

Administrative Decisions (Judicial Review) Amendment Act 1980

No. 111 of 1980

An Act to amend the *Administrative Decisions (Judicial Review) Act 1977*

[Assented to 1 September 1980]

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

Short title, &c.

1. (1) This Act may be cited as the *Administrative Decisions (Judicial Review) Amendment Act 1980*.

(2) The *Administrative Decisions (Judicial Review) Act 1977*¹ is in this Act referred to as the Principal Act.

Commencement

2. This Act shall come into operation on the date fixed by Proclamation under section 2 of the Principal Act.

Interpretation

3. Section 3 of the Principal Act is amended—

- (a) by adding at the end of the definition of “decision to which this Act applies” in sub-section (1) “or a decision included in any of the classes of decisions set out in Schedule 1”; and
- (b) by adding at the end thereof the following sub-sections:

“(7) A reference in a Schedule to this Act to another Act or a provision of another Act shall be read as including a reference to regulations or by-laws in force under that other Act or for the purposes of that provision, as the case may be.

“(8) For the purposes of a Schedule to this Act—

- (a) a decision made, proposed to be made, or required to be made, as the case may be, by a person acting as the delegate of another person, or by a person otherwise lawfully authorized to

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act on behalf of another person, shall be deemed to be a decision by that other person; and

- (b) a decision made, proposed to be made, or required to be made, as the case may be, by a person for the time being acting in, or performing any of the duties of, an office or appointment shall be deemed to be a decision by the holder of that office or appointment.

“(9) In a Schedule to this Act—

‘air force law’, ‘military law’ and ‘naval law’ have the same respective meanings as in the *Courts-Martial Appeals Act 1955*;

‘Commonwealth authority’ means an authority or other body (whether incorporated or not) that is established by an enactment;

‘Service’ includes the Australian Federal Police.”.

Limitation of jurisdiction of State courts

4. Section 9 of the Principal Act is amended—

- (a) by omitting paragraph (a) of sub-section (1) and substituting the following paragraph:

“(a) a decision to which this section applies that is made after the commencement of this Act;”;

- (b) by omitting from paragraphs (b) and (c) of sub-section (1) “Act” (wherever occurring) and substituting “section”;

- (c) by inserting in sub-section (2), before the definition of “officer of the Commonwealth”, the following definition:

“ ‘decision to which this section applies’ means—

- (a) a decision that is a decision to which this Act applies; or

- (b) a decision of an administrative character that is included in any of the classes of decisions set out in Schedule 1, other than paragraphs (m) and (n);”;

- (d) by adding at the end thereof the following sub-sections:

“(3) For the purposes of this section, any decision given, or any order made, by a member, or a member of the staff, or a delegate, of the National Companies and Securities Commission, or any other conduct that has been, is being, or is proposed to be, engaged in by such a member or delegate, in the performance of a function, or the exercise of a power, conferred, or expressed to be conferred, upon the Commission by a State Act or a law of the Northern Territory shall be deemed not to be a decision given, or an order made or conduct that has been, is being or is proposed to be, engaged in, as the case may be, by an officer of the Commonwealth.

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- “(4) This section does not affect—
- (a) the jurisdiction vested in a court of a State by the *Bankruptcy Act 1966*;
 - (b) the jurisdiction conferred on the Supreme Court of a State by section 32A of the *Federal Court of Australia Act 1976*; or
 - (c) the jurisdiction of a court of a State in respect of any matter that is pending before it at the commencement of this Act.”.

Manner of making applications

5. Section 11 of the Principal Act is amended by omitting sub-paragraph (ii) of paragraph (b) of sub-section (3) and substituting the following sub-paragraph:

- “(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 applicant is notified in accordance with sub-section 13 (3) of the opinion that the applicant was not entitled to make the request, the Court makes an order under sub-section 13 (4A) declaring that the applicant was not entitled to make the request or the applicant is notified in accordance with sub-section 13A (3) or 14 (3) that the statement will not be furnished ; or”.

Reasons for decision may be obtained

6. Section 13 of the Principal Act is amended—
- (a) by omitting sub-sections (1), (2), (3) and (4) and substituting the following sub-sections:
 - “(1) Where a person makes a decision to which this section applies, 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.
 - “(2) Where such a request is made, the person who made the decision shall, subject to this section, as soon as practicable, and in any event within 28 days, after receiving the request, prepare the statement and furnish it to the person who made the request.
 - “(3) Where a person to whom a request is made under sub-section (1) is of the opinion that the person who made the request was not entitled to make the request, the first-mentioned person may, within 28 days after receiving the request—
 - (a) give to the second-mentioned person notice in writing of his opinion; or

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- (b) apply to the Court under sub-section (4A) for an order declaring that the person who made the request was not entitled to make the request.

