

1994

**LEGISLATIVE ASSEMBLY
FOR THE
AUSTRALIAN CAPITAL TERRITORY**

**INTERPRETATION
(AMENDMENT) BILL 1994
AND THE
ADMINISTRATIVE APPEALS
(CONSEQUENTIAL AMENDMENTS)
BILL 1994**

EXPLANATORY MEMORANDUM

Circulated by authority of

Terry Connolly MLA

Attorney General

OUTLINE

The sole purpose of the Interpretation (Amendment) Bill 1994, the 'Interpretation Bill', is to insert a definition of the Administrative Appeals Tribunal, the 'Tribunal', into the *Interpretation Act 1967*. Henceforth, other enactments will only need to refer to the 'Administrative Appeals Tribunal' as this phrase will be fully defined in the *Interpretation Act 1967*.

The primary purpose of the Administrative Appeals (Consequential Amendments) Bill 1994, the 'Consequential Bill', is to make amendments consequential to the amendments found in the:

- (a) Administrative Appeals Tribunal (Amendment) Bill 1994, the 'AAT Bill'; and
- (b) the Interpretation Bill.

Any person who has a right to have a decision reviewed should be advised of the decision and their right of review. The AAT Bill at clause 9 provides for a Code of Practice to set minimum standards for the giving of notices of decisions and rights of review. These notices are to be given to any person whose interests are affected by a decision which is, at any stage, reviewable by the Tribunal.

A large number of enactments currently make provision for the notification of decisions and rights of review. These provisions will become redundant on commencement of the Code. The Consequential Bill will repeal those provisions and provide that notices must be in accordance with the Code.

The Interpretation Bill inserts the following definition of the Tribunal into the *Interpretation Act 1967*:

'Administrative Appeals Tribunal' means the Australian Capital Territory Administrative Appeals Tribunal established by section 4 of the *Administrative Appeals Tribunal Act 1989*.

The Consequential Bill amends a large number of enactments so that they all consistently refer to the Tribunal by using the phrase 'Administrative Appeals Tribunal'. The phrase 'Administrative Appeals Tribunal' wherever it appears will have the meaning set out above.

The Consequential Bill also serves a number of other minor purposes as outlined below.

Section references to decisions

It is usual for enactments providing for review of decisions by the Tribunal to list the relevant decisions under the enactment which are reviewable and provide a reference to the relevant section under which the decision is made. Currently some enactments fail to indicate the section under which the relevant decision is made. The Consequential Bill will remedy this deficiency.

Time periods for notices

It is a common law requirement that timely notice of a decision be given. Currently some enactments specify the time within which notice of a decision must be given. The Consequential Bill will delete these provisions as they are unnecessary.

Statement of reasons

Where a person is entitled to have a decision reviewed by the Tribunal that person is entitled under section 26 of the *Administrative Appeals Tribunal Act 1989*, the 'AAT Act', to obtain a statement of reasons for the decision. Currently some enactments require a statement of reasons to be provided at the time of giving notice of the decision. The Consequential Bill will delete most of these provisions as they are unnecessary.

Additional rights of review

A small number of enactments currently fail to provide the Tribunal with jurisdiction to review all of the decisions made under those enactments which are suitable for review. The Consequential Bill will remedy this deficiency.

Time periods for applying to the Tribunal

All enactments which provide for review of decisions by the Tribunal with the exception of the *Taxation (Administration) Act 1987* and the *Freedom of Information Act 1989* require applications to be lodged within the time periods provided for in the AAT Act. The *Taxation (Administration) Act 1987* and the *Freedom of Information Act 1989* currently allow a period of 60 days for applications to be lodged. The Consequential Bill, with one exception, amends the *Taxation (Administration) Act 1987* and the *Freedom of Information Act 1989* to require applications to be lodged within the time periods provided for in the AAT Act.

The one exception is under the *Freedom of Information Act 1989* which currently provides that no application can be made to the Tribunal where a complaint to the Ombudsman is yet to be determined. A person currently has 60 days from the time of being advised of the result of the complaint to lodge an application with the Tribunal. The Bill reduces this time period for lodging an application from 60 days to 28 days.

FINANCIAL IMPLICATIONS

The proposed amendments in the Interpretation Bill will not result in any additional expenditure. This is also the position with respect to the amendments found in the Consequential Bill with the possible exception of those providing for the introduction of a Code of Practice. There may be some increase in decisions reviewed as a result of minimum standards being set for notices of decisions and rights of review. However, most of the relevant enactments already provide for some form of notification of decisions and rights of review. Moreover, if people are openly and clearly informed of their rights and of the basis of decisions affecting them they may be less likely to seek a review than if they are not fully and clearly advised of decisions and rights.

