



New South Wales

Administrative Decisions Tribunal Amendment Act 2004 No 81

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New South Wales

Administrative Decisions Tribunal Amendment Act 2004 No 81

Act No 81, 2004

An Act to amend the *Administrative Decisions Tribunal Act 1997* to make further provision with respect to interlocutory matters; to amend certain Acts to provide direct rights of appeal to the Supreme Court from the Administrative Decisions Tribunal instead of to an Appeal Panel of the Tribunal; and for other purposes. [Assented to 3 November 2004]

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Administrative Decisions Tribunal Amendment Act 2004*.

2 Commencement

- (1) This Act commences on a day or days to be appointed by proclamation, except as provided by subsection (2).
- (2) Schedule 2.2 commences on the date of assent to this Act.

3 Amendment of Administrative Decisions Tribunal Act 1997 No 76

The *Administrative Decisions Tribunal Act 1997* is amended as set out in Schedule 1.

4 Amendment of other Acts

The Acts specified in Schedule 2 are amended as set out in that Schedule.

Schedule 1 Amendment of Administrative Decisions Tribunal Act 1997

(Section 3)

[1] Section 24A

Insert after section 24:

24A Constitution of Tribunal for exercise of interlocutory functions

(1) In this section:

interlocutory function means the making of any order or other decision by the Tribunal (including an Appeal Panel of the Tribunal) in proceedings in respect of any of the following:

- (a) stays or adjournments,
- (b) prohibition or restriction of the disclosure, broadcast or publication of matters by order under section 75,
- (c) summonses,
- (d) extensions of time for any matter (including for the lodgment of applications or appeals),
- (e) evidential matters,
- (f) disqualification of members,
- (g) joinder of parties to proceedings,
- (h) summary dismissal of proceedings,
- (i) any other interlocutory issue before the Tribunal.

(2) In exercising any of its interlocutory functions, the Tribunal may be constituted by:

- (a) in the case of a function of the Tribunal in relation to an internal appeal or external appeal—one presidential judicial member who is assigned by the President for the purpose of exercising the function, or
- (b) in the case of a function of the Tribunal otherwise than in relation to an internal appeal or external appeal—one judicial member of the Division to which the function concerned is allocated who is assigned by the President or (subject to any direction of the President) the Divisional Head for the purpose of exercising the function.

- (3) Nothing in this section prevents a differently constituted Tribunal from exercising an interlocutory function or any other function of the Tribunal if the Tribunal is duly constituted to exercise that function apart from this section.
- (4) This section has effect despite any other requirement of this Act or any other enactment relating to the constitution of the Tribunal for the exercise of its functions.

[2] Section 113 Right to appeal against appealable decisions of the Tribunal

Insert after section 113 (2):

- (2A) Despite subsections (1) and (2), an appeal does not lie to an Appeal Panel of the Tribunal against an interlocutory decision of the Tribunal except by leave of the Appeal Panel.
- (2B) For the purposes of determining whether to grant leave to appeal under subsection (2A), an Appeal Panel may be constituted by one presidential judicial member who is assigned by the President to make that determination.
- (2C) The provisions of subsection (2B):
 - (a) have effect despite any other requirement of this Act or any other enactment relating to the constitution of an Appeal Panel for the exercise of its functions, and
 - (b) do not prevent a differently constituted Appeal Panel from determining whether to grant leave to appeal under subsection (2A) if the Panel is duly constituted to exercise that function apart from subsection (2B).

[3] Schedule 5 Savings and transitional provisions

Insert at the end of clause 1 (1):

Administrative Decisions Tribunal Amendment Act 2004

[4] Schedule 5, Part 8

Insert after Part 7:

**Part 8 Provisions consequent on enactment of
Administrative Decisions Tribunal
Amendment Act 2004**

36 Definitions

In this Part:

amending Act means the *Administrative Decisions Tribunal Amendment Act 2004*.

appeal abolition date, in relation to a right to appeal to an Appeal Panel, means:

