



**C R O W N
S O L I C I T O R ' S
O F F I C E**
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This bulletin summarises recent significant changes to the *Anti-Discrimination Act 1977* and the *Administrative Decisions Tribunal Act 1997* which may affect your agency.

These changes commenced on 1 January 2009.

Key points:

- Maximum amount of compensation for discrimination complaints increased from \$40,000 to \$100,000
- Rights to representation in the Administrative Decisions Tribunal amended
- President rather than the Attorney General to grant exemptions from the *Anti-Discrimination Act*
- Parties may be represented by agents in the Tribunal only with leave
- Changes to Tribunal's powers to award costs against a party

Parliament has enacted the *Administrative Decisions Tribunal Amendment Act 2008* which contains a number of changes to the procedure in the Administrative Decisions Tribunal concerning reviewable decisions which are of interest to administrators. In addition the Act contains amendments to the *Anti-Discrimination Act 1977*.

AMENDMENTS TO THE ANTI-DISCRIMINATION ACT

The Act contains a number of amendments to the *Anti-Discrimination Act* which removes specific provisions in Sections 98, 107 and 110 and replacing them with the powers already contained in the *Administrative Decisions Tribunal Act*.

Section 98 previously provided for a party to discrimination proceedings before the Tribunal to appear personally or if a corporation, by a director, secretary or agent of the corporation. If the party is not a corporation it may be represented by an agent only with leave. Now s.71 of the *Administrative Decisions Tribunal Act* will apply which has been amended also (see below).

Section 110 dealt with costs of Tribunal proceedings. It has now been amended and costs are to be awarded under Section 88 of the *Administrative Decisions Tribunal Act*. That provision has been amended itself (see below).

Section 108 has been amended to provide that the Tribunal may order a respondent to pay a complainant damages not exceeding \$100,000 where the complaint has been substantiated. Previously the maximum was \$40,000.

The granting of exemptions to the *Anti-Discrimination Act* or the regulations was previously done by the Attorney General on the recommendation of the Anti-Discrimination Board. **Section 126** has been amended to allow the President of the Anti-Discrimination Board to grant such exemptions. Decisions regarding exemptions by the President may now be reviewed by the Administrative Decisions Tribunal on application by an “affected person”, which means the person who applied for the decision or a person who is otherwise directly affected by the decision.

Amendments to the *Administrative Decisions Tribunal Act*

There are a number of amendments but this bulletin will only deal with the most significant ones.

Section 53 has been amended to allow an administrator and the applicant engaged in an internal review to agree on a period in which the administrator must notify the applicant in writing of the outcome of the internal review, instead of the prescribed 21 days.

Section 58 is amended to require the administrator to lodge with the Tribunal a copy of any statement of reasons for a decision in an internal review conducted in respect of the decision under review, as well as the other documentation which must already be provided.

Section 55 has been amended to require a person who applies to the Tribunal for a review of a reviewable decision to have “duly applied for an internal review” as well as that review having been finalised or taken to be finalised. Amendments are also made to the period in which an application for a review of a decision must be made to the Tribunal, although the default application period remains 28 days after the day on which the internal review is taken to have been finalised in most cases. Formerly the period was described in the rules.

Despite what is stated above, the Tribunal may deal with an application for review even though the applicant has not duly applied for an internal review if the Tribunal is satisfied that there was an unreasonable refusal to consider the application and the application to the Tribunal was made within a reasonable time, or it is necessary for the Tribunal to deal with the application in order to protect the applicant's interests and the application was made within a reasonable time.

Section 67 has been amended to omit s.67(4) and insert a new subsection which provides for when the Tribunal may make a person a party to proceedings.

Previously this depended on the satisfaction of the Tribunal that the interests of the person were likely to be affected by the decision. Now the Tribunal may order a party to be joined if the Tribunal considers that the person ought to have been joined as a party or is a person whose joinder is necessary to the determination of the all matters in dispute in the proceedings.

Section 71 has been amended so that a party to proceedings before the Tribunal may now only be represented by an agent (other than a legal practitioner) with the leave of the Tribunal under subsection (2). The Tribunal may grant or refuse leave and revoke any leave that has been granted. The rules of the Tribunal may make provision with respect to when leave is to be granted or revoked.

Section 73(5) has been amended so that additional to the Tribunal's existing powers to dismiss any proceedings, it may dismiss them if an applicant has failed to appear in the proceedings or if the Tribunal considers there has

been want of prosecution in the proceedings.

In addition the Tribunal may reinstate proceedings that have been dismissed if the Tribunal considers there is a reasonable explanation for the failure to appear.

Section 74 makes clear that a member or assessor who presides over a preliminary conference in Tribunal proceedings is not excluded from participating as a member of the Tribunal determining the proceedings unless a party to the preliminary conference objects and the party demonstrates that the further participation of the member or assessor is likely to prejudice the party's case.

Section 79A has been inserted to allow the Tribunal to refer a question of law to the Supreme Court for the opinion of the Court if the President of the Tribunal has consented in writing.

Section 88 dealing with costs has been amended. Each party to proceedings before the Tribunal is to bear their own costs except as provided in s.88(1A). The Tribunal may only award costs (subject to its rules and any other Act or law) if it is satisfied that it is fair to do so having regard to:

- (a) Whether a party has conducted the proceedings in a way that unnecessarily disadvantages another party, by conduct such as failure to comply with an order or direction without reasonable excuse; failure to comply with the Act, the regulations, the rules or any other relevant provision; asking for an adjournment as a result of such failure; causing an adjournment; or vexatiously conducting the proceedings;
- (b) Whether the party is responsible for unreasonably prolonging the proceedings;
- (c) The relative strengths of the claims made by each party including whether a claim has no tenable basis in fact or law.
- (d) The nature and complexity of the proceedings;
- (e) Any other matter that the Tribunal considers relevant.

This is a significant departure from the previous provision which required that the Tribunal be satisfied that there were special circumstances warranting an award for costs. However the Tribunal may not award costs in an application for an original decision unless the enactment giving the Tribunal jurisdiction provides for costs to be awarded. Costs may be awarded in discrimination proceedings under s.110 of the *Anti-Discrimination Act*.

Section 102 has been repealed. That section allowed the Tribunal to refer a matter for mediation or neutral evaluation.

Section 113 dealing with the right to appeal allows a party to appeal within 28 days after the Tribunal gives the party oral reasons or written reasons whichever is the later. This deals with the situation where the Tribunal sometimes does not provide written reasons.

This bulletin is prepared for the information of clients of the Crown Solicitor and is not intended to provide a comprehensive summary or constitute legal advice.

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