

Passed by both Houses



New South Wales

Administrative Decisions Tribunal Legislation Amendment (Revenue) Bill 2000

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I certify that this PUBLIC BILL, which originated in the LEGISLATIVE ASSEMBLY, has finally passed the LEGISLATIVE COUNCIL and the LEGISLATIVE ASSEMBLY of NEW SOUTH WALES.

*Clerk of the Legislative Assembly.
Legislative Assembly,
Sydney, , 2000*



New South Wales

Administrative Decisions Tribunal Legislation Amendment (Revenue) Bill 2000

Act No , 2000

An Act to amend the *Administrative Decisions Tribunal Act 1997* to establish a Revenue Division of the Tribunal; to make amendments to the *Taxation Administration Act 1996* and to revise the jurisdiction of the Supreme Court and Land and Environment Court to review certain revenue decisions; to make consequential amendments to the *Land and Environment Court Act 1979* and the *Land Tax Management Act 1956*; and for other purposes.

I have examined this Bill, and find it to correspond in all respects with the Bill as finally passed by both Houses.

Chairman of Committees of the Legislative Assembly.

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Administrative Decisions Tribunal Legislation Amendment (Revenue) Act 2000*.

2 Commencement

This Act commences on a day or days to be appointed by proclamation.

3 Amendment of Administrative Decisions Tribunal Act 1997 No 76

The *Administrative Decisions Tribunal Act 1997* is amended as set out in Schedule 1.

4 Amendment of Taxation Administration Act 1996 No 97

The *Taxation Administration Act 1996* is amended as set out in Schedule 2.

5 Consequential amendment of other Acts

The Acts specified in Schedule 3 are amended as set out in that Schedule.

Schedule 1 Amendment of Administrative Decisions Tribunal Act 1997

(Section 3)

[1] Schedule 1 Divisions of Tribunal

Insert in alphabetical order:

Revenue Division

[2] Schedule 2 Composition and functions of Divisions

Insert after Part 3B:

Part 3C Revenue Division

Division 1 Composition of Division

1 Division members

- (1) Subject to subclauses (2) and (3), the Revenue Division of the Tribunal is to be composed of the following members:
 - (a) a Divisional Head,
 - (b) such other members as may be assigned to the Division by or under this Act.
- (2) A member is not to be appointed as Divisional Head unless the Minister has consulted with the relevant Minister about the appointment.
- (3) The President is not to assign a member to the Division unless:
 - (a) the Minister has consulted with the relevant Minister about the assignment, and
 - (b) the Minister has advised the President of the result of the consultation.
- (4) In this clause:
relevant Minister means the Minister administering the *Taxation Administration Act 1996*.

Division 2 Functions of Division

2 Functions allocated to Division

The functions of the Tribunal in relation to the following enactments are allocated to the Revenue Division of the Tribunal:

Taxation Administration Act 1996

[3] Schedule 5 Savings and transitional provisions

Insert at the end of clause 1 (1):

*Administrative Decisions Tribunal Legislation Amendment
(Revenue) Act 2000*

[4] Schedule 5

Insert in Schedule 5, with appropriate Part and clause numbers:

Part Provisions consequent on enactment of Administrative Decisions Tribunal Legislation Amendment (Revenue) Act 2000

Definitions

In this Part:

amending Act means the *Administrative Decisions Tribunal Legislation Amendment (Revenue) Act 2000*.

existing tax objection determination means the determination of an objection by the Chief Commissioner of State Revenue under Division 1 of Part 10 of the *Taxation Administration Act 1996* before the repeal of the repealed appeal provisions by the amending Act.

new review provisions means Division 2 of Part 10 of the *Taxation Administration Act 1996* as inserted by the amending Act.

repealed appeal provisions means Division 2 of Part 10 of the *Taxation Administration Act 1996* as in force immediately before the commencement of the new review provisions.

revenue amendments means the amendments made to the *Taxation Administration Act 1996*, the *Land and Environment Court Act 1979* and the *Land Tax Management Act 1956* by the amending Act.

Amending Act applies to certain existing tax objection determinations

- (1) This clause applies to any existing tax objection determination in respect of which:
 - (a) an appeal to the Supreme Court could have been lodged under the repealed appeal provisions immediately before the repeal of those provisions by the amending Act, and
 - (b) no such appeal was lodged with the Supreme Court immediately before that repeal.
- (2) No appeal lies to the Supreme Court under the repealed appeal provisions in respect of an existing tax objection determination to which this clause applies.
- (3) However, the new review provisions apply to any such determination as if those provisions had been in force at the time the determination was made under the *Taxation Administration Act 1996*.

