ADMINISTRATIVE DECISIONS (JUDICIAL REVIEW) AMENDMENT BILL 1978

Date Introduced: 24 May 1978
House: House of Representatives
Presented by: Honourable R.I. Viner, M.P.,
Minister representing the
Attorney-General

Short Digest of Bill

Purpose

To exclude administrative decisions made under Northern Territory laws from the provisions of the Administrative Decisions (Judicial Review) Act 1977 providing for review by the Federal Court.

Background

The Administrative Decisions (Judicial Review) Act 1977 provides for review in the Federal Court of administrative decisions made under Acts, Territory Ordinances, and subordinate legislation on the application of a person whose interests are adversely affected. The grounds for review include: that a breach of natural justice occurred; that procedures required by law were not observed; lack of jurisdiction on the part of the person making the decision; errors of law and fraud. The Court may quash the decision, refer it to the decision-maker for further consideration; declare the rights of the parties; or require or prohibit the doing of acts which it thinks necessary to ensure justice. Reports or recommendations required by legislation to be made before a decision are treated as decisions. There is also provision for review where there has been a failure to make a decision and for review of conduct for the purposes of making a decision. Decisions of the Governor-General are excluded from the operation of the Act.

The Act, which is to apply to decisions made after it comes into operation, has not yet been proclaimed. In his Second Reading Speech the Minister indicated that this will not be before 1 July 1978.

The Northern Territory (Self-Government) Bill 1978, introduced on 11 May 1978 provides for the progressive transfer of functions to the Territory. The Territory is established as a body politic under the Crown and Ministers of the Territory are to have executive authority for matters which are specified by regulation. In his Second Reading Speech the Minister has indicated that decisions within the authority
of the Northern Territory Government should not be subject to review in the Federal Court. For a discussion of the review processes of such decisions in the Northern Territory Supreme Court see the Digest of the Northern Territory Supreme Court Amendment Bill (No. 2) 1978.

Main Provisions

Decisions which may be reviewed must be made under an "enactment". Clause 3 of the Bill amends the definition of "enactment" in section 3 of the Act so that decisions made under Northern Territory Ordinances or Northern Territory subordinate legislation will be excluded unless they relate to a matter not within the executive authority of Northern Territory Ministers which has been specified by regulations made under new section 19A (inserted by clause 7). In addition, decisions to be made under the Northern Territory (Self-Government) Bill 1978 when it is in operation are excluded. This covers many decisions of the Administrator; decisions made by the Governor-General are excluded from the operation of the Act and this places decisions of the Administrator on a comparable footing.

Clauses 4, 5 and 6 are consequential on the restriction on the meaning of the word "enactment".

The Bill is to operate from the date on which the Administrative Decisions (Judicial Review) Act 1977 is proclaimed.

29 May 1978

Law and Government Group

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