“(4) Where a person gives a notice under sub-section (3), or applies to the Court under sub-section (4A), with respect to a request, the person is not required to comply with the request unless—

- (a) the Court, on an application under sub-section (4A), declares that the person who made the request was entitled to make the request; or
- (b) the person who gave the notice under sub-section (3) has applied to the Court under sub-section (4A) for an order declaring that the person who made the request was not entitled to make the request and the Court refuses that application,

and, in either of those cases, the person who gave the notice shall prepare the statement to which the request relates and furnish it to the person who made the request within 28 days after the decision of the Court.

“(4A) The Court may, on the application of—

- (a) a person to whom a request is made under sub-section (1); or
- (b) a person who has received a notice under sub-section (3),

make an order declaring that the person who made the request concerned was, or was not, entitled to make the request.”; and

- (b) by adding at the end thereof the following sub-sections:

“(8) The regulations may declare a class or classes of decisions to be decisions that are not decisions to which this section applies.

“(9) Regulations made under sub-section (8) 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.

“(10) A regulation made under sub-section (8) applies only in relation to decisions made after the regulation takes effect.

“(11) In this section, ‘decision to which this section applies’ means a decision that is a decision to which this Act applies, but does not include—

- (a) a decision in relation to which section 28 of the *Administrative Appeals Tribunal Act 1975* applies;
- (b) a decision that 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; or
- (c) a decision included in any of the classes of decision set out in Schedule 2.”.

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7. After section 13 of the Principal Act the following section is inserted:

Certain information not required to be disclosed

“13A. (1) This section applies in relation to any information to which a request made to a person under sub-section 13 (1) relates, being information that—

- (a) relates to the personal affairs or business affairs of a person, other than the person making the request; and
- (b) is information—
 - (i) that was supplied in confidence;
 - (ii) the publication of which would reveal a trade secret;
 - (iii) that was furnished in compliance with a duty imposed by an enactment; or
 - (iv) the furnishing of which in accordance with the request would be in contravention of an enactment, being an enactment that expressly imposes on the person to whom the request is made a duty not to divulge or communicate to any person, or to any person other than a person included in a prescribed class of persons, or except in prescribed circumstances, information of that kind.

“(2) Where a person has been requested in accordance with sub-section 13 (1) to furnish a statement to a person—

- (a) the first-mentioned person is not required to include in the statement any information in relation to which this section applies; 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 section 13 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.”.

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Certification by Attorney-General concerning the disclosure of information

8. Section 14 of the Principal Act is amended—

- (a) by omitting from paragraph (c) of sub-section (1) “by the Crown in right of the Commonwealth”; and
- (b) by omitting from sub-section (2) “section 12” and substituting “section 13”.

Change in person holding, or performing the duties of, an office

9. Section 17 of the Principal Act is amended by omitting paragraph (b) and substituting the following paragraph:

- “(b) the person no longer holds, or, for whatever reason, is not performing the duties of, that office.”.

New Schedules

10. The Principal Act is amended by adding at the end thereof the Schedules set out in the Schedule to this Act.

SCHEDULE

Section 10

SCHEDULES TO BE ADDED AT THE END OF THE PRINCIPAL ACT

SCHEDULE 1

Section 3

CLASSES OF DECISIONS THAT ARE NOT DECISIONS TO WHICH THIS ACT APPLIES

- (a) decisions under the *Conciliation and Arbitration Act 1904*, other than decisions of the Director of the Industrial Relations Bureau made on behalf of the Bureau;
- (b) decisions under the *Public Service Arbitration Act 1920*;
- (c) decisions under the *Coal Industry Act 1946*, other than decisions of the Joint Coal Board;
- (d) decisions under any of the following Acts:
 - Australian Security Intelligence Organization Act 1956*
 - Australian Security Intelligence Organization Act 1979*
 - Telecommunications (Interception) Act 1979*
 - Telephonic Communications (Interception) Act 1960*;
- (e) decisions making, or forming part of the process of making, or leading up to the making of, assessments or calculations of tax or duty, or decisions disallowing objections to assessments or calculations of tax or duty, or decisions amending, or refusing to amend, assessments or calculations of tax or duty, under any of the following Acts:
 - Australian Capital Territory Taxation (Administration) Act 1969*
 - Coal Excise Act 1949*
 - Customs Act 1901*
 - Customs Tariff Act 1966*
 - Estate Duty Assessment Act 1914*
 - Excise Act 1901*
 - Gift Duty Assessment Act 1941*
 - Income Tax Assessment Act 1936*
 - Pay-roll Tax Assessment Act 1941*

