



New South Wales

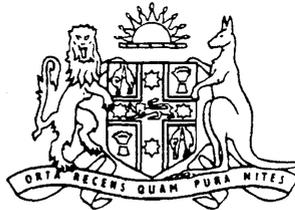
Administrative Decisions Tribunal Legislation Further Amendment Act 1998 No 156

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New South Wales

Administrative Decisions Tribunal Legislation Further Amendment Act 1998 No 156

Act No 156, 1998

An Act to amend the *Administrative Decisions Tribunal Act 1997* to make further provision with respect to the Divisions, constitution and functions of the Tribunal; to amend various other Acts to confer jurisdiction on the Tribunal and to make consequential amendments and amendments in the nature of statute law revision; and for other purposes. [Assented to 14 December 1998]

The Legislature of New South Wales enacts:**1 Name of Act**

This Act is the *Administrative Decisions Tribunal Legislation Further Amendment Act 1998*.

2 Commencement

Subject to subsection (2), this Act commences on a day or days to be appointed by proclamation.

- (2) Schedule 1 (except for Schedule 1 [21]–[24]) commences on the date of assent.

3 Amendments

The Acts specified in Schedules 1–5 are amended as set out in those Schedules.

4 Explanatory notes

The matter appearing under the heading “Explanatory note” in Schedules 1–5 does not form part of this Act.

Schedule 1 **Amendment of Administrative Decisions Tribunal Act 1997 No 76**

(Section 3)

[1] **Section 4 Definitions**

Omit “Deputy President” from the definition of *Divisional Head* in section 4 (1).

Insert instead “member”.

Explanatory note

Item [1] makes an amendment to the definition of *Divisional Head* in section 4 of the *Administrative Decisions Tribunal Act 1997* that is consequential on the amendments made by items [3]–[6].

[2] **Section 4 (1)**

Insert in appropriate alphabetical order:

lodge a document includes file a document.

Explanatory note

Item [2] clarifies the meaning of the term *lodge* for the purposes of the *Administrative Decisions Tribunal Act 1997*.

[3] **Section 16 Divisional Heads**

Omit “A Deputy President” from section 16(1).

Insert instead “The President or a Deputy President”.

[4] **Section 16 (1) (a)**

Insert “President or” after “appointment of the”.

[5] **Section 16 (2) (c)**

Insert “the President or” after “hold office as”.

[6] Section 16 (3) and (4)

Omit “a Deputy President” wherever occurring.
Insert instead “the President or a Deputy President”.

Explanatory note

Items [3]–[6] amend section 16 of the *Administrative Decisions Tribunal Act 1997* to enable the President of the Tribunal to be appointed a Divisional Head.

[7] Section 21 Assignment of members to Divisions

Omit section 21 (3). Insert instead:

- (3) Subject to this Act, the President:
- (a) is to assign each member (other than the President or a Divisional Head) to one or more Divisions.
and
 - (b) may assign a member who is a Divisional Head to one or more Divisions in respect of which the member is not the Divisional Head.

and may vary any such assignment at any time.

Explanatory note

Item [7] amends section 21 of the *Administrative Decisions Tribunal Act 1997* to enable the President of the Tribunal to assign Divisional Heads to Divisions in respect of which they are not the Divisional Head.

[8] Section 25 Functions of President

Omit section 25 (2). Insert instead:

- (2) The President is to facilitate the adoption of good administrative practices in the conduct of the business of the Tribunal.

Explanatory note

Item [8] amends section 25 of the *Administrative Decisions Tribunal Act 1997* to replace the current requirement that the President of the Tribunal is responsible for the management of the administrative affairs of the Tribunal with a requirement that the President facilitate the adoption of good administrative practices in the conduct of the Tribunal's business.

[9] Section 28 Functions of Registrars and Deputy Registrars

Omit “managing the affairs of the Tribunal” from section 28 (1). Insert instead “exercising the President’s functions under section 25”.

Explanatory note

Item [9] makes an amendment to section 28 of the *Administrative Decisions Tribunal Act 1997* that is consequential on the amendment made by item [8].

