Date Introduced: 25 October 1979
House: Senate
Presented by: Senator Hon. P.D. Durack, Q.C., Attorney-General

Short Digest of Bill

Purpose

To alter provisions about the powers and procedures of the Administrative Appeals Tribunal and about the membership and meetings of the Administrative Review Council.

Background

The Administrative Appeals Tribunal is established under the Administrative Appeals Tribunal Act 1975 and commenced operations on 1 July 1976. The Tribunal is empowered to review decisions by Commonwealth Ministers, Authorities and officials where jurisdiction has been conferred by legislation. On 1 February 1979 the Tribunal had jurisdiction to review decisions under more than 60 enactments (Commonwealth Acts and regulations and A.C.T. Ordinances). These decisions vary in subject and scope and include: deportation of aliens and immigrants; decisions on eligibility and registration of premises under bounty legislation; decisions on deregistration of tax agents and patent attorneys and on registration of marriage celebrants; compensation for articles lost or damaged in the post; determinations of notional improved value for ACT rating purposes; and refunds of customs and excise duty.

Where the Tribunal has jurisdiction it may confirm, quash or vary the decision, substitute its own decision or remit the matter to the original decision-maker with directions. It is not, however, empowered to come to any decision not open to the original decision-maker and is bound by any limits on the discretion of the original decision-maker.

The Tribunal consists of members some of whom are lawyers and some of whom have other relevant experience (for example, as a valuer, for looking at ACT rating decisions). Some members are full-time and some are part-time. The President is the Hon. Mr. Justice Brennan.
The Act also establishes an Administrative Review Council to examine the making of administrative decisions and the available processes for review. The Council consists of the President of the Tribunal, the Commonwealth Ombudsman and the Chairman of the Law Reform Commission and ten other members.

The ARC does not deal with individual cases or complaints but makes recommendations on possible changes to the law or practice; topics which have been considered include whether or not jurisdiction in social security matters should be vested in the Tribunal, advice about the transfer of jurisdiction of the Ombudsman in the Northern Territory and whether any classes of decisions should be exempted from scrutiny under the Administrative Decisions (Judicial Review) Act 1977. The Council has presented two annual reports to Parliament.

The creation of the Tribunal and the ARC was part of a programme of administrative law reform which also included the creation of the Commonwealth Ombudsman who receives and investigates complaints about the administrative actions of Commonwealth Departments and prescribed authorities (but not Ministers). The Ombudsman does not quash or vary decisions but may make recommendations to the department or authority and if no appropriate action is taken may report to the Prime Minister and to Parliament. The Ombudsman commenced operation on 1 July 1977. He is Professor J.E. Richardson.

The other major step in the reform process will be the coming into operation of the Administrative Decisions (Judicial Review) Act 1977. This Act defined and extended the grounds on which administrative decisions under Commonwealth enactments may be reviewed by the courts, creating more satisfactory remedies and more flexible procedures than the existing methods of prerogative writs, injunctions and declarations. A person aggrieved by a decision will be able to seek an order for review in the Federal Court of Australia.

The Act has not yet been proclaimed. In its Second Annual Report (1978) the ARC stated that it had made recommendations to the Attorney-General about the classes of decisions to be exempted by regulation from the operation of the Act. These regulations have not yet been made.

Main Provisions

Administrative Appeals Tribunal

Section 28 of the Act provides for an applicant to request a statement setting out the facts, evidence and
reasons for a decision from the decision-maker and that this statement is to be provided within 14 days. Clause 4 alters the section to require the production of the statement as soon as practicable but in any case within 28 days. Under section 37 the decision-maker is also required to lodge the statement, and other relevant documents, with the Tribunal within the time prescribed (currently 14 days). Clause 5 alters this to 28 days and also inserts a new sub-section 37(1A) enabling the Tribunal to shorten this period on request from a party if it appears that hardship would otherwise occur. In its Second Annual Report the ARC noted that it had received representations from the Department of Business and Consumer Affairs of problems in meeting the 14 day deadline. The ARC sought comments from other Departments and from the Administrative Law Committee of the Law Council of Australia.

Section 41 currently provides that, although an application for review will not normally suspend or affect the operation of a decision, it is possible for the Tribunal to allow suspension of the decision or the staying of action under it until the review is completed. In some cases, for example deportation orders, this has the practical result that the decision is not in force at all so that the applicant may not even be detained. Clause 6 substitutes a new section 41 which enables orders suspending or staying the whole or part of a decision, until the review is completed (sub-section 41(2)) and for variations or revocations of such orders (sub-section 41(3)). The decision-maker is normally to be given an opportunity to make a submission (sub-section 41(4)) unless special reasons of urgency are established when an order may be made but will not operate until a copy is served on the decision-maker (sub-section 41(5)). Clause 9 inserts new section 44A making similar provision where there are appeals to the Federal Court. Clause 14 amends the Part of the Schedule dealing with the Migration Act 1958 so that an order staying a deportation order does not prevent the detention of the deportee.

Clause 7 amends section 43 so that decisions of the Tribunal come into operation immediately they are given or from some later date specified by the Tribunal (new sub-sections 43(5A) and (5B)); where the Tribunal varies a decision or substitutes its own decision the varied or substituted decision will continue to be effective from the date of the original decision.

Administrative Review Council

Clause 11 amends section 50 to widen the qualifications of members of the ARC so that experience at a high level in industry, commerce, public administration,
industrial relations or government service and knowledge of public administration are included as well as extensive knowledge of administrative law or public administration. This will enable the appointment, not now possible, of people who have practical experience in the areas affected by administrative decisions and also of people with extensive knowledge of public administration without extensive experience in public administration.

Under section 56 the President of the Tribunal is Chairman of the ARC and is responsible for convening meetings. Clause 10 amends section 49 which establishes the ARC to enable the appointment by the Governor-General of one member as Chairman and clause 12 makes the necessary alterations to section 56. The Attorney-General states that this change is to avoid possible conflicts of interest where a matter discussed by the ARC might come before the Tribunal.

1 November 1979

Law & Government Group

LEGISLATIVE RESEARCH SERVICE