Second Reading

The Hon. JOHN HATZISTERGOS (Attorney General, Minister for Justice, and Minister for Industrial Relations) [5.41 p.m.]: I move:

That this bill be now read a second time.

In less than one month the Administrative Decisions Tribunal [ADT] will celebrate 10 years of operation. The ADT is integral to the Government's commitment to ensuring open and accessible government for the people of New South Wales, so this anniversary is a very welcome one. The ADT was established as an independent, accessible and cost-effective forum to review the decisions of public administrators. While its role also incorporates the making of original decisions in some circumstances, the primary reason for its existence is to afford citizens the right to challenge administrative decisions. By reviewing decisions of public administrators, the tribunal provides a positive institutional tool to give guidance to government decision makers in making the correct decision in the first instance.

Members will be aware of the recently tabled statutory review of the Administrative Decisions Tribunal Act. The review concluded that the policy objectives of the Act remain valid. The review also made recommendations for amendments to the Act with the intention of improving the tribunal's operational efficiency. This bill gives effect to the recommended legislative changes in the statutory review as well as making other amendments to enhance the operational efficiency of the tribunal. I will refer to these reforms in more detail shortly. First, I draw the attention of members to a number of other amendments that are contained in the bill.

The bill gives effect to the Government's decision to increase the amount of compensation that can be awarded by the tribunal in its Equal Opportunity Division from $40,000 to $100,000. This increase will make sure the ADT is able to make compensation awards that reflect the seriousness of the consequences of discrimination and the importance of the jurisdiction in ensuring that discriminatory conduct will not be tolerated in public life in New South Wales. The bill also makes some changes to the Anti-Discrimination Act to modernise the operation of the Act's exemption process. At present, the Attorney General has responsibility for the granting of exemption orders, which can be made only in accordance with the recommendations of the Anti-Discrimination Board. There is no right to a merits review of the Minister's decision.

Exemption powers exist in the anti-discrimination legislation of other States and Territories. The common feature of the legislation of other States and Territories is the right of review by a tribunal or court. This right of review results in consistent and transparent decision making and reflects modern administrative law practice. The bill amends the Anti-Discrimination Act to vest the power to grant exemptions in the president of the Anti-Discrimination Board rather than the Attorney General. The president's decision will be reviewable by the Administrative Decisions Tribunal. The amendments implement recommendations made in the New South Wales Law Reform Commission review of the Anti-Discrimination Act 1977 and more closely reflect exemption regimes in other Australian jurisdictions.

I will now address a number of amendments affecting the tribunal's procedure, functions and constitution. Firstly, the bill clarifies, in section 8 of the Act, that the tribunal can review the conduct of an administrator. This amendment puts beyond doubt that the tribunal's review jurisdiction includes the review of the conduct of administrators. An example of such reviewable conduct can be found in the Privacy and Personal Information Protection Act 1998. Secondly, the bill requires agents who are not legal practitioners to obtain leave from the tribunal to represent a party. This amendment seeks to redress concerns that some classes of agent who are appearing in the tribunal are not necessarily able to act in the professionally detached manner that is required in order to represent another's interests effectively.

By giving the tribunal a clear right to revoke the agent's leave to appear, it will be in a better position to protect litigants from any conduct by their agent that undermines the relevant and timely presentation of their case. It is proposed that the tribunal will establish a protocol to assist agents seeking to appear on behalf of litigants in the tribunal to apply for leave to do so. The bill also addresses a recommendation of the statutory review that concerns costs. It amends section 88 to confirm that the parties in the tribunal are to bear their own costs unless the tribunal orders otherwise, and incorporates an expanded range of matters to be considered in the making of an award of costs. The provision is modelled on the provision contained in the Victorian Civil and Administrative Tribunal Act 1997.

The bill also ends the cumbersome and unworkable process set out in the Administrative Decisions Tribunal Act for the making of rules in the tribunal. The statutory review found that the process of rule subcommittees and lengthy exhibition and consultation requirements prescribed in the current Act has proved to be so complex that the tribunal has been unable to use the provisions, preferring instead to rely on the making of practice notes to set out the tribunal's procedures in some of the more common areas of practice. Amendments made by this bill will enable a rule committee to make rules for any division of the tribunal and remove the exhibition and

consultation requirements so that the tribunal is in the same position with respect to its rule-making functions as other tribunals.