[10] Section 67 Parties to proceedings before Tribunal

Insert after section 67 (1) (a):

- (a1) if an order or other decision is sought from the Tribunal in respect of a person (other than the applicant)—the person in respect of whom the order or other decision is sought, and

[11] Section 67 (1) (c) and (2) (d)

Omit “on application by the person” wherever occurring.

[12] Section 67 (4)

Omit the subsection. Insert instead:

- (4) The Tribunal may, by order, make a person who is not a party to proceedings for an original decision or review of a reviewable decision a party to the proceedings, either of its own motion or on the written application of the person, if it is satisfied that the interests of the person are likely to be affected by the original decision (or are affected by the reviewable decision).

[13] Section 67 (4A)

Insert after section 67 (4):

- (4A) If an application is made to the Tribunal for an original decision by means of referring a complaint or other matter in respect of a person to the Tribunal for determination, the rules of the Tribunal may make provision (despite subsection (1)) for the parties to any such application for the purposes of this Act. For

example, the rules may provide for the designation of the person who originally made a complaint that has been referred to the Tribunal as the applicant in the proceedings before the Tribunal instead of the person who referred the complaint.

Explanatory note

Item [10] amends section 67 of the *Administrative Decisions Tribunal Act 1997* to confirm that a person (other than an applicant) in respect of whom an original decision is sought is a party to the proceedings for the original decision.

Item [13] inserts a new subsection that will enable rules of the Tribunal to be made designating the parties to proceedings for an original decision that are commenced by referring a complaint or other matter to the Tribunal for determination.

Item [12] replaces section 67 (4) of the Act with a provision that enables the Tribunal to join a person as a party to proceedings before the Tribunal on its own motion, as well as on the written application of the person. Item [11] makes consequential amendments.

[14] Section 72 Notice of application to be served on other parties

Insert at the end of section 72:

- (2) It is sufficient compliance with subsection (1) if:
 - (a) the Registrar directs the applicant to serve notice referred to in subsection (1) on another party on the Registrar's behalf, and
 - (b) notice is served on the other party by the applicant in accordance with the rules of the Tribunal referred to in subsection (1).

Explanatory note

Item [14] amends section 72 of the *Administrative Decisions Tribunal Act 1997* to make it clear that the Registrar of the Tribunal complies with the requirement imposed on the Registrar by that section to cause a notice of lodgment of the application to be served on a party if the notice is served by the applicant at the direction of the Registrar.

[15] Section 73 Procedure of the Tribunal generally

Omit section 73 (6). Insert instead:

- (6) A judicial member may:
 - (a) hold a directions hearing in relation to any proceedings before the Tribunal, or

- (b) authorise a non-judicial member, the Registrar or a Deputy Registrar to hold a directions hearing in relation to any proceedings before the Tribunal.

Explanatory note

Item [15] replaces section 73 (6) of the *Administrative Decisions Tribunal Act 1997* with a provision that enables a judicial member to authorise the Registrar or a Deputy Registrar to hold a directions hearing. At present, a judicial member may only authorise another member to conduct such a hearing.

[16] Section 74 Preliminary conferences

Omit “is in the form prescribed by” from section 74 (5) (b).

Insert instead “is in such form as may be prescribed by (or approved under)”.

Explanatory note

Item [16] removes the present mandatory requirement in section 74 (5) (b) of the *Administrative Decisions Tribunal Act 1997* that objections to an assessor or member participating in a preliminary conference be lodged in the form prescribed by the rules of the Tribunal.

[17] Section 138 Notices, service and lodgment of documents

Insert after section 138 (3):

- (4) **Rules may make provision in respect of notices, service and lodgment**

Despite subsections (1)–(3), the rules of the Tribunal may:

- (a) provide for additional means of serving, giving or lodging any notice or document, and
- (b) provide that a notice or document of a class specified by the rules be served, given or lodged only in the manner prescribed by the rules.

