

ADMINISTRATIVE DECISIONS (JUDICIAL REVIEW) ACT 1977

No. 59 of 1977

An Act relating to the Review on Questions of Law of certain Administrative Decisions.

BE IT ENACTED by the Queen, and the Senate and House of Representatives of the Commonwealth of Australia, as follows:—

- Short title. 1. This Act may be cited as the *Administrative Decisions (Judicial Review) Act 1977*.¹
- Commence-
ment. 2. This Act shall come into operation on a date to be fixed by Proclamation.
- Interpret-
ation. 3. (1) In this Act, unless the contrary intention appears—
“Court” means the Federal Court of Australia;
“decision to which this Act applies” means a decision of an administrative character made, proposed to be made, or required to be made, as the case may be (whether in the exercise of a discretion or not) under an enactment, other than a decision by the Governor-General;
“duty” includes a duty imposed on a person in his capacity as a servant of the Crown;
“enactment” means—
 (a) an Act other than the *Commonwealth Places (Application of Laws) Act 1970*;
 (b) an Ordinance of a Territory; or
 (c) an instrument (including rules, regulations or by-laws) made under such an Act or under such an Ordinance,
and includes a part of an enactment;
“failure”, in relation to the making of a decision, includes a refusal to make the decision;
“order of review”, in relation to a decision, in relation to conduct engaged in for the purpose of making a decision or in relation to a failure to make a decision, means an order on an application made under section 5, 6 or 7 in respect of the decision, conduct or failure;
“Rules of Court” means Rules of Court made under the *Federal Court of Australia Act 1976*;

“the Court or a Judge” has the same meaning as in the *Federal Court of Australia Act 1976*.

(2) In this Act, a reference to the making of a decision includes a reference to—

- (a) making, suspending, revoking or refusing to make an order, award or determination;
- (b) giving, suspending, revoking or refusing to give a certificate, direction, approval, consent or permission;
- (c) issuing, suspending, revoking or refusing to issue a licence, authority or other instrument;
- (d) imposing a condition or restriction;
- (e) making a declaration, demand or requirement;
- (f) retaining, or refusing to deliver up, an article; or
- (g) doing or refusing to do any other act or thing,

and a reference to a failure to make a decision shall be construed accordingly.

(3) Where provision is made by an enactment for the making of a report or recommendation before a decision is made in the exercise of a power under that enactment or under another enactment, the making of such a report or recommendation shall itself be deemed, for the purposes of this Act, to be the making of a decision.

(4) In this Act—

- (a) a reference to a person aggrieved by a decision includes a reference—
 - (i) to a person whose interests are adversely affected by the decision; or
 - (ii) in the case of a decision by way of the making of a report or recommendation—to a person whose interests would be adversely affected if a decision were, or were not, made in accordance with the report or recommendation;

and

- (b) a reference to a person aggrieved by conduct that has been, is being, or is proposed to be, engaged in for the purpose of making a decision or by a failure to make a decision includes a reference to a person whose interests are or would be adversely affected by the conduct or failure.

(5) A reference in this Act to conduct engaged in for the purpose of making a decision includes a reference to the doing of any act or thing preparatory to the making of the decision, including the taking of evidence or the holding of an inquiry or investigation.

(6) A document or a statement that is required by this Act to be furnished to a person or a notice that is required by this Act to be given to a person may be posted to the person by a pre-paid letter—

- (a) where the person has furnished an address at which documents may be served—to that address; or
- (b) where no such address has been furnished—
 - (i) in the case of a person not being a company—to the address of his place of residence or business last known to the person posting the document, statement or notice; or
 - (ii) in the case of a company—to the address of the registered office of the company,

and, if a document, statement or notice is so posted, then, for the purposes of this Act, the document or statement shall be deemed to be furnished, or the notice shall be deemed to be given, as the case may be, at the time when the document, statement or notice is so posted.

Act to operate notwithstanding anything in existing laws.

4. This Act has effect notwithstanding anything contained in any enactment in force at the commencement of this Act.

Applications for review of decisions.