Amending Act applies to certain appeal proceedings before Supreme Court

- (1) This clause applies to an appeal in respect of an existing tax objection determination that was pending before (but not heard by) the Supreme Court under the repealed appeal provisions immediately before the repeal of those provisions by the amending Act.
- (2) The new review provisions apply to an appeal to which this clause applies instead of the repealed appeal provisions.
- (3) For the purposes of subclause (2), an appeal to which this clause applies is taken to be an application for review by the Supreme Court that was duly made under the new review provisions. Accordingly, the Supreme Court may determine or otherwise deal with the appeal as if it were an application for review made to it under the new review provisions.

Amending Act does not apply to or affect certain matters

- (1) Subject to this Part, this Act and the revenue amendments do not apply to or affect:
 - (a) any determination of a taxpayer's objection made by the Chief Commissioner of State Revenue under the *Taxation Administration Act 1996* before the commencement of the revenue amendments, and
 - (b) any right to appeal to the Land and Environment Court under section 38A of the *Land Tax Management Act 1956* that accrued before that commencement, and
 - (c) any other proceedings that were instituted before the commencement of the revenue amendments and have not been finally determined by a court before that commencement.
- (2) Subject to this Part, any rules, regulations or other law that would have been applied to any determination, appeal right or proceedings referred to in subclause (1) had this Act and the amending Act not been enacted continue to apply to the objection, appeal right or proceedings as if this Act and the amending Act had not been enacted.

Schedule 2 Amendment of Taxation Administration Act 1996

(Section 4)

[1] Section 3 Definitions

Omit paragraph (b) of the definition of *assessment* in section 3 (1).

Insert instead:

- (b) an assessment by the Supreme Court or the Administrative Decisions Tribunal on an application for a review.

[2] Section 3 (1)

Omit the definition of *non-reviewable decision*.

[3] Section 3 (1)

Insert in alphabetical order:

review means a review by the Supreme Court, the Land and Environment Court or the Administrative Decisions Tribunal on an application made under Division 2 of Part 10.

[4] Section 5 Meaning of “non-reviewable” in relation to certain decisions

Omit the section.

[5] Section 7 Purpose of Act and relationship with other taxation laws

Omit “ and appeals” from section 7 (3) (h). Insert instead “and reviews”.

[6] Section 9 Reassessment

Omit “appeal” from section 9 (3) (a). Insert instead “review”.

[7] Section 12 Compromise assessment

Omit section 12 (4).

[8] Section 44 Recovery of tax as a debt

Omit “appeal” from the note to the section. Insert instead “review”.

[9] Part 10, heading

Omit “appeals”. Insert instead “reviews”.

[10] Section 86

Omit the section. Insert instead:

86 Objections

- (1) A taxpayer who is dissatisfied with:
- (a) an assessment that is shown in a notice of assessment served on the taxpayer, or
 - (b) any other decision of the Chief Commissioner under a taxation law,
- may lodge a written objection with the Chief Commissioner.

Note. Part 5 and other provisions of the *Land Tax Management Act 1956* make provision for objections under this Part in respect of certain valuation and other decisions.

- (2) However, a taxpayer may not lodge such an objection in respect of the following:
- (a) an assessment made under section 12 (Compromise assessment) with the agreement of the taxpayer,
 - (b) the determination of an objection under this Part (including such part of any reassessment that gives effect to the determination of an objection that is allowed in whole or in part),
 - (c) a decision to reassess the taxpayer’s tax liability that does not have the effect of increasing that liability where the taxpayer seeks to lodge the objection more than 60 days after the date of service of the notice of the initial assessment,
 - (d) a decision not to reassess the taxpayer’s tax liability where the taxpayer seeks to lodge the objection more than 60 days after the date of service of the notice of the initial assessment.

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- (3) The provisions of subsection (2) (c) and (d) do not preclude the lodgment of an objection that is sought to be lodged more than 60 days after the date of service of the notice of the initial assessment if the Chief Commissioner permits its lodgment. The provisions of section 90 (2)–(5) apply to any such objection in the same way as they apply to an objection referred to in section 90 (1).

[11] Section 91 Determination of objection

Omit “appeal under section 96 (1) (b)” from the note to section 91 (1).
Insert instead “review under Division 2”.

[12] Section 91 (2)

Omit the subsection. Insert instead:

- (2) The Chief Commissioner may determine an objection that is the subject of an application for review under Division 2 at any time before the hearing of the application for review commences.

