

1987

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

THE SENATE

ADMINISTRATIVE DECISIONS (JUDICIAL REVIEW)

ADMENDMENT BILL 1987

EXPLANATORY MEMORANDUM

(Circulated by the authority of the Minister representing the
Attorney-General)

ADMINISTRATIVE DECISIONS (JUDICIAL REVIEW)
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OUTLINE

The Administrative Decisions (Judicial Review) Amendment Bill 1986 which amends the Administrative Decisions (Judicial Review) Act 1977 ("the Act") has three main purposes -

- (1) to strengthen the provisions in the Act under which the Federal Court ("the Court") has a discretion to refuse to grant an application for review where provision is made by another law for review of the relevant decision by a tribunal, authority or person.
- (2) to discourage the disruption of administrative proceedings, by narrowing the scope for resort to the Act during the course of those proceedings, where legislative provision exists for the review of the decision complained of at the conclusion of those proceedings.
- (3) to make specific provision in relation to the Court's general discretion under the Act to refuse to grant an application.

The measures should result in fewer hearings under the Act, and thus will have an impact on the Court's workload. By minimising the disruption to hearings before tribunals it should also aid the efficiency of tribunals. Whilst not quantifiable, savings to revenue will result.

NOTES ON CLAUSES

Clause 1 - Short title, & c.

Clause 2 - Rights conferred to be additional to other rights

2. This clause amends section 10 of the Act by making certain consequential amendments to sub-section (2), paragraph (2)(a) and sub-paragraph 2(b)(ii), by inserting in sub-section (2), new paragraphs (c) and (d) and by inserting new sub-sections (2A) and (2B).
3. The amendments to sub-paragraph 10(2)(b)(ii) remove references to tribunals, authorities and persons as these are dealt with separately in new paragraph 10(2)(c). The sub-paragraph is also amended, with reference to section 39B of the Judiciary Act, to ensure that an application under the Act may not be refused solely for the reason that the applicant has a right to apply to the Court for a writ of mandamus, prohibition or an injunction pursuant to section 39B.
4. New paragraph 10(2)(c) provides that where an application for review is lodged with the Court, and provision is made by any other law under which the applicant is entitled to seek a review of that decision (otherwise than by a court) the Court shall refuse to grant the application unless it is satisfied that it is in the interests of justice for the Court to grant the application. This strengthens the power of the Court to refuse an application where there is an alternative remedy.
5. New paragraph 10(2)(d) provides that where an application for review is lodged in relation to proceedings before a tribunal, authority or person during the course of those proceedings, and the Court considers that adequate review by the Court, another court, tribunal or person is available at

the conclusion of those proceedings, and that it is desirable to avoid interference with those proceedings, the Court shall refuse to grant the application unless the Court is satisfied that it is in the interests of justice for the application to be granted. This will facilitate the efficient operation of administrative proceedings by minimising disruption caused by the making of applications under the Act during the course of the proceedings.

6. The intention of new sub-section 10(2A) is to ensure that the exercise by the Court of its powers under the preceding sub-section takes place at the earliest appropriate stage in the course of the proceedings. This will keep costs and delays to a minimum.

7. New sub-section 10(2B) provides that appeals against an order of the Court refusing to grant an application shall be taken to be an interlocutory judgment. The effect of this provision is that an appeal against a decision by the Court under section 10 not to hear an application for review shall lie to the Full Court of the Federal Court only by leave of the Court or a Judge of the Court.

Clause 3 - Power of the Court to refuse applications

8. This clause inserts a new section 10A in the Act. New sub-section 10A(1) empowers the Court to stay a proceeding or to refuse to grant an application where the Court considers it inappropriate to grant the application or to continue the proceedings. Paragraph (a) of the sub-section corresponds with the Court's present wide discretion to refuse relief. Paragraph (b) makes it clear that this discretion extends to enabling the Court to stay proceedings.

9. New sub-section 10A(2) is intended to ensure that the exercise by the Court of its powers under this section takes place at the earliest appropriate stage in the course of proceedings. This will assist in minimising costs and delays.

Clause 4 - Application

10. The clause provides that the amendments only apply to applications made to the Court lodged after the amendments come into operation.

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