5. (1) A person who is aggrieved by a decision to which this Act applies that is made after the commencement of this Act may apply to the Court for an order of review in respect of the decision on any one or more of the following grounds:—

- (a) that a breach of the rules of natural justice occurred in connexion with the making of the decision;
- (b) that procedures that were required by law to be observed in connexion with the making of the decision were not observed;
- (c) that the person who purported to make the decision did not have jurisdiction to make the decision;
- (d) that the decision was not authorized by the enactment in pursuance of which it was purported to be made;
- (e) that the making of the decision was an improper exercise of the power conferred by the enactment in pursuance of which it was purported to be made;
- (f) that the decision involved an error of law, whether or not the error appears on the record of the decision;
- (g) that the decision was induced or affected by fraud;
- (h) that there was no evidence or other material to justify the making of the decision;
- (j) that the decision was otherwise contrary to law.

(2) The reference in paragraph (1) (e) to an improper exercise of a power shall be construed as including a reference to—

- (a) taking an irrelevant consideration into account in the exercise of a power;

- (b) failing to take a relevant consideration into account in the exercise of a power;
- (c) an exercise of a power for a purpose other than a purpose for which the power is conferred;
- (d) an exercise of a discretionary power in bad faith;
- (e) an exercise of a personal discretionary power at the direction or behest of another person;
- (f) an exercise of a discretionary power in accordance with a rule or policy without regard to the merits of the particular case;
- (g) an exercise of a power that is so unreasonable that no reasonable person could have so exercised the power;
- (h) an exercise of a power in such a way that the result of the exercise of the power is uncertain; and
- (j) any other exercise of a power in a way that constitutes abuse of the power.

(3) The ground specified in paragraph (1) (h) shall not be taken to be made out unless—

- (a) the person who made the decision was required by law to reach that decision only if a particular matter was established, and there was no evidence or other material (including facts of which he was entitled to take notice) from which he could reasonably be satisfied that the matter was established; or
- (b) the person who made the decision based the decision on the existence of a particular fact, and that fact did not exist.

6. (1) Where a person has engaged, is engaging, or proposes to engage, in conduct for the purpose of making a decision to which this Act applies, a person who is aggrieved by the conduct may apply to the Court for an order of review in respect of the conduct on any one or more of the following grounds:—

Applications for review of conduct related to making of decisions.

- (a) that a breach of the rules of natural justice has occurred, is occurring, or is likely to occur, in connexion with the conduct;
- (b) that procedures that are required by law to be observed in respect of the conduct have not been, are not being, or are likely not to be, observed;
- (c) that the person who has engaged, is engaging, or proposes to engage, in the conduct does not have jurisdiction to make the proposed decision;
- (d) that the enactment in pursuance of which the decision is proposed to be made does not authorize the making of the proposed decision;
- (e) that the making of the proposed decision would be an improper exercise of the power conferred by the enactment in pursuance of which the decision is proposed to be made;

- (f) that an error of law has been, is being, or is likely to be, committed in the course of the conduct or is likely to be committed in the making of the proposed decision;
- (g) that fraud has taken place, is taking place, or is likely to take place, in the course of the conduct;
- (h) that there is no evidence or other material to justify the making of the proposed decision;
- (j) that the making of the proposed decision would be otherwise contrary to law.

(2) The reference in paragraph (1) (e) to an improper exercise of a power shall be construed as including a reference to—

- (a) taking an irrelevant consideration into account in the exercise of a power;
- (b) failing to take a relevant consideration into account in the exercise of a power;
- (c) an exercise of a power for a purpose other than a purpose for which the power is conferred;
- (d) an exercise of a discretionary power in bad faith;
- (e) an exercise of a personal discretionary power at the direction or behest of another person;
- (f) an exercise of a discretionary power in accordance with a rule or policy without regard to the merits of the particular case;
- (g) an exercise of a power that is so unreasonable that no reasonable person could have so exercised the power;
- (h) an exercise of a power in such a way that the result of the exercise of the power is uncertain; and
- (j) any other exercise of a power in a way that constitutes abuse of the power.