[13] Section 93 Notice of determination

Insert after section 93 (2):

- (2A) The reasons for a determination of an objection in respect of an assessment or other decision that the Administrative Decisions Tribunal has jurisdiction under Division 2 to review must set out the matters referred to in section 49 (3) of the *Administrative Decisions Tribunal Act 1997* in respect of the determination.
- (2B) The notice must also inform the objector of the objector’s right to make an application for review under Division 2 in the case of a determination to disallow the objection or to allow the objection in part only.

[14] Section 94 Recovery of tax pending objection

Omit “or appeal” wherever occurring.

[15] Part 10, Division 2

Omit the Division. Insert instead:

Division 2 Reviews

96 Review by Administrative Decisions Tribunal

- (1) A taxpayer may apply to the Administrative Decisions Tribunal for a review of a decision of the Chief Commissioner that has been the subject of an objection under Division 1 if:
 - (a) the taxpayer is dissatisfied with the Chief Commissioner's determination of the taxpayer's objection, or
 - (b) 90 days (not including any period of suspension under section 92) have passed since the taxpayer's objection was served on the Chief Commissioner and the Chief Commissioner has not determined the objection.
- (2) However, a taxpayer cannot apply to the Administrative Decisions Tribunal for review under this section in respect of:
 - (a) a decision of a kind prescribed by the regulations as an exempt decision for the purposes of this section, or
 - (b) a land value decision referred to in section 98.
- (3) A taxpayer who has applied to the Supreme Court for a review under section 97 of a decision cannot apply to the Administrative Decisions Tribunal under this section in respect of the same decision. However, the taxpayer may do so if the earlier application is withdrawn with the approval of the Supreme Court for the purpose of enabling the Administrative Decisions Tribunal to deal with the matter.
- (4) The following provisions of the *Administrative Decisions Tribunal Act 1997* do not apply to an application made under this section (or any assessment or other decision to which it relates):
 - (a) Part 2 of Chapter 5,
 - (b) section 55 (1) (b) and (d).

(5) For the purposes of section 58 (1) (a) of the *Administrative Decisions Tribunal Act 1997*:

- (a) the obligation of the Chief Commissioner under that paragraph to lodge a statement of reasons with the Tribunal in respect of an application is limited to providing the Tribunal with a statement of reasons only in respect of the matters arising from the grounds specified in the application, and
- (b) if one of the grounds specified in the application relates to a matter raised in an objection determined by the Chief Commissioner—the Chief Commissioner may rely on reasons previously given to the taxpayer by the Chief Commissioner under section 93 for the determination of the objection in explanation of that part of the assessment or decision to which the objection related.

Note. Section 58 of the *Administrative Decisions Tribunal Act 1997* requires an administrator whose reviewable decision is the subject of an application for review to the Tribunal to lodge with the Tribunal certain relevant documents relating to the decision, including statements of reasons.

- (6) A regulation prescribing a kind of decision for the purposes of subsection (2) cannot be made without the concurrence of the Minister administering the *Administrative Decisions Tribunal Act 1997*.

97 Review by Supreme Court

- (1) A taxpayer may apply to the Supreme Court for a review of a decision of the Chief Commissioner that has been the subject of an objection under Division 1 if:
 - (a) the taxpayer is dissatisfied with the Chief Commissioner's determination of the taxpayer's objection, or
 - (b) 90 days (not including any period of suspension under section 92) have passed since the taxpayer's objection was served on the Chief Commissioner and the Chief Commissioner has not determined the objection.

- (2) A taxpayer who has applied to the Administrative Decisions Tribunal for a review under section 96 in respect of a decision cannot apply to the Supreme Court under this section in respect of the same decision. However, the taxpayer may do so if the earlier application is withdrawn with the approval of the Administrative Decisions Tribunal for the purposes of enabling the Supreme Court to deal with the matter.
- (3) A taxpayer cannot apply to the Supreme Court for review under this section in respect of a land value decision referred to in section 98.

98 Review by Land and Environment Court of land value decisions

- (1) In this section:
land value decision means a decision of the Chief Commissioner concerning land value made for the purposes of the *Land Tax Management Act 1956*, including any matter that under that Act may be the subject of an objection under this Part as if it were a land value.
- (2) A taxpayer may apply to the Land and Environment Court for the review of a land value decision that has been the subject of an objection under Division 1 if:
 - (a) the taxpayer is dissatisfied with the Chief Commissioner's determination of the taxpayer's objection, or
 - (b) 90 days (not including any period of suspension under section 92) have passed since the taxpayer's objection was served on the Chief Commissioner and the Chief Commissioner has not determined the objection.