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SCHEDULE 1—continued

- Pay-roll Tax (Territories) Assessment Act 1971*
Sales Tax Assessment Act (No. 1) 1930
Sales Tax Assessment Act (No. 2) 1930
Sales Tax Assessment Act (No. 3) 1930
Sales Tax Assessment Act (No. 4) 1930
Sales Tax Assessment Act (No. 5) 1930
Sales Tax Assessment Act (No. 6) 1930
Sales Tax Assessment Act (No. 7) 1930
Sales Tax Assessment Act (No. 8) 1930
Sales Tax Assessment Act (No. 9) 1930
States Receipts Duties (Administration) Act 1970
Wool Tax (Administration) Act 1964;
- (f) decisions of Taxation Boards of Review;
 - (g) decisions under Part IV of the *Taxation Administration Act 1953*;
 - (h) decisions under the *Foreign Takeovers Act 1975*;
 - (j) decisions, or decisions included in a class of decisions, under the Banking (Foreign Exchange) Regulations in respect of which the Treasurer has certified, by instrument in writing, that the decision or any decision included in the class, as the case may be, is a decision giving effect to the foreign investment policy of the Commonwealth Government;
 - (k) decisions under regulations 7, 11 or 12 of the Passport Regulations, other than decisions relating to Australian passports;
 - (l) decisions of the National Labour Consultative Council;
 - (m) decisions of the National Companies and Securities Commission made in the performance of a function, or the exercise of a power, conferred, or expressed to be conferred, upon it by any State Act or a law of the Northern Territory;
 - (n) decisions of the Ministerial Council for Companies and Securities established by Part VII of the agreement between the Commonwealth and the States a copy of which is set out in the Schedule to the *National Companies and Securities Commission Act 1979*;
 - (o) decisions under naval law, military law or air force law, being—
 - (i) decisions in connection with charges (including decisions made in the course of the investigation of charges and decisions to lay charges);
 - (ii) decisions in connection with the taking of summaries of evidence;
 - (iii) decisions in connection with the convening or ordering of courts-martial;
 - (iv) decisions in connection with the conduct of proceedings before commanding officers or other officers or courts-martial (including decisions making findings);
 - (v) decisions in connection with the awarding of sentences or punishments;
 - (vi) decisions in connection with the confirmation or review of findings or sentences; or
 - (vii) decisions in connection with the remission, commutation or substitution of sentences or punishments.

SCHEDULE 2

Section 13

CLASSES OF DECISIONS THAT ARE NOT DECISIONS TO WHICH SECTION 13 APPLIES

- (a) decisions in connection with, or made in the course of, redress of grievances, or redress of wrongs, with respect to members of the Defence Force;
- (b) decisions in connection with personnel management (including recruitment, training, promotion and organization) with respect to the Defence Force, including decisions relating to particular persons;
- (c) decisions under any of the following Acts:
 - Consular Privileges and Immunities Act 1972*
 - Diplomatic Privileges and Immunities Act 1967*
 - Extradition (Commonwealth Countries) Act 1966*

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SCHEDULE 2—continued

Extradition (Foreign States) Act 1966

International Organizations (Privileges and Immunities) Act 1963;

