

Summary of the proposed amendments contained in the Administrative Appeals Tribunal Amendment Bill 2004

No.	Proposed Amendments	Items in the Schedule to the Bill
<p><i>Please note that the items in the Exposure Draft of the Administrative Appeals Tribunal Amendment Bill 2004 are not yet sequentially numbered.</i></p>		
1.	Insert an objects clause in the Act.	1
2.	Amend the definition of 'State' to include the Australian Capital Territory and remove all provisions that make special reference to the Australian Capital Territory and Northern Territory.	2, 5, 6, 8, 9, 13, 63, 136-138, 154
3.	<p>Expand the range of alternative dispute resolution processes available to the Tribunal to include neutral evaluation, case appraisal, conciliation and other prescribed processes.</p> <p>Allow the President to direct that a proceeding, or any part of a proceeding, be referred to a particular alternative dispute resolution process (currently, the President can direct parties to a conference without requiring their consent, but can only direct parties to mediation with their consent).</p>	3, 42, 97, 97A-H, 100, 109, 110, 121, 123, 124, 127, 146, 147, 148, 153
4.	<p>Allow the President to authorise members to perform the following functions generally, in relation to particular types or classes of decisions, or in relation to particular proceedings:</p> <ul style="list-style-type: none"> ▪ hold a directions hearing ▪ grant applications for extension of time before the hearing has commenced ▪ make a person a party to the proceeding before the hearing has commenced ▪ determine persons whose interests are affected by a decision that is under review ▪ make orders in accordance with terms of agreement reached between the parties during the course of an alternative dispute resolution process before the hearing has commenced ▪ make orders relating to the confidentiality of any evidence or document before the hearing has commenced ▪ make orders relating to the lodgement of documents with the Tribunal before the hearing has commenced ▪ make orders requiring a decision-maker to lodge an additional statement containing further and better particulars of findings on material questions of fact before the hearing has commenced 	4, 42A, 43, 43A, 46A, 46B, 62, 93, 94, 96, 96A, 106B, 107, 108, 111, 112, 113, 113A, 114, 115, 116, 117, 119, 124A, 145, 145A, 198, 199

No.	Proposed Amendments	Items in the Schedule to the Bill
	<ul style="list-style-type: none"> ▪ make orders in relation to the discontinuance, dismissal or reinstatement of an application before the hearing has commenced ▪ make orders in relation to frivolous or vexatious applications before the hearing has commenced ▪ make orders in accordance with terms of agreement reached between the parties, other than agreement reached in the course of an alternative dispute resolution process before the hearing has commenced ▪ make directions relating to the taxing of costs before the hearing has commenced ▪ make costs orders for certain proceedings in the Security Appeals Division before the hearing has commenced ▪ authorise a refusal to issue a summons ▪ give a party leave to inspect a document produced under summons ▪ make orders staying or otherwise affecting the operation of the decision that is under review if the hearing has not commenced (after the hearing has commenced, the members who constitute the tribunal may make such orders) ▪ vary any orders staying or otherwise affecting the operation of the decision that is under review 	
5.	Give the President discretion to decide whether to constitute the Tribunal with a single presidential member if the parties submit a notice agreeing that the matter may be dealt with by a presidential member alone.	44, 45, 46
6.	Clarify the meaning of various provisions without changing their operation, in accordance with modern drafting convention.	10, 17A-17E, 69A, 76, 91, 128
7.	<p>Replace the words ‘furnish’ and ‘serve’ (and all their derivatives) with the word ‘give’ (and its derivatives) to accord with plain English principles.</p> <p>Move all provisions that relate to the manner in which documents may be given to Part VI (Miscellaneous) of the Act.</p> <p>Insert a note clarifying that documents may be given electronically. Provide that, if a document is given electronically, then it is taken to have been given on the day it is sent.</p>	11, 12, 48, 64-69, 70-75, 77-80, 82-84, 87-89, 102, 103, 104, 118, 131-133, 135, 139, 144, 155, 157, 158, 159, 159A

