

1979

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

THE SENATE

ADMINISTRATIVE APPEALS TRIBUNAL AMENDMENT BILL 1979

EXPLANATORY MEMORANDUM

(Circulated by authority of the Attorney-General,
Senator the Honourable P.D. Durack, Q.C.)

ADMINISTRATIVE APPEALS TRIBUNAL AMENDMENT BILL 1979

Purpose

The Bill will amend the Administrative Appeals Tribunal Act 1975, which established the Administrative Appeals Tribunal and the Administrative Review Council. The proposed amendments will:

- (a) give the Administrative Appeals Tribunal and the Federal Court of Australia greater flexibility in exercising their powers to order the stay or suspension of decisions subject to review or appeal;
- (b) enable the appointment of a person other than the President of the Administrative Appeals Tribunal as Chairman of the Administrative Review Council;
- (c) extend the qualifications for membership of the Administrative Review Council; and
- (d) effect a number of machinery changes to the Act.

Clause 2 - Commencement

The Act will come into operation on the day on which it receives the Royal Assent.

Clause 3 - Constitution of Tribunal

Sub-section 21(1A) of the Principal Act provides for the manner in which the Tribunal is to be constituted when hearing certain preliminary matters.

Under sub-section 37(1A), to be inserted by clause 5 of this Bill, the Tribunal will have power to shorten the time within which a statement of reasons and other relevant documents are to be lodged with the Tribunal under sub-section 37(1) (see below).

Clause 3 of the Bill includes the exercise of this new power among the powers with respect to which sub-section 21(1A) makes provision concerning the manner in which the Tribunal is to be constituted.

Clause 4 - Time Limit for
Furnishing a Statement of Reasons

This clause amends sub-sections 28(1) and (1A) of the Principal Act so that the time limit for a decision-maker to furnish a statement setting out findings of fact and reasons for a decision (or in certain cases to give a notice explaining why such a statement will not be furnished) will be 'as soon as practicable but in any case within 28 days' after receipt of the relevant request.

Clause 5 - Time Limit for Lodging
Material Documents with the Tribunal

This clause fixes 28 days after receiving a notice of application for review of a decision as the period within which a decision-maker must, under sub-section 37(1) of the Principal Act, lodge a statement of reasons and other relevant documents with the Tribunal. It also inserts a new sub-section 37(1A) empowering the Tribunal to specify a period less than 28 days where it appears to the Tribunal that a person would or might suffer hardship if this were not done.

Clause 6 - Stay Orders, etc. by the Tribunal

This clause repeals section 41 of the Principal Act and substitutes a new section.

Sub-section (1) of the new section re-enacts existing sub-section 41(1).

Under sub-section (2) of the new section the Tribunal or a presidential member may, on request, make appropriate orders staying or otherwise affecting the operation or implementation of all or part of a decision which is the subject of an application for

review. The present provision permits such orders only in respect of the whole of the subject decision, and this has given rise to difficulties in some cases.

Under sub-section (3) of the new section, the Tribunal or a presidential member will have power, on request, to make an order varying or revoking an order made under sub-section 41(2), or further varying the same. This provision, which is new, will enable the Tribunal to deal with changing circumstances.

Paragraph (a) of sub-section (4) of the new section provides that an order is not to be made under sub-section 41(2) unless the decision-maker has been given a reasonable opportunity to make a submission. This follows sub-section 41(3) of the Principal Act.

Paragraph (b) of sub-section (4) of the new section contains a similar provision in respect of the making of a variation or revocation order (or an order for further variation), and is necessary in the light of the new provision for variation or revocation in sub-section 41(3).

Under sub-section (5) of the new section an order may be made without affording a reasonable opportunity for the making of submissions if the Tribunal or presidential member is satisfied that, whether for reasons of urgency or otherwise, it is impracticable to provide that opportunity. To ensure that the decision-maker will be in a position rapidly to seek revocation or variation of a stay order made in these circumstances, sub-section 41(5) also provides as a safeguard that such a stay order is not to come into operation until a notice setting out the terms of the order is served on the decision-maker.

Sub-section (6) of the new section provides that an order under sub-section 41(2) (as varied under sub-section 41(3)) is subject to such conditions as are specified in the order, and has effect until the Tribunal's decision on the substantive application commences to operate or until the expiration of any earlier period specified in the order. This too will give the Tribunal added flexibility, while ensuring that a stay order does not have an unnecessarily long duration.

Clause 7 - Commencement of
Operation of Tribunal's Decision

This clause amends section 43 of the Principal Act so as to clarify the date upon which a decision of the Tribunal is to commence to operate and, in particular, so as to enable the Tribunal to fix that date.

Clauses 8 and 9 -
Stay Orders, etc. by the Federal Court

Clause 8 omits sub-section 44(6) of the Principal Act and clause 9 inserts a new provision (section 44A). The new section 44A is designed to give the Federal Court of Australia powers parallel to those to be conferred on the Tribunal by new section 41.

Sub-section (1) of the new section substantially re-enacts the opening words of existing sub-section 44(6).

Under sub-section (2) of the new section the Federal Court or a Judge of that Court may, where an appeal is instituted to the Court from a decision of the Tribunal, make appropriate orders staying or otherwise affecting the operation or implementation of either or both of the Tribunal's decision and the original administrative decision which the Tribunal was reviewing.

By sub-section (3) of the new section power is given to vary or revoke such an order, or further to vary the same.

Sub-section (4) of the new section provides that an order under sub-section 44A(2) (as varied under sub-section 44A(3)) is subject to such conditions as are specified in the order, and has effect until the giving of a decision on the appeal or until the expiration of any earlier period specified in the order.

Clauses 10 and 12 - Chairman of the Administrative Review Council

Clause 10 inserts a new provision in section 49 of the Principal Act to provide for the appointment by the Governor-General of a Chairman of the Administrative Review Council from among its members. At present, sub-section 56(5) requires the President of the Administrative Appeals Tribunal to preside at Council meetings. The new provision will enable appointment of a member of the Council other than the President of the Tribunal to be Council Chairman.

Clause 12 provides for certain consequential amendments to section 56.

Clause 11 - Membership of the Administrative Review Council

This clause amends section 50 of the Principal Act to extend the areas of experience from which persons may be appointed to the Council. The required qualifications will now be '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 ... an extensive knowledge of administrative law or public administration'.

Clause 13 - Northern Territory Arrangements

This clause omits the existing sub-section 65(3) of the Principal Act and inserts a new sub-section that will enable arrangements to be made with the Northern Territory for officers or employees of the Public Service of the Territory to be appointed officers of the Tribunal.

Clause 14 - Deportation Orders

This clause amends clause 22 of the Schedule to the Principal Act so as to make absolutely clear that if a deportation order has been made under section 12 or 13 of the Migration Act 1958, that order does not cease to be in force for the purposes of section 39 of that Act (enabling the detention of deportees) by reason only of the making of a stay order under the Administrative Appeals Tribunal Act.