



Australian Capital Territory

# **Administrative Decisions (Judicial Review) Act 1989**

**A1989-33**

**Republication No 17**

**Effective: 11 January 2006 – 1 June 2006**

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Last amendment made by A2005-62

Authorised by the ACT Parliamentary Counsel

## About this republication

### The republished law

This is a republication of the *Administrative Decisions (Judicial Review) Act 1989* (including any amendment made under the *Legislation Act 2001*, part 11.3 (Editorial changes)) as in force on 11 January 2006. It also includes any amendment, repeal or expiry affecting the republished law to 11 January 2006.

The legislation history and amendment history of the republished law are set out in endnotes 3 and 4.

### Kinds of republications

The Parliamentary Counsel's Office prepares 2 kinds of republications of ACT laws (see the ACT legislation register at [www.legislation.act.gov.au](http://www.legislation.act.gov.au)):

- authorised republications to which the *Legislation Act 2001* applies
- unauthorised republications.

The status of this republication appears on the bottom of each page.

### Editorial changes

The *Legislation Act 2001*, part 11.3 authorises the Parliamentary Counsel to make editorial amendments and other changes of a formal nature when preparing a law for republication. Editorial changes do not change the effect of the law, but have effect as if they had been made by an Act commencing on the republication date (see *Legislation Act 2001*, s 115 and s 117). The changes are made if the Parliamentary Counsel considers they are desirable to bring the law into line, or more closely into line, with current legislative drafting practice.

This republication includes amendments made under part 11.3 (see endnote 1).

### Uncommenced provisions and amendments

If a provision of the republished law has not commenced or is affected by an uncommenced amendment, the symbol **U** appears immediately before the provision heading. The text of the uncommenced provision or amendment appears only in the last endnote.

### Modifications

If a provision of the republished law is affected by a current modification, the symbol **M** appears immediately before the provision heading. The text of the modifying provision appears in the endnotes. For the legal status of modifications, see *Legislation Act 2001*, section 95.

### Penalties

The value of a penalty unit for an offence against this republished law at the republication date is—

- (a) if the person charged is an individual—\$100; or
- (b) if the person charged is a corporation—\$500.



Australian Capital Territory

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Australian Capital Territory

# Administrative Decisions (Judicial Review) Act 1989

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An Act relating to the review on questions of law of certain administrative decisions

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## 1 Name of Act

This Act is the *Administrative Decisions (Judicial Review) Act 1989*.

## 2 Dictionary

The dictionary at the end of this Act is part of this Act.

*Note 1* The dictionary at the end of this Act defines certain terms used in this Act, and includes references (*signpost definitions*) to other terms defined elsewhere.

For example, the signpost definition '*person aggrieved*—see section 3B.' means that the term 'person aggrieved' is defined that section.

*Note 2* A definition in the dictionary (including a signpost definition) applies to the entire Act unless the definition, or another provision of the Act, provides otherwise or the contrary intention otherwise appears (see Legislation Act, s 155 and s 156 (1)).

## 3 Notes

A note included in this Act is explanatory and is not part of this Act.

*Note* See the Legislation Act, s 127 (1), (4) and (5) for the legal status of notes.

## 3A Meaning of *making* and *failure to make* a decision

- (1) For this Act, a reference to the *making* of a decision includes a reference to—
- (a) making, suspending, revoking or refusing to make an order, award or determination; or
  - (b) giving, suspending, revoking or refusing to give a certificate, direction, approval, consent or permission; or
  - (c) issuing, suspending, revoking or refusing to issue a licence, authority or other instrument; or

- (d) imposing a condition or restriction; or
  - (e) making a declaration, demand or requirement; or
  - (f) keeping, or refusing to give up, an article; or
  - (g) doing or refusing to do anything else;
- (2) If provision is made by an enactment for the making of a report or recommendation before a decision is made, the making of the report or recommendation is itself taken, for this Act, to be the **making** of a decision.
- (3) A reference to a **failure to make** a decision includes a reference to a failure to make—
- (a) a decision mentioned in subsection (1) (a) to (g); or
  - (b) a report or recommendation mentioned in subsection (2).

*Note* **Fail** is defined in the Legislation Act, dict, pt 1, to include refuse.

### **3B Meaning of *person aggrieved***

- (1) For this Act, a reference to a **person aggrieved** by a decision includes a reference to—
- (a) a person whose interests are adversely affected by the decision; and
  - (b) for a decision by way of the making of a report or recommendation—a person whose interests would be adversely affected if a decision were, or were not, made in accordance with the report or recommendation.
- (2) For this Act, a reference to a **person aggrieved** by conduct that has been, is being, or is proposed to be engaged in for the purpose of making a decision, includes a reference to a person whose interests are, or would be, adversely affected by the conduct.

- (3) For this Act, a reference to a *person aggrieved* by a failure to make a decision includes a reference to a person whose interests are, or would be, adversely affected by the failure.

