

# CHAPTER ONE

## INTRODUCTION

1.1 On 1 December 2004, the Senate referred the Administrative Appeals Tribunal Amendment Bill 2004 (the Bill) to the Senate Legal and Constitutional Legislation Committee for inquiry and report by 10 March 2005.

### Key provisions of the Bill

1.2 The Bill amends the *Administrative Appeals Tribunal Act 1975* (the Act) and related legislation.<sup>1</sup>

1.3 The Explanatory Memorandum states that the aim of the Bill is to 'improve the capacity of the Administrative Appeals Tribunal (the AAT) to manage its workload and ensure that reviews are conducted as efficiently as possible'.<sup>2</sup> The purpose behind reforms in five key areas is to:

... make the AAT more efficient, flexible and responsive to the environment in which it operates. The reforms reinforce that the primary objective of the AAT is to provide a mechanism for review that is fair, just, economical, informal and quick.<sup>3</sup>

1.4 The Explanatory Memorandum explains that the five key areas of reform are:

- *Procedures* – The President of the AAT is given the power to issue directions in relation to the operation of the Tribunal and the conduct of reviews. The Bill also expands the range of alternate dispute resolution processes available to the AAT.
- *Removal of constitution provisions* – The Bill removes the requirements restricting those members who may be appointed to the AAT for the purposes of a particular hearing. Instead, the President will have the power to determine who is to constitute the Tribunal for the purposes of

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1 *Archives Act 1983; Commonwealth Electoral Act 1918; Environment Protection and Biodiversity Conservation Act 1999; Federal Proceedings (Costs) Act 1981; Freedom of Information Act 1982; Insurance Acquisitions and Takeovers Act 1991; Insurance Act 1973; Judges' Pensions Act 1968; Lands Acquisition Act 1989; Life Insurance Act 1995; Migration Act 1958; Military Rehabilitation and Compensation Act 2004; Narcotic Drugs Act 1967; Privacy Act 1988; Safety, Rehabilitation and Compensation Act 1988; Seafarers Rehabilitation and Compensation Act 1992; Superannuation Act 1976; Trans-Tasman Mutual Recognition Act 1997.*

2 *Explanatory Memorandum*, p.1.

3 *ibid.*

a particular hearing, having regard to a range of factors such as expertise and experience in a relevant area.

- *Use of Ordinary Members* – The Bill allows the President to authorise ordinary members to exercise certain powers previously restricted to presidential and/or senior members.
- *The role of the Federal Court* – The Bill introduces a requirement for the President's consent to be given before a question of law may be referred to the Federal Court. The Federal Court is also given the power to make findings of fact in limited circumstances when it conducts an appeal from the AAT on a question of law.
- *Expansion of qualification requirements for appointment as President* – The Bill expands the range of qualifications for appointment as President of the AAT. At present only a Federal Court Judge may be appointed as President. The Bill provides that one of the following may be appointed President: a current or former judge of any federal court; a former judge of any State or Territory Supreme Court; or a person who has been enrolled as a legal practitioner in Australia for at least five years. The Bill also replaces tenure for presidential and senior members with fixed term appointments.<sup>4</sup>

1.5 The Bill also contains a range of measures that modernise the vocabulary of the Act and insert new headings to enhance the readability and user friendliness of the Act. Criminal offences in the Act have been redrafted in the style of the *Criminal Code* and their penalties updated.<sup>5</sup>

### **Consultation on the Bill**

1.6 The Committee understands that the Attorney-General undertook a process of consultation with stakeholders in 2004, including the release of an exposure draft of the Bill for comment. As a result of the consultation, the Attorney-General the Hon Philip Ruddock MP stated:

We received invaluable input from stakeholders and other interested parties which resulted in significant improvements to the Bill.<sup>6</sup>

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4 *ibid.*

5 *ibid.*, p. 2.

