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**THE LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL  
TERRITORY**

**ADMINISTRATIVE APPEALS TRIBUNAL AMENDMENT BILL 2002**

**EXPLANATORY STATEMENT**

Circulated by authority of

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## **ADMINISTRATIVE APPEALS TRIBUNAL AMENDMENT BILL 2002**

### **BACKGROUND**

The *Administrative Appeals Tribunal Act 1989* (the Act) establishes the Administrative Appeals Tribunal (the AAT) for the Australian Capital Territory (the ACT). The function of the AAT is to review administrative decisions made under a range of ACT enactments. That review is designed to be a relatively flexible and informal process. Any Act may provide for the AAT to review certain decisions made under that Act on application by a person who has an interest in the outcome of the decision.

The Act provides for the AAT to have a Land and Planning Division. The reason for having a Land and Planning Division is that a number of decisions about land, planning and environment management can be taken to the AAT for review. The *Land (Planning and Environment) Act 1991* and the *Tree Protection (Interim Scheme) Act 2001* both provide for the AAT to review decisions.

The Administrative Appeals Tribunal Amendment Bill 2002 is part of a package of legislation to improve land management processes in the ACT. It is designed to strengthen the AAT Land and Planning Division in order to assist it to speedily and effectively resolve disputes about land planning decisions.

### **SUMMARY**

The Administrative Appeals Tribunal Amendment Bill 2002 makes four main changes to the Act.

It inserts objects both for the whole of the AAT and for the Land and Planning Division in order to define the focus for AAT operations.

It inserts a requirement for the AAT to consider in each land, planning and environment matter whether mediation is appropriate and gives the AAT the power to order parties to attempt mediation. Using this approach it should be possible to reduce the number of land, planning and environment matters that the AAT has to hear.

The bill introduces a statutory time limit of 120 days for the AAT to decide land, planning and environment applications. As some applications can be particularly complicated there is provision for the President of the AAT to extend the time limit if necessary.

The bill gives the AAT power to order costs against a party in a land, planning and environment application if the party has failed to follow a direction given by the AAT.

## REVENUE/COST IMPLICATIONS

The requirement for mediation to be considered in every land, planning and environment application will necessitate additional mediation resources being made available to the AAT. There is a related proposal to have a three member panel comprised in part of experts in land, planning and environment management disciplines to hear applications before the Land and Planning Division of the AAT. No legislation is required to implement that proposal. The estimated cost implications of these proposals to increase resources for the AAT to deal with planning applications is \$300,000 in the 2003/2004 financial year and in following years.

## SUMMARY OF CLAUSES

### *Formal Clauses*

Clause 1 sets out the name of the Act.

Clause 2 provides for the Act to commence on 1 July 2003.

Clause 3 says that the Act amends the *Administrative Appeals Tribunal Act 1989*.

### *New definition*

Clause 4 inserts a new definition of “application” for the purposes of the provisions relating to land, planning and environment matters into section 3 of the Act.

New section 49B provides that, for the purposes of division 4.5, “application” means an application for review by the AAT of a decision under the *Land (Planning and Environment) Act 1991* or the *Tree Protection (Interim Scheme) Act 2001*.

Clause 4 also inserts a definition for “registered mediator” into section 3 of the Act. As a result, “registered mediator” in the Act will mean a mediator registered under the *Mediation Act 1997*.

### *Main objects of Act*

Clause 5 inserts a new part 1A, headed “Objects and important concepts”, in the Act.

Part 1A contains new section 3A and new section 3B.

Section 3A contains the main objects of the Act. These main objects apply to the whole of the Act and therefore to the AAT generally. They are:

- to establish an independent administrative appeals tribunal

- to review decisions made by decision-makers under enactments if authorised by enactments
- to ensure that the AAT is accessible
- to ensure that proceedings in the AAT are efficient, effective and as informal as possible
- to ensure decisions of the AAT are fair
- to foster an atmosphere in which administrative review is viewed positively as a way of enhancing the delivery of services and programs
- to encourage, and bring about, compliance by administrators with Territory laws.

***Role and main object of land and planning division***

Section 3B contains the objects that are especially for the Land and Planning Division of the AAT. Although the main objects contained in section 3A apply to the Land and Planning Division, the additional things in section 3B also apply to that Division. Section 3B makes it clear that review of decisions by the AAT is part of the ACT land and planning system. It says that the main object of the Land and Planning Division is:

- to contribute to the orderly and sustainable development of the ACT by making decisions that are consistent with the land and planning system and with the social, environmental and economic background of the ACT.

***Application of division 4.5***

Clause 6 takes out the existing section 17(4) and inserts a new one. Previously section 17(4) said that the provisions of the Act applied to each Division of the AAT. This amendment provides that all the provisions of the Act, except for division 4.5, apply to each Division of the AAT.