(3) The ground specified in paragraph (1) (h) shall not be taken to be made out unless—

- (a) the person who proposes to make the decision is required by law to reach that decision only if a particular matter is established, and there is no evidence or other material (including facts of which he is entitled to take notice) from which he can reasonably be satisfied that the matter is established; or
- (b) the person proposes to make the decision on the basis of the existence of a particular fact, and that fact does not exist.

Applications
in respect of
failures to
make
decisions.

7. (1) Where—

- (a) a person has a duty to make a decision to which this Act applies;
- (b) there is no enactment that prescribes a period within which the person is required to make that decision; and
- (c) the person has failed to make that decision,

a person who is aggrieved by the failure of the first-mentioned person to make the decision may apply to the Court for an order of review in respect of the failure to make the decision on the ground that there has been unreasonable delay in making the decision.

(2) Where—

- (a) a person has a duty to make a decision to which this Act applies;
- (b) an enactment prescribes a period within which the person is required to make that decision; and
- (c) the person failed to make that decision before the expiration of that period,

a person who is aggrieved by the failure of the first-mentioned person to make the decision within that period may apply to the Court for an order of review in respect of the failure to make the decision within that period on the ground that the first-mentioned person has a duty to make the decision notwithstanding the expiration of that period.

8. The Court has jurisdiction to hear and determine applications made to the Court under this Act.

Jurisdiction of Federal Court of Australia.

9. (1) Notwithstanding anything contained in any Act other than this Act, a court of a State does not have jurisdiction to review—

Limitation of jurisdiction of State courts.

- (a) a decision to which this Act applies;
- (b) conduct that has been, is being, or is proposed to be, engaged in for the purpose of making a decision to which this Act applies;
- (c) a failure to make a decision to which this Act applies; or
- (d) any other decision given, or any order made, by an officer of the Commonwealth or any other conduct that has been, is being, or is proposed to be, engaged in by an officer of the Commonwealth, including a decision, order or conduct given, made or engaged in, as the case may be, in the exercise of judicial power.

(2) In this section—

“officer of the Commonwealth” has the same meaning as in paragraph 75 (v) of the Constitution;

“review” means review by way of—

- (a) the grant of an injunction;
- (b) the grant of a prerogative or statutory writ (other than a writ of *habeas corpus*) or the making of any order of the same nature or having the same effect as, or of a similar nature or having a similar effect to, any such writ; or
- (c) the making of a declaratory order.

Rights conferred by this Act to be additional to other rights.

10. (1) The rights conferred by sections 5, 6 and 7 on a person to make an application to the Court in respect of a decision, in respect of conduct engaged in for the purpose of making a decision or in respect of a failure to make a decision—

- (a) are in addition to, and not in derogation of, any other rights that the person has to seek a review, whether by the Court, by another court, or by another tribunal, authority or person, of that decision, conduct or failure; and
- (b) shall be disregarded for the purposes of the application of sub-section 6 (3) of the *Ombudsman Act* 1976.

(2) Notwithstanding sub-section (1)—

- (a) the Court, or any other court, may, in a proceeding instituted otherwise than under this Act, in its discretion, refuse to grant an application for a review of a decision, conduct engaged in for the purpose of making a decision, or a failure to make a decision, for the reason that an application has been made to the Court under section 5, 6 or 7 in respect of that decision, conduct or failure; and
- (b) the Court may, in its discretion, refuse to grant an application under section 5, 6 or 7 that was made to the Court in respect of a decision, in respect of conduct engaged in for the purpose of making a decision, or in respect of a failure to make a decision, for the reason—
 - (i) that the applicant has sought a review by the Court, or by another court, of that decision, conduct or failure otherwise than under this Act; or
 - (ii) that adequate provision is made by an enactment other than this Act under which the applicant is entitled to seek a review by the Court, by another court, or by another tribunal, authority or person, of that decision, conduct or failure.

(3) In this section, “review” includes a review by way of reconsideration, re-hearing, appeal, the grant of an injunction or of a prerogative or statutory writ or the making of a declaratory or other order.

Manner of making applications.