Explanatory note

Item [17] inserts a new section 138 (4) into the *Administrative Decisions Tribunal Act 1997* to enable the rules of the Tribunal to provide for the serving, giving or lodging of notices and documents.

[18] Section 145 Regulations

Insert “or an appeal to an Appeal Panel” after “application to the Tribunal” wherever occurring in section 145 (2).

[19] Section 145 (2) (b)

Insert “or an appeal” after “lodgment of an application”.

[20] Section 145 (2) (c)

Insert “or appellant” after “applicant”.

Explanatory note

Item [18] amends section 145 of the *Administrative Decisions Tribunal Act 1997* to make it clear that a fee may be prescribed for an appeal to an Appeal Panel of the Tribunal.

Items [19] and [20] make consequential amendments.

[21] Schedule 1 Divisions of Tribunal

Insert in alphabetical order:

Occupational Regulation Division

Explanatory note

Item [21] amends Schedule 1 of the *Administrative Decisions Tribunal Act 1997* to establish an Occupational Regulation Division of the Tribunal.

[22] Schedule 2 Composition and functions of Divisions

Insert after Part 3:

Part 3A Occupational Regulation Division

Division 1 Composition of Division

1 Division members

- (1) Subject to subclause (2), the Occupational Regulation Division of the Tribunal is to be composed of the following members:
 - (a) a Divisional Head,
 - (b) such other members as may be assigned to the Division by or under this Act.
- (2) The regulations may make provision for or with respect to the assignment of members to the Occupational Regulation Division and the qualifications for appointment of a Divisional Head for the Division.

Division 2 Functions of Division

2 Functions allocated to Division

The functions of the Tribunal in relation to the following enactments (or specified provisions of enactments) are allocated to the Occupational Regulation Division of the Tribunal:

section 20 of the *Architects Act 1921*

Part 4B of the *Environmental Planning and Assessment Act 1979*

Home Building Act 1989

section 20F of the *Motor Dealers Act 1974*

sections 8 (4) and 39 of the *Pawnbrokers and Second-hand Dealers Act 1996*

Division 4 of Part 2 of the *Security Industry Act 1997*

section 16 of the *Surveyors Act 1929*

Trade Measurement Act 1989

Trade Measurement Administration Act 1989

Division 4 of Part 2 of the *Travel Agents Act 1986*

Parts 3, 4 and 6 of the *Veterinary Surgeons Act 1984*

Division 3 Special requirements for constitution of Tribunal for certain allocated functions

3 Veterinary Surgeons Act 1986 (Original decisions and reviewable decisions)

- (1) For the purposes of exercising a function conferred or imposed on the Tribunal by or under the Act, the Tribunal is to be constituted by the following Division members of the Occupational Regulation Division of the Tribunal:
 - (a) 1 Division member who is a judicial member, and
 - (b) 1 Division member who is a non-judicial member and who is also a member of the Board, and
 - (c) 1 Division member who:
 - (i) is a non-judicial member, and
 - (ii) is not a veterinary surgeon, and

(iii) was assigned to the Division on the recommendation of the relevant Minister to represent the interests of users of veterinary services.

(2) In this clause:

Board means the Board of Veterinary Surgeons of New South Wales constituted under section 4 of the Act.

relevant Minister means the Minister administering the Act.

the Act means the *Veterinary Surgeons Act 1986*.

4 Security Industry Act 1997 (Reviewable decisions)

Applications made under section 29 of the *Security Industry Act 1997* are to be determined by one Division member of the Occupational Regulation Division of the Tribunal who is a judicial member.

Explanatory note

Item [22] amends Schedule 2 of the *Administrative Decisions Tribunal Act 1997* to insert a new Part to provide for the composition and functions of the proposed Occupational Regulation Division of the Tribunal.

[23] Schedule 2

Omit “*Veterinary Surgeons Act 1986*” from clause 2(1) of Part 4.

[24] Schedule 2

Omit clauses 7 and 8 from Part 4.