8.	Modernise the offence provisions of the Act so that they comply with the current style of the <i>Criminal Code Act 1995</i> .	151, 153A
9.	Make minor structural and presentational changes (to make the AAT Act more user friendly), including dividing existing Parts of the Act into Divisions and Subdivisions, inserting headings and notes and, in some instances, relocating sections into more appropriate parts of the Act.	14, 15, 23-24, 25, 25A, 28A, 29, 32, 37, 38, 40, 46A, 48, 49A, 51, 57, 59, 60, 62, 64, 65, 68, 69A, 73, 77, 82, 84, 85, 89, 90, 91, 94, 95, 98, 99, 100-101, 102, 103, 104, 106, 106B, 108B, 109, 121, 124, 124A, 128, 130-131, 133-136, 139, 139A, 141, 142, 143, 146, 149, 150, 151, 153A, 155, 179, 186, 189, 193, 193A.
10.	Expand the qualification requirements for appointment as President to include a federal magistrate, a former judge, a former federal magistrate or a legal practitioner enrolled for at least five years in an Australian jurisdiction, in addition to a Judge of the Federal Court.	16, 23
11.	Require appointments of all members of the AAT to be for terms of up to 7 years, with eligibility for re-appointment. This removes the possibility of tenured appointments.	18-21

12.	Remove a spent provision that was inserted in 1994 to enable Justice Jane Matthews to be appointed as President of the AAT for a term of 5 years (during the period that former President Deirdre O'Connor was appointed to the Australian Industrial Relations Commission).	22
13.	Allow a part-time Deputy President to be appointed on an acting basis if a part-time Deputy President is unavailable to perform the duties of their office.	24, 24A
14.	Clarify that a resignation takes effect from the time a resignation is given to the Governor-General, or if a later day is specified in the resignation, on that later day.	25, 26, 58, 143
15.	Remove the existing provision which extends eligibility for a judicial pension to non-judicial presidential members of the Tribunal. This will not affect the eligibility or entitlement for the judicial pension of current or retired members of the Tribunal.	25A, 25B, 27, 28, 182
16.	Allow the Attorney-General, rather than the Governor-General, to assign members to Divisions of the Tribunal.	29, 30
17.	Expand the powers of the President to issue directions in relation to the operation of the Tribunal and the conduct of reviews.	33, 34, 35, 36, 38, 39
18.	Amend the provisions that apply where a member becomes unavailable during the course of a review to ensure that as many of the remaining members as possible constitute the Tribunal for the purposes of completing the review and to give the President discretion as to how the constitution of the Tribunal should be varied. Insert a provision that allows the President to reconstitute the Tribunal if he or she is of the opinion that it would be in the interests of achieving the expeditious and efficient conduct of the review.	38, 49, 49AA, 50, 52, 53, 53A, 54, 55, 55A, 56, 61, 139A, 168, 168A

19.	<p>Expand the range of factors that the President must have regard to when constituting the AAT.</p> <p>Remove or amend restrictions on the constitution of the AAT included in a range of other acts that confer jurisdiction on the AAT:</p> <ul style="list-style-type: none"> ○ <i>Commonwealth Electoral Act 1918</i> ○ <i>Environment Protection and Biodiversity Conservation Act 1999</i> ○ <i>Insurance Acquisitions and Takeovers Act 1991</i> ○ <i>Insurance Act 1973</i> ○ <i>Lands Acquisition Act 1989</i> ○ <i>Life Insurance Act 1995</i> ○ <i>Migration Act 1958</i> ○ <i>Privacy Act 1988</i> ○ <i>Safety, Rehabilitation and Compensation Act 1988</i> ○ <i>Seafarers' Rehabilitation and Compensation Act 1992</i> ○ <i>Superannuation Act 1976</i> 	54, 166, 167, 180, 181, 183, 184, 185, 187, 190, 191, 192, 196, 197
20.	Amend the method of resolving disagreements to avoid the need to reconstitute the Tribunal.	120, 120A, 163, 164, 164A, 172, 172A, 172B
21.	Remove the current requirement that a multi-member Tribunal be constituted by at least one presidential or senior member. This will allow a multi-member Tribunal to be constituted by ordinary members only.	40, 41
22.	Allow the Tribunal to extend the time for the making of an application where it is satisfied that it is reasonable to grant an extension in the circumstances.	85, 86
23.	Insert a provision that the Tribunal may limit the scope of the review.	60
24.	Clarify what should be included in a statement of reasons for an application for review of a decision in order to ensure that applicants adequately identify the issues that they intend to raise in the review of a decision.	81
25.	Impose an obligation on decision-makers to assist the Tribunal.	92