INTERPRETATION (AMENDMENT) BILL 1994**NOTES ON CLAUSES****Formal Clauses**

Clauses 1, 2 and 3 are formal requirements. **Clause 1** provides for the Act to be cited as the *Interpretation (Amendment) Act 1994*. **Clause 3** provides that the 'Principal Act', which is amended by this Act, is the *Interpretation Act 1967*. In this explanatory memorandum the Principal Act is referred to as 'the Interpretation Act'.

Clause 2 provides that sections 1, 2 and 3 commence on the day on which this Act is notified in the *Gazette*. Section 4 will commence on the day on which the Code of Practice provisions (sections 9 and 28) in the *Administrative Appeals Tribunal (Amendment) Act (No. 2) 1994* commence.

Meaning of certain words

Section 14 of the Interpretation Act provides for definitions of words and phrases. **Clause 4** will amend section 14 by inserting a definition of 'Administrative Appeals Tribunal'. This phrase is defined to mean the Australian Capital Territory Administrative Appeals Tribunal established by section 4 of the *Administrative Appeals Tribunal Act 1989*.

**ADMINISTRATIVE APPEALS (CONSEQUENTIAL
AMENDMENTS) BILL 1994**

NOTES ON CLAUSES

Formal clauses

Clauses 1 and 2 are formal requirements. **Clause 1** provides for the Act to be cited as the *Administrative Appeals (Consequential Amendments) Act 1994*. **Clause 2** provides that sections 1 and 2 commence on the day on which this Act is notified in the *Gazette*. The remaining provisions will commence on the day on which the Code of Practice provisions (sections 9 and 28) in the *Administrative Appeals Tribunal (Amendment) Act (No. 2) 1994* commence.

Amendments of Acts

Clause 3 provides that the Acts specified in Schedule 1 are amended as set out in that Schedule.

Amendments of Regulations

Clause 4 provides that the Regulations specified in Schedule 2 are amended as set out in that Schedule.

Schedules 1 & 2

Schedules 1 and 2 list a number of enactments which are amended as set out below.

Code of Practice

The enactments set out below and listed in Schedules 1 and 2 are amended to provide for the introduction of a Code of Practice to set minimum standards for the giving of notices and rights of review.

Acts

Adoption Act 1993

Agents Act 1968

Air Pollution Act 1984

Animal Diseases Act 1993

Animal Welfare Act 1992
Associations Incorporation Act 1991
Audit Act 1989
Bookmakers Act 1985
Boxing Control Act 1993
Building Act 1972
Bushfire Act 1936
Business Franchise (Tobacco and Petroleum Products) Act 1984
Business Franchise ("X" Videos) Act 1990
Canberra Institute of Technology Act 1987
Casino Control Act 1988
Children's Services Act 1986
Chiropractors and Osteopaths Act 1983
Clinical Waste Act 1990
Consumer Affairs Act 1973
Co-operative Societies Act 1939
Credit Act 1985
Dangerous Goods Act 1975 (NSW) in its application in the ACT
Dental Technicians and Dental Prosthetists Registration Act 1988
Dentists Registration Act 1931
Discrimination Act 1991
Dog Control Act 1975
Drugs of Dependence Act 1989
Education Act 1937
Electricity Act 1971
Electricity and Water Act 1988
Financial Institutions Duty Act 1987
Food Act 1992
Gaming Machine Act 1987
Gas Act 1992
Hawkers Act 1936
Health Act 1993
Heritage Objects Act 1991
Lakes Act 1976
Land (Planning and Environment) Act 1991
Legal Aid Act 1977
Liquor Act 1975
Long Service Leave (Building and Construction Industry) Act 1981
Meat Act 1931
Medical Practitioners Act 1930
Mental Health Act 1983
Motor Traffic Act 1936