Division 4.5 of the Act is inserted by the bill and sets out special requirements for dealing with land, planning and environment applications. It also gives the AAT power to make an order for costs in relation to land, planning and environment applications under certain circumstances.

## ***Headings***

Clause 7 inserts a new division heading. The heading “Division 4.1 Review, applications and parties” will appear at the top of part 4, before section 24. The insertion of division headings is to make the Act easier to read.

Clause 8 inserts a division 4.2 heading after section 30 in the Act. The new heading will read “Division 4.2 Mediation and hearings before tribunal”.

Clause 9 inserts a new heading for section 33A. The previous heading for section 33A is removed and replaced by a heading reading “Mediation generally”.

## ***Exclusion of division 4.5***

Clause 10 substitutes the term “registered mediator” for the term “mediator” in section 33A(1). In section 33A(1) the AAT is given power to refer matters for mediation. The amendment will mean that if the AAT refers a matter to a mediator, the mediator will be one who is registered under the *Mediation Act 1997*.

Separate provisions that apply only to mediation of land, planning and environment matters are included in new section 49D that is inserted by the bill.

Clause 11 takes out the reference in section 33A(3) to subsection (1) of section 33A and replaces it with a reference to the Act. The effect of this is to broaden the application of section 33A(3) so that applies to all mediation resulting from an AAT direction. It will therefore apply to land, planning and environment matters referred to mediation under new section 49D, inserted by the bill. Section 33A(3) provides protection for mediation sessions by preventing evidence about them being given in a Tribunal hearing.

Clause 12 inserts a new division heading before section 40. The new heading will read: “Division 4.3 Powers of tribunal”.

Clause 13 renumbers the present section 41 as section 39A. Section 39A is then moved to be immediately after section 39. The renumbering and relocation is to put the provisions in a more logical order and to accommodate the insertion of the new division 4.5 that deals with land, planning and environment matters.

Clause 14 inserts a new division heading after section 44A. The new heading will read: “Division 4.4 After end of tribunal proceeding”.

Clause 15 inserts new division 4.5. The heading to the division is: “Division 4.5 Land, planning and environment applications”. It is inserted after section 49. Division 4.5 contains new section 49A, 49B, 49C, 49D, and 49E. They contain new provisions relating to the treatment of land, planning and environment application by the AAT.

### ***Application of division 4.5***

New section 49A provides that division 4.5 applies to applications for review by the AAT of decisions under the *Land (Planning and Environment) Act 1991* and the *Tree Protection (Interim Scheme) Act 2001*. The other provisions in part 4 of the Act also apply to these applications, but the provisions in division 4.5 only apply to applications under those Acts.

### ***Meaning of “application” for division 4.5***

New section 49B provides that, for the purposes of division 4.5, “application” means an application for review by the AAT of a decision under the *Land (Planning and Environment) Act 1991* or the *Tree Protection (Interim Scheme) Act 2001*.

### ***Time for deciding applications***

New section 49C introduces a time limit of 120 days for the AAT to decide a land, planning and environment application. The President of the AAT can extend the time for deciding an application on the basis that the extension would serve the interests of justice.

If an application is not decided within 120 days, details of the time taken to decide to application must be included in the annual report of the AAT. If the time allowed for making a decision has been extended by the President, the reasons for that extension must also be included in the annual report. However, a failure to comply with those requirements will not affect the validity of the AAT decision.

### ***Mediation***

New section 49D makes special provision for mediation of land, planning and environment applications. It requires the AAT to consider, in respect of each land, planning and environment application, whether it is suitable for mediation and whether mediation is likely to resolve the application. If the AAT considers that mediation is a suitable option and is reasonably likely to be successful it can refer the matter to a registered mediator and direct parties to attend mediation.

The aim is to encourage parties as much as possible to resolve issues underlying the application without the need for the AAT to hold a full hearing.

The AAT can also refer the application to a registered mediator and direct parties to attend mediation if one of the parties applies for such a direction.

Although new section 49D contains provisions that apply only to mediation about land, planning and environment applications, the general mediation provisions in section 33A also apply to mediation of these matters.

As a result of the new definition inserted by the bill into section 3 of the Act, a registered mediator is a mediator who is registered under the *Mediation Act 1997*.

## *Costs*

New section 49E gives the AAT power to make an award of costs against a party to a land, planning and environment application. An award of costs can only be made against a party that has contravened a direction of the AAT. In addition, an award of costs can only be made if the AAT considers that it is in the interests of justice to do so.

The purpose of the provision is to discourage parties from contravening directions of the AAT in order to delay proceedings. It is designed to assist the AAT to decide land, planning and environment matters within the time limit of 120 days set by section 49C.

The costs will be payable in accordance with the scale of costs prescribed in the *Supreme Court Rules*.