Explanatory note

Item [23] and [24] make amendments that are consequential on the allocation by item [22] of the Tribunal's functions under the *Security Industry Act 1997* and the *Veterinary Surgeons Act 1986* to the proposed Occupational Regulation Division.

[25] Schedule 3 Provisions relating to members of Tribunal

Omit clause 3.

Explanatory note

Item [25] omits the present age requirements for members of the Tribunal.

[26] Schedule 5 Savings and transitional provisions

Insert at the end of clause 1 (1):

Administrative Decision's Tribunal Legislation Further Amendment Act 1998

Explanatory note

Item [26] amends clause 1 of Schedule 5 to the *Administrative Decisions Tribunal Act 1997* to enable regulations of a savings or transitional nature to be made that are consequent on the enactment of the proposed Act.

[27] Schedule 5, clause 2, definition of "Community Services Appeals Tribunal"

Insert "[6]" after "Schedule 1.6".

[28] Schedule 5, clause 4 (1)

Insert "[6]" after "Schedule 1.6".

[29] Schedule 5, clause 8A

Insert after clause 8:

8A Commencement of abolition provisions of amending Act for the purposes of this Schedule

For the avoidance of doubt, Schedules 2.1, 3.3, 4.1, 4.2 and 4.3 to the amending Act are taken, for the purposes of this Schedule only, to have commenced on 6 October 1998.

Explanatory note

Item [28] amends Schedule 5 to the *Administrative Decisions Tribunal Act 1997* to ensure that the Community Services Appeals Tribunal will be abolished on the commencement of Schedule 1.6 [6] to the *Administrative Decisions Legislation Amendment Act 1997*. Item [27] makes a consequential amendment.

Item [29] confirms that Schedules 2.1, 3.3, 4.1, 4.2 and 4.3 to the *Administrative Decisions Legislation Amendment Act 1997* commenced on 6 October 1998.

[30] Schedule 5

Insert in Schedule 5 with appropriate Part number (being a number greater than 3) and clause numbers (being numbers greater than 20):

**Part Provisions consequent on enactment of
Administrative Decisions Tribunal
Legislation Further Amendment Act 1998**

Definitions

In this Part:

amending Act means the *Administrative Decisions Tribunal Legislation Further Amendment Act 1998*.

ADT means the Administrative Decisions Tribunal established by this Act.

Pending court proceedings

- (1) This clause applies to proceedings before a court that:
 - (a) were instituted before the commencement of any relevant amendment, and
 - (b) have not been finally determined by the court before that commencement.
- (2) Proceedings to which this clause applies are to be determined as if this Act and the amending Act had not been enacted.
- (3) Accordingly, any rules, regulations or other law that would have been applicable to the proceedings had this Act and the amending Act not been enacted continue to apply to the proceedings as if neither Act had been enacted.
- (4) In this clause:

court includes any tribunal, person or body authorised to determine any appeal.

relevant amendment means an amendment made to another Act by the amending Act the effect of which is to confer jurisdiction on the ADT to determine any matter that, immediately before the commencement of that amendment, could have been determined by the court concerned.

Regulations made under substantially re-enacted provisions continue in force

- (1) Subject to this clause, a regulation in force immediately before the commencement of a relevant amendment to the provision under which the regulation was made continues to have effect as a regulation made under the provision (as amended).
- (2) Any reference in a regulation continued in force under subclause (1):
 - (a) to a person, court or tribunal from which jurisdiction is to be transferred to the ADT is to be read as a reference to the ADT, and
 - (b) to an appeal, complaint or other application to the person, court or tribunal is to be read as a reference to an application to the ADT.
- (3) Nothing in this clause prevents the future amendment or repeal of any such regulation.
- (4) In this clause, *relevant amendment* means an amendment made to any provision of another Act by the amending Act the effect of which is:
 - (a) to substantially re-enact the provision of the other Act, or
 - (b) to otherwise amend the provision by removing references to any person, court or tribunal and replacing them with references to the ADT.