Motor Vehicles (Dimension and Mass) Act 1990
Nature Conservation Act 1980
Noise Control Act 1988
Nurses Act 1988
Optometrists Act 1956
Ozone Protection Act 1991
Payroll Tax Act 1987
Pesticides Act 1989
Pharmacy Act 1931
Physiotherapists Registration Act 1977
Plumbers, Drainers and Gasfitters Board Act 1982
Poisons and Drugs Act 1978
Radiation Act 1983
Rates and Land Rent (Relief) Act 1970
Rates and Land Tax Act 1926
Registration of Births, Deaths and Marriages Act 1963
Roads and Public Places Act 1937
Sale of Motor Vehicles Act 1977
Stamp Duties and Taxes Act 1987
Stock Act 1991
Superannuation (Legislative Assembly Members) Act 1991
Surveyors Act 1967
Taxation (Administration) Act 1987
Trade Measurement Act 1991
Traffic Act 1937
Unit Titles Act 1970
Veterinary Surgeons Registration Act 1965
Vocational Training Act 1989
Water Pollution Act 1984
Weapons Act 1991
Workers' Compensation Act 1951

Regulations

Adoption Regulations
Animal Welfare Regulations
Canberra Sewerage and Water Supply Regulations
Dangerous Goods Regulation 1978 (NSW) in its application in the ACT
Meat Regulations

Definition of Tribunal

The enactments set out below and listed in Schedules 1 and 2 are amended to provide for the insertion of a definition of the Tribunal into the *Interpretation Act 1967*.

Acts

Agents Act 1968
Air Pollution Act 1984
Animal Diseases Act 1993
Animal Welfare Act 1992
Associations Incorporation Act 1991
Audit Act 1989
Bookmakers Act 1985
Boxing Control Act 1993
Building Act 1972
Bushfire Act 1936
Business Franchise (Tobacco and Petroleum Products) Act 1984
Business Franchise ("X" Videos) Act 1990
Casino Control Act 1988
Children's Services Act 1986
Chiropractors and Osteopaths Act 1983
Clinical Waste Act 1990
Consumer Affairs Act 1973
Co-operative Societies Act 1939
Credit Act 1985
Dangerous Goods Act 1975 (NSW) in its application in the ACT
Dental Technicians and Dental Prosthetists Registration Act 1988
Dentists Registration Act 1931
Drugs of Dependence Act 1989
Education Act 1937
Egg Industry Act 1975
Egg Industry (Amendment) Act 1979
Electricity Act 1971
Electricity and Water Act 1988
Evidence Act 1971
Financial Institutions Duty Act 1987
Food Act 1992
Freedom of Information Act 1989
Gaming Machine Act 1987
Gas Act 1992

Hawkers Act 1936
Health Act 1993
Health Professions Boards (Elections) Act 1980
Heritage Objects Act 1991
Lakes Act 1976
Legal Aid Act 1977
Liquor Act 1975
Long Service Leave (Building and Construction Industry) Act 1981
Medical Practitioners Act 1930
Motor Traffic Act 1936
Motor Vehicles (Dimension and Mass) Act 1990
Nature Conservation Act 1980
Noise Control Act 1988
Nurses Act 1988
Ombudsman Act 1989
Optometrists Act 1956
Ozone Protection Act 1991
Payroll Tax Act 1987
Pesticides Act 1989
Pharmacy Act 1931
Physiotherapists Registration Act 1977
Plumbers, Drainers and Gasfitters Board Act 1982
Poisons and Drugs Act 1978
Radiation Act 1983
Rates and Land Rent (Relief) Act 1970
Rates and Land Tax Act 1926
Roads and Public Places Act 1937
Sale of Motor Vehicles Act 1977
Stamp Duties and Taxes Act 1987
Supreme Court Act 1933
Surveyors Act 1967
Taxation (Administration) Act 1987
Trade Measurement Act 1991
Unit Titles Act 1970
Veterinary Surgeons Registration Act 1965
Vocational Training Act 1989
Water Pollution Act 1984
Weapons Act 1991
Workers' Compensation Act 1951

Regulations

Adoption Regulations

Animal Welfare Regulations

Canberra Sewerage and Water Supply Regulations

Dangerous Goods Regulation 1978 (NSW) in its application in the ACT

Meat Regulations

Section references to decisions

The enactments set out below and listed in Schedules 1 and 2 are amended to insert in those provisions which list the relevant decisions reviewable by the Tribunal the section under which the relevant decision is made.

