

[Act 1997 No 76]



New South Wales

# Administrative Decisions Tribunal Bill 1997

## Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.\*  
The *Administrative Decisions Legislation Amendment Bill 1997* is cognate with this Bill.

## Overview of Bill

The objects of this Bill are:

- (a) to establish an Administrative Decisions Tribunal and provide for its procedures and powers, and
- (b) to enable that Tribunal:
  - (i) to make decisions as the primary decision-maker under various Acts, and
  - (ii) to review decisions of administrators under various Acts, and
  - (iii) to exercise such other functions as may be conferred or imposed on it by or under the proposed Act or any other Act or law, and

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\* Amended in committee—see table at end of volume.

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- (c) to provide a preliminary process for the internal review of decisions of administrators before the review of such decisions by that Tribunal, and
- (d) to require administrators making reviewable decisions under various Acts to notify persons of decisions affecting them and of any review rights they might have and to provide reasons for their decisions on request, and
- (e) to abolish the following tribunals:
  - the Boxing Appeals Tribunal continued under section 28 of the *Boxing and Wrestling Control Act 1986*
  - the Community Services Appeals Tribunal constituted under the *Community Services (Complaints, Appeals and Monitoring) Act 1993*
  - the Equal Opportunity Tribunal constituted under the *Anti-Discrimination Act 1977*
  - the Legal Services Tribunal constituted under the *Legal Profession Act 1987*
  - the Schools Appeals Tribunal constituted under the *Education Reform Act 1990*
  - the Veterinary Surgeons Disciplinary Tribunal constituted under the *Veterinary Surgeons Act 1986*.

While this Bill establishes and provides for the procedures and powers of the Administrative Decisions Tribunal, the Tribunal will have jurisdiction to deal with a matter only if another Act (or in some cases a statutory rule under another Act) provides for applications to be made to it in respect of the matter. Such jurisdiction is initially conferred by the cognate *Administrative Decisions Legislation Amendment Bill 1997*.

The legislative scheme proposed by this Bill and the cognate *Administrative Decisions Legislation Amendment Bill 1997* will ensure that the jurisdiction presently exercised by the various tribunals mentioned above will be exercised instead by the Administrative Decisions Tribunal. It also enables the Administrative Decisions Tribunal to exercise certain jurisdiction presently exercised by courts in relation to administrative decisions.

This Bill and its cognate Bill represent the first stage of a process aimed at abolishing various existing tribunals and transferring their jurisdiction to the Administrative Decisions Tribunal and amending other Acts to provide for the review of administrative decisions.

## Outline of provisions

### Chapter 1 Preliminary

**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** specifies the objects of the proposed Act.

**Clause 4** defines certain words and expressions used in the proposed Act.

**Clause 5** defines an *enactment* to mean:

- (a) in relation to a reviewable decision—an Act (other than the proposed Act) or a statutory rule (other than a statutory rule made under the proposed Act), or
- (b) in any other case—an Act (other than the proposed Act).

**Clause 6** defines *decision* for the purposes of the proposed Act.

**Clause 7** defines an *original decision* of the Tribunal as a decision of the Tribunal made in relation to a matter over which it has jurisdiction under an enactment to act as the primary decision-maker.

**Clause 8** defines a *reviewable decision* of the Tribunal as a decision of an administrator that the Tribunal has jurisdiction under an enactment to review.

**Clause 9** defines an *administrator*, in relation to a reviewable decision, to mean the person or body that makes (or is taken to have made) the decision under the enactment concerned.

**Clause 10** provides that charts and other notes included in the proposed Act are explanatory notes and do not form part of the proposed Act.

### Chapter 2 Establishment of the Tribunal (clauses 11–35)

Part 1 of this Chapter establishes an Administrative Decisions Tribunal of New South Wales.

Part 2 makes provision for the membership of the Tribunal and the assignment of members to the various Divisions of the Tribunal specified in Schedule 1. The President is assigned to each Division of the Tribunal while each Divisional Head is assigned to the Division he or she heads (and such

other Divisions to which the Governor assigns the Divisional Head). All other members are assigned to Divisions by the President. However, the assignment of a member to a Division is subject to any applicable preconditions for assignment specified in Schedule 2. Schedule 3 makes further general provision in respect of such matters as the terms of appointment, remuneration, seniority and vacancy in the office of members.

Part 3 enables the Tribunal to exercise its functions in specialist Divisions and provides for the constitution of the Tribunal to exercise its various functions. Schedule 2 makes provision for the composition of each Division, the allocation of matters to the various Divisions and for special requirements for the constitution of the Tribunal in relation to certain matters.

Part 4 provides for the appointment of a Registrar, Deputy Registrars and staff to assist the Tribunal in the exercise of its functions.

Part 5 enables the Minister to appoint assessors with specialist knowledge in any of the areas over which the Tribunal exercises jurisdiction. The functions of assessors include assisting and advising the Tribunal on matters before it and conducting preliminary conferences under proposed section 34.

### **Chapter 3 Jurisdiction of Tribunal** (clauses 36–40)

The Chapter specifies the circumstances in which the Tribunal has jurisdiction to make an original decision or review a reviewable decision. As a general rule, the Tribunal will only have jurisdiction to make an original decision or review a reviewable decision if an enactment confers a right on a person to apply to the Tribunal for such a decision. It makes provision for the resolution of conflicts between the provisions of the proposed Act and an enactment. The Chapter also enables the Ombudsman and the Tribunal to enter into arrangements for the transfer and referral of matters and enables them to exercise their functions in accordance with any such arrangements.

