

Administrative Appeals Tribunal Amendment Act 1979

No. 143 of 1979

An Act to amend the *Administrative Appeals Tribunal Act 1975*.

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

Short title,
&c.

1. (1) This Act may be cited as the *Administrative Appeals Tribunal Amendment Act 1979*.¹

(2) The *Administrative Appeals Tribunal Act 1975*² is in this Act referred to as the Principal Act.

Commence-
ment

2. This Act shall come into operation on the day on which it receives the Royal Assent.¹

Constitution
of Tribunal
for exercise
of powers

3. Section 21 of the Principal Act is amended by omitting from sub-section (1A) “37 (2)” and substituting “37 (1A) or (2)”.

Person
affected by
decision may
obtain
reasons for
decision

4. Section 28 of the Principal Act is amended by omitting from sub-sections (1) and (1A) “within 14 days” and substituting “as soon as practicable but in any case within 28 days”.

Lodging of
material
documents
with
Tribunal

5. Section 37 of the Principal Act is amended—

(a) by omitting from sub-section (1) “within the prescribed time” and substituting “within 28 days”; and

(b) by inserting after sub-section (1) the following sub-section:

“(1A) If it appears to the Tribunal that a party to a proceeding before the Tribunal for a review of a decision would or might suffer hardship if the period prescribed by sub-section (1) for lodging with the Tribunal for the purposes of the review the copies of the documents mentioned in that sub-section is not shortened, the Tribunal may, upon request being made, as prescribed, by that party, make an order directing that those copies be lodged with the Tribunal within such period (being a period of less than 28 days) after the person who made the decision receives or received notice of the application as is specified in the order.”

6. Section 41 of the Principal Act is repealed and the following section substituted:

“41. (1) Subject to this section, the making of an application to the Tribunal for a review of a decision does not affect the operation of the decision or prevent the taking of action to implement the decision.

Operation and implementation of a decision that is subject to review

“(2) The Tribunal or a presidential member may, on request being made, as prescribed, by a party to a proceeding before the Tribunal (in this section referred to as the ‘relevant proceeding’), if the Tribunal or presidential member is of the opinion that it is desirable to do so after taking into account the interests of any persons who may be affected by the review, make such order or orders staying or otherwise affecting the operation or implementation of the decision to which the relevant proceeding relates or a part of that decision as the Tribunal or presidential member considers appropriate for the purpose of securing the effectiveness of the hearing and determination of the application for review.

“(3) Where an order is in force under sub-section (2) (including an order that has previously been varied on one or more occasions under this sub-section), the Tribunal or a presidential member may, on request being made, as prescribed, by a party to the relevant proceeding, make an order varying or revoking the first-mentioned order.

“(4) Subject to sub-section (5), the Tribunal or a presidential member shall not—

- (a) make an order under sub-section (2) unless the person who made the decision to which the relevant proceeding relates has been given a reasonable opportunity to make a submission to the Tribunal or presidential member, as the case may be, in relation to the matter; or
- (b) make an order varying or revoking an order in force under sub-section (2) (including an order that has previously been varied on one or more occasions under sub-section (3)) unless—
 - (i) the person who made the decision to which the relevant proceeding relates;
 - (ii) the person who requested the making of the order under sub-section (2); and
 - (iii) if the order under sub-section (2) has previously been varied by an order or orders under sub-section (3)—the person or persons who requested the making of the last-mentioned order or orders,

have been given a reasonable opportunity to make submissions to the Tribunal or presidential member, as the case may be, in relation to the matter.

“(5) Sub-section (4) does not prohibit the Tribunal or a presidential member from making an order without giving to a person referred to in that sub-section a reasonable opportunity to make a submission to the

Tribunal or presidential member in relation to a matter if the Tribunal or presidential member is satisfied that, by reason of the urgency of the case or otherwise, it is not practicable to give that person such an opportunity but, where an order is so made without giving such an opportunity to the person who made the decision to which the relevant proceeding relates, the order does not come into operation until a notice setting out the terms of the order is served on that person.

“(6) An order in force under sub-section (2) (including an order that has previously been varied on one or more occasions under sub-section (3))—

- (a) is subject to such conditions as are specified in the order; and
- (b) has effect until—
 - (i) where a period for the operation of the order is specified in the order—the expiration of that period or, if the application for review is decided by the Tribunal before the expiration of that period, the decision of the Tribunal on the application for review comes into operation; or
 - (ii) if no period is so specified—the decision of the Tribunal on the application for review comes into operation.”