- (a) in relation to appeals against decisions of the Tribunal under the *Architects Act 2003*—the day on which Part 4A of that Act (as inserted by the amending Act) commences, and
- (b) in relation to appeals against decisions of the Tribunal under the *Surveying Act 2002*—the day on which Part 6A of that Act (as inserted by the amending Act) commences, and
- (c) in relation to appeals against decisions of the Tribunal under the *Veterinary Practice Act 2003*—the day on which Part 9A of that Act (as inserted by the amending Act) commences, and
- (d) in relation to appeals against decisions of the Tribunal under the *Veterinary Surgeons Act 1986*—the day on which Part 6B of that Act (as inserted by the amending Act) commences.

existing right to appeal means a right to appeal to an Appeal Panel against a decision of the Tribunal that was in existence immediately before the appeal abolition date for that right (whether or not that right was exercised before that date).

37 Pending proceedings before an Appeal Panel

- (1) This clause applies to proceedings before an Appeal Panel of the Tribunal that:

- (a) were instituted in exercise of an existing right to appeal, and
 - (b) have not been finally determined by the Appeal Panel before the appeal abolition date for that appeal right.
- (2) Subject to clause 39, proceedings to which this clause applies are to be determined as if the amending Act had not been enacted.
- (3) Accordingly, any rules, regulations or other law that would have been applicable to the proceedings had the amending Act not been enacted continue to apply to the proceedings as if the amending Act had not been enacted.

38 Existing rights of appeal to Appeal Panel

- (1) This clause applies to an existing right to appeal that had not been exercised before the appeal abolition date.
- (2) No appeal lies to an Appeal Panel under an existing right to appeal to which this clause applies on or after the appeal abolition date, but lies instead to the Supreme Court under the new appeal provisions as if those provisions had been in force at the time the right to appeal first accrued.
- (3) For the purposes of this clause, the *new appeal provisions* are:
- (a) in relation to appeals against decisions of the Tribunal under the *Architects Act 2003*—Part 4A of that Act (as inserted by the amending Act), and
 - (b) in relation to appeals against decisions of the Tribunal under the *Surveying Act 2002*—Part 6A of that Act (as inserted by the amending Act), and
 - (c) in relation to appeals against decisions of the Tribunal under the *Veterinary Practice Act 2003*—Part 9A of that Act (as inserted by the amending Act), and
 - (d) in relation to appeals against decisions of the Tribunal under the *Veterinary Surgeons Act 1986*—Part 6B of that Act (as inserted by the amending Act).
- (4) Despite anything in the *Supreme Court Act 1970* or the rules of court made under that Act, an appeal made to the Supreme Court pursuant to this clause must be made within the same period provided by or under this Act for an appeal to an Appeal Panel immediately before the relevant appeal abolition date.

39 Interlocutory matters

- (1) Section 24A (as inserted by the amending Act) extends to proceedings that were pending before (but not yet heard by) the Tribunal immediately before the commencement of that section.
- (2) Section 113 (2A)–(2C) (as inserted by the amending Act) do not apply to the following:
 - (a) any right to appeal to an Appeal Panel that had accrued (but not been exercised) before the date on which those subsections commenced,
 - (b) any appeal to an Appeal Panel that was pending before the Panel immediately before the date on which those subsections commenced.

Schedule 2 Amendment of other Acts

(Section 4)

2.1 Architects Act 2003 No 89

[1] Section 21 Restrictions on registration of de-registered persons

Omit section 21 (6).

[2] Section 49 Appeals to Appeal Panel against decisions and orders of Tribunal under this Division

Omit the section.

[3] Part 4A

Insert after Part 4:

Part 4A Appeals against decisions of Tribunal

58A Definition

In this Part:

architect decision means an order or other decision of the Tribunal made in proceedings commenced by an application made under this Act (whether made in exercise of its review jurisdiction or original jurisdiction under the *Administrative Decisions Tribunal Act 1997*).

58B Application of Administrative Decisions Tribunal Act 1997

The provisions of Part 1 of Chapter 7 of the *Administrative Decisions Tribunal Act 1997* do not apply to an architect decision.

Note. Part 1 of Chapter 7 of the *Administrative Decisions Tribunal Act 1997* provides that certain decisions of the Tribunal may be appealed to an Appeal Panel of the Tribunal.