Pending proceedings in a Division of ADT on re-allocation of function

- (1) This clause applies to proceedings:
 - (a) that are pending in the General Division of the ADT immediately before the commencement of Schedule 1 [22] to the amending Act, and
 - (b) that relate to applications made to the ADT under the *Environmental Planning and Assessment Act 1979*, *Security Industry Act 1997* or *Veterinary Surgeons Act 1986*.

- (2) Proceedings to which this clause apply are to be determined in the General Division in accordance with the provisions of Part 4 of Schedule 2 to this Act as in force immediately before the commencement of Schedule 1 [22] to the amending Act.

Appointments of Divisional Heads not affected

The amendments made to section 16 of this Act by the amending Act do not affect the validity of any appointment of a Divisional Head made under that section before its amendment.

Assignment of members to Divisions not affected

The amendments made to section 21 of this Act by the amending Act do not affect the validity of any assignment of a member to a Division made under that section before its amendment.

Explanatory note

Item [30] amends Schedule 5 to the *Administrative Decisions Tribunal Act 1997* to make provision in respect of certain savings and transitional matters consequent on the enactment of the proposed Act.

Schedule 2 Amendment of Administrative Decisions Legislation Amendment Act 1997 No 77

(Section 3)

[1] Schedule 1 Amendments concerning abolished Community Services Appeals Tribunal

Omit Schedule 1.9 [1]. Insert instead:

[1] Part 2, Division 3

Omit the Division. Insert instead:

Division 3 Applications for review by Administrative Decisions Tribunal

20 Decisions that are reviewable by Administrative Decisions Tribunal

For the purposes of section 40 (1) (a) of the *Community Services (Complaints, Reviews and Monitoring) Act 1993*, any of the following decisions is reviewable by the Administrative Decisions Tribunal:

- (a) a decision approving the provision of financial assistance if the approval to the provision of the assistance should not have been given under section 10 (2) because the provision of the assistance will not conform with the objects of this Act and the principles and applications of principles set out in Schedule 1,
- (b) a decision to provide financial assistance to an eligible organisation in relation to the provision of designated services if the terms and conditions on which the assistance is provided to the organisation do not comply with section 12.

- (c) a decision to provide financial assistance to a person or eligible organisation in relation to the conduct of an approved research or development activity if the terms and conditions on which the assistance is provided to the person or organisation do not comply with section 13,
- (d) a decision not to conduct a review under section 15 or to conduct a review that is not in accordance with the requirements of that section,
- (e) a decision to terminate future instalments of approved financial assistance if those instalments have been terminated otherwise than in accordance with section 16,
- (f) a decision belonging to such class of decisions as may be prescribed by the regulations.

[2] Schedule 5 Amendments transferring the jurisdiction of courts

Omit Schedule 5.2.

Explanatory note

Item [1] replaces Schedule 1.9 [1] to the *Administrative Decisions Legislation Amendment Act 1997*, which would amend section 20 of the *Disability Services Act 1993*, so as to clarify what kinds of decisions under the *Disability Services Act 1993* may be the subject of an application for review by the Administrative Decisions Tribunal.

Item [2] is consequential on the re-enactment (with appropriate modifications) by Schedule 3 to this Act of the amendments to the *Animal Research Act 1985* presently contained in the *Administrative Decisions Legislation Amendment Act 1997*.

Schedule 3 Amendment of Animal Research Act 1985 No 123

(Section 3)

[1] Section 17 Definitions

Omit the definition of *appeal* from section 17 (1).

[2] Section 20 Determination of applications

Omit section 20 (4). Insert instead:

- (4) If, at the expiration of 90 days after an application has been made, the Director-General has failed to determine the application, the Director-General is, for the purposes only of any application for review by the Administrative Decisions Tribunal, taken to have refused to accredit the applicant as a research establishment.

[3] Section 24 Determination of complaints

Omit section 24 (4). Insert instead:

- (4) The cancellation or suspension of accreditation of a research establishment takes effect at the expiration of 14 days after written notice of the cancellation or suspension is served on the establishment, subject to any order made by the Administrative Decisions Tribunal under Division 2 of Part 3 of Chapter 5 of the *Administrative Decisions Tribunal Act 1997*.

