on material questions of fact, refers to the evidence or other material on which those findings were based and gives the reasons for the decision—

the day on which a document setting out the terms of the decision is provided to the applicant; or

- (b) in any other case—
  - (i) if a statement in writing setting out those findings, referring to that evidence or other material and giving those reasons is provided to the applicant otherwise than under section 13 (1) not later than the 28th day after the day on which a document setting out the terms of the decision is provided to the applicant—the day on which the statement is so provided; or
  - (ii) if the applicant, in accordance with section 13 (1), requests the person who made the decision to provide a statement as mentioned in that subsection—the day on which the statement is provided, the applicant is notified in accordance with section 13 (3) that the applicant was not entitled to make the request, the Supreme Court makes an order under section 13 (5) declaring that the applicant was not entitled to make the request or the applicant is notified in accordance with section 14 (3) or 15 (4) that the statement will not be provided; or
  - (iii) in any other case—the day on which a document setting out the terms of the decision is provided to the applicant.

(4) Where—

- (a) no period is prescribed for the making of applications for orders of review in relation to a particular decision; or
- (b) no period is prescribed for the making of an application by a particular person for an order of review in relation to a particular decision;

the Supreme Court may refuse to entertain an application for an order of review in relation to the decision, or refuse to entertain an application by the person, as the case may be, if the Supreme Court



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is of the opinion that the application was not made within a reasonable time after the decision was made.

- (5) In forming an opinion for the purposes of subsection (4), the Supreme Court shall have regard to—
- (a) the time when the applicant became aware of the making of the decision; and
  - (b) if subsection (4) (b) applies—any period prescribed for the making by another person of an application for an order of review in relation to the decision; and
  - (c) such other matters as it considers relevant.
- (6) The applicant for an order of review is not limited to the grounds set out in the application but, if he or she wishes to rely on a ground not so set out, the Supreme Court may direct that the application be amended to specify that ground.
- (7) The rules of court may make provision for and in relation to service on appropriate persons of copies of documents lodged with the registry of the Supreme Court under this Act.
- (8) Strict compliance with rules of court made for the purposes of this section is not required and substantial compliance is sufficient.

## **11 Amendment of documents**

The Supreme Court may, on such terms as it thinks fit, permit a document lodged with the registry of the Supreme Court in connection with an application under this Act to be amended and may, if it thinks fit, direct such a document to be amended in a manner specified by the Supreme Court.

## **12 Application to be made a party to a proceeding**

- (1) A person interested in a decision, conduct or failure in relation to which an application has been made to the Supreme Court under this

Act may apply to the Supreme Court to be made a party to the application.

- (2) The Supreme Court may, in its discretion—
  - (a) grant the application either unconditionally or subject to such conditions as it thinks fit; or
  - (b) refuse the application.

**13 Reasons for decision may be obtained**

- (1) Where a person makes a decision to which this section applies, any person who is entitled to make an application to the Supreme Court under section 5 in relation to the decision may, by notice in writing given to the person who made the decision, request the person to provide a statement in writing setting out the findings on material questions of fact, referring to the evidence or other material on which those findings were based and giving the reasons for the decision.
- (2) Where such a request is made, the person who made the decision shall, subject to this section, as soon as practicable and in any event within 28 days after receiving the request, prepare the statement and give it to the person who made the request.
- (3) Where a person to whom such a request is made is of the opinion that the applicant was not entitled to make the request, the firstmentioned person may, within 28 days after receiving the request—
  - (a) provide to the applicant a notice in writing stating that opinion; or
  - (b) apply to the Supreme Court under subsection (5) for an order declaring that applicant was not entitled to make the request.
- (4) Where a person provides a notice under subsection (3), or applies to the Supreme Court under subsection (5), with respect to a request, the person is not required to comply with the request unless—

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- (a) the Supreme Court, on an application under subsection (5), declares that the applicant was entitled to make the request; or
  - (b) the person has applied to the Supreme Court under subsection (5) for an order declaring that the applicant was not entitled to make the request and the Supreme Court refuses that application;

and, in either of those cases, the person shall prepare the statement to which the request relates and provide it to the person who made the request within 28 days after the decision of the Supreme Court.