The existing Administrative Decisions Tribunal Rules (Transitional) Regulation 1998 will be repealed and the rules contained in that regulation will become the Administrative Decisions Tribunal Rules 1998. These rules will be statutory rules for the purpose of part 6 of the Interpretation Act 1987 and consequently subject to the tabling and disallowance provisions of the part. Finally, before I turn to the more procedural amendments, members will be familiar with the innovation in government decision making that the ADT Act has effected. Before a reviewable decision may be considered by the tribunal, administrators are usually obliged to provide a statement of reasons for the decision and to conduct an internal review of the initial decision. In order to provide greater clarity concerning the decision-making timeframes, this bill makes a number of amendments to the relevant provisions of the Act.

Firstly, section 53 is amended to require an administrator to notify a person of the result of an internal review within 21 days after the application for internal review is lodged, or such other period as is agreed. Section 55 is reworked so that the period within which an application for a review in the tribunal is to be made—having regard to whether or not reasons have been requested and provided, and whether or not an internal review has been conducted—is clear. Finally, section 58 is also amended to make it clear that a copy of any statement of reasons provided on internal review must be provided to the tribunal.

The bill makes other procedural amendments to the Administrative Decisions Tribunal Act as follows. It amends section 24A so that it is clear that the tribunal is to be constituted by a single member for interlocutory proceedings without the president needing to effect a formal assignment in each case. It also provides for the president, or relevant divisional head, to be able to give directions as to the members who may constitute the tribunal for interlocutory purposes. This amendment should relieve the tribunal of the administrative burden of formally assigning a member to each interlocutory matter. The bill amends section 26 of the Act so that the tribunal's annual report is able to be tabled when Parliament is not sitting. Sections 44 and 57 are amended so that the tribunal may dispense with the need for a late application to be in writing. This will avoid the need for the tribunal to insist on applications in writing when they are made during the hearing of a matter.

Section 67 (4) will be amended to give the tribunal a broader power to join a person as a party to the proceedings if necessary. It expands the circumstances where proceedings can be dismissed to include dismissal for want of prosecution or where an applicant fails to appear, and includes a concomitant right to reinstate proceedings where the applicant who failed to appear provides a reasonable excuse. It ensures that the tribunal takes into account the best interests of certain defined vulnerable people when giving effect to an agreed settlement. It provides that the member or assessor who was involved in the conduct of a preliminary conference in proceedings before the tribunal can go on to hear the substantive matter, unless it is proved that to do so would prejudice an objecting party's case.

It provides that the tribunal at first instance can, like the appeal panel, refer questions of law to the Supreme Court, and that these referrals will always, regardless of the status of the presiding tribunal member, be assigned to the Court of Appeal. The bill provides clarification that the registrar has discretion as to whether or not to issue a summons, and that the tribunal may pay for the costs of a mediator or neutral evaluator. It clarifies that the 28 days within which an appeal from a first instance decision of the tribunal is to be lodged may run from the provision of either oral or written reasons, whichever is the later. It clarifies that part of a case can be remitted to the tribunal in first instance on internal review, or the other person or body in the case of an external appeal. It expands the power to make a regulation for fees to be charged by the tribunal.

It makes amendments to the provisions concerning the constitution of the Legal Services Division to ensure sufficient eminently qualified people are available to constitute the tribunal for the purpose of hearing serious disciplinary matters against legal practitioners. It ensures that both former members and members of the tribunal who cease to have certain qualifications may, nevertheless, complete unfinished matters, notwithstanding the expiry of their membership of the tribunal or qualification. It provides that, like other professional discipline matters, appeals from disciplinary proceedings against accredited certifiers are to go straight to the Supreme Court. Other amendments by way of statute law revision bringing references to other Acts up to date and repealing superfluous provisions in other Acts are also made. I commend the bill to the House.