[4] Section 25A Application to Director-General (as inserted by the Animal Research Amendment Act 1997 No 25)

Omit section 25A (5). Insert instead:

- (5) If, at the expiration of 90 days after an application has been made, the Director-General has failed to determine the application, the Director-General is, for the purposes only of any application for review to the Administrative Decisions Tribunal, taken to have refused to grant an authority to the applicant.

[S] Section 28B Determination of complaints (as inserted by the Animal Research Amendment Act 1997 No 25)

Omit section 28B (4). Insert instead:

- (4) The cancellation or suspension of accreditation of an authority takes effect at the expiration of 14 days after written notice of the cancellation or suspension is served on the holder of the authority, subject to any order made by the Administrative Decisions Tribunal under Division 2 of Part 3 of Chapter 5 of the *Administrative Decisions Tribunal Act 1997*.

[6] Section 39 Determination of applications

Omit section 39 (4). Insert instead:

- (4) If, at the expiration of 90 days after an application has been made, the Director-General has failed to determine the application, the Director-General is, for the purposes only of any application for review to the Administrative Decisions Tribunal, taken to have refused to grant a licence to the applicant.

[7] Part 4, Division 6

Omit the Division. Insert instead:

Division 6 Reviews by Administrative Decisions Tribunal

45 Applications to Administrative Decisions Tribunal for review of determination

- (1) Any person who is dissatisfied with a determination of the Director-General under this Part that affects the person may apply to the Administrative Decisions Tribunal for a review, of the determination.
- (2) An application to the Tribunal is to be made within 28 days after written notice of the determination of the

Director-General is served on the person or, if the application relates to a failure to determine an application under this Part within 90 days after the application was made, within 28 days after the expiration of that 90 day period.

Explanatory note

Item [7] amends the *Animal Research Act 1985* to confer jurisdiction on the Administrative Decisions Tribunal to review certain decisions of the Director-General of the Department of Agriculture concerning accreditation and licensing that are presently appealable to the District Court.

The other items make consequential amendments.

Schedule 4 Amendment of Dangerous Goods Act 1975 No 68

(Section 3)

Section 29

Omit the section. Insert instead:

29 Reviews by Administrative Decisions Tribunal of decisions concerning licences and permits

- (1) An aggrieved person may apply to the Administrative Decisions Tribunal for a review of a decision of a relevant decision-maker concerning a licence or permit.
- (2) For the purposes of an application to the Administrative Decisions Tribunal under this section, a relevant decision-maker is taken to have refused an application to the decision-maker for the issue, renewal or transfer of a licence or permit if the application has not been granted within 1 month (or, if another period is prescribed by the regulations, within that other period) after the application is duly made.
- (3) In this section:
aggrieved person, in relation to a decision concerning a licence or permit, means:
 - (a) the person who holds (or held) the licence or permit, or
 - (b) the person who has applied for the licence or permit.

relevant decision-maker, in relation to a decision concerning a licence or permit, means the person or body authorised by or under this Act to make the decision.

Explanatory note

The amendment to the *Dangerous Goods Act 1975* enables the Administrative Decisions Tribunal to review certain decisions concerning licences and permits that can be issued under the Act. Presently, such decisions are appealable to the Minister for Industrial Relations.

Schedule 5 Amendment of Surveyors Act 1929 No 3

(Section 3)

Section 16

Omit the section. Insert instead:

16 Reviews by Administrative Decisions Tribunal of decisions of board on inquiry

Any person dissatisfied with any decision of the board on an inquiry under this Part may apply to the Administrative Decisions Tribunal for a review of the decision of the board.

Explanatory note

The amendment to the *Surveyors Act 1929* transfers jurisdiction from the Supreme Court and District Court to the Administrative Decisions Tribunal to review disciplinary decisions of the Board of Surveyors of New South Wales.

[Minister's second reading speech made in—
Legislative Assembly on 10 November 1998
Legislative Council on 3 December 1998]