- (5) The Supreme Court may, on the application of—
  - (a) a person to whom a request is made under subsection (1); or
  - (b) a person who has received a notice under subsection (3);make an order declaring that the person who made the request concerned was, or was not, entitled to make the request.
- (6) A person to whom a request for a statement in relation to a decision is made under subsection (1) may refuse to prepare and provide the statement if—
  - (a) in the case of a decision the terms of which were recorded in writing and set out in a document that was provided to the applicant—the request was not made on or before the 28th day after the day on which that document was so provided; or
  - (b) in any other case—the request was not made within a reasonable time after the decision was made;

and in any such case the person to whom the request was made shall provide to the applicant, within 14 days after receiving the request, a notice in writing stating that the statement will not be provided and giving the reason why the statement will not be so provided.

- (7) For the purposes of subsection (6) (b), a request for a statement in relation to a decision shall be taken to have been made within a reasonable time after the decision was made if the Supreme Court,

on application by the applicant, declares that the request was made within a reasonable time.

- (8) If the Supreme Court, upon application for an order under this subsection made by a person to whom a statement has been provided following a request under subsection (1), considers that the statement does not contain adequate particulars of findings on material questions of fact, an adequate reference to the evidence or other material on which those findings were based or adequate particulars of the reasons for the decision, the Supreme Court may order the person who provided the statement to provide to the person who made the request, within such time as is specified in the order, an additional statement containing further and better particulars in relation to matters specified in the order with respect to those findings, that evidence or other material or those reasons.
- (9) The regulations may declare decisions not to be decisions to which this section applies.
- (10) Regulations made under subsection (9) may specify decisions in any way, whether by reference to the nature or subject matter of the decisions, by reference to the enactment or provision of an enactment under which they are made, by reference to the holder of the office by whom they are made, or otherwise.
- (11) A regulation made under subsection (9) applies only in relation to decisions made after the regulation takes effect.
- (12) In this section:  
***decision to which this section applies*** means a decision to which this Act applies, other than—
  - (a) a decision to which the *Administrative Appeals Tribunal Act 1989*, section 26 applies; or
  - (b) a decision that includes, or is accompanied by, a statement setting out findings of facts, a reference to the evidence or

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other material on which those findings were based and the reasons for the decision; or

(c) a decision to which schedule 2 applies.

## **14 Certain information not required to be disclosed**

- (1) This section applies in relation to any information to which a request made to a person under section 13 (1) relates, being information that—
- (a) relates to the personal affairs or business affairs of a person other than the person making the request; and
  - (b) is information—
    - (i) that was supplied in confidence; or
    - (ii) the publication of which would reveal a trade secret; or
    - (iii) that was provided in compliance with a duty imposed by an enactment; or
    - (iv) the providing of which in accordance with the request would be in contravention of an enactment, being an enactment that expressly imposes on the person to whom the request is made a duty not to divulge or communicate to any person, or to persons other than particular persons, or except in prescribed circumstances, information of that kind.
- (2) Where a person has been requested under section 13 (1) to provide a statement to another person—
- (a) the firstmentioned person is not required to include in the statement any information in relation to which this section applies; and
  - (b) where the statement would be false or misleading if it did not include information of that kind—the firstmentioned person is not required to provide the statement.

- (3) Where, under subsection (2), information is not included in a statement provided by a person or a statement is not provided by a person, the person shall provide a notice in writing to the person who requested the statement—
  - (a) if information is not included in a statement—stating that the information is not so included and giving the reason for not including the information; or
  - (b) if a statement is not provided—stating that the statement will not be provided and giving the reason for not providing the statement.
- (4) Nothing in this section affects the power of the Supreme Court to make an order for the discovery of documents or to require the giving of evidence or the production of documents to the Supreme Court.

## **15 Certification concerning the disclosure of information**

- (1) If the Minister certifies in writing that the disclosure of information concerning a specified matter would be contrary to the public interest—
  - (a) because it would involve the disclosure of deliberations or decisions of the Executive or of a committee of the Executive; 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 Territory in a judicial proceeding that the information should not be disclosed;subsections (3), (4) and (5) have effect.
- (2) If the Commonwealth Attorney-General certifies in writing that the disclosure of information concerning a specified matter would be contrary to the public interest—

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- (a) because it would prejudice the security, defence or international relations of the Commonwealth; or
  - (b) because it would involve the disclosure of deliberations or decisions of the Commonwealth Cabinet or of a committee of the Cabinet; or
  - (c) for any other reason specified in the certificate that could form the basis for a claim by the Crown in right of the Commonwealth in a judicial proceeding that the information should not be disclosed;

subsections (3), (4) and (5) have effect.

