Administrative Appeals Tribunal Amendment Bill 1993

Date Introduced: 4 May 1993
House: Senate
Portfolio: Attorney-General

Purpose
The main changes proposed by this Bill will:
* clarify the role and powers of the President of the Administrative Appeals Tribunal (AAT):
* provide that an application for a review of a decision by the AAT will not be taken to have been made unless the prescribed fee is paid;
* give an express legislative basis to directions hearings and mediation; and
* extend the AAT's power to dismiss an application for review of a decision.

Background
On 10 October 1990, it was announced that the Attorney-General and the President of the AAT had agreed that a review of the operations of the AAT be carried out. The purpose of the review was to assess the services of the AAT, efficiency of the AAT's existing administrative operational arrangements and structures, with a view to making recommendations on how improvements can be made and making a detailed costing of them. The review commenced on 1 October 1991 and the final report of the review was provided to the Attorney-General and the President on 29 November 1991.

The report's recommendations included:
* that it be put beyond doubt that a directions hearing is a part of the AAT's process in reviewing a decision;
* the AAT be given power to dismiss an application for review where the application is frivolous or vexatious or an abuse of the process of the AAT; and
* that payment of the lodgment fee be a pre-requisite to the application being received.¹

It is reported in the AAT's 1991-92 Annual Report, that the review's recommendations are in the process of being assessed and implemented, with priority being given to the recommendations on professional development for members and staff, case management including the further development of standards, the promotion of access to the AAT and the promotion of a national focus for the AAT.

Main Provisions
Role and Powers of the President: Section 20 of the Administrative Appeals Tribunal Act 1975 (the Principal Act) allows the President to give directions relating to the arrangement of the business of the AAT and to the persons who are to constitute the AAT for the purposes of particular proceedings. In giving such directions, the President is to have regard to the degree of public importance and the complexity of a matter and the status and position of the person who made the decision that is to be reviewed.

New subsections 20(1) and 20(1A), which provide a clearer statement of the role and powers of the President, will be inserted into the Principal Act by clause 4. Proposed subsection 20(1) provides that the President is to be responsible for ensuring the orderly and expeditious discharge of the business of the AAT. Proposed subsection 20(1A) provides the President with power to give certain directions, including as to:
* the arrangement of the business of the AAT;
* the persons who are to constitute the AAT for the purposes of a particular proceeding;
* the places at which the AAT may sit; and
* the procedures of the AAT generally and at a particular place.
Constitution of the AAT: The AAT can be constituted in a number of different ways as set out in subsection 21(1) of the Principal Act. These are by a presidential member who is a judge and two other members; a Deputy President and two non-presidential members; a presidential member alone; three non-presidential members, provided at least one is a senior member; or a non-presidential members alone.

The principal effect of clause 5 will be to allow the AAT to be constituted in two new ways. These are by three Deputy Presidents, or two Deputy Presidents and one non-presidential member.

Fee for Review: Proposed section 29A, which will be inserted into the Principal Act by clause 9, provides that an application will not be taken to have been made unless the prescribed fee (if any) is paid.

Procedural Directions: The procedures of the AAT are provided for in section 33 of the Principal Act. Directions hearings are held for the purpose of giving directions as to the procedure to be followed at or in connection with a hearing. Directions hearings may be held, pursuant to subsection 33(2) of the Principal Act, at any stage in a proceeding and are at the discretion of the AAT.

New subsections 33(1A) and 33(2A), that deal with procedural directions, will be inserted into the Principal Act by clause 10. Proposed subsection 33(1A) provides that the President may authorise a member to hold a directions hearing in relation to a proceeding. Proposed subsection 33(2A) provides that a direction as to procedure may:
* require any party to a proceeding to provide further information in relation to the proceeding;
* require the person who made the decision which is being reviewed to provide a statement of the grounds on which they will resist the review at the hearing; or
* require any party to a proceeding to provide a statement of matters upon which reliance is intended to be placed at the hearing.

Mediation: It is reported in the AAT's Annual Report for 1991-92, that the AAT began to offer mediation as an alternative dispute resolution procedure within the AAT during 1991-92. A pilot mediation program commenced in the social security and customs jurisdictions in Brisbane and Melbourne in September 1991 and in Sydney in March 1992. Following evaluation of the pilot program, the AAT decided to adopt mediation as part of the AAT's pre-hearing process. Parties are not compelled to take part in mediation. Those participating in a mediation are required to sign an agreement of confidentiality. Mediations are only conducted in the AAT by members and staff accredited as mediators. As at 30 June 1992, the AAT had held 64 mediations. Of the 55 mediations held in the social security jurisdiction, approximately 85% resulted in a settlement agreement. Of the four mediations held in the customs jurisdictions, two were settled. Mediation currently occurs in conferences conducted under section 34 of the Principal Act.

A new section 34A, which expressly authorises the AAT to use mediation, will be inserted into the Principal Act by clause 12. Proposed subsection 34A(1) will allow the President, where it is thought desirable and the parties consent, to direct a proceeding, or any part of a proceeding or any matter arising out of a proceeding, be referred to a mediator for mediation. A mediator is to be a member of the AAT, or officer of the AAT directed by the President to mediate in a particular case (proposed subsection 34A(2)). Where the parties to a mediation agree on the terms of a decision, the terms of the agreement are put in writing, signed by or on behalf of the parties and lodged with the AAT. If the AAT is satisfied that a decision in the terms of the agreement would be within its powers, it may, if it appears appropriate to do so, make a decision in accordance with the terms of the agreement (proposed subsections 34A(4) and 34A(5)).

Powers of AAT to Dismiss Application for Review: Subsection 42A(1) of the Principal Act allows the AAT to dismiss an application if all the parties before it agree. Subsection 42A(2) provides that where a party to a proceeding fails to appear at either a preliminary conference or at a hearing, the AAT may dismiss the application without proceeding to a decision where the only party appearing is the decision maker, or direct that the non-appearing party be struck out as a party.

Clause 16 will extend the AAT's power to dismiss an application for a review of a decision. The proposed dismissal powers include the power to dismiss an application:
* because of a failure to appear at a directions hearing, a conference, or a mediation;
* because of a failure to show, within a prescribed time and after being notified that the decision does not appear to be reviewable, that the decision is reviewable; and
because of a failure within a reasonable time to proceed with the application, or comply with a direction of the AAT in relation to the application.

Frivolous or Vexatious Proceedings: The Principal Act currently does not give the AAT power to dismiss an application for review of a decision that is frivolous or vexatious. Proposed section 42B, which will be inserted into the Principal Act by clause 17, will allow the AAT, if satisfied that an application is frivolous or vexatious to:
* dismiss the application; and
* if it considers it appropriate, give a direction that the applicant not make another application without the leave of the AAT.

Failure to Comply with Summons: Clause 20 will make it an offence, punishable by a maximum fine of $1,000 or three months imprisonment, for a person served with a summons to produce a book, document or thing to not do so without reasonable excuse.

References