Review by
Tribunal

7. Section 43 of the Principal Act is amended—

(a) by inserting after sub-section (5) the following sub-sections:

“(5A) Subject to sub-section (5B), a decision of the Tribunal comes into operation forthwith upon the giving of the decision.

“(5B) The Tribunal may specify in a decision that the decision is not to come into operation until a later date specified in the decision and, where a later date is so specified, the decision comes into operation on that date.”; and

(b) by inserting “upon the coming into operation of the decision of the Tribunal,” in sub-section (6) before “unless”.

Appeals to
Federal
Court of
Australia
from
decisions of
Tribunal

8. Section 44 of the Principal Act is amended by omitting sub-section (6).

9. After section 44 of the Principal Act the following section is inserted:

Operation
and
implement-
ation of a
decision that
is subject to
appeal

“44A. (1) Subject to this section, the institution of an appeal to the Federal Court of Australia from a decision of the Tribunal does not affect the operation of the decision or prevent the taking of action to implement the decision.

“(2) Where an appeal is instituted in the Federal Court of Australia from a decision of the Tribunal, that Court or a Judge of that Court may

make such order or orders staying or otherwise affecting the operation or implementation of either or both of the following:

- (a) the decision of the Tribunal or a part of that decision; and
- (b) the decision to which the proceeding before the Tribunal related or a part of that decision,

as that Court or Judge considers appropriate for the purpose of securing the effectiveness of the hearing and determination of the appeal.

“(3) Where an order is in force under sub-section (2) (including an order that has previously been varied on one or more occasions under this sub-section), the Federal Court of Australia or a Judge of that Court may make an order varying or revoking the first-mentioned order.

“(4) An order in force under sub-section (2) (including an order that has previously been varied on one or more occasions under sub-section (3))—

- (a) is subject to such conditions as are specified in the order; and
- (b) has effect until—
 - (i) where a period for the operation of the order is specified in the order—the expiration of that period or, if a decision is given on the appeal before the expiration of that period, the giving of the decision; or
 - (ii) where no period is so specified—the giving of a decision on the appeal.”

10. Section 49 of the Principal Act is amended by inserting after sub-section (2) the following sub-section: Composition of Council

“(2A) The Governor-General shall appoint one of the members to be the Chairman of the Council.”

11. Section 50 of the Principal Act is amended by omitting “unless he has had extensive experience in public administration or has an extensive knowledge of administrative law” and substituting “unless he has had extensive experience at a high level in industry, commerce, public administration, industrial relations, the practice of a profession or the service of a government or of an authority of a government or has an extensive knowledge of administrative law or public administration”. Qualifications for appointment

12. Section 56 of the Principal Act is amended by omitting “President” from sub-sections (2), (3), (5) and (6) and substituting “Chairman of the Council”. Meetings

Officers of
Tribunal

13. Section 65 of the Principal Act is amended by omitting sub-section (3) and substituting the following sub-section:

“(3) The Registrar, the Deputy Registrars and the other officers of the Tribunal shall be—

- (a) persons appointed or employed under the *Public Service Act* 1922; or
- (b) if there is in force an arrangement between the Public Service Board and the appropriate authority of the Northern Territory providing for the services of officers or employees of the Public Service of that Territory to be made available to the Tribunal—persons whose services are made available to the Tribunal in pursuance of the arrangement.”

Schedule

14. The Schedule to the Principal Act is amended by adding at the end of clause 22 the following sub-clause:

“(5) Where an application has, whether before or after the commencement of this sub-clause, been made to the Tribunal for the review of a decision of the Minister under section 12 or 13 of the *Migration Act* 1958 ordering the deportation of a person, the order for the deportation of the person shall not be taken for the purposes of section 39 of that Act to have ceased or to cease to be in force by reason only of any order that has, whether before or after the commencement of this sub-clause, been made by the Tribunal or a presidential member under section 41 of this Act or by the Federal Court of Australia or a Judge of that Court under section 44A of this Act.”

NOTES

1. Act No. 143, 1979; assented to 27 November 1979.
2. Act No. 91, 1975, as amended. For previous amendments *see* Acts Nos. 60, 89, 91, 157, 162, 163 and 209, 1976; Nos. 30, 57, 58 and 111, 1977; Nos. 65 and 109, 1978; and No. 19, 1979.