- (3) Where a person has been requested under section 13 to provide a statement to another person—
  - (a) the firstmentioned person is not required to include in the statement any information in respect of which a certificate has been provided under subsection (1) or (2); and
  - (b) where the statement would be false or misleading if it did not include information of that kind—the firstmentioned person is not required to provide the statement.
- (4) Where, under subsection (3), information is not included in a statement provided by a person or a statement is not provided by a person, the person shall provide a notice in writing to the person who requested the statement—
  - (a) if information is not included in a statement—stating that the information is not so included and giving the reason for not including the information; or
  - (b) if a statement is not provided—stating that the statement will not be provided and giving the reason for not providing the statement.
- (5) Nothing in this section affects the power of the Supreme Court to make an order for the discovery of documents or to require the

giving of evidence or the production of documents to the Supreme Court.

**16 Stay of proceedings**

- (1) The making of an application to the Supreme Court under section 5 in relation to a decision does not affect the operation of the decision or prevent the implementation of the decision, but—
  - (a) the Supreme Court may, by order, on such conditions (if any) as the Supreme Court determines, suspend the operation of the decision; and
  - (b) the Supreme Court may order, on such conditions (if any) as the Supreme Court determines, a stay of all or any proceedings under the decision.
- (2) The Supreme Court may make an order under subsection (1) on the Supreme Court's own motion or on the application of the person who made the application under section 5.

**17 Powers of the Supreme Court in respect of applications for order of review**

- (1) On an application for an order of review in respect of a decision, the Supreme Court may, in its discretion, make all or any of the following orders:
  - (a) an order quashing or setting aside the decision, or a part of the decision, with effect from the date of the order or from such earlier or later date as the Supreme Court specifies;
  - (b) an order referring the matter to which the decision relates to the person who made the decision for further consideration, subject to such directions as the Supreme Court thinks fit;
  - (c) an order declaring the rights of the parties in respect of any matter to which the decision relates;



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- (d) an order directing any of the parties to do, or to refrain from doing, any act or thing in order to do justice between the parties.
- (2) On an application for an order of review in respect of conduct that has been, is being, or is proposed to be, engaged in for the purpose of the making of a decision, the Supreme Court may, in its discretion, make either or both of the following orders:
- (a) an order declaring the rights of the parties in respect of any matter to which the conduct relates;
- (b) an order directing any of the parties to do, or to refrain from doing, any act or thing in order to do justice between the parties.
- (3) On an application for an order of review in respect of a failure to make a decision, or in respect of a failure to make a decision within the period within which the decision was required to be made, the Supreme Court may, in its discretion, make all or any of the following orders:
- (a) an order directing the making of the decision;
- (b) an order declaring the rights of the parties in relation to the making of the decision;
- (c) an order directing any of the parties to do, or to refrain from doing, any act or thing in order to do justice between the parties.
- (4) The Supreme Court may at any time, of its own motion or on the application of any party, revoke, vary, or suspend the operation of any order made by it under this section.

**18 Change in person holding, or performing the duties of, an office**

Where—

- (a) a person has, in the performance of the duties of an office, made a decision in respect of which an application may be made to the Supreme Court under this Act; and
- (b) the person no longer holds, or, for whatever reason, is not performing the duties of, that office;

this Act has effect as if the decision had been made by—

- (c) the person for the time being holding or performing the duties of that office; or
- (d) if there is no person for the time being holding or performing the duties of that office or that office no longer exists—such person as the Minister administering the enactment under which the decision was made, or a person authorised by that Minister, specifies.

**19 Intervention by Minister or Commonwealth Attorney-General**

- (1) The Minister may, on behalf of the Territory, intervene in a proceeding before the Supreme Court under this Act.
- (2) The Commonwealth Attorney-General may, on behalf of the Commonwealth intervene in a proceeding before the Supreme Court under this Act, being a proceeding involving a matter in respect of which he or she has provided a certificate under section 15 (2).
- (3) Where the Minister or the Commonwealth Attorney-General intervenes in a proceeding under this section—
  - (a) the Supreme Court may, in the proceeding, make such order as to costs against the Territory or the Commonwealth, as the case may be, as the Supreme Court thinks fit; and
  - (b) the Minister or the Commonwealth Attorney-General, as the case may be, shall be taken to be a party to the proceeding.

