

[Act 2000 No 33]



New South Wales

Administrative Decisions Tribunal Legislation Amendment Bill 2000

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The objects of this Bill are:

- (a) to amend the *Administrative Decisions Tribunal Act 1997*:
 - (i) to increase the time within which an internal review of a reviewable decision must be completed from 14 days to 21 days, and
 - (ii) to provide that a person who conducts an internal review under the Act of an administrator's decision may affirm or vary or set aside the decision and substitute a new decision, and
 - (iii) to restrict the application of the offence in section 126 of the Act to the disclosure of the identity of witnesses and other persons in proceedings in, or appeals from, the Community Services Division and to other proceedings prescribed by the regulations, and
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- (iv) to broaden the power of the Tribunal to make suppression orders concerning the identity of witnesses and other persons in proceedings before the Tribunal or concerning the publication or broadcast of reports of proceedings before the Tribunal, and
 - (v) to enable members whose terms of appointment have expired to complete matters that have not been completed before their terms expired, and
 - (vi) to provide that a presidential judicial member may sit on an Appeal Panel whether or not the member was a Division member of the Division from which the appeal is brought, and
 - (vii) to apply section 128 of the *Evidence Act 1995* to proceedings before the Tribunal even when the Tribunal is not bound to apply the laws of evidence in the proceedings, and
- (b) to amend consequentially the *Anti-Discrimination Act 1977* to remove the power of the Tribunal under that Act to suppress evidence and other information arising from proceedings before the Tribunal under that Act following the consolidation of such powers in the *Administrative Decisions Tribunal Act 1997*, and
- (c) to clarify the right of persons aggrieved by decisions made under the *Dangerous Goods Act 1975* to apply to the Tribunal for the review of such decisions.

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

Clause 3 is a formal provision giving effect to the amendments to the *Administrative Decisions Tribunal Act 1997* set out in Schedule 1.

Clause 4 is a formal provision giving effect to the amendments to the Acts specified in Schedule 2.

Schedule 1 Amendment of Administrative Decisions Tribunal Act 1997

Schedule 1 [1] amends section 24 of the Act to enable any presidential judicial member to sit on an Appeal Panel (whether or not he or she was a member of the Division from which the appeal is brought). However, if the presidential judicial member is not a Division member, the other judicial member who is required under that section to constitute the Panel will need to be Division member.

At present, the presidential judicial member must be a Division member while the other judicial member need not be.

Schedule 1 [2]–[4] amend section 53 of the Act to replace references in the section to individuals who are to directed to conduct internal reviews under that section with references to internal reviewers.

Schedule 1 [5] amends section 53 of the Act to enable an internal reviewer to affirm or vary or set aside the administrator's decision and substitute a new decision for that decision. In exercising that function, the internal reviewer will have the same powers to make a decision as the administrator has. The internal reviewer will also have to notify the administrator of the result of the internal review as soon as is practicable after its completion. **Schedule 1 [9]** also amends the section to ensure that any such decision of an internal reviewer will be treated as if it had been made by the administrator. **Schedule 1 [7]** and **[8]** make consequential amendments to the section.

At present, only the administrator is empowered to affirm or vary or set aside the administrator's decision and substitute a new decision following an internal review conducted by such an internal reviewer.

Schedule 1 [6] amends section 53 to increase the time within which an internal review of a reviewable decision must be completed from 14 days to 21 days.

Schedule 1 [10] inserts section 73A in the Act to apply section 128 of the *Evidence Act 1995* to proceedings before the Tribunal even when the Tribunal is not bound to apply the laws of evidence in the proceedings.

Section 128 of the *Evidence Act 1995* confers a privilege on a witness in proceedings in a NSW court to refuse to answer questions on the ground that it might incriminate the witness in other proceedings. However, the section also allows the court, where it believes that there are reasonable grounds for such an objection or when it compels the witness under the section to answer, to issue the witness with a certificate. Such a certificate has the effect that the evidence to

which it relates cannot be used against the witness (except in criminal proceedings in respect of the falsity of the evidence) in any NSW court.