11. (1) An application to the Court for an order of review—

- (a) shall be made in such manner as is prescribed by Rules of Court;
- (b) shall set out the grounds of the application; and
- (c) shall be lodged with a Registry of the Court and, in the case of an application in relation to a decision that has been made and the terms of which were recorded in writing and set out in a document that was furnished to the applicant, including such a decision that a person purported to make after the expiration of the period within which it was required to be made, shall be so

lodged within the prescribed period or within such further time as the Court (whether before or after the expiration of the prescribed period) allows.

(2) Any other application to the Court under this Act shall be made as prescribed by Rules of Court.

(3) The prescribed period for the purposes of paragraph (1) (c) is the period commencing on the day on which the decision is made and ending on the twenty-eighth day after—

- (a) if the decision sets out the findings on material questions of fact, refers to the evidence or other material on which those findings were based and gives the reasons for the decision—the day on which a document setting out the terms of the decision is furnished to the applicant; or
- (b) in a case to which paragraph (a) does not apply—
 - (i) if a statement in writing setting out those findings, referring to that evidence or other material and giving those reasons is furnished to the applicant otherwise than in pursuance of a request under sub-section 13 (1) not later than the twenty-eighth day after the day on which a document setting out the terms of the decision is furnished to the applicant—the day on which the statement is so furnished;
 - (ii) if the applicant, in accordance with sub-section 13 (1), requests the person who made the decision to furnish a statement as mentioned in that sub-section—the day on which the statement is furnished, the Court makes an order under sub-section 13 (4) declaring that the applicant was not entitled to make the request or the applicant is notified in accordance with sub-section 14 (3) that the statement will not be furnished; or
 - (iii) in any case—the day on which a document setting out the terms of the decision is furnished to the applicant.

(4) Where—

- (a) no period is prescribed for the making of applications for orders of review in relation to a particular decision; or
- (b) no period is prescribed for the making of an application by a particular person for an order of review in relation to a particular decision,

the Court may—

- (c) in a case to which paragraph (a) applies—refuse to entertain an application for an order of review in relation to the decision referred to in that paragraph; or

(d) in a case to which paragraph (b) applies—refuse to entertain an application by the person referred to in that paragraph for an order of review in relation to the decision so referred to, if the Court is of the opinion that the application was not made within a reasonable time after the decision was made.

(5) In forming an opinion for the purposes of sub-section (4), the Court shall have regard to—

(a) the time when the applicant became aware of the making of the decision; and

(b) in a case to which paragraph (4) (b) applies—the period or periods prescribed for the making by another person or other persons of an application or applications for an order or orders of review in relation to the decision,

and may have regard to such other matters as it considers relevant.

(6) The applicant for an order of review is not limited to the grounds set out in the application but, if he wishes to rely on a ground not so set out, the Court may direct that the application be amended to specify that ground.

(7) The Court may, on such terms as it thinks fit, permit a document lodged with a Registry of the Court in connexion with an application under this Act to be amended and may, if it thinks fit, direct such a document to be amended in a manner specified by the Court.

(8) The Rules of Court may make provision for and in relation to service on appropriate persons of copies of documents lodged with a Registry of the Court under this Act.

(9) Strict compliance with Rules of Court made for the purposes of this section is not required and substantial compliance is sufficient.

Application
to be made a
party to a
proceeding.

12. (1) A person interested in a decision, in conduct that has been, is being, or is proposed to be, engaged in for the purpose of making a decision, or in a failure to make a decision, being a decision, conduct or failure in relation to which an application has been made to the Court under this Act, may apply to the Court to be made a party to the application.

(2) The Court may, in its discretion—

(a) grant the application either unconditionally or subject to such conditions as it thinks fit; or

(b) refuse the application.

13. (1) Where a person makes a decision to which this Act applies (other than a decision in relation to which section 28 of the *Administrative Appeals Tribunal Act 1975* applies or which includes, or is accompanied by a statement setting out, findings of facts, a reference to the evidence or other material on which those findings were based and the reasons for the decision), any person who is entitled to make an application to the Court under section 5 in relation to the decision may, by notice in writing given to the person who made the decision, request him to furnish a statement in writing setting out the findings on material questions of fact, referring to the evidence or other material on which those findings were based and giving the reasons for the decision.