### **Chapter 4 Process for original decision-making** (clauses 41–46)

The Chapter outlines the process involved in making and reviewing an original decision. It also specifies when an application for an original decision may be made to the Tribunal and provides for the powers of the Tribunal on any such application. These provisions, however, are subject to any contrary provisions in the enactment under which application is brought (see clause 40).

## **Chapter 5 Process for review of reviewable decisions** (clauses 47–66)

Part 1 of this Chapter outlines the process involved in reviewing a reviewable decision. It also explains the respective roles of the administrator who made the decision, the Tribunal and the Supreme Court in this process.

Part 2 provides for the role of the administrator who makes the reviewable decision.

On request, the administrator is to provide reasons for his or her decision and to arrange for an internal review on the application of any interested person. The administrator must, where practicable, also provide such a person with information concerning the person's review rights. If the decision is the subject of proceedings before the Tribunal, the administrator must furnish the Tribunal with relevant documents (including written reasons) on which the decision is based.

Part 3 provides for the role of the Tribunal.

The Tribunal may determine an application made to it for a review of a reviewable decision, but generally only after an internal review has been, or is taken to have been, completed. Subject to contrary provision being made by any relevant enactment, the function of the Tribunal on a review is to make the correct and preferable decision on the merits based on the material then before it. The Part also makes provision for the application of Government policy by the Tribunal on any such review.

The respective roles of the Supreme Court and the Tribunal in relation to appeals from Tribunal decisions are explained more fully in Chapter 7. Appeals may be brought under Part 1 of that Chapter to an Appeal Panel of the Tribunal from decisions of the Tribunal at first instance. A further appeal may be made to the Supreme Court on questions of law against decisions of the Appeal Panel. The Chapter also makes it clear that it does not affect the Supreme Court's inherent supervisory jurisdiction to review decisions of the Tribunal.

## **Chapter 6 Procedure of Tribunal generally** (clauses 67–111)

This Chapter deals with matters relating to the parties to proceedings for an application (Part 1) and with other general procedural matters (Part 2). In particular, the Chapter provides that preliminary conferences can be

conducted by the Tribunal (or the member or assessor arranged by the Tribunal) enabling the parties to confer with the Tribunal (or the member or assessor arranged by the Tribunal) and each other on an informal basis. If the parties reach an agreement following such a conference, the Tribunal, member or assessor may make a determination giving effect to that agreement.

Part 3 also enables rules concerning practice and procedure to be made by the Rule Committee of the Tribunal. The Rule Committee will have the power to establish a specialist Subcommittee for each Division of the Tribunal (which may include people who are not members of the Rule Committee) to recommend to it the making of rules specifically applicable to the Division. Provision is also made for public consultation in the development of such rules.

Part 4 provides for a number of alternative dispute resolution mechanisms. The Tribunal may refer a matter arising in proceedings before it for mediation or neutral evaluation. Mediation is a structured negotiation process in which the mediator, as a neutral and independent party, assists the parties to a dispute to achieve their own resolution of the dispute. Neutral evaluation is a process of evaluation of a dispute in which the neutral evaluator seeks to identify and reduce the issues of fact and law that are in dispute. Attendance and participation at a mediation session or neutral evaluation session is voluntary.

## **Chapter 7 Appeals from decisions of Tribunal** (clauses 112–123)

This Chapter provides for internal appeal rights and appeals to the Supreme Court and explains the inter-relationship between the Tribunal and the Court.

Part 1 enables a party to proceedings before the Tribunal to appeal to an Appeal Panel of the Tribunal against an original decision (but only if an enactment expressly provides for such an appeal) or against a review of a reviewable decision. Such appeals are to be on questions of law only unless the Appeal Panel grants leave for an appeal on the merits. The Part also enables an Appeal Panel to refer questions of law to the Supreme Court for the opinion of the Court.

Part 2 provides for appeals to the Supreme Court on questions of law from decisions of an Appeal Panel (whether the decisions are made on appeal under Part 1 of the Chapter or otherwise).

Part 3 preserves the supervisory jurisdiction of the Supreme Court in relation to decisions of the Tribunal. However, it also confers on the Court the power to dismiss an application for judicial review if it considers that adequate provision is made under the proposed Act for the Tribunal to review the decision or if an application for review has already been lodged with the Tribunal.

## **Chapter 8    Miscellaneous** (clauses 124–146)

This Chapter contains various provisions relating to the general operation of the Act.

Part 1 contains provisions concerning the confidentiality and disclosure of information. It includes, for instance, a provision dealing with the inter-relationship between the proposed Act and the *Freedom of Information Act 1989*.

Part 2 contains other miscellaneous provisions. These include provisions relating to the following:

- the authentication of documents of the Tribunal
- the giving of notices and lodgment of documents
- contempt of the Tribunal
- the allowances and expenses of witnesses before the Tribunal
- the review of the Act after 5 years of operation
- the making of regulations.

## **Schedules**

**Schedule 1** lists the Divisions of the Tribunal.

**Schedule 2** provides for the composition of each Division of the Tribunal, allocates the functions of the Tribunal to the Divisions and provides for any special requirements for the constitution of the Tribunal in relation to specified matters.

**Schedule 3** contains additional provisions relating to members of the Tribunal.

**Schedule 4** contains additional provisions relating to assessors of the Tribunal.

**Schedule 5** contains provisions of a savings and transitional nature.