At present, section 128 of that Act has only limited application to the Tribunal. This arises from the definition of NSW court in the *Evidence Act 1995*. The term is defined in that Act to include any person or body (other than a court) that, in exercising a function under the law of the State, is *required to apply the laws of evidence*. However, section 73 (2) of the *Administrative Decisions Tribunal Act 1997* provides that the Tribunal is generally not bound by the rules of evidence. One exception to this general rule is section 168 of the *Legal Profession Act 1987*, which provides that the Tribunal is to apply the rules of evidence when exercising functions under that Act relating to disciplinary matters.

Schedule 1 [11] amends section 75 of the Act to enable the Tribunal to make an order prohibiting or restricting the disclosure of the name, address, picture or any other material, or the doing of any thing, that identifies or may lead to the identification of any person (whether or not a party to proceedings before the Tribunal or a witness summoned by, or appearing before, the Tribunal). This power reflects the power that the Tribunal presently has under section 110A (1) (b) of the *Anti-Discrimination Act 1977* in respect of proceedings under that Act.

At present, the power conferred by section 75 is limited to making orders prohibiting or restricting the publication of the names and addresses of witnesses appearing before the Tribunal.

It also amends section 75 to enable the Tribunal to make an order prohibiting or restricting the publication or broadcast of any report of proceedings before the Tribunal. This power reflects the power that the Tribunal presently has under section 110A (1) (a) (i) of the *Anti-Discrimination Act 1977* in respect of proceedings under that Act.

Section 110A of the *Anti-Discrimination Act 1977* will be consequentially omitted by Schedule 2.1.

Schedule 1 [12] amends section 75 of the Act to provide that the Tribunal cannot make a suppression order of the kind referred to above in respect of proceedings to which section 126 of the Act (as proposed to be amended by Schedule 1 [13]) applies.

It also makes it clear that the Tribunal may revoke or vary any order made under section 75 from time to time.

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Schedule 1 [13] amends section 126 of the Act to restrict its application to proceedings in, or appeals from, the Community Services Division and to other classes of proceedings prescribed by the regulations. At present, section 126 makes it an offence to publish, without the consent of the Tribunal, the names of or any other information that identifies persons involved in any proceedings before the Tribunal.

Schedule 1 [14] amends clause 2 of Part 1 of Schedule 2 to the Act to allocate the exercise of the Tribunal's functions under the *Adoption of Children Act 1965* and the *Child Protection (Prohibited Employment) Act 1998* to the Community Services Division. At present, these functions are allocated to the General Division by clause 2 of Part 4 of Schedule 2 to the Act because they are not specifically allocated to any other Division.

Schedule 1 [15] inserts a clause 8A in Schedule 3 to the Act to enable members whose terms of appointment have expired to complete matters that have not been completed before their terms expire.

Schedule 1 [16] and **[17]** contain provisions of a savings or transitional nature.

Schedule 2 Amendment of other Acts

Schedule 2.1 omits section 110A of the *Anti-Discrimination Act 1977*, which deals with the powers of the Tribunal to make suppression orders. The powers will be consolidated in section 75 of the *Administrative Decisions Tribunal Act 1997* (as amended by Schedule 1 [11]).

Schedule 2.2 replaces section 29 of the *Dangerous Goods Act 1975* with a new section.

The new section enables any person who is aggrieved by a decision of a relevant decision-maker under the Act or the regulations relating to a licence or permit to apply to the Administrative Decisions Tribunal for a review of the decision.

At present, the right to apply for such a review is confined to the person who holds (or held) the licence or permit concerned or who has applied for the licence or permit. The new section reinstates the more general right to challenge such decisions that existed under section 29 of the Act as in force immediately before its repeal and substitution by Schedule 4 to the *Administrative Decisions Tribunal Legislation Further Amendment Act 1998*.