Person entitled to apply for review of decision may obtain reasons for decision.

(2) Where such a request is made, the person who made the decision shall, subject to this section, within 14 days after receiving the request, prepare the statement and furnish it to the person who made the request.

(3) A person to whom a request is made under sub-section (1) for the furnishing of a statement in relation to a decision may apply to the Court, within 14 days after receiving the request, for an order declaring that the person who made the request was not entitled to make the request.

(4) Where an application is made for an order under sub-section (3), the person who made the decision is not required to furnish the statement before the Court gives its decision on that application and—

- (a) if the Court makes an order declaring that the person who made the request was not entitled to make it—the person who made the decision is not required to furnish the statement; or
- (b) if the Court refuses the application—the person who made the decision shall prepare the statement, and furnish it to the person who made the request, within 14 days after the decision of the Court.

(5) A person to whom a request for a statement in relation to a decision is made under sub-section (1) may refuse to prepare and furnish the statement if—

- (a) in the case of a decision the terms of which were recorded in writing and set out in a document that was furnished to the person who made the request—the request was not made on or before the twenty-eighth day after the day on which that document was so furnished; or
- (b) in any other case—the request was not made within a reasonable time after the decision was made,

and in any such case the person to whom the request was made shall give to the person who made the request, within 14 days after receiving the request, notice in writing stating that the statement will not be furnished to him and giving the reason why the statement will not be so furnished.

(6) For the purposes of paragraph (5) (b), a request for a statement in relation to a decision shall be deemed to have been made within a reasonable time after the decision was made if the Court, on application by the person who made the request, declares that the request was made within a reasonable time after the decision was made.

(7) If the Court, upon application for an order under this sub-section made to it by a person to whom a statement has been furnished in pursuance of a request under sub-section (1), considers that the statement does not contain adequate particulars of findings on material questions of fact, an adequate reference to the evidence or other material on which those findings were based or adequate particulars of the reasons for the decision, the Court may order the person who furnished the statement to furnish to the person who made the request for the statement, within such time as is specified in the order, an additional statement or additional statements containing further and better particulars in relation to matters specified in the order with respect to those findings, that evidence or other material or those reasons.

Certain
information
not required
to be
disclosed.

14. (1) If the Attorney-General certifies, by writing signed by him, that the disclosure of information concerning a specified matter would be contrary to the public interest—

- (a) by reason that it would prejudice the security, defence or international relations of Australia;
- (b) by reason that it would involve the disclosure of deliberations or decisions of the Cabinet or of a Committee of the Cabinet; or
- (c) for any other reason specified in the certificate that could form the basis for a claim by the Crown in right of the Commonwealth in a judicial proceeding that the information should not be disclosed,

the following provisions of this section have effect.

(2) Where a person has been requested in accordance with section 12 to furnish a statement to a person—

- (a) the first-mentioned person is not required to include in the statement any information in respect of which the Attorney-General has certified in accordance with sub-section (1) of this section; and
- (b) where the statement would be false or misleading if it did not include such information—the first-mentioned person is not required by that section to furnish the statement.

(3) Where, by reason of sub-section (2), information is not included in a statement furnished by a person or a statement is not furnished by a person, the person shall give notice in writing to the person who requested the statement—

- (a) in a case where information is not included in a statement—stating that the information is not so included and giving the reason for not including the information; or
- (b) in a case where a statement is not furnished—stating that the statement will not be furnished and giving the reason for not furnishing the statement.

(4) Nothing in this section affects the power of the Court to make an order for the discovery of documents or to require the giving of evidence or the production of documents to the Court.

15. (1) The making of an application to the Court under section 5 in relation to a decision does not affect the operation of the decision or prevent the taking of action to implement the decision but— Stay of proceedings.

- (a) the Court or a Judge may, by order, on such conditions (if any) as it or he thinks fit, suspend the operation of the decision; and
- (b) the Court or a Judge may order, on such conditions (if any) as it or he thinks fit, a stay of all or any proceedings under the decision.

