Short Digest of Bill

Purpose

To exclude certain decisions from review by the Federal Court; and to provide that reasons need not be given in respect of other decisions.

Background

The Administrative Decisions (Judicial Review) Act 1977 has not yet been proclaimed. The Act provides for a uniform system for review by the Federal Court of administrative decisions under Commonwealth legislation. The Act excludes the jurisdiction of State courts to review such decisions; however the jurisdiction of the High Court and Territory Supreme Courts remains. A feature of the Act is that the person who is entitled to apply for review may first apply to the decision-maker for a statement setting out the material facts, evidence and reasons for a decision; the decision-maker may apply to the Attorney-General for a certificate that to give certain information would prejudice security, defence, international relations, disclose the deliberations or decisions of Cabinet or its committees or otherwise be the basis for a claim of Crown privilege; if the certificate is granted, the information may be omitted and, if this would falsify the statement, no statement need be given; but the information cannot be withheld from the Court.

Under section 19, certain decisions may be excluded by regulation. In April 1977 the then Attorney-General Mr. Ellicott, requested the Administrative Review Council to examine the provisions of the legislation for advice on the classes of decisions (if any) that should be excluded by regulation. A Sub-Committee of the Council, chaired by Sir Clarrie Harders, reported to the Attorney-General in November 1978. The Council recommended the exclusion of these, and only these, classes of decisions -
decisions in disciplinary proceedings in the Defence Force

all decisions under the ASIO and Telephonic Communications (Interception) legislation

all decisions under diplomatic and consular legislation and in relation to diplomats, consuls and their families under the Migration Act

decisions about passports taken on the direction of foreign governments

many decisions about the administration of criminal justice

for twelve months, decisions about promotion and promotion appeals under the Public Service Act and in statutory authorities

decisions of the Commonwealth Grants Commission about the allocation of funds

decisions about tax assessments

decisions of the Advisory Council of Inter-Government Relations

tentatively, decisions of the Conciliation and Arbitration Commission (excluding Industrial Registrars) and other Commonwealth arbitral bodies.

The Council received submissions and had discussions with the Public Service Board, Public Service Departments, statutory authorities and Public Service trade union representatives. In many cases fear was expressed about the obligation to give statements of reasons, either because of an expectation of a greatly increased burden of work, or because the disclosure of the information could be prejudicial to the work of the Department or organization or oblige it to divulge information obtained in confidence or under some statutory compulsion.
Main Provisions

An explanatory Memorandum describing the provisions in detail has been circulated by the Attorney-General.

Clause 3 amends the definition of "decision to which the Act applies" to exclude all decisions described in Schedule I. This lists some of the decisions recommended for exclusion by the Administrative Review Council; other decisions in the Schedule include:

- decisions under the Foreign Takeovers Act
- decisions under the Banking (Foreign Exchange) Regulations certified by the Treasurer as giving effect to the Government's foreign investment policy
- decisions of the National Labour Consultative Council
- decisions of the National Companies and Securities Commission made under State or Northern Territory laws
- decisions of the Ministerial Council for Companies and Securities

Some decisions recommended for exclusion by the Council are not in Schedule I but are included in Schedule 2 described below; these include decisions about diplomatic and consular representation, decisions about the administration of criminal justice and decisions about public service promotions.

Section 19 is not amended which means that more classes of decisions may be excluded from the operation of the Act by regulation.

Clause 6 inserts a definition of "decision to which this section applies" in section 13 (dealing with statements of reasons) so that reasons need not be given for certain decisions. Schedule 2 lists those decisions; and regulations may be made excluding more classes of decisions from the operation of section 13. The list includes:

- decisions about the redress of wrongs and personnel management in the Defence Force
- some decisions under the Migration Act
decisions about the administration of criminal justice

decisions of the Minister for Finance to issue sums out of Consolidated Revenue

decisions of various statutory authorities in respect of their commercial activities

decisions of Distribution Commissioners

decisions of the National Director of CES to refer or not to refer particular clients to particular employees

personnel management decisions of a general nature, in the APS and in statutory authorities

for twelve months, promotions and transfers in the APS

appointments to the APS

Clause 6 further amends section 13 so that the period for providing a statement of reasons is extended from 14 to 28 days; and section 13 is also amended to provide for a refusal on the ground that the applicant has no standing with provision for an order about standing, to be sought from the Court either by the applicant or the decision-maker.

Clause 7 inserts a new section 13A so that certain information need not be included in a statement of reasons and, if this would falsify the statement, permitting no statement to be made. The information covered by section 13A is information relating to personal or business affairs and supplied in confidence, where publication would reveal a trade secret, supplied under a statutory duty or where publication would contravene a specific statutory obligation not to publish. The statement, if furnished, must indicate the omission of the material and the reason; or if no statement is furnished the reason for not furnishing it must be given.

Clause 4 amends section 9 (which excludes the jurisdiction of State courts) so that it only applies to decisions made after the Act is proclaimed; this is because the Act only permits review of decisions made once it is in operation. Other amendments made to section 9 by clause 4 clarify the decisions which are excluded from the jurisdiction of State courts.
Clause 8 amends section 14 so that any ground on which privilege may be claimed is included as a ground on which a certificate may be given to withhold information; it is limited at present to claims of Crown privilege.

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