

2008

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

**ACT CIVIL AND ADMINISTRATIVE TRIBUNAL BILL 2008
SUPPLEMENTARY EXPLANATORY STATEMENT**

Presented by
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Government Amendment 1: Clause 8 Rules of Evidence

Subsection 8(1) provides that the tribunal need not comply with the rules of evidence under the Commonwealth *Evidence Act 1995*. It reflects the existing law applying to ACT tribunals (other than in relation to legal disciplinary matters, where the rules of evidence are expressly retained).

Subsection 8(2) was originally provided as a 'signpost' provision to the Tribunal, encouraging it to consider the desirability of an approach consistent with the rules of evidence in the ACT. The exercise of a function by the tribunal was not affected by a failure to comply with subsection (2).

On balance, following comments on the bill, while subsections (2) and (3) probably reflect ACT law, it would be better not to include these provisions in the Act as they may encourage parties to request the Tribunal to undertake such an analysis as a means of preserving appeal rights and facilitate technical legal challenges and appeals and the adoption of delaying tactics to parties so minded.

As there is already a considerable body of law dealing with the application by tribunals of rules of evidence, the governments view is that this provides sufficient legal protection for parties – without the need for subsections 8(2) and (3).

Accordingly, this amendment proposes that the two subsections be omitted.

[Government Amendments 2 - 3 relate to the same matter.]

Government Amendment 2: Clause 10 Making an application

This section provided that an application for the review of an administrative decision must be made within 28 days of the decision being made.

Running time from the date of the making of a decision in lieu of the date on which it is given to the applicant may result in injustice in some cases.

Accordingly, these amendments provide that if a decision is not communicated to a relevant person within a reasonable time, an application for an administrative review may be made within 28 days of an appropriate event.

Government Amendment 3: Clause 10 Making an application

These amendments provide that if a decision is not communicated to a relevant person within a reasonable time, an application for an administrative review may be made within 28 days of an appropriate event.

[Government Amendments 4 - 6 relate to the same matter.]

Government Amendment 4: Clause 15 Definitions

This amendment omits a definition, which is no longer used in the Bill.

Government Amendment 5: Clause 15 Definitions

This amendment omits a definition, which is no longer used in the Bill.

Government Amendment 6: Clause 15 Definitions

This amendment omits a definition, which is no longer used in the Bill.

Government Amendment 7: Clause 18 \$10,000 limit on civil dispute applications

This amendment generally limits civil dispute applications to disputes about sums of money less than \$10,000. The Bill as introduced made an express exception in relation to residential tenancy matters but, on reflection, this exception is not necessary as the definition of civil disputes does not extend to residential tenancy disputes.

Accordingly, this amendment removes the unnecessary exception.

Government Amendment 8: Clause 30 Representation

This provision deals with who may represent a person before the ACAT. As a general rule, it is intended that a lawyer or someone else may represent a person before the tribunal. This is an important provision as a party may choose to be represented by another person without any particular characteristic or qualification because of their own disability or lack of confidence to be self-represented. Provision is made allowing the rules to restrict who might represent a person (for example, the rules might provide that a person under the age of 18 may not represent a person).

This provision is being amended to ensure consistency with section 41 of the Bill.

Government Amendment 9: Clause 31 Early resolution of applications

This provision deals with the role of the tribunal in the early resolution of disputes. As a general rule, it is intended that the tribunal would be pro-active in attempting to settle matters prior to hearing.

The amendment recognises that there may be certain types of cases where, for reasons of efficiency, the dispute should be brought before a tribunal member as soon as possible.

Accordingly, the amendment provides the tribunal with a discretion as to the application of pre-hearing dispute resolution processes.

Government Amendment 10: Clause 34 Admissibility of evidence given at preliminary conference

This provision generally makes evidence given at a preliminary conference inadmissible in later proceedings.

As drafted, this privilege is too wide, as it might confound a later prosecution for giving false or misleading evidence or some other offence relating to the administration of justice.

Accordingly, the amendment provides that the privilege does not extend to a later prosecution for giving false or misleading evidence or some other offence relating to the administration of justice.

[Government Amendments 11 - 13 relate to the same matter.]

Government Amendment 11: Clause 39 Hearings in private or partly in private

This provision deals with when hearings should be in public. Ordinarily, proceedings should be in public unless the tribunal is satisfied that the right to a public hearing is outweighed by competing interests.

As drafted the provision allowed a party to make an application for an order under the provision. However, no provision was made for the ACAT to make an order on its own motion (which might be necessary if the person before the tribunal is not represented and may be unaware of the desirability of such an order being made).

Accordingly, the amendment provides that the ACAT may make an order on application of a party or on its own initiative.

Government Amendment 12: Clause 39 Hearings in private or partly in private

This amendment is necessary to provide that the ACAT may make an order on application of a party or on its own initiative.

Government Amendment 13: Clause 39 Hearings in private or partly in private

This amendment is necessary to provide that the ACAT may make an order on application of a party or on its own initiative.

Government Amendment 14: Clause 41 Powers in relation to Witnesses etc

This amendment gives the ACAT the express power to allow copies of original documents to be made.

Government Amendment 15: Clause 41 Powers in relation to Witnesses etc

This amendment is included for the purposes of consistency with government amendment 7.

Government Amendment 16: Clause 41 Powers in relation to Witnesses etc

This amendment gives the ACAT the express power to set aside a subpoena.

[Government Amendments 17 - 18 relate to the same matter.]

Government Amendment 17: Clause 50 Disclosure of material interests by tribunal members

This provision deals with conflicts of interest.

This amendment makes it clear that the potential class of associates is not exhaustively described by the bill, but can extend to a broader range of people.

Government Amendment 18: Clause 50 Disclosure of material interests by tribunal members

This provision deals with conflicts of interest.

This amendment expands the definition of material interest to include not only conflicts, but also matters that might reasonably be seen to conflict. This change is intended to bring the definition into line with the long established “could be seen etc” perception of bias test (see Ebner v Official Trustee in Bankruptcy (2000) 176 ALR 644).

Government Amendment 19: Clause 56 Other actions by tribunal

This amendment introduced a new example into the bill (in this case confirming that the head power includes dismissing a proceeding with consent of the parties)

Government Amendment 20: Clause 56 Other actions by tribunal

This amendment introduced a new example into the bill (in this case confirming that the head power includes dismissing a proceeding on withdrawal of a party or on a failure to prosecute).

Government Amendment 21: Clause 69 Effect of orders for administrative review

This amendment makes it clear that, in general, an order takes effect from the day the tribunal makes the order.

Government Amendment 22: Clause 107 Functions of non-presidential members

This amendment ensures that an authorising law may confer particular responsibilities only on a presidential member.

Government Amendment 23: Clause 107 Functions of registrar - non-presidential functions

This amendment ensures that an authorising law may confer particular responsibilities only on a non-presidential member and these responsibilities cannot be delegated to the registrar.

Government Amendment 24: Dictionary

This amendment removes an unnecessary definition.

Government Amendment 25: Dictionary

This amendment removes an unnecessary definition.

Government Amendment 26: Dictionary

This amendment removes an unnecessary definition.