(2) The Court or a Judge may make an order under sub-section (1) of its or his own motion or on the application of the person who made the application under section 5.

16. (1) On an application for an order of review in respect of a decision, the Court may, in its discretion, make all or any of the following orders:— Powers of the Court in respect of applications for order of review.

- (a) an order quashing or setting aside the decision, or a part of the decision, with effect from the date of the order or from such earlier or later date as the Court specifies;
- (b) an order referring the matter to which the decision relates to the person who made the decision for further consideration, subject to such directions as the Court thinks fit;
- (c) an order declaring the rights of the parties in respect of any matter to which the decision relates;
- (d) an order directing any of the parties to do, or to refrain from doing, any act or thing the doing, or the refraining from the doing, of which the Court considers necessary to do justice between the parties.

(2) On an application for an order of review in respect of conduct that has been, is being, or is proposed to be, engaged in for the purpose of the making of a decision, the Court may, in its discretion, make either or both of the following orders:—

- (a) an order declaring the rights of the parties in respect of any matter to which the conduct relates;
- (b) an order directing any of the parties to do, or to refrain from doing, any act or thing the doing, or the refraining from the

doing, of which the Court considers necessary to do justice between the parties.

(3) On an application for an order of review in respect of a failure to make a decision, or in respect of a failure to make a decision within the period within which the decision was required to be made, the Court may, in its discretion, make all or any of the following orders:—

- (a) an order directing the making of the decision;
- (b) an order declaring the rights of the parties in relation to the making of the decision;
- (c) an order directing any of the parties to do, or to refrain from doing, any act or thing the doing, or the refraining from the doing, of which the Court considers necessary to do justice between the parties.

(4) The Court may at any time, of its own motion or on the application of any party, revoke, vary, or suspend the operation of, any order made by it under this section.

Change in
occupancy of
office.

17. Where—

- (a) a person has, in the performance of the duties of an office, made a decision in respect of which an application may be made to the Court under this Act; and
- (b) the person no longer holds that office,

this Act has effect as if the decision had been made by—

- (c) the person for the time being holding or performing the duties of that office; or
- (d) if there is no person for the time being holding or performing the duties of that office or that office no longer exists—such person as the Minister administering the enactment under which the decision was made, or a person authorized by him, specifies.

Intervention
by Attorney-
General.

18. (1) The Attorney-General may, on behalf of the Commonwealth, intervene in a proceeding before the Court under this Act.

(2) Where the Attorney-General intervenes in a proceeding in pursuance of this section, the Court may, in the proceeding, make such order as to costs against the Commonwealth as the Court thinks fit.

(3) Where the Attorney-General intervenes in a proceeding in pursuance of this section, he shall be deemed to be a party to the proceeding.

Act not to
apply in
relation to
certain
decisions.

19. (1) The regulations may declare a class or classes of decisions to be decisions that are not subject to judicial review by the Court under this Act.

(2) If a regulation is so made in relation to a class of decisions—

- (a) section 5 does not apply in relation to a decision included in that class;

- (b) section 6 does not apply in relation to conduct that has been, is being, or is proposed to be, engaged in for the purpose of making a decision included in that class; and
- (c) section 7 does not apply in relation to a failure to make a decision included in that class,

but the making of the regulation does not affect the exclusion by section 9 of the jurisdiction of the courts of the States in relation to such a decision, such conduct or such a failure.

(3) Regulations made for the purposes of sub-section (1) may specify a class of decisions in any way, whether by reference to the nature or subject-matter of the decisions, by reference to the enactment or provision of an enactment under which they are made, by reference to the holder of the office by whom they are made, or otherwise.

(4) A regulation made in pursuance of sub-section (1) applies only in relation to decisions made after the regulation takes effect.

20. The Governor-General may make regulations, not inconsistent Regulations. with this Act, prescribing all matters required or permitted by this Act to be prescribed by regulations or necessary or convenient to be prescribed by regulations for carrying out or giving effect to this Act.

NOTE

1. Act No. 59, 1977; assented to 16 June 1977.