Acts

Air Pollution Act 1984

Associations Incorporation Act 1991

Business Franchise ("X" Videos) Act 1990

Clinical Waste Act 1990

Consumer Affairs Act 1973

Credit Act 1985

Dangerous Goods Act 1975 (NSW) in its application in the ACT

Electricity Act 1971

Hawkers Act 1936

Mental Health Act 1983

Motor Vehicles (Dimension and Mass) Act 1990

Noise Control Act 1988

Pesticides Act 1989

Plumbers, Drainers and Gasfitters Board Act 1982

Radiation Act 1983

Roads and Public Places Act 1937

Sale of Motor Vehicles Act 1977

Taxation (Administration) Act 1987

Trade Measurement Act 1991

Water Pollution Act 1984

Regulations

Meat Regulations

Schools Authority Regulations

Time periods for notices

The enactments set out below and listed in Schedules 1 and 2 are amended to delete those provisions which specify the time within which notice of a decision must be given.

Acts

Adoption Act 1993

Agents Act 1968

Animal Diseases Act 1993

Associations Incorporation Act 1991

Building Act 1972

Business Franchise ("X" Videos) Act 1990

Canberra Institute of Technology Act 1987

Children's Services Act 1986

Chiropractors and Osteopaths Act 1983

Clinical Waste Act 1990

Credit Act 1985

Dental Technicians and Dental Prosthetists Registration Act 1988

Dog Control Act 1975

Drugs of Dependence Act 1989

Electricity and Water Act 1988

Financial Institutions Act 1987

Gaming Machine Act 1987

Gas Act 1992

Health Act 1993

Lakes Act 1976

Land (Planning and Environment) Act 1991

Liquor Act 1975

Long Service Leave (Building and Construction Industry) Act 1981

Meat Act 1931

Medical Practitioners Act 1930

Motor Vehicles (Dimension and Mass) Act 1990

Nature Conservation Act 1980

Noise Control Act 1988

Optometrists Act 1956

Payroll Tax Act 1987

Pesticides Act 1989

Pharmacy Act 1931

Poisons and Drugs Act 1978

Registration of Births, Deaths and Marriages Act 1963

Sale of Motor Vehicles Act 1977

Stamp Duties and Taxes Act 1987
Traffic Act 1937

Regulations

Adoption Regulations
Canberra Sewerage and Water Supply Regulations
Meat Regulations

Statement of reasons

The enactments set out below and listed in Schedules 1 and 2 are amended to delete those provisions which require a statement of reasons to be provided at the time of giving notice of a decision.

Acts

Bookmakers Act 1985
Canberra Institute of Technology Act 1987
Children's Services Act 1986
Clinical Waste Act 1990
Co-operative Societies Act 1939
Credit Act 1985
Dangerous Goods Act 1975 (NSW) in its application in the ACT
Dentists Registration Act 1931
Discrimination Act 1991
Dog Control Act 1975
Electricity Act 1971
Gaming Machine Act 1987
Mental Health Act 1983
Plumbers, Drainers and Gasfitters Board Act 1982
Radiation Act 1983
Rates and Land Rent (Relief) Act 1970
Superannuation (Legislative Assembly Members) Act 1991
Veterinary Surgeons Registration Act 1965
Water Pollution Act 1984
Weapons Act 1991

Regulations

Dangerous Goods Regulation 1978 (NSW) in its application in the ACT

Additional rights of review

The Acts set out below and listed in Schedule 1 are amended to provide the Tribunal with jurisdiction to review additional decisions made under those Acts which are suitable for review. The additional decisions reviewable by the Tribunal are located in each of the relevant Acts as indicated.

Consumer Affairs Act 1973 (new paragraph 15FK(2)(b))
 Credit Act 1985 (new paragraph 262(1)(aa))
 Dangerous Goods Act 1975 (NSW) in its application in the ACT
 (new paragraph 29(p))
 Dentists Registration Act 1931 (new paragraphs 38B(1)(ea) & (eb))
 Medical Practitioners Act 1930 (new subsection 54(g))
 Pesticides Act 1989 (new paragraphs 80(1)(ea), (ga), (ja) & (na))
 Radiation Act 1983 (new paragraph 72(p))
 Superannuation (Legislative Assembly Members) Act 1991 (new
 subsection 21(a))
 Water Pollution Act 1984 (new paragraph 40(1)(da))

Time periods for applying to the Tribunal

The *Taxation (Administration) Act 1987* and the *Freedom of Information Act 1989* are amended, with one exception, to require any application for a review of a decision made under either of these enactments to be lodged within the time periods provided for in the AAT Act.

The one exception is under the *Freedom of Information Act 1989* where the time period for lodging an application, following a complaint being determined by the Ombudsman, is changed from being 60 days to 28 days.