**20 Act not to apply to certain decisions**

- (1) The regulations may declare decisions to be decisions that are not subject to judicial review by the Supreme Court under this Act.
- (2) If a regulation is so made in relation to a decision—
  - (a) section 5 does not apply in relation to that decision; and
  - (b) section 6 does not apply in relation to conduct that has been, is being, or is proposed to be, engaged in for the purpose of making that decision; and
  - (c) section 7 does not apply in relation to a failure to make that decision.
- (3) Regulations made for the purposes of subsection (1) may specify decisions in any way, whether by reference to the nature or subject matter of the decisions, by reference to the enactment or provision of an enactment under which they are made, by reference to the holder of the office by whom they are made, or otherwise.
- (4) Regulations made for the purposes of subsection (1) apply only in relation to decisions made after the regulations take effect.

**21 Regulation-making power**

The Executive may make regulations for this Act.

*Note* Regulations must be notified, and presented to the Legislative Assembly, under the *Legislation Act 2001*.

**22 Transitional—sch 1, clause 5**

- (1) A reference in schedule 1, clause 5 to a decision under the *Building Act 2004*, section 96 (Approval of fidelity fund schemes) or section 107 (Suspension or cancellation of approval of approved scheme) includes a reference to a decision made under the *Building Act 1972* (repealed), section 67 (Approval of fidelity fund schemes) or section 78 (Suspension or cancellation of approval of approved scheme).
- (2) This section expires on 1 July 2005.

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## Schedule 1      Decisions to which this Act does not apply

(see s 3)

- 1 This Act does not apply to—
  - (a) decisions making, or forming part of the process of making, or leading up to the making of, assessments; or
  - (b) decisions disallowing wholly or partly objections to assessments; or
  - (c) decisions refusing to amend, wholly or partly, assessments; made under any of the following enactments:
    - *Duties Act 1999*;
    - *Financial Institutions Duty Act 1987*;
    - *Payroll Tax Act 1987*;
    - *Stamp Duties and Taxes Act 1987*;
    - *Taxation Administration Act 1999*.
- 2 This Act does not apply to decisions made under the following enactments:
  - *Inquiries Act 1991*;
  - *Confiscation of Criminal Assets Act 2003*;
  - *Royal Commissions Act 1991*.
- 3 This Act does not apply to decisions made under—
  - (a) the *Electoral Act 1992*, part 4 (Electoralates); and
  - (b) the *Legislation Act 2001*, chapter 5 (Regulatory impact statements for subordinate laws and disallowable instruments).
- 4 This Act does not apply to—

- (a) a decision of the Executive under the *Judicial Commissions Act 1994*, section 5 (1), 16 (3) or 18; or
  - (b) a decision of a member of the Legislative Assembly to propose a motion in accordance with section 14 (3) (a) of that Act or to give notice of the motion to the Attorney-General in accordance with section 14 (3) (b) of that Act; or
  - (c) a decision of the Attorney-General under section 16 (1), 17 (1) or 23 (3) of that Act; or
  - (d) a resolution for the examination of a complaint in respect of a judicial officer by a judicial commission passed by the Legislative Assembly under that Act; or
  - (e) a decision of a judicial commission under that Act.
- 5 This Act does not apply to a decision under the *Building Act 2004*, section 96 (Approval of fidelity fund schemes) or section 107 (Suspension or cancellation of approval of approved scheme).
- 6 This Act does not apply to decisions of the Minister under the *Plant Diseases Act 2002*, part 3 (Measures for the control of diseases and pests).
- 7 This Act does not apply to decisions under the *Gungahlin Drive Extension Authorisation Act 2004*.
- 8 This Act does not apply to decisions of the Minister under the *Gene Technology (GM Crop Moratorium) Act 2004*, section 7 (Moratorium orders) or section 8 (Exemptions).