- (d) decisions under the *Migration Act 1958*, being—
 - (i) decisions under section 6, other than—
 - (A) a decision relating to a person who, at the time of the decision, was a person in respect of whom there was in force a visa or return endorsement under that Act; or
 - (B) a decision relating to a person who, having entered Australia within the meaning of that Act, was in Australia at the time of the decision;
 - (ii) decisions in connection with the issue or cancellation of visas;
 - (iii) decisions under section 8 relating to whether a person has diplomatic or consular status; or
 - (iv) decisions relating to a person who, having entered Australia, within the meaning of that Act, as a diplomatic or consular representative of another country, a member of the staff of such a representative or the spouse or a dependent relative of such a representative, was in Australia at the time of the decision;
- (e) decisions relating to the administration of criminal justice, and, in particular—
 - (i) decisions in connection with the investigation or prosecution of persons for any offences against a law of the Commonwealth or of a Territory;
 - (ii) decisions in connection with the appointment of investigators or inspectors for the purposes of such investigations;
 - (iii) decisions in connection with the issue of search warrants under a law of the Commonwealth or of a Territory;
 - (iv) decisions in connection with the issue of Writs of Assistance, or Customs Warrants, under the *Customs Act 1901*; and
 - (v) decisions under a law of the Commonwealth or of a Territory requiring the production of documents, the giving of information or the summoning of persons as witnesses;
- (f) decisions in connection with the institution or conduct of proceedings in a civil court, including decisions that relate to, or may result in, the bringing of such proceedings for the recovery of pecuniary penalties arising from contraventions of enactments, and, in particular—
 - (i) decisions in connection with the investigation of persons for such contraventions;
 - (ii) decisions in connection with the appointment of investigators or inspectors for the purposes of such investigations;
 - (iii) decisions in connection with the issue of search warrants, Writs of Assistance or Customs Warrants under enactments; and
 - (iv) decisions under enactments requiring the production of documents, the giving of information or the summoning of persons as witnesses;
- (g) decisions of the Minister for Finance to issue sums out of the Consolidated Revenue Fund under an Act to appropriate moneys out of that Fund for the service of, or for expenditure in respect of, any year;
- (h) decisions under section 32 or 36A of the *Audit Act 1901*;
- (i) decisions of the Commonwealth Grants Commission relating to the allocation of funds;
- (j) decisions of any of the following Tribunals:
 - Academic Salaries Tribunal
 - Federal Police Arbitral Tribunal
 - Remuneration Tribunal;
- (k) decisions of any of the following authorities in respect of their commercial activities:
 - Australian Canned Fruits Corporation
 - Australian Dairy Corporation
 - Australian Egg Board
 - Australian Honey Board
 - Australian Industry Development Corporation
 - Australian Meat and Livestock Corporation
 - Australian National Airlines Commission
 - Australian National Railways Commission

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SCHEDULE 2—continued

Australian Shipping Commission
Australian Wheat Board
Australian Wool Corporation
Canberra Commercial Development Authority
Christmas Island Phosphate Commission
Commonwealth Banking Corporation
Commonwealth Development Bank of Australia
Commonwealth Savings Bank of Australia
Commonwealth Serum Laboratories Commission
Commonwealth Trading Bank of Australia
Health Insurance Commission
Housing Loans Insurance Corporation;

- (l) decisions of the Reserve Bank in connection with its banking operations (including individual open market operations and foreign exchange dealings);
- (m) decisions in connection with the enforcement of judgments or orders for the recovery of moneys by the Commonwealth or by an officer of the Commonwealth;
- (n) decisions of Distribution Commissioners under the *Commonwealth Electoral Act 1918*;
- (o) decisions of the National Director of the Commonwealth Employment Service made on behalf of that Service to refer, or not to refer, particular clients to particular employers;
- (p) decisions under the *Air Navigation Act 1920* that—
 - (i) relate to aircraft design, the construction or maintenance of aircraft or the safe operation of aircraft or otherwise relate to aviation safety; and
 - (ii) arise out of findings on material questions of fact based on evidence, or other material—
 - (A) that was supplied in confidence; or
 - (B) the publication of which would reveal information that is a trade secret;
- (q) decisions in connection with personnel management (including recruitment, training, promotion and organization) with respect to the Australian Public Service or any other Service established by an enactment or the staff of a Commonwealth authority, other than a decision relating to, and having regard to the particular characteristics of, or other circumstances relating to, a particular person;
- (r) decisions made before the expiration of a period of 12 months, or such longer period as is prescribed, commencing on the date of commencement of this Act that relate to promotions, transfers (being transfers that are subject to appeal) or appeals against promotions or transfers, of individual members of the Australian Public Service or of any other Service established by an enactment or of the staff of a Commonwealth authority;
- (s) decisions relating to promotions in accordance with section 53B or 53C of the *Public Service Act 1922*;
- (t) decisions relating to—
 - (i) the making of appointments in the Australian Public Service or any other Service established by an enactment or to the staff of a Commonwealth authority;
 - (ii) the engagement of persons as employees under the *Public Service Act 1922* or under any other enactment that establishes a Service or by a Commonwealth authority; or
 - (iii) the making of appointments under an enactment or to an office established by, or under, an enactment;
- (u) decisions in connection with the prevention or settlement of industrial disputes, or otherwise relating to industrial matters, in respect of the Australian Public Service or any other Service established by an enactment or the staff of a Commonwealth authority.

NOTE

1. No. 59, 1977, as amended. For previous amendments, see No. 66, 1978.