58C Right to appeal to Supreme Court

- (1) A party to any proceedings in which the Tribunal has made an architect decision may appeal to the Supreme Court against the decision of the Tribunal.
- (2) An appeal under this Part to the Supreme Court:
 - (a) may be made on any question of law, and

- (b) with the leave of the Supreme Court, may extend to a review of the merits of the decision concerned.
- (3) Despite subsections (1) and (2), an appeal does not lie to the Supreme Court under this Part against any of the following decisions of the Tribunal except by leave of the Supreme Court:
 - (a) an interlocutory decision,
 - (b) a decision made with the consent of the parties,
 - (c) a decision as to costs.
- (4) The Tribunal (or any of the members constituting the Tribunal) cannot be made a party to an appeal under this Part. Rules of court made under the *Supreme Court Act 1970* may make provision for the parties to any such appeal (including the designation of a respondent where the only party in the proceedings from which the appeal is brought was the appellant).
- (5) An appeal to the Supreme Court under this Part must be made:
 - (a) within such time and in such manner as is prescribed by rules of court made under the *Supreme Court Act 1970*, or
 - (b) within such further time as the Supreme Court may allow.

58D Appeals on questions of law

- (1) If an appeal under this Part is restricted to questions of law, the Supreme Court is to determine the appeal and may make such orders as it thinks appropriate in light of its determination.
- (2) The orders that may be made by the Supreme Court on appeal include (but are not limited to):
 - (a) an order affirming or setting aside the decision of the Tribunal, and
 - (b) an order remitting the case to be heard and decided again by the Tribunal (either with or without the hearing of further evidence) in accordance with the directions of the Supreme Court.

58E Appeals on the merits

- (1) If an appeal under this Part extends to a review of the merits of an architect decision, the Supreme Court is to decide what the correct and preferable decision is having regard to the material then before it, including the following:
 - (a) any relevant factual material,
 - (b) any applicable written or unwritten law.
- (2) The Supreme Court may exercise all the functions that are conferred or imposed by or under this Act or the *Administrative Decisions Tribunal Act 1997* on the Tribunal to make the decision concerned.
- (3) In determining any such appeal, the Supreme Court may decide:
 - (a) to affirm the decision, or
 - (b) to vary the decision, or
 - (c) to set aside the decision and make a decision in substitution for the decision it set aside.

58F Appeal does not stay decision appealed against

Subject to any interlocutory order made by the Supreme Court, an appeal under this Part does not affect the operation of the architect decision appealed against or prevent the taking of action to implement the decision.

2.2 Children and Young Persons (Care and Protection) Act 1998 No 157

[1] Section 264 Regulations

Insert after section 264 (1A) (i):

- (j) providing for the review by the Administrative Decisions Tribunal of a decision, or failure to make a decision, in relation to a family day care children's service of a class prescribed by the regulations.

[2] Section 264 (1B)

Insert "or (j)" after "subsection (1A) (i)".

2.3 Surveying Act 2002 No 83

Part 6A

Insert after Part 6:

Part 6A Appeals against decisions of Tribunal

32A Definition

In this Part:

surveyor decision means an order or other decision of the Tribunal made in proceedings commenced by an application made under section 14 of this Act.

Tribunal means the Administrative Decisions Tribunal.

32B Application of Administrative Decisions Tribunal Act 1997

The provisions of Part 1 of Chapter 7 of the *Administrative Decisions Tribunal Act 1997* do not apply to a surveyor decision.

Note. Part 1 of Chapter 7 of the *Administrative Decisions Tribunal Act 1997* provides that certain decisions of the Tribunal may be appealed to an Appeal Panel of the Tribunal.

32C Right to appeal to Supreme Court

- (1) A party to any proceedings in which the Tribunal has made a surveyor decision may appeal to the Supreme Court against the decision of the Tribunal.
- (2) An appeal under this Part to the Supreme Court:
 - (a) may be made on any question of law, and
 - (b) with the leave of the Supreme Court, may extend to a review of the merits of the decision concerned.
- (3) Despite subsections (1) and (2), an appeal does not lie to the Supreme Court under this Part against any of the following decisions of the Tribunal except by leave of the Supreme Court:
 - (a) an interlocutory decision,
 - (b) a decision made with the consent of the parties,
 - (c) a decision as to costs.

