



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

- (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 be 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.

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*.



New South Wales

Administrative Decisions Tribunal Legislation Amendment Bill 2000

Contents

	Page
1 Name of Act	2
2 Commencement	2
3 Amendment of Administrative Decisions Tribunal Act 1997 No 76	2
4 Amendment of other Acts	2
Schedules	
1 Amendment of Administrative Decisions Tribunal Act 1997	3
2 Amendment of other Acts	9



New South Wales

Administrative Decisions Tribunal Legislation Amendment Bill 2000

No. , 2000

A Bill for

An Act to amend the *Administrative Decisions Tribunal Act 1997* with respect to internal reviews, the constitution and functions of the Tribunal, suppression orders and the application of rules of evidence; to clarify the right of aggrieved persons to apply to the Tribunal for reviews of decisions under the *Dangerous Goods Act 1975*; to amend consequentially the *Anti-Discrimination Act 1977*; and for other purposes.

The Legislature of New South Wales enacts:	1
1 Name of Act	2
This Act is the <i>Administrative Decisions Tribunal Legislation Amendment Act 2000</i> .	3 4
2 Commencement	5
This Act commences on a day or days to be appointed by proclamation.	6 7
3 Amendment of Administrative Decisions Tribunal Act 1997 No 76	8
The <i>Administrative Decisions Tribunal Act 1997</i> is amended as set out in Schedule 1.	9 10
4 Amendment of other Acts	11
The Acts specified in Schedule 2 are amended as set out in that Schedule.	12 13

Schedule 1	Amendment of Administrative Decisions Tribunal Act 1997	1
		2
	(Section 3)	3
[1]	Section 24 Appeal Panel of the Tribunal	4
	Omit section 24 (2). Insert instead:	5
	(2) An Appeal Panel must include:	6
	(a) 1 presidential judicial member (whether or not the member is a Division member of the Division in which the decision under appeal was made), and	7
		8
		9
	(b) 1 other judicial member who need not be a Division member of the Division in which the decision under appeal was made unless the presidential judicial member is not such a Division member, and	10
		11
		12
		13
	(c) 1 non-judicial member who is such a Division member.	14
[2]	Section 53 Internal reviews	15
	Insert “(the <i>internal reviewer</i>)” after “who is directed to do so by the administrator” in section 53 (3).	16
		17
[3]	Section 53 (3)	18
	Omit “The individual”. Insert instead “The internal reviewer”.	19
[4]	Section 53 (4)	20
	Omit “individual dealing with the application”.	21
	Insert instead “internal reviewer”.	22
[5]	Section 53 (5)–(5B)	23
	Omit section 53 (5). Insert instead:	24
	(5) Review of the application	25
	Following the internal review of the decision, the internal reviewer may:	26
		27
	(a) affirm the decision, or	28

(b)	vary the decision, or	1
(c)	set aside the decision and make a decision in substitution for the decision that is set aside.	2 3
(5A)	Reviewer has functions of administrator	4
	In exercising a function under subsection (5), an internal reviewer is taken for all purposes to have the right to exercise the same functions under any relevant enactment or other law that the administrator had in making the decision being reviewed.	5 6 7 8 9
(5B)	Reviewer to notify administrator of decision	10
	An internal reviewer must notify the administrator of the result of, and the reasons for, his or her decision under subsection (5) as soon as is practicable after making the decision.	11 12 13
[6]	Section 53 (6) and (9) (b)	14
	Omit “14 days” wherever occurring. Insert instead “21 days”.	15
[7]	Section 53 (7)	16
	Omit “administrator” where firstly and secondly occurring. Insert instead “internal reviewer”.	17 18
[8]	Section 53 (7)	19
	Omit “administrator” where lastly occurring. Insert instead “reviewer”.	20 21
[9]	Section 53 (8)	22
	Omit the subsection. Insert instead:	23
(8)	Status of decisions made on internal review	24
	For the purposes of this Act, a reviewable decision that is affirmed, varied or set aside and substituted under subsection (5) is:	25 26 27
(a)	taken to have been made by the administrator (as affirmed, varied or substituted by the internal reviewer), and	28 29 30
(b)	taken to have been made on the date on which the applicant is given a notice under subsection (6).	31 32

