



Express law

fast track information for clients

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Amendments to the AAT Act

Significant amendments to the [Administrative Appeals Tribunal Act 1975](#) ('the AAT Act') have now commenced. The *Administrative Appeals Tribunal Amendment Act 2005* empowers the Federal Court to make findings of fact in appeals from decisions of the tribunal and introduces significant new requirements for decision makers. The amendments commenced on 16 May 2005. In this *Express law* we highlight some of the key changes.

Background

The *Administrative Appeals Tribunal Amendment Act 2005* introduces a range of measures designed to assist the Administrative Appeals Tribunal ('the tribunal') to meet the aims of its new formal objective statement of 'providing a mechanism of review that is fair, just, economical, informal and quick'. In his second reading speech, the Attorney-General described the amendments as 'the most substantial reform' to the tribunal since its inception.

Role of the Federal Court

It may now be necessary in future appeals to the Federal Court from decisions of the tribunal to give consideration at an early stage as to whether further evidence may need to be filed on the appeal.

Section 44 of the AAT Act now permits the Federal Court to make findings of fact in appeals from decisions of the tribunal. This amendment implements an Administrative Review Council recommendation and is designed to allow the court to dispose of appropriate matters completely rather than remitting them to the tribunal for the taking of further evidence. The new procedure also applies to the Federal Magistrates' Court where matters are transferred to that court by the Federal Court.

Under new section 44(7) of the AAT Act, the court is only able to make findings of fact that are not inconsistent with those already made by the tribunal. Before making findings of fact, the court must determine whether it is convenient to do so having regard to factors including the expeditious and efficient resolution of the whole of the matter and the relative expense or delay to the parties. Section 44(8) of the AAT Act allows the court to have regard to evidence in proceedings before the tribunal and to receive further evidence for the purpose of making new findings under section 44(7).

Referral of questions of law

Section 45(1) of the AAT Act now requires the concurrence of the President to be obtained before a question of law may be referred to the Federal Court. This is designed to ensure that referrals occur only in exceptional circumstances that justify the guidance of the court.

Appeals to the Federal Court may still only be made on a question of law.

New requirements imposed on decision makers

Decision makers now have a legislative duty to assist the tribunal

New section 33(1AA) of the AAT Act imposes a duty on the person who made the decision under review to use their best endeavours to assist the tribunal to make its decision. The Explanatory Memorandum to the new amendments states that s 33(1AA) is consistent with the model litigant obligations under the Legal Services Directions issued by the Attorney-General, and is not intended to place any obligations on the decision maker that are the responsibility or obligation of the applicant. The Office of Legal Services Coordination of the Attorney-General's Department has issued [Guidance Note No 1 of 2005](#) relating to this amendment.

Decision makers will need to consider the extent to which s 33(1AA) may require them to alter the way they conduct their cases before the tribunal. In some cases, this may raise difficult questions of approach, with time and resource implications. AGS envisages further guidance by it to clients in light of the developing understanding of s 33(1AA)'s operation.

Decision makers must now provide the tribunal with all documents objectively relevant to the review of the decision by the tribunal, not only those they subjectively consider relevant

Section 37(1)(b) of the AAT Act previously required that a decision maker must give to the tribunal every other document (or part thereof) that is in that person's possession and considered by the person to be relevant to the review of the decision by the tribunal. This section has been amended by deleting 'considered by the person to be'. The effect is to require decision makers to give the tribunal all documents that a reasonable person would consider relevant to the review of the decision by the tribunal, and not only documents which they, in their subjective opinion, consider to be relevant to the decision under review.

Reforms to tribunal procedures

Further statement of reasons

New section 29(1B) of the AAT Act enables the tribunal to obtain an amended statement of reasons from the applicant where the tribunal considers the original statement does not assist it in identifying why the applicant believes the decision is not the correct or preferable decision.

Alternative dispute resolution

New section 34A(1) of the AAT Act provides that where an application has been made for review of a decision, the President may direct the holding of a conference in relation to the proceeding or any part of it, or that the proceeding or any part of it be referred for a particular dispute resolution process. The range of alternative dispute resolution procedures available to the tribunal is also expanded to include neutral evaluation, case appraisal and conciliation.

New section 34D of the AAT Act enables parties to give effect to an agreement reached through alternative dispute resolution processes, on conditions including that the agreement

is in writing and lodged with the tribunal and that the tribunal is satisfied that such a decision would be within its powers.

Reforms to tribunal management and constitution

Sections 20(2) and 20(4) of the AAT Act now give the President the power to issue directions determining tribunal practice and procedure on the conduct of reviews.

The amendments also remove restrictions in the AAT Act and some other legislation on how the tribunal is to be constituted for particular matters. The removal of these restrictions is designed to ensure the tribunal is constituted by the most appropriate members in each hearing, having regard to factors including the degree of public importance or complexity of the matter, the status of the decision maker, and the degree to which it is desirable for the members constituting the tribunal to have special knowledge, expertise or experience.

Other amendments

The accessibility and readability of the AAT Act is improved through the insertion of new headings and sub-headings and plain English terms like 'given to' instead of 'served on' and 'given' instead of 'furnished'.

Criminal offences in the AAT Act have been redrafted in the style of the Criminal Code, and penalties for those offences have been updated.

A consolidated version of the AAT Act is available at:

<http://scaleplus.law.gov.au/html/pasteact/0/27/pdf/AAT1975.pdf>

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