

TRIBUNAL WATCH

Law and Justice Legislation Amendment Act (No. 1) 1995

On 1 December 1995, the Law and Justice Legislation Amendment Act (No. 1) 1995 was passed by Parliament and commenced on Royal Assent (16 December 1995).

The Act amends the *Administrative Appeals Tribunal Act 1975* (the AAT Act) to give effect to certain recommendations of the Report of the Review on the Administrative Appeals Tribunal, conducted by the Administrative Appeals Tribunal between October 1990 and November 1991. Some changes to the AAT Act recommended by the Review were enacted by the *Administrative Appeals Tribunal Amendment Act 1993*. The Law and Justice Legislation Amendment Act implements other recommendations in the Review directed at streamlining the procedures of the Tribunal and clarifying the powers of the Tribunal in procedural matters.

The Act also establishes a Security Appeals Division of the AAT (see below).

The Law and Justice Legislation Amendment Act amends the AAT Act by providing:

- for two member hearings;
- for the creation of the office of District Registrar and Conference Registrar;
- that, where the parties consent, the AAT may dispense with a hearing if the issues are suitable for determination in the absence of the parties;
- for application of confidentiality provisions of other Acts;
- that, after an application for review of a decision has been lodged, the decision-maker may only vary the decision where:
 - the decision-maker is specifically authorised to do so by the relevant statute; or
 - the AAT and the parties consent;

- that, where the AAT has made an order staying the decision under review which has remained in force until the AAT's decision, unless the Tribunal or the Federal Court otherwise directs, that decision does not come into effect until the time for an appeal to the Federal Court has expired or the appeal is determined;
- for correction of errors in decisions or statements of reasons; and
- for review by the Tribunal of a taxation of costs.

The amendments also provide that the AAT has the power to remit matters to the decision-maker for reconsideration at any stage of the proceedings.

The *Federal Court of Australia Act 1976* is amended to allow for a party to an arbitration to seek a review, on a question of law, of an award made in arbitration. Where the arbitration is not complete, a party to the arbitration will be able to request the arbitrator to seek leave for a review on a question of law.

The *Judiciary Act 1903* is amended to remove the personal power of the Chief Justice to issue commissions to persons authorising them to administer oaths and affirmations for the purposes of proceedings in the High Court (there are other provisions by which commissions can be issued without requiring a personal power).

The Act removes gender-specific language from the *Administrative Appeals Tribunal Act 1975*.

The Act also makes amendments consequential on the amendments to the *Administrative Appeals Tribunal Act 1975* to the:

- Estate Duty Assessment Act 1914;
- Federal Proceedings (Costs) Act 1981;
- Fringe Benefits Tax Assessment Act 1986;
- Income Tax Assessment Act 1936;

- Pay-roll Tax Assessment Act 1941;
- Pay-roll Tax (Territories) Assessment Act 1971; and
- Safety, Rehabilitation and Compensation Act 1988.

Security Appeals Tribunal incorporated into AAT

Under the *Law and Justice Legislation Amendment Act (No. 1) 1995*, the Security Appeals Tribunal is abolished and a new Security Appeals Division of the Administrative Appeals Tribunal is established. The abolition of the Security Appeals Tribunal involves amendments to the ASIO Act, the AAT Act, the AD(JR) Act and the Migration Act.

ASIO conducts security assessments on individuals who, because of their work for Commonwealth agencies, require access to information or areas to which access is limited or controlled on security grounds. The Security Appeals Division will deal with the review of adverse or qualified security assessments of a person made by ASIO under the *Australian Security Intelligence Organisation Act 1979*. The Security Appeals Division will also deal with the review of decisions made under the *Archives Act 1983* refusing access to ASIO records.

The procedures of the Security Appeals Division will be similar to those used in the Security Appeals Tribunal. In particular, the provisions of the ASIO Act that relate to the confidentiality of proceedings and the qualifications for appointment are incorporated into the AAT Act. However, specific procedural requirements have been introduced because of the security aspects of cases in this Division. These procedural amendments relate to:

- the constitution of the Division—when conducting a review, the Division will be constituted by a presidential member (who must preside at Security Appeals Division hearings) and two other members;
- secrecy of information presented at hearings—under the ASIO Act, the applicant or a representative of the applicant, and ASIO

or the Commonwealth agency, had to be absent when the Security Appeals Tribunal was hearing submissions or evidence from the other party. The amendments mean that ASIO and the Commonwealth agency will no longer be required to be absent when the applicant's case is being put to the AAT. Further, the applicant or the applicant's representative will generally be allowed to be present when the Division is hearing submissions or evidence from ASIO or the Commonwealth agency (except when the security or defence of Australia is involved);

- privilege against self-incrimination—the ASIO Act provided that a person may not refuse to answer questions on the ground of self-incrimination but that evidence obtained could not be used in evidence in other proceedings. This provision has not been incorporated into the AAT Act; and
- appeals from Security Appeals Division—under the ASIO Act, subject to the Constitution, a decision or finding of the Security Appeal Tribunal was not subject to review by any court or tribunal. This limitation has not been carried into the AAT Act. The existing provisions for appeal from a decision by the AAT will also apply to decisions made by the Security Appeals Division, so that appeals and references on questions of law will be able to be taken to the Federal Court.

Presidential Members of the AAT and Senior Members or Members cross-assigned to the Security Appeals Division within the AAT will be able to exercise powers of the AAT in the Security Appeals Division. The following AAT members have recently been cross-assigned to the new Security Appeals Division:

Senior Member Dwyer
 Senior Member Kiosoglous
 Senior Member Beddoe
 Senior Member Allen
 Senior Member Barbour
 Senior Member Gibbs
 Mr Brassil, Member