[10] Section 73A	1
Insert after section 73:	2
73A Application of section 128 of Evidence Act 1995 to proceedings before Tribunal	3
Section 128 (Privilege in respect of self-incrimination in other proceedings) of the <i>Evidence Act 1995</i> is taken to apply to evidence given in proceedings before the Tribunal even when the Tribunal is not required to apply the rules of evidence in those proceedings.	4
5	5
6	6
7	7
8	8
9	9
[11] Section 75 Proceedings on hearing to be conducted in public	10
Omit section 75 (2) (b). Insert instead:	11
(b) an order prohibiting or restricting:	12
(i) the disclosure of the name, address, picture or any other material 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), or	13
14	14
15	15
16	16
17	17
18	18
(ii) the doing of any other thing that identifies, or may lead to the identification of, any such person,	19
20	20
21	21
(b1) an order prohibiting or restricting the publication or broadcast of any report of proceedings before the Tribunal,	22
23	23
24	24
[12] Section 75 (2A) and (2B)	25
Insert after section 75 (2):	26
(2A) The Tribunal cannot make an order under subsection (2) (b) in respect of any proceedings to which section 126 applies.	27
28	28
(2B) The Tribunal may from time to time vary or revoke an order made under subsection (2).	29
30	30

[13] Section 126 Publication of names or identification of persons involved in proceedings	1 2
Insert before subsection (1):	3
(1A) This section applies only to the following:	4
(a) proceedings in the Community Services Division of the Tribunal,	5 6
(b) appeals to an Appeal Panel from a decision made by the Tribunal in the Community Services Division,	7 8
(c) such other proceedings (or class or classes of proceedings) as may be prescribed by the regulations for the purposes of this section.	9 10 11
[14] Schedule 2 Composition and functions of Divisions	12
Insert in alphabetical order in clause 2 of Part 1:	13
<i>Adoption of Children Act 1965</i>	14
<i>Child Protection (Prohibited Employment) Act 1998</i>	15
[15] Schedule 3 Provisions relating to members of Tribunal	16
Insert after clause 8:	17
8A Former member whose term expires may complete unfinished matters	18 19
(1) A former member may, despite the expiration of the period of the member's appointment, complete or otherwise continue to deal with any matters relating to proceedings before the Tribunal that have been heard or partly heard (or were otherwise the subject of deliberations) by the member before the expiration of that period.	20 21 22 23 24 25
(2) While completing or otherwise dealing with matters referred to in subclause (1), the former member is taken to have and may exercise all the rights and functions of a member that the former member had immediately before the expiration of his or her period of appointment.	26 27 28 29 30

[16] Schedule 5 Savings and transitional provisions	1
Insert at the end of clause 1 (1):	2
<i>Administrative Decisions Tribunal Legislation Amendment Act</i>	3
<i>2000</i>	4
[17] Schedule 5	5
Insert in Schedule 5, with appropriate Part and clause numbers:	6
Part Provisions consequent on enactment of Administrative Decisions Tribunal Legislation Amendment Act 2000	7 8 9
Definitions	10
In this Part:	11
<i>amending Act</i> means the <i>Administrative Decisions Tribunal Legislation Amendment Act 2000</i> .	12 13
Amending Act does not apply to or affect existing proceedings and other matters under this Act	14 15
(1) The amending Act does not apply to or affect:	16
(a) any internal review that has not been completed (or a right to seek an internal review arising) under section 53 of this Act immediately before the commencement of Schedule 1 [5] to the amending Act, and	17 18 19 20
(b) any appeal to an Appeal Panel that has not been heard or completed (or any right to so appeal arising) immediately before the commencement of Schedule 1 [1] to the amending Act, and	21 22 23 24
(c) any order made under section 75 (2) (b) of this Act before the commencement of Schedule 1 [11] to the amending Act that is in force immediately before that commencement, and	25 26 27 28