26.	<p>Allow the President to authorise conference registrars to issue directions as to the procedure to be followed at or in connection with the hearing of a proceeding before the hearing has commenced.</p> <p>This amendment implements recommendation 125 of ALRC Report 89, <i>Managing Justice</i>.</p>	94, 95
27.	<p>Amend the provisions that impose an obligation on respondents to provide the Tribunal with copies of all documents that are relevant to the review of the decision to change the test of the relevance from a subjective test to an objective one.</p>	101, 101A
28.	<p>Allow the Tribunal to specify the number of copies of additional documents that are required to be given to the Tribunal.</p>	103A, 103B, 104A
29.	<p>Impose a time-limit on decision-makers when reconsidering a decision that the Tribunal has remitted to them.</p>	129, 129A
30.	<p>Expand the power of the Federal Court hearing appeals from the Tribunal to make findings of fact where an error of law has been made by the AAT. Such findings will only be able to be made if it is appropriate to do so and if they are consistent with the findings of the AAT in the matter.</p> <p>This amendment implements a recommendation made in the Administrative Review Council's report number 41, <i>Appeals from the Administrative Appeals Tribunal to the Federal Court</i>.</p>	140, 141, 141A
31.	<p>Require the consent of the President for the referral of questions of law to the Federal Court of Australia.</p>	142, 142A
32.	<p>Extend the protection and immunity afforded to:</p> <ul style="list-style-type: none"> ▪ alternative dispute resolution practitioners (such protection is currently afforded to mediators under the AAT Act); ▪ Registrar, Deputy Registrars and District Registrars when issuing summons or when taxing costs (these powers can also be exercised by members who would be protected if they did so); and ▪ Conference Registrars when issuing directions as to procedure. 	146, 147, 148, 149, 150
33.	<p>Extend the offences of failing to comply with a summons, refusing to be sworn or to answer questions, or giving false or misleading evidence to apply to alternative dispute resolution processes (this is currently extended to conferences and mediations).</p>	153

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34.	<p>Allow the Tribunal to specify the date for compliance with a summons for production of a book, document or thing. Clarify that, unless the Tribunal directs, a person who is named in a summons for production of a book, document or thing may fulfil the requirement at the specified time, without the need to attend the hearing.</p> <p>Allow persons summoned to be paid fees for compliance with the summons, as opposed to simply for fees for attendance. This will allow persons who are summoned to produce documents to be paid fees associated with the costs of producing the documents. This is consistent with the fees payable for compliance with summonses in the Federal Court. Regulations will need to be made to prescribe the fees payable.</p>	108A-108C, 155A-155E
35.	Allow Regulations to be made to deal with transitional matters.	159B
36.	<p>Amend section 64 of the <i>Freedom of Information Act 1982</i> (which relates to production of exempt documents to the AAT) to implement recommendations 85 and 86 of the Open Government Report of the Australian Law Reform Commission (ALRC 77) and the Administrative Review Council (ARC 40).</p> <p>At present, section 64 provides that the Tribunal can only require the production of a document that is claimed to be exempt (in order to ascertain whether it is an exempt document) during the course of the hearing.</p> <p>Recommendation 85 of ALRC 77 & ARC 40 proposed that section 64 be amended to make it clear that the AAT can, at any time after the date by which an agency must have complied with section 37 of the AAT Act (which requires the respondent to produce to the Tribunal all documents within its possession or control that are relevant to the review), require production to the AAT of documents claimed by the agency to be exempt. This means that the Tribunal will be able to require production of the exempt document in order to ascertain that it is exempt prior to the hearing.</p> <p>Recommendation 86 proposed that section 64 should be amended to clarify that if an agency voluntarily produces an exempt document to the Tribunal then the AAT is prohibited from disclosing the documents to any person other than a member or staff member of the AAT. The recommendation arose from a decision of the Federal Court which held that if an exempt document is voluntarily produced to the AAT then the AAT is not prohibited from showing it to the applicant's legal representatives (<i>Day v Collector of Customs</i> (1995) 130 ALR 106).</p>	174 - 178