- (4) The Tribunal (or any of the members constituting the Tribunal) cannot be made a party to an appeal under this Part. Rules of court made under the *Supreme Court Act 1970* may make provision for the parties to any such appeal (including the designation of a respondent where the only party in the proceedings from which the appeal is brought was the appellant).
- (5) An appeal to the Supreme Court under this Part must be made:
 - (a) within such time and in such manner as is prescribed by rules of court made under the *Supreme Court Act 1970*, or
 - (b) within such further time as the Supreme Court may allow.

32D Appeals on questions of law

- (1) If an appeal under this Part is restricted to questions of law, the Supreme Court is to determine the appeal and may make such orders as it thinks appropriate in light of its determination.
- (2) The orders that may be made by the Supreme Court on appeal include (but are not limited to):
 - (a) an order affirming or setting aside the decision of the Tribunal, and
 - (b) an order remitting the case to be heard and decided again by the Tribunal (either with or without the hearing of further evidence) in accordance with the directions of the Supreme Court.

32E Appeals on the merits

- (1) If an appeal under this Part extends to a review of the merits of a surveyor decision, the Supreme Court is to decide what the correct and preferable decision is having regard to the material then before it, including the following:
 - (a) any relevant factual material,
 - (b) any applicable written or unwritten law.
- (2) The Supreme Court may exercise all the functions that are conferred or imposed by or under this Act or the *Administrative Decisions Tribunal Act 1997* on the Tribunal to make the decision concerned.

- (3) In determining any such appeal, the Supreme Court may decide:
- (a) to affirm the decision, or
 - (b) to vary the decision, or
 - (c) to set aside the decision and make a decision in substitution for the decision it set aside.

32F Appeal does not stay decision appealed against

Subject to any interlocutory order made by the Supreme Court, an appeal under this Part does not affect the operation of the surveyor decision appealed against or prevent the taking of action to implement the decision.

2.4 Veterinary Practice Act 2003 No 87

[1] Section 51 Tribunal's powers when complaint proved

Omit "an Appeal Panel of the Tribunal on appeal under section 52" from section 51 (4).

Insert instead "the Supreme Court on appeal under Part 9A".

[2] Section 52 Appeal against orders of the Tribunal in its original jurisdiction

Omit the section.

[3] Section 54 Recording of proceedings and orders of Tribunal, Board and committees

Omit "the Appeal Panel of the Tribunal in an appeal under section 52" from section 54 (3) (a).

Insert instead "the Supreme Court on appeal under Part 9A".

[4] Part 9A

Insert after Part 9:

Part 9A Appeals against decisions of Tribunal

91A Definitions

In this Part:

original decision means an order made by the Tribunal under section 51.

review decision means a decision of the Tribunal made in proceedings commenced by an application made under this Act for the review of a decision of the Board.

91B Application of Administrative Decisions Tribunal Act 1997

The provisions of Part 1 of Chapter 7 of the *Administrative Decisions Tribunal Act 1997* do not apply to a review decision or original decision.

Note. Part 1 of Chapter 7 of the *Administrative Decisions Tribunal Act 1997* provides that certain decisions of the Tribunal may be appealed to an Appeal Panel of the Tribunal.

91C Right to appeal to Supreme Court against review decision of Tribunal

- (1) A party to any proceedings in which the Tribunal has made a review decision may appeal to the Supreme Court against the decision of the Tribunal.
- (2) An appeal under this section to the Supreme Court:
 - (a) may be made on any question of law, and
 - (b) with the leave of the Supreme Court, may extend to a review of the merits of the order or other decision concerned.

