NSW Legislative Assembly Hansard

Administrative Decisions Tribunal Amendment Bill

Extract from NSW Legislative Assembly Hansard and Papers Wednesday 1 September 2004.

Second Reading

Mr GRAHAM WEST (Campbelltown—Parliamentary Secretary) [10.36 a.m.], on behalf of Mr Bob Debus: I move:

That this bill be now read a second time.

The Government is pleased to introduce the Administrative Decisions Tribunal Amendment Bill. The bill amends the Administrative Decisions Tribunal Act 1997 to streamline the interlocutory and appeals processes in the Administrative Decisions Tribunal. It also makes related amendments to certain other Acts which provide for applications or appeals to the Administrative Decisions Tribunal. These are the Architects Act 2003, the Surveying Act 2002, the Veterinary Surgeons Act 1986, the Veterinary Practice Act 2003, and the Children and Young Persons (Care and Protection) Act 1998.

This bill will allow the tribunal to realise considerable annual savings and reduce administrative delays. It will also allow tribunal members to concentrate on the tribunal's core jurisdiction, which is to make and review administrative decisions that affect people's rights and resolve general complaints. A conservative estimate of the annual savings that can be achieved if the amendments are passed is $168,000. The savings will result chiefly from single member hearings of interlocutory matters and introducing appeals by leave in respect of interlocutory matters. Under proposed section 24A of the Act, the president will have the authority to direct that, in an interlocutory matter whether at first instance or on appeal, the tribunal may be constituted by one member. Consequently, the tribunal will no longer be required to convene multi-member panels to hear all interlocutory matters.

The benefit of this reform is twofold. The first benefit is that matters can proceed more quickly. Previously the tribunal experienced difficulty in convening panels to hear matters. Single member panels will ensure that more interlocutory decisions are disposed of. The second benefit is a considerable reduction in costs. The cost of panel hearings of the tribunal can be over four times greater than the cost of a hearing by a single member. The tribunal can expect to save at least $111,000 as a result of this reform. The introduction of appeals by leave from interlocutory decisions will also produce administrative efficiencies. Under new subsections (2A), (2B) and (2C) of section 113, the president has authority to direct that an appeal panel be constituted by a single presidential judicial member. Appeals from interlocutory decisions will only proceed with the leave of the appeal panel. This means the tribunal will have the power to control the number of interlocutory matters that proceed to appeal, with the result that the number of appeals heard is likely to drop. As a result, the tribunal's resources will not be wasted on hearing appeals which lack merit or which are likely to fail.

A third reform is to remove the right of appeal to the appeal panel of the tribunal in matters involving architects, surveyors and veterinary surgeons. A decision of the tribunal at first instance in these professional proceedings may now be appealed directly to the Supreme Court. It is proposed that appeals to an appeal panel of the tribunal are to be abolished by amendment of the Architects Act 2003, the Surveying Act 2002, the Veterinary Surgeons Act 1986 and the Veterinary Practice Act 2003. It is proposed to amend each Act with an identical provision that states that the appeals provisions of the ADT Act do not apply to a review decision or original decision of the tribunal. The proposed amending provisions in the Architects Act are sections 58A and 58B, in the Surveying Act sections 32A and 32B, and in the Veterinary Surgeons Act 1986 and Veterinary Practice Act 2003, sections 54G, 54H, 91A and 91B.

The advantage of abolishing a right of appeal to the tribunal in these matters is considerable. Individuals subject to disciplinary hearings, fighting for their professional reputation and their professional livelihood, will typically refuse to accept adverse findings. They will continue to appeal to the ultimate level of the Supreme Court before they accept a finding. In doing so, they can place a considerable burden on the resources of the tribunal. The tribunal has a broad and diverse workload that requires careful administrative management. It cannot afford to make ineffective use of the time of its members, especially judicial members, who are called to participate in a great variety of hearings. In the past, it has been unusual for an appeal panel of the tribunal to overturn the decision of the tribunal at first instance. The appeal decision usually confirms the original decision, in whole or part. Even so, the person who finds that an adverse decision of the tribunal has been confirmed at the appeal level of the tribunal will still usually appeal to the Supreme Court.

This means that, so far as the tribunal is concerned, the time it spends on hearing appeals against original decisions on professional discipline matters is usually wasted. The original decision has been confirmed and the unsuccessful party appeals to the Supreme Court. It is appropriate that the intermediate right of appeal to an appeal panel should be abolished. It means the parties to professional disciplinary proceedings have a direct right of appeal to the Supreme Court and the tribunal is placed in a position to allocate judicial members to other matters. The abolition of the intermediate right of appeal was implemented in 2001 in relation to legal practitioners and licensed conveyancers. That reform has been uncontroversial. Last year, the cost of hearing appeals against professional disciplinary decisions was at least $41,000. Therefore the reform, once implemented, is likely to produce not only administrative efficiencies but also substantial savings.

In respect of rights of appeal to the Supreme Court, the proposed amending provisions in the Architects Act are contained in a new part 4A, in the Surveying Act in a new part 6A, and in the Veterinary Surgeons Act 1986 and Veterinary Practice Act 2003 in new parts 6B and 9A. Supreme Court appeals in relation to architects and surveyors will work as follows. Any party to proceedings in the tribunal can appeal to the Supreme Court against the tribunal's decision on a question of law. If the court grants leave, they can obtain a review on the merits. However, an appeal against any interlocutory decision, or a decision made by consent, or a decision as to costs, can be made only by leave of the Supreme Court.

In relation to veterinary practitioners, similar rules apply but with a number of differences that relate principally to the category of decision made by the tribunal. A decision of the tribunal made following review of a decision of the Veterinary Practitioners Board may be appealed by a party to the tribunal proceedings on a point of law, or with leave, on the merits. A decision of the tribunal in relation to a disciplinary order made under the relevant section of the veterinary legislation may be appealed to the Supreme Court by a veterinary practitioner, or former veterinary practitioner, on a point of law or, with the court's leave, on the merits. The person who made the original complaint may also appeal the decision, but only on a point of law or in relation to any penalty imposed. In relation to both original and review decisions, appeals against interlocutory decisions, decisions by consent or decisions as to costs can be made only by leave of the Supreme Court.

The bill also amends the Children and Young Persons (Care and Protection) Act 1988. The amendment is made by adding a new sub-paragraph (j) to section 264 (1) of the Act. This section sets out matters in relation to which regulations may be made under the Act. The aim of the amendment is to allow for the tribunal to review certain decisions made in relation to a family day care children's service. Until now, only the Supreme Court has had power to review such decisions. Granting a power of review to the tribunal will facilitate quick, practicable and resource effective access to review. In relation to transitional arrangements, the bill provides that all amending legislation, except that relating to the Children and Young Persons (Care and Protection) Act, commences on the date of proclamation. However, the new rights created will not apply to two categories of proceedings.

The first category is pending proceedings before an appeal panel. If proceedings were instituted in exercise of an existing right of appeal and had not been determined by the appeal panel at the date of commencement then the proceedings are to be determined as if the new legislation had not been enacted. The second category relates to interlocutory matters. New subsections (2A), (2B) and (2C) of section 113

will not apply to any accrued right of appeal to an appeal panel that had not been exercised, or any appeal that was pending before the panel on the date of commencement. In relation to the Children and Young Persons (Care and Protection) Act, the amendment proposed will commence on the date of assent to the proposed Act. In conclusion, this bill will bring real benefits to our system of administrative review. It will allow the tribunal to utilise its resources more effectively to hear more matters more quickly. It will, in short, improve access to justice in administrative matters. I commend the bill to the House.