**3C Meaning of *conduct engaged in* for purpose of making decision**

For this Act, a reference to *conduct engaged in* for the purpose of making a decision includes a reference to the doing of anything preparatory to the making of the decision, including—

- (a) the taking of evidence; or
- (b) the holding of an inquiry or investigation.

**4 Act to operate despite anything in existing laws**

This Act has effect despite anything contained in any enactment in force at the commencement of this Act.

**5 Applications for review of decisions**

- (1) A person aggrieved by a decision to which this Act applies may apply to the Supreme Court for an order of review in relation to the decision on any 1 or more of the following grounds:
- (a) that a breach of the rules of natural justice happened in relation to the making of the decision;
  - (b) that procedures that were required by law to be observed in relation to the making of the decision were not observed;
  - (c) that the person who purported to make the decision did not have jurisdiction to make the decision;
  - (d) that the decision was not authorised by the enactment under which it was purported to be made;
  - (e) that the making of the decision was an improper exercise of the power given by the enactment under which it was purported to be made;



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- (f) that the decision involved an error of law, whether or not the error appears on the record of the decision;
  - (g) that the decision was induced or affected by fraud;
  - (h) that there was no evidence or other material to justify the making of the decision;
  - (i) that the decision was otherwise contrary to law.
- (2) The reference in subsection (1) (e) to an *improper exercise* of a power includes a reference to—
- (a) taking an irrelevant consideration into account in the exercise of a power; and
  - (b) failing to take a relevant consideration into account in the exercise of a power; and
  - (c) an exercise of a power for a purpose other than a purpose for which the power is given; and
  - (d) an exercise of a discretionary power in bad faith; and
  - (e) an exercise of a personal discretionary power at the direction or behest of another person; and
  - (f) an exercise of a discretionary power in accordance with a rule or policy without regard to the merits of the particular case; and
  - (g) an exercise of a power that is so unreasonable that no reasonable person could have so exercised the power; and
  - (h) an exercise of a power in such a way that the result of the exercise of the power is uncertain; and
  - (i) any other exercise of a power in a way that is abuse of the power.
- (3) The ground mentioned in subsection (1) (h) is not taken to be made out unless—

- (a) the person who made the decision was required by law to reach that decision only if a particular matter was established, and there was no evidence or other material (including facts of which the person was entitled to take notice) from which the person could reasonably be satisfied that the matter was established; or
- (b) the person who made the decision based the decision on the existence of a particular fact, and that fact did not exist.

**6 Applications for review of conduct related to making of decisions**

- (1) If a person has engaged, is engaging, or proposes to engage, in conduct for the purpose of making a decision to which this Act applies, a person aggrieved by the conduct may apply to the Supreme Court for an order of review in relation to the conduct on any 1 or more of the following grounds:
  - (a) that a breach of the rules of natural justice has happened, is happening, or is likely to happen, in relation to the conduct;
  - (b) that procedures that are required by law to be observed in relation to the conduct have not been, are not being, or are likely not to be, observed;
  - (c) that the person who has engaged, is engaging, or proposes to engage, in the conduct does not have jurisdiction to make the proposed decision;
  - (d) that the enactment under which the decision is proposed to be made does not authorise the making of the proposed decision;
  - (e) that the making of the proposed decision would be an improper exercise of the power given by the enactment under which the decision is proposed to be made;
  - (f) that an error of law—

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- (i) has been, is being, or is likely to be, committed in the course of the conduct in the making of the proposed decision; or
  - (ii) is likely to be committed in the making of the proposed decision.
- (g) that fraud has taken place, is taking place, or is likely to take place, in the course of the conduct;
  - (h) that there is no evidence or other material to justify the making of the proposed decision;
  - (i) that the making of the proposed decision would be otherwise contrary to law.
- (2) The reference in subsection (1) (e) to an *improper exercise* of a power includes a reference to—
- (a) taking an irrelevant consideration into account in the exercise of a power; and
  - (b) failing to take a relevant consideration into account in the exercise of a power; and
  - (c) an exercise of a power for a purpose other than a purpose for which the power is given; and
  - (d) an exercise of a discretionary power in bad faith; and
  - (e) an exercise of a personal discretionary power at the direction or behest of another person; and
  - (f) an exercise of a discretionary power in accordance with a rule or policy without regard to the merits of the particular case; and
  - (g) an exercise of a power that is so unreasonable that no reasonable person could have so exercised the power; and
  - (h) an exercise of a power in such a way that the result of the exercise of the power is uncertain; and

- (i) any other exercise of a power in a way that is abuse of the power.
- (3) The ground mentioned in subsection (1) (h) is not taken to be made out unless—
  - (a) the person who proposes to make the decision is required by law to reach that decision only if a particular matter is established, and there is no evidence or other material (including facts of which the person was entitled to take notice) from which the person can reasonably be satisfied that the matter is established; or
  - (b) the person proposed to make the decision on the basis of the existence of a particular fact, and that fact does not exist.

