NSW Legislative Council Hansard

ADMINISTRATIVE DECISIONS TRIBUNAL AMENDMENT BILL

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Second Reading

The Hon. JOHN HATZISTERGOS (Minister for Justice, and Minister Assisting the Premier on Citizenship) [3.37 p.m.]: I move:

That this bill be now read a second time.
I seek leave to have the second reading speech incorporated in *Hansard*.

Leave granted.

The Government is pleased to introduce the *Administrative Decisions Tribunal Amendment Bill 2004.* This Bill amends the *Administrative Decisions Tribunal Act 1997* to streamline the interlocutory and appeals process 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, 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 saving 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 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 cost. The cost of panel hearings in 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 proposed section 113(2A)-(2C), 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 that lack merit or 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, 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 and 54H and 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 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* a new Part 6A, and in the *Veterinary Surgeons Act 1986* and *Veterinary Practice Act 2003,* 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 only be made 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 only be made 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 the 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 have 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. Proposed section 113(2A)-(2C) 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.

The Hon. GREG PEARCE [3.37 p.m.]: The Opposition does not oppose the Administrative Decisions Tribunal Amendment Bill. The purpose of the bill is to amend the Administrative Decisions Tribunal Act 1997 to make further provision with respect to interlocutory matters and to amend certain Acts to provide direct rights of appeal to the Supreme Court from the Administrative Decisions Tribunal [ADT] instead of to an appeal panel of the tribunal. The Administrative Decisions Tribunal was established to provide a central, cost effective and convenient way for the people of New South Wales to obtain review of administrative decisions and to have certain general complaints resolved.

This bill amends the 1997 Act in a number of ways. First, it provides that any appeal against an interlocutory decision of the tribunal to an ADT appeal panel may proceed only with the leave of the panel. This will promote the finality of interlocutory decisions and will give the tribunal the power to control the number of interlocutory matters that proceed to appeal. The bill also enables the president of the ADT to direct that an interlocutory matter both in the first instance and at the level of the appeal panel can be constituted by a single presidential judicial member. As a result, these matters can proceed more quickly, hopefully at a reduced cost to the ADT. The bill also removes any right to appeal decisions involving architects, surveyors and veterinary surgeons to an ADT appeal panel. Instead, these appeals will go directly to the Supreme Court.

Currently, most professional disciplinary matters appealed in the ADT are then appealed to the Supreme Court. It is hoped that abolishing the intermediate level of appeal will expedite the process of appeal for the applicant and will produce both administrative and financial savings for the ADT. The Coalition sought comment from the New South Wales Law Society, the Australian Institute of Quantity Surveyors, the Australian Veterinary Association and the Royal Australian Institute of Architects, and none of those organisations has expressed any particular concern about the proposal on behalf of its members. The bill also amends the Children and Young Persons (Care and Protection) Act 1998 to provide for certain decisions in relation to family day care children services to be reviewed by the ADT. At present only the Supreme Court has the power to review such decisions, and granting a power of review to the ADT should facilitate quicker, practical and resource-effective access to the review.

The amendments will allow the ADT to make annual savings and to reduce administrative delays because the tribunal will be able to utilise its resources more effectively and to hear matters more quickly. I note that when introducing this bill the Parliamentary Secretary in the other place highlighted the fact that there would be savings. One must be surprised about the level of savings. I suppose it fits within the context of the Government's current disastrous budgetary situation. I note that the Parliamentary Secretary estimated that annual savings of $168,000 would be achieved if the amendments were passed. No doubt it is laudable to make those savings, but I am concerned that the Government is in such a situation that it needs to amend the Act for that purpose. As I said, the Opposition does not oppose the bill. We expect to see it passed quickly.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS [3.42 p.m.]: The Administrative Decisions Tribunal [ADT] has been responsible for reviewing administrative decisions made by certain New South Wales government agencies. The tribunal has been extremely valuable, particularly in reviewing freedom of information decisions. Indeed, I have received valuable information, as has the public, on freedom of information decisions reviewed by the ADT, and the process is simpler than other mechanisms that are available. The ADT cannot review every decision made by a New South Wales government department or agency; it can review decisions only when the State Parliament has passed an Act giving it the power to do so.

The ADT reviews certain decisions regarding adoption, and community and disability services; it hears complaints about discrimination, vilification, harassment and victimisation referred by the President of the Anti-Discrimination Board; it hears certain types of professional misconduct cases—for example, matters referred to it by the Legal Services Commissioner against a solicitor or barrister; it hears retail lease cases; and it hears appeals in certain circumstances either from decisions of its own divisions or from certain external bodies. The tribunal is made up of six divisions, each of which is responsible for a particular area. The divisions are the general division; the community services division, covering adoption and DOCS; the revenue division, covering gaming and racing; the equal opportunity division, which deals with anti-discrimination matters; the retail leases division, which deals with retail leases; and the legal services division, which deals with solicitors and conveyancers. The tribunal reviews decisions in its general division from 113 different pieces of legislation. The people covered are diverse, ranging alphabetically from apiarists and boxers to wrestlers and veterinary surgeons.

The stated aim of this bill is to streamline the interlocutory and appeals processes of the ADT. This will be achieved by the following. First, an appeal panel of the ADT can now be only one presidential judicial member—at present interlocutory matters are dealt with by more than one member; secondly, by allowing appeals regarding architects, surveyors and veterinarians to go directly to the Supreme Court; and, thirdly, by allowing matters relating to family day care services to be reviewed by the tribunal. The Government estimates that the savings from these amendments will be $168,000 a year, which seems extraordinarily modest for a bill passing through this House. I wonder what the cost of drafting the bill and putting it through the House is, given that this bill is designed to save just $168,000. Of course, that is only an estimate. The amendments seem to have the ability to take the workload off the tribunal in areas that this bill affects. However, allowing appeals to be heard by one member, rather than a panel, is good for efficiency, economy and it will save $168, 000. However, it will mean that appellants are in more of a legal lottery as to which member they get. If the panel has three members the chances of both sides getting a fairer result are higher. I am a little concerned and cautious about this, although I will not oppose the bill.

The Hon. JOHN HATZISTERGOS (Minister for Justice, and Minister Assisting the Premier on Citizenship) [3.45 p.m.], in reply: I commend the bill to the House.

Motion agreed to.

Bill read a second time and passed through remaining stages.

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