- (d) an offence under section 126 of this Act that was committed or is alleged to have been committed (or any proceedings for any such offence that were commenced but have not been finally determined) before the commencement of Schedule 1 [13] to the amending Act, and
- (e) any application to the Tribunal for a review under the *Dangerous Goods Act 1975* that has not been heard or completed (or any right to so apply arising) immediately before the commencement of Schedule 2.2 to the amending Act.
- (2) Accordingly, any rules, regulations or other law that would have been applicable to a matter referred to in subclause (1) (a)–(e) had the amending Act not been enacted continue to apply to that matter as if the amending Act had not been enacted.
- 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 [14] to the amending Act, and
- (b) that relate to applications made to the ADT under the *Adoption of Children Act 1965* or the *Child Protection (Prohibited Employment) Act 1998*.
- (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 [14] to the amending Act.

Schedule 2	Amendment of other Acts	1
	(Section 4)	2
2.1	Anti-Discrimination Act 1977 No 48	3
	Section 110A Publication of proceedings etc	4
	Omit the section.	5
2.2	Dangerous Goods Act 1975 No 68	6
	Section 29	7
	Omit the section. Insert instead:	8
	29 Reviews by Administrative Decisions Tribunal of decisions concerning licences and permits	9
	(1) A person who is aggrieved by any of the following decisions may apply to the Administrative Decisions Tribunal for a review of the decision:	10
		11
		12
		13
	(a) a decision of a relevant decision-maker under this Act or the regulations relating to a licence,	14
		15
	(b) a decision of a relevant decision-maker under this Act or the regulations relating to a permit.	16
		17
	(2) For the purposes of an application to the 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.	18
		19
		20
		21
		22
		23
		24
	(3) An application under subsection (1) must be made within 28 days after the directly aggrieved person is notified of the decision.	25
		26
		27

- (4) Section 48 (Notice of decision and review rights to be given by administrators) of the *Administrative Decisions Tribunal Act 1997* is taken to require a relevant decision-maker to notify only a directly aggrieved person. 1
2
3
4
- (5) Section 53 (Internal reviews) of the *Administrative Decisions Tribunal Act 1997* does not apply to a decision of the kind referred to in subsection (1). Accordingly, section 55 (1) (d) of that Act does not apply to any such decision. 5
6
7
8
- (6) If an application is made to the Tribunal under subsection (1) by an aggrieved person who is not a directly aggrieved person, the Tribunal must notify the directly aggrieved person of the application (or may order the relevant decision-maker to notify the person of the application) as soon as is reasonably practicable after the application is made. 9
10
11
12
13
14
- (7) Without limiting section 67 (Parties to proceedings before Tribunal) of the *Administrative Decisions Tribunal Act 1997*, the Tribunal may do any one or more of the following: 15
16
17
- (a) join an aggrieved person as a party to proceedings in the Tribunal brought by any other aggrieved person in respect of the same decision, 18
19
20
- (b) allow an aggrieved person to make submissions to the Tribunal concerning a decision under review in proceedings brought by another aggrieved person and take those submissions into account in determining the proceedings. 21
22
23
24
25
- (8) In this section: 26
- aggrieved person**, in relation to a decision relating to a licence or permit, means: 27
28
- (a) a directly aggrieved person, or 29
- (b) any other person aggrieved by the decision as referred to in subsection (1). 30
31
- directly aggrieved person**, in relation to a decision relating to a licence or permit, means: 32
33
- (a) the person who holds (or held) the licence or permit, or 34
- (b) a person who has applied for the licence or permit. 35

relevant decision-maker, in relation to a decision relating to a licence or permit, means the person or body authorised by or under this Act or the regulations to make the decision. 1
2
3