91D Right to appeal to Supreme Court against original decision of Tribunal

- (1) The following persons may appeal to the Supreme Court against an original decision of the Tribunal:
 - (a) the veterinary practitioner or former veterinary practitioner against whom the decision was made,

- (b) the person who made the original complaint, but only:
 - (i) on a question of law, or
 - (ii) with respect to any penalty imposed.
- (2) Subject to subsection (1) (b), an appeal under this section to the Supreme Court:
 - (a) may be made on any question of law, and
 - (b) with the leave of the Supreme Court, may extend to a review of the merits of the decision concerned.

91E Appeals against interlocutory decisions

An appeal does not lie to the Supreme Court under this Part against any of the following decisions of the Tribunal except by leave of the Supreme Court:

- (a) an interlocutory decision,
- (b) a decision made with the consent of the parties,
- (c) a decision as to costs.

91F Appeals on questions of law

- (1) If an appeal under this Part is restricted to questions of law, the Supreme Court is to determine the appeal and may make such orders as it thinks appropriate in light of its determination.
- (2) The orders that may be made by the Supreme Court on appeal include (but are not limited to):
 - (a) an order affirming or setting aside the decision of the Tribunal, and
 - (b) an order remitting the case to be heard and decided again by the Tribunal (either with or without the hearing of further evidence) in accordance with the directions of the Supreme Court.
- (3) Without limiting subsection (2), in any appeal against an original decision the Supreme Court may, in respect of the veterinary practitioner concerned:
 - (a) make any order that could have been made under section 51, or
 - (b) vary any decision made by the Tribunal.

91G Appeals on the merits

- (1) If an appeal under this Part extends to a review of the merits of a review decision or original decision, the Supreme Court is to decide what the correct and preferable decision is having regard to the material then before it, including the following:
 - (a) any relevant factual material,
 - (b) any applicable written or unwritten law.
- (2) The Supreme Court may exercise all the functions that are conferred or imposed by or under this Act or the *Administrative Decisions Tribunal Act 1997* on the Tribunal to make the decision concerned.
- (3) In determining any such appeal, the Supreme Court may decide:
 - (a) to affirm the decision, or
 - (b) to vary the decision, or
 - (c) to set aside the decision and make a decision in substitution for the decision it set aside.

91H Appeal does not stay decision appealed against

Subject to any interlocutory order made by the Supreme Court, an appeal under this Part does not affect the operation of the review decision or original decision appealed against or prevent the taking of action to implement the decision.

91I Procedure on appeal

- (1) The provisions of section 75 of the *Administrative Decisions Tribunal Act 1997* apply (subject to the rules of the Supreme Court) in respect of the hearing of an appeal against an original decision in the same way as those provisions apply in respect of the hearing of a complaint by the Tribunal.
- (2) The Tribunal (or any of the members constituting the Tribunal) cannot be made a party to an appeal under this Part. Rules of court made under the *Supreme Court Act 1970* may make provision for the parties to any such appeal (including the designation of a respondent where the only party in the proceedings from which the appeal is brought was the appellant).

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- (3) An appeal to the Supreme Court under this Part must be made:
- (a) within such time and in such manner as is prescribed by rules of court made under the *Supreme Court Act 1970*, or
 - (b) within such further time as the Supreme Court may allow.

2.5 Veterinary Surgeons Act 1986 No 55

[1] Section 25G Effect of suspension

Omit “an Appeal Panel of the Tribunal on appeal under section 34” from section 25G (3).

Insert instead “the Supreme Court on appeal under Part 6B”.

[2] Section 34 Appeal against orders of the Tribunal in its original jurisdiction

Omit the section.

[3] Section 36 Recording of proceedings and decision of Investigating Committee and orders of Tribunal and Board

Omit “the Appeal Panel of the Tribunal in an appeal under section 34” from section 36 (3) (a).

Insert instead “the Supreme Court on appeal under Part 6B”.

[4] Part 6B

Insert after Part 6A:

Part 6B Appeals against decisions of Tribunal

54G Definitions

In this Part:

original decision means an order made by the Tribunal under section 32.

review decision means a decision of the Tribunal made in proceedings commenced by an application made under this Act for the review of a decision of the Investigating Committee or the Board.

54H Application of Administrative Decisions Tribunal Act 1997

The provisions of Part 1 of Chapter 7 of the *Administrative Decisions Tribunal Act 1997* do not apply to a review decision or original decision.