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## Schedule 2      Decisions to which section 13 does not apply

(see s 13)

Section 13 does not apply to any of the following decisions:

- (a) decisions relating to the administration of criminal justice and, in particular—
  - (i) decisions in connection with the investigation or prosecution of persons for offences against a law in force in the Territory; and
  - (ii) decisions in connection with the appointment of investigators or inspectors for the purposes of such investigations; and
  - (iii) decisions in connection with the issue of search warrants under a law in force in the Territory; and
  - (iv) decisions under a law in force in the Territory requiring the production of documents, the giving of information or the summoning of persons as witnesses;
- (b) decisions in connection with the institution or conduct of proceedings in a civil court, including decisions that relate to, or may result in, the bringing of such proceedings for the recovery of pecuniary penalties arising from contraventions of enactments and, in particular—
  - (i) decisions in connection with the investigation of persons for such contraventions; and
  - (ii) decisions in connection with the appointment of investigators or inspectors for the purposes of such investigations; and

- (iii) decisions in connection with the issue of search warrants under enactments; and
- (iv) decisions under enactments requiring the production of documents, the giving of information or the summoning of persons as witnesses;
- (c) decisions authorised by an Act to issue sums out of the public money of the Territory;
- (d) decisions of the Treasurer under the *Financial Management Act 1996*, section 18 (1);
- (e) decisions in connection with the enforcement of judgments or orders for the recovery of money by—
  - (i) the Territory; or
  - (ii) public servants in their official capacities;
- (f) decisions in connection with personnel management (including recruitment, training, promotion and organisation) with respect to the public service other than a decision relating to, and having regard to the particular characteristics of, or other circumstances relating to, a particular person;
- (g) decisions relating to promotions, transfers, temporary performance of duties, of or by individual officers of the public service;
- (h) decisions relating to—
  - (i) the making of appointments to the public service; or
  - (ii) the engagement of persons as employees under the *Public Sector Management Act 1994*; or
  - (iii) the making of appointments under an enactment or to an office established by, or under, an enactment;



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- (j) decisions in connection with the prevention or settlement of industrial disputes, or otherwise relating to industrial matters, in respect of the public service;
  - (k) decisions relating to the making or terminating of appointments of chief executives under the *Public Sector Management Act 1994*;
  - (m) decisions relating to the appointment, or the termination of an appointment, of a person to the office of commissioner for public administration;
  - (n) decisions relating to the employment, or the termination of employment, of staff under the *Legislative Assembly (Members' Staff) Act 1989*.

## Endnotes

1 About the endnotes

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## Endnotes

### 1 About the endnotes

Amending and modifying laws are annotated in the legislation history and the amendment history. Current modifications are not included in the republished law but are set out in the endnotes.

Not all editorial amendments made under the *Legislation Act 2001*, part 11.3 are annotated in the amendment history. Full details of any amendments can be obtained from the Parliamentary Counsel's Office.

Uncommenced amending laws and expiries are listed in the legislation history and the amendment history. These details are underlined. Uncommenced provisions and amendments are not included in the republished law but are set out in the last endnote.

If all the provisions of the law have been renumbered, a table of renumbered provisions gives details of previous and current numbering.

The endnotes also include a table of earlier republications.

### 2 Abbreviation key

am = amended	ord = ordinance
amdt = amendment	orig = original
ch = chapter	par = paragraph/subparagraph
cl = clause	pres = present
def = definition	prev = previous
dict = dictionary	(prev...) = previously
disallowed = disallowed by the Legislative Assembly	pt = part
div = division	r = rule/subrule
exp = expires/expired	reg = regulation/subregulation
Gaz = Gazette	renum = renumbered
hdg = heading	reloc = relocated
IA = Interpretation Act 1967	R[X] = Republication No
ins = inserted/added	RI = reissue
LA = Legislation Act 2001	s = section/subsection
LR = legislation register	sch = schedule
LRA = Legislation (Republication) Act 1996	sdiv = subdivision
mod = modified/modification	sub = substituted
o = order	SL = Subordinate Law
om = omitted/repealed	<u>underlining</u> = whole or part not commenced or to be expired

### 3 Legislation history

This Act was originally a Commonwealth ordinance—the *Administrative Decisions (Judicial Review) Ordinance 1989* No 33 (Cwlth).

The *Australian Capital Territory (Self-Government) Act 1988* (Cwlth), s 34 (4) converted most former Commonwealth ordinances in force in the ACT into ACT enactments. This allowed the ACT Legislative Assembly to amend and repeal the laws. This Act was converted into an ACT enactment on 11 May 1989 (self-government day).