6 Media Release 144/2004, *A More Efficient Administrative Appeals Tribunal*, Attorney-Generals Department, 11 August 2004.  
[http://www.ag.gov.au/agd/WWW/MinisterRuddockHome.nsf/Page/Media\\_Releases\\_2004\\_Third\\_Quarter\\_11\\_August\\_2004\\_-\\_A\\_more\\_efficient\\_Administrative\\_Appeals\\_Tribunal\\_-\\_1442004](http://www.ag.gov.au/agd/WWW/MinisterRuddockHome.nsf/Page/Media_Releases_2004_Third_Quarter_11_August_2004_-_A_more_efficient_Administrative_Appeals_Tribunal_-_1442004) (accessed 11 January 2005)

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## Background

1.7 The AAT commenced operations in 1976. The Tribunal is an independent body that conducts merit reviews of a broad range of administrative decisions made by the Australian Government. It also reviews decisions made by some state government and non-government bodies in certain circumstances. Merits review of a decision involves its reconsideration by the review body. On the facts before it, the Tribunal will decide if the correct – or in a discretionary area, the preferable – decision has been made. It will affirm, vary or set aside the original decision.<sup>7</sup>

1.8 The Tribunal consists of a President, presidential members (including Judges and Deputy Presidents), senior members and members. Currently, the President is always a judge of the Federal Court of Australia. Some presidential members are judges of the Federal Court or the Family Court of Australia. All Deputy Presidents are lawyers. Senior members may be lawyers or have special expertise in other areas such as accountancy, actuarial work, administration, aviation, engineering, environment, insurance, medicine, military affairs, social welfare, taxation and valuation.<sup>8</sup>

1.9 The Tribunal has jurisdiction to review decisions made under 395 separate Acts and statutory instruments. These cover areas such as Commonwealth employees' compensation, social security, taxation, veterans' entitlements, bankruptcy, civil aviation, corporations law, customs, freedom of information, immigration and citizenship, industry assistance and security assessments undertaken by the Australian Security Intelligence Organisation.<sup>9</sup>

1.10 The Tribunal is organised into a number of Divisions as prescribed by the Act.<sup>10</sup> These Divisions include:

- the General Administrative Division;
- the Medical Appeals Division;
- the Security Appeals Division;
- the Taxation Appeals Division; and
- the Valuation and Compensation Division.

1.11 The Tribunal is generally one of the last avenues for those seeking administrative review. The Tribunal will usually not review a decision until an internal review has been performed by the agency that made the original decision. In

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7 *Administrative Appeals Tribunal(AAT) Annual Report 2003-04*, p. 12.

8 *AAT Annual Report 2003-04*, p. 13.

9 Administrative Appeals Tribunal Homepage, *About the AAT; Introduction to the AAT*, p. 1 of 6, <http://www.aat.gov.au/AboutTheAAT/IntroductionToTheAAT.htm> (accessed 11 January 2005)

10 Subsection 19(2) of the Act.

other cases, the Tribunal may not review a decision unless that decision has been subject to an intermediate review by a specialist tribunal. Specialist tribunals include the Refugee Review Tribunal, the Migration Review Tribunal, the Social Security Appeals Tribunal, and the Veterans Review Board. For example, a decision made in the area of social security will not be subject to review by the AAT unless it has first been reviewed by the Social Security Appeals Tribunal.<sup>11</sup>

1.12 The Tribunal's decisions are subject to review by the Federal Court and the Federal Magistrates Court. The operations of the Tribunal are also generally subject to external scrutiny by the Commonwealth Ombudsman, through requests under the *Freedom of Information Act 1982*, inquiries undertaken by parliamentary committees, and audits undertaken by the Australian National Audit Office.<sup>12</sup>

### **Conduct of the inquiry**

1.13 The Committee advertised the inquiry in *The Australian* newspaper on 15 December 2004 and invited submissions by 21 January 2005. Details of the inquiry, the Bill and associated documents were placed on the Committee's website. The Committee also wrote to over 60 interested organisations and individuals inviting submissions. The Committee received 18 submissions which are listed at Appendix 1. Submissions were placed on the Committee's website for ease of access by the public. The Committee held a public hearing in Sydney on 1 February 2005. A list of witnesses who appeared at the hearing is at Appendix 2.

### **Acknowledgements**

1.14 The Committee thanks those organisations and individuals who made submissions and gave evidence at the public hearing.

### **Notes on references**

1.15 References in this report are to individual submissions as received by the Committee, not a bound volume. References to the Committee Hansard are to the proof Hansard: page numbers may vary between the proof and the official Hansard transcript.

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11 *AAT Annual Report 2003-04*, p. 12.

12 *ibid*, p. 30.