Note. Part 1 of Chapter 7 of the *Administrative Decisions Tribunal Act 1997* provides that certain decisions of the Tribunal may be appealed to an Appeal Panel of the Tribunal.

54I Right to appeal to Supreme Court against review decision of Tribunal

- (1) A party to any proceedings in which the Tribunal has made a review decision may appeal to the Supreme Court against the decision of the Tribunal.
- (2) An appeal under this section to the Supreme Court:
 - (a) may be made on any question of law, and
 - (b) with the leave of the Supreme Court, may extend to a review of the merits of the order or other decision concerned.

54J Right to appeal to Supreme Court against original decision of Tribunal

- (1) The following persons may appeal to the Supreme Court against an original decision of the Tribunal:
 - (a) the registered veterinary surgeon or former registered veterinary surgeon against whom the decision was made,
 - (b) the person who made the original complaint, but only:
 - (i) on a question of law, or
 - (ii) with respect to any penalty imposed.
- (2) Subject to subsection (1) (b), an appeal under this section to the Supreme Court:
 - (a) may be made on any question of law, and
 - (b) with the leave of the Supreme Court, may extend to a review of the merits of the decision concerned.

54K Appeals against interlocutory decisions

An appeal does not lie to the Supreme Court under this Part against any of the following decisions of the Tribunal except by leave of the Supreme Court:

- (a) an interlocutory decision,
- (b) a decision made with the consent of the parties,
- (c) a decision as to costs.

54L Appeals on questions of law

- (1) If an appeal under this Part is restricted to questions of law, the Supreme Court is to determine the appeal and may make such orders as it thinks appropriate in light of its determination.
- (2) The orders that may be made by the Supreme Court on appeal include (but are not limited to):
 - (a) an order affirming or setting aside the decision of the Tribunal, and
 - (b) an order remitting the case to be heard and decided again by the Tribunal (either with or without the hearing of further evidence) in accordance with the directions of the Supreme Court.
- (3) Without limiting subsection (2), in any appeal against an original decision the Supreme Court may, in respect of the veterinary surgeon concerned:
 - (a) make any order that could have been made under section 32, or
 - (b) vary any decision made by the Tribunal.

54M Appeals on the merits

- (1) If an appeal under this Part extends to a review of the merits of a review decision or original decision, the Supreme Court is to decide what the correct and preferable decision is having regard to the material then before it, including the following:
 - (a) any relevant factual material,
 - (b) any applicable written or unwritten law.

- (2) The Supreme Court may exercise all the functions that are conferred or imposed by or under this Act or the *Administrative Decisions Tribunal Act 1997* on the Tribunal to make the decision concerned.
- (3) In determining any such appeal, the Supreme Court may decide:
 - (a) to affirm the decision, or
 - (b) to vary the decision, or
 - (c) to set aside the decision and make a decision in substitution for the decision it set aside.

54N Appeal does not stay decision appealed against

Subject to any interlocutory order made by the Supreme Court, an appeal under this Part does not affect the operation of the review decision or original decision appealed against or prevent the taking of action to implement the decision.

54O Procedure on appeal

- (1) The provisions of section 75 of the *Administrative Decisions Tribunal Act 1997* apply (subject to the rules of the Supreme Court) in respect of the hearing of an appeal against an original decision in the same way as those provisions apply in respect of the hearing of a complaint by the Tribunal.
- (2) The Tribunal (or any of the members constituting the Tribunal) cannot be made a party to an appeal under this Part. Rules of court made under the *Supreme Court Act 1970* may make provision for the parties to any such appeal (including the designation of a respondent where the only party in the proceedings from which the appeal is brought was the appellant).

- (3) An appeal to the Supreme Court under this Part must be made:
- (a) within such time and in such manner as is prescribed by rules of court made under the *Supreme Court Act 1970*, or
 - (b) within such further time as the Supreme Court may allow.

[Second reading speech made in—
Legislative Assembly on 1 September 2004
Legislative Council on 26 October 2004]

BY AUTHORITY