As with most ordinances in force in the ACT, the name was changed from *Ordinance* to *Act* by the *Self-Government (Citation of Laws) Act 1989* No 21, s 5 on 11 May 1989 (self-government day).

#### **Administrative Decisions (Judicial Review) Act 1989 No 33**

notified 10 May 1989

commenced 11 May 1989 (s 2)

as amended by

#### **Royal Commissions and Inquiries (Consequential Provisions) Act 1991 No 3 sch**

notified 1 March 1991 (Gaz 1991 No S7)

s 1, s 2 commenced 1 March 1991 (s 2 (1))

sch commenced 1 May 1991 (s 2 (2) and Gaz 1991 No 16)

#### **Administrative Decisions (Judicial Review) (Amendment) Act 1991 No 102**

notified 15 January 1992 (Gaz 1991 No S3)

s 1, s 2 commenced 15 January 1992 (s 2 (1))

remainder (ss 3-5) commenced 15 July 1992 (s 2 (3))

#### **Electoral Act 1992 No 71 s 53**

notified 8 December 1992 (Gaz 1992 No S218)

s 1, s 2 commenced 8 December 1992 (s 2 (1))

s 53 commenced 21 December 1992 (s 2 (2) and Gaz 1992 No S243)

#### **Administrative Decisions (Judicial Review) (Amendment) Act 1993 No 65**

notified 6 September 1993 (Gaz 1993 No S172)

commenced 6 September 1993 (s 2)

## Endnotes

3 Legislation history

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**Supreme Court (Amendment) Act (No 2) 1993 No 91 sch 3**

notified 17 December 1993 (Gaz 1993 No S258)  
sch 3 commenced 17 December 1993 (s 2)

**Judicial Commissions (Consequential Amendments) Act  
1994 No 10 s 4**

notified 14 March 1994 (Gaz 1994 No S44)  
s 4 commenced 14 March 1994 (s 2)

**Public Sector Management (Consequential and Transitional  
Provisions) Act 1994 No 38 sch 1 pt 3**

notified 30 June 1994 (Gaz 1994 No S121)  
s 1, s 2 commenced 30 June 1994 (s 2 (1))  
sch 1 pt 3 commenced 1 July 1994 (s 2 (2) and Gaz 1994 No S142)

**Financial Management and Audit (Consequential and Transitional  
Provisions) Act 1996 No 26 sch pt 1**

notified 1 July 1996 (Gaz 1996 No S130)  
sch pt 1 commenced 1 July 1996 (s 2)

**Land (Planning and Environment) (Amendment) Act (No 3) 1996  
No 85 s 88**

notified 24 December 1996 (Gaz 1996 No S345)  
s 1, s 2 commenced 24 December 1996 (s 2 (1))  
s 88 commenced 24 June 1997 (s 2 (3))

**Tobacco Licensing (Amendment) Act 1998 No 18 sch 1**

notified 10 July 1998 (Gaz 1998 No S190)  
commenced 10 July 1998 (s 2)

**Taxation Administration (Consequential and Transitional Provisions)  
Act 1999 No 5 sch 2**

notified 1 March 1999 (Gaz 1999 No S8)  
s 1, s 2 commenced 1 March 1999 (s 2 (1))  
sch 2 commenced 1 March 1999 (s 2 (2))

**Duties (Consequential and Transitional Provisions) Act 1999 No 8  
s 33**

notified 1 March 1999 (Gaz 1999 No S8)  
ss 1-3 commenced 1 March 1999 (s 2 (1))  
commenced 1 March 1999 (s 2 (2))

**Law Reform (Miscellaneous Provisions) Act 1999 No 66 sch 3**

notified 10 November 1999 (1999 No 45)  
commenced 10 November 1999 (s 2)

**Tobacco Amendment Act 2000 No 16 sch 3 pt 1**

notified 20 April 2000 (Gaz 2000 No 16)  
s 1, s 2 commenced 20 April 2000 (s 2 (1))  
sch 3 pt 1 commenced 1 July 2000 (s 2 (3))

**Subordinate Laws Amendment Act 2000 No 71 sch 2**

notified 21 December 2000 (Gaz 2000 No S69)  
s 1, s 2 commenced 21 December 2000 (IA s 10B)  
sch 2 commenced 21 June 2001 (IA s 10E)

