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ADMINISTRATIVE APPEALS TRIBUNAL AMENDMENT BILL 1977

Date Introduced: 28 April 1977
House: House of Representatives
Presented by: The Honourable R. J. Ellicott,
Attorney-General

Short Digest of Bill

Purpose

The main purpose of the Bill is to amend the Administrative Appeals Tribunal Act 1975 so as to alter the structure of the Administrative Appeals Tribunal by providing for a new class of senior non-presidential members, thus enabling a wider range of matters to be dealt with by the Tribunal.

Provisions

Section 6 of the Principal Act provides for the appointment by the Governor-General of the members of the Administrative Appeals Tribunal. Under section 5 the members are to consist of presidential and non-presidential members. Clause 4 of the Bill amends section 6 to provide for the appointment of a new class of senior non-presidential members by the Governor-General or for the declaration by the Governor-General that an existing non-presidential member is a senior non-presidential member. A consequential definition of this new class of member is included in section 3 of the Act (the definitions section) by clause 3 of the Bill.

Clause 12 relates to the constitution of the Tribunal and amends section 21 of the Act so as to provide for the constitution of the Tribunal in any one of four different ways, namely by a presidential member sitting with two non-presidential members or alone, by three non-presidential members, of whom at least one is a senior non-presidential member, or by a senior non-presidential member sitting alone. Under a new subsection 21 (1A), inserted by clause 12, the constitution of the Tribunal is prescribed for the purpose of the exercise of the power of the Tribunal in certain specified cases.

Clause 13 replaces section 22 of the Act with two new provisions (sections 21A and 22) which deal with the reconstitution of the Tribunal at any time during the hearing of a matter. It is intended that where an apparently simple matter turns out to be complex or to involve difficult questions of statutory interpretation, the Tribunal may be reconstituted, if necessary, at a higher level. Thus, for example, a non-presidential bench may be reconstituted as a presidential bench, or a bench comprising a single senior non-presidential member may be reconstituted as a bench comprising three non-presidential members including a senior non-presidential member. The new section 21A also provides for cases where only part of a matter requires to be heard at

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a higher level; in such cases the remainder of the matter may be remitted for determination by the Tribunal as originally constituted.

Clause 11 amends section 20 to empower the President of the Tribunal to change the constitution of the Tribunal previously determined by him where it has not begun to hear a matter. The President is required by proposed sub-section 20 (3) to have regard to the public importance and complexity of the matter and to the status of the decision-maker in determining the persons who are to constitute the Tribunal.

Clause 30 amends section 45 to provide that the Tribunal, as constituted by non-presidential members, may not refer a question of law to the Federal Court of Australia without the concurrence of the President.

The Bill also contains provisions designed to facilitate the transfer, by means of regulations made under section 26 of the Act, of the jurisdiction of existing appeal bodies to the Tribunal (clause 16). Under the existing provisions of section 26, the jurisdiction of the Tribunal arises only in relation to decisions made after regulations transferring the jurisdiction to the Tribunal have been made. Matters pending before a review body on the date on which the transferring regulations are made cannot therefore be transferred to the Tribunal by those regulations. Clause 16 amends section 26 to alter this situation (see, in particular, the new sub-sections 26 (5) and (6) inserted by clause 16).

The remaining important provisions of the Bill are contained in clauses 22 and 23, which relate to the protection of documents and information that should not, in the public interest, be disclosed. Clause 22 amends section 36 in three main ways. The first amendment is that a certificate given by the Attorney-General that the disclosure of information or the contents of a document would be contrary to the public interest may be set aside by the President instead of by the Tribunal. At present the Tribunal always includes a presidential member who presides and determines questions arising under section 36. The first amendment is thus a consequence of the creation of the new class of member and the possibility that the Tribunal may be presided over by such a member. A presidential member, other than the President, will however under the amendment effected by clause 22, no longer be able to set aside a certificate of the Attorney-General under section 36. Secondly, the new sub-section 36 (3) enables access to a document or information to be given to some only of the parties concerned. Finally, a new sub-section 36 (4A) is inserted to enable the staff of the Tribunal to have access to certified information or documents for the purpose of carrying out their duties.

Clause 23 inserts a new section 36A, which is designed to give a protection to witnesses before the Tribunal in relation to questions similar to that given by section 36 in relation to documents and information.

Section 66 of the Act makes it an offence for a present or past member or officer of the Tribunal to record or disclose any information acquired by reason of his office or employment. This section is repealed and replaced by a much less stringent provision. The new section 66, which is contained in clause 34 of the Bill, provides merely that a present or past member or officer of the Tribunal shall not be competent or required to give evidence involving the disclosure of documents or information that

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are the subject of a certificate of the Attorney-General under section 36 or of an order by the Tribunal prohibiting the public disclosure of the document or information.

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3

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