99 Time for making application for review

- (1) An application for review following a determination by the Chief Commissioner of an objection must be made not later than 60 days after the date of issue of the notice of the Chief Commissioner's determination of the objection. The court or tribunal to which the application is to be made may allow a person to apply for a review after that 60-day period.

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- (2) An application for review following a failure of the Chief Commissioner to determine an objection within the relevant 90-day period may be made at any time after the end of that period.

100 Provisions relating to applications for review

- (1) An application for review following a failure of the Chief Commissioner to determine an objection cannot be made unless the applicant has given written notice of the proposed application to the Chief Commissioner not less than 14 days before it is made.
- (2) The applicant's and respondent's cases on an application for review are not limited to the grounds of the objection.
- (3) The applicant has the onus of proving the applicant's case in an application for review.
- (4) If the applicant or respondent appeals against a decision of the Administrative Decisions Tribunal in an application for review to an Appeal Panel of the Tribunal, the applicant in the application for review continues to bear the onus of proving the applicant's case in the appeal if the Appeal Panel grants leave for the appeal to extend to a review of the merits of the decision.

101 Powers of court or tribunal on review

- (1) The court or tribunal dealing with the application for review may do any one or more of the following:
- (a) confirm or revoke the assessment or other decision to which the application relates,
 - (b) make an assessment or other decision in place of the assessment or other decision to which the application relates,
 - (c) make an order for payment to the Chief Commissioner of any amount of tax that is assessed as being payable but has not been paid,
 - (d) remit the matter to the Chief Commissioner for determination in accordance with its finding or decision,

- (e) make any further order as to costs or otherwise as it thinks fit.
- (2) Nothing in this section limits the application of the following provisions of the *Administrative Decisions Tribunal Act 1997* in respect of an application for review before the Administrative Decisions Tribunal:
 - (a) Division 3 of Part 3 of Chapter 5,
 - (b) section 88.

102 Giving effect to decision on review

- (1) Within 60 days after the decision on the review becomes final, the Chief Commissioner must take any action that is necessary to give effect to that decision. That action may include amending any relevant assessment.
- (2) If no appeal against the decision on the review is made within 30 days after the day on which the decision is made, the decision on the review is taken, for the purposes of this section, to have become final at the end of the 30-day period.

103 Recovery of tax pending review

- (1) The fact that an application for a review is pending does not in the meantime affect the assessment or other decision to which the application for review relates and tax may be recovered as if no review were pending.
- (2) Nothing in this section affects any power of a court or tribunal to which an application for review under this Part is made (or can be made) to grant a stay under any other law of any such assessment or decision.

103A Review or appeal by other courts or tribunals

- (1) No court or tribunal (or other body or person) has jurisdiction or power to consider any question concerning an assessment or other decision of the Chief Commissioner under a taxation law (including the determination of an objection under Division 1) except as provided by this Part.

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- (2) Subsection (1) does not apply to a decision of the Chief Commissioner under Part 4, 7, 8, 9 or 11 (not being an assessment).

Note. This subsection preserves the inherent jurisdiction of the Supreme Court to entertain an application for judicial review of any such decision of the Chief Commissioner.

[16] Part 10, Division 3, heading

Omit “appeal”. Insert instead “review”.

[17] Section 104 Refund of amount

Omit “appeal is upheld”.

Insert instead “application for review is successful”.

[18] Section 119 Evidence of assessment

Omit “appeal” from section 119 (b). Insert instead “review”.

Schedule 3 Consequential amendment of other Acts

(Section 5)

3.1 Land and Environment Court Act 1979 No 204

Section 19 Class 3—land tenure, valuation, rating and compensation matters

Omit section 19 (b1). Insert instead:

(b1) reviews under section 98 of the *Taxation Administration Act 1996* in relation to land value,

3.2 Land Tax Management Act 1956 No 26

[1] Part 5, heading

Omit “appeals”. Insert instead “reviews”.

[2] Section 35 Objections

Omit section 35 (4).

[3] Section 38A

Omit the section. Insert instead:

38A Reviews concerning land value

Section 98 of the *Taxation Administration Act 1996* makes provision for the review by the Land and Environment Court of a decision concerning land value that has been the subject of an objection.

[4] Section 65A Alteration of strata unit entitlements

Insert after section 65A (7):

- (7A) An objection under Part 10 of the *Taxation Administration Act 1996* may be made to an alteration of proportional unit entitlement by the Chief Commissioner under this section as if it were a land value.
- (7B) The right to object referred to in subsection (7A) in respect of the land value of land includes the right to object on the ground that the altered proportional unit entitlement is not fair and reasonable.