**Legislation (Consequential Amendments) Act 2001 No 44 pt 6**

notified 26 July 2001 (Gaz 2001 No 30)  
s 1, s 2 commenced 26 July 2001 (IA s 10B)  
pt 6 commenced 12 September 2001 (s 2 and Gaz 2001 No S65)

**Building Amendment Act 2002 No 15 s 14**

notified LR 17 May 2002  
s 1, s 2 commenced 17 May 2002 (LA s 75)  
s 14 commenced 18 May 2002 (s 2)

**Plant Diseases Act 2002 A2002-42 s 44**

notified LR 2 December 2002  
s 1, s 2 commenced 2 December 2002 (LA s 75 (1))  
s 44 commenced 2 June 2003 (s 2 and LA s 79)

**Confiscation of Criminal Assets Act 2003 A2003-8 sch 1 pt 1.1**

notified LR 27 March 2003  
s 1, s 2 commenced 27 March 2003 (LA s 75 (1))  
sch 1 pt 1.1 commenced 15 August 2003 (s 2 and CN2003-7)

**Construction Occupations Legislation Amendment Act 2004  
A2004-13 sch 2 pt 2.1**

notified LR 26 March 2004  
s 1, s 2 commenced 26 March 2004 (LA s 75 (1))  
sch 2 pt 2.1 commenced 1 September 2004 (s 2 and see Construction  
Occupations (Licensing) Act 2004 A2004-12, s 2 and CN2004-8)

## Endnotes

4 Amendment history

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### **Gungahlin Drive Extension Authorisation Act 2004 A2004-27 s 15**

notified LR 26 May 2004

s 1, s 2 commenced 26 May 2004 (LA s 75 (1))

s 15 commenced 27 May 2004 (s 2)

### **Gene Technology (GM Crop Moratorium) Act 2004 A2004-40 s 40**

notified LR 9 July 2004

s 1, s 2 commenced 9 July 2004 (LA s 75 (1))

s 40 commenced 10 July 2004 (s 2)

## 4 Amendment history

### **Commencement**

s 2 om 2001 No 44 amdt 1.42

### **Interpretation**

s 3 am 1991 No 102 s 4; 1993 No 65 s 4; 1996 No 85 s 88; 2001 No 44 amdts 1.43-1.45

def **duty** am 1994 No 38 sch 1 pt 3

def **enactment** am 1999 No 66 sch 3

def **rules of court** am 1993 No 91 sch 3

### **Effect of Act on other rights**

s 9 am 1991 No 102 s 5; 1993 No 65 s 5; 1999 No 66 sch 3

### **Stay of proceedings**

s 16 am 1999 No 66 sch 3

### **Regulation-making power**

s 21 sub 2001 No 44 amdt 1.46

### **Transitional—sch 1, clause 5**

s 22 ins A2004-13 amdt 2.1

exp 1 July 2005 (s 22 (2))

### **Decisions to which this Act does not apply**

sch 1 am 1991 No 3 sch; 1992 No 71 s 53; 1994 No 10 s 4; 1998 No 18 sch 1; 1999 No 5 sch 2; 1999 No 8 s 33; 2000 No 16 sch 3 pt 1; 2001 No 44 amdt 1.47; 2002 No 15 s 14; A2002-42, s 44; A2003-8 amdt 1.1; A2004-13 amdt 2.2; A2004-27 s 15; A2004-40 s 40

### **Decisions to which section 13 does not apply**

sch 2 am 1994 No 38 sch 1 pt 3; 1996 No 26 sch

## 5 Earlier republications

Some earlier republications were not numbered. The number in column 1 refers to the publication order.

Since 12 September 2001 every authorised republication has been published in electronic pdf format on the ACT legislation register. A selection of authorised republications have also been published in printed format. These republications are marked with an asterisk (\*) in column 1. Except for the footer, electronic and printed versions of an authorised republication are identical.

Republication No	Amendments to	Republication date
1	Act 1991 No 102	15 July 1992
2	Act 1993 No 91	31 January 1994
3	Act 1994 No 38	31 January 1995
4	Act 1996 No 26	30 November 1996
5	Act 1999 No 8	1 March 1999
6	Act 2001 No 44	18 October 2001
7	Act 2002 No 15	20 May 2002
8	<u>A2003-8</u>	2 June 2003
9	A2003-8	15 August 2003
10	A2004-27	27 May 2004
11	A2004-40	10 July 2004

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