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ADMINISTRATIVE DECISIONS (JUDICIAL REVIEW) 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 purpose of the Bill is to provide for judicial review in the Federal Court of administrative decisions as an alternative to the existing remedies of prerogative writs and actions for declarations or injunctions.

Provisions

The Bill applies to decisions of an administrative character made, proposed or required to be made under Commonwealth Acts, Territory Ordinances and regulations made under those Acts or Ordinances. Decisions made by the Governor-General are excluded and regulations may be made to exclude other classes of decisions but such regulations may not be made retrospectively (definition of “decision to which this Act applies” in sub-clause 3 (1) and clause 19). Special interpretation provisions in sub-clauses 3 (2), (3) and (5) enlarge the concept of making a decision by listing all aspects of decision-making, failure to make a decision and the making of preliminary reports or recommendations if these are required under the legislation. Sub-clause 3 (4) identifies the persons who may make applications for judicial review.

The right to apply for a review is contained in clauses 5, 6 and 7. Sub-clause 5 (1) deals with the review of the making of decisions and lists the grounds on which a review may be sought. These include a breach of natural justice, an error in law and an improper exercise of power. A final ground in sub-clause 5 (1) is that the decision was otherwise contrary to law. Clause 6 makes similar provision for an application to review “conduct for the purpose of making a decision to which this Act applies”, which is defined in sub-clause 3 (5) to include the doing of acts or things preparatory to making a decision, such as taking evidence or holding an inquiry. Clause 7 gives a right to apply for a review of the failure by a person to make a decision within the prescribed time (sub-clause 7 (2)) or if no time is prescribed on the ground that there has been unreasonable delay (sub-clause 7 (1)).

Clause 8 gives the Federal Court of Australia jurisdiction to hear and determine applications for review and clause 16 lists the orders that the Court may make, including quashing the decision, referring the decision for reconsideration, declaration

Administrative Decisions (Judicial Review) Bill 1977 (Bills Digest 27, 1977)

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of the rights of the parties and directions to do or refrain from doing anything necessary in the opinion of the Court to do justice between the parties.

Clause 11 provides that applications must be made in accordance with Rules of Court and must be made within specified periods. If the decision sets out facts and evidence, the time is 28 days from the making of the decision; a longer period is allowed in other cases.

Under clause 13 persons who may apply for a review of a decision under clause 5 may first apply to the decision-maker for a statement setting out material facts and evidence on which the decision was based and giving a reason for the decision. Either the information must be provided within 14 days or the decision-maker can apply to the Court for an order that the request should not be allowed. Under clause 14 information so requested may be withheld on specific matters the disclosure of which has been certified by the Attorney-General to be contrary to the public interest on the ground of prejudice to the security, defence or international relations of Australia, that their disclosure would involve the disclosure of Cabinet deliberations, or on any other ground that would satisfy a claim of Crown privilege in the Courts. However, this does not prevent the Court from making orders for the production of documents or the giving of evidence on such matters; the ordinary rules relating to Crown privilege would apply in such cases.

The rights granted under clauses 5, 6 and 7 are not intended to abolish any existing rights for judicial review or to exclude the jurisdiction of the Ombudsman (clause 10 (1)). However, the Court, or another court, may refuse to grant the relief sought in any action under the existing procedures for judicial review if a review is being sought under clauses 5, 6 and 7; and the Court may refuse to grant an application under clauses 5, 6 and 7 if it believes that adequate procedures for review exist under other Commonwealth laws or that the person has sought relief under one of the existing procedures for judicial review.

State courts may not review decisions to which the Act applies by way of injunction, declaratory orders or prerogative writs; the granting of a writ of habeas corpus by a State court is not affected.

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