## **7 Applications for failures to make decisions**

- (1) If—
  - (a) a person has a duty to make a decision to which this Act applies; and
  - (b) there is no law that prescribes a period within which the person is required to make that decision; and
  - (c) the person has failed to make that decision;

a person aggrieved by the failure to make the decision may apply to the Supreme Court for an order of review in relation to the failure to make the decision on the ground that there has been unreasonable delay in making the decision.

- (2) If—
  - (a) a person has a duty to make a decision to which this Act applies; and
  - (b) a law prescribes a period within which the person is required to make that decision; and

- (c) the person has failed to make that decision before the end of that period;

a person aggrieved by the failure may apply to the Supreme Court for an order of review in relation to the failure to make the decision within that period on the ground that the person has a duty to make the decision even though the period has ended.

## **8 Effect of Act on other rights**

- (1) The rights given by section 5, section 6 and section 7 to a person to seek an order for review—
  - (a) are additional to the rights of the person to seek a review in another way; and
  - (b) must be disregarded for the *Ombudsman Act 1989*, section 6 (6).
- (2) However—
  - (a) the Supreme Court or any other court may, in a proceeding brought otherwise than under this Act, refuse to grant an application for review in relation to a matter if an application for review of that matter has been made to the Supreme Court under section 5, section 6 or section 7; and
  - (b) the Supreme Court may, in its discretion, refuse to grant an application for review of a matter under section 5, section 6 or section 7 if—
    - (i) the applicant has sought a review by a court including the Supreme Court of the matter otherwise than under this Act; or
    - (ii) adequate provision is made by a law other than this Act under which the applicant is entitled to seek a review of that matter; or

(iii) the matter to which the application relates arises under the *Land (Planning and Environment) Act 1991* or the *Heritage Act 2004* and is a matter being reviewed, or for which application has been made for review, under a law other than this Act, whether on the application of the person who has made application to the Supreme Court for review of the matter under this Act or anyone else.

(3) In this section:

*review* includes a review by way of reconsideration, rehearing, appeal, the grant of an injunction or of a prerogative or statutory writ or the making of a declaratory or other order.

## **9 Applications for order of review must set out grounds**

An application to the Supreme Court for an order of review must set out the grounds of the application.

## **10 Period in which application for order of review must be made**

(1) An application to the Supreme Court for an order of review in relation to a decision that has been made (including a decision made after the end of the period within which it was required to be made) must be made within the period required by subsection (2) (or any further time allowed by the court) if the terms of the decision were—

- (a) recorded in writing; and
- (b) set out in a document that was given to the applicant.

*Note* The court may allow further time after the end of the period required by s (2) (see Legislation Act, s 151C).

(2) For subsection (1), the period within which an application for an order of review is required to be made is the period beginning on the day the decision is made and ending 28 days after the relevant day.

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- (3) If there is no period prescribed for making an application for an order for review in relation to a particular decision, the Supreme Court may refuse to consider an application for an order for review in relation to the decision if it is of the opinion that the application was not made within a reasonable time after the decision was made.
- (4) If there is no period prescribed for making an application by a particular person for an order for review in relation to a particular decision, the Supreme Court may refuse to consider an application by the person for an order for review in relation to the decision if it is of the opinion that the application was not made within a reasonable time after the decision was made.
- (5) In forming an opinion for subsection (3) or (4), the Supreme Court—
- (a) must have regard to—
    - (i) the time when the applicant became aware of the decision; and
    - (ii) if subsection (4) applies—the period prescribed for the making of an application by anyone else for an order of review in relation to the decision; and
  - (b) may have regard to anything else it considers relevant.
- (6) In subsection (2):
- relevant day*** means—
- (a) if the decision includes, or is accompanied by, a written statement of reasons for the decision—the day a document setting out the terms of the decision is given to the applicant; or
- Note* For the meaning of ***statement of reasons***, see the dict.
- (b) if paragraph (a) does not apply and a written statement of reasons for the decision is given to the applicant (otherwise than because of a request under section 13 (1)) not later than 28 days after the day a document setting out the terms of the

decision is given to the applicant—the day the statement is given to the applicant; or

- (c) if paragraph (a) does not apply and the applicant requests the person who made the decision to give a statement under section 13 (1)—
  - (i) the day the statement is given to the applicant; or
  - (ii) the day the applicant is told under section 13 (3) that the applicant was not entitled to make the request; or
  - (iii) the day the Supreme Court makes an order under section 13 (6) declaring that the applicant was not entitled to make the request; or
  - (iv) the day the applicant is told under section 14 (3) or section 15 (3) that the statement will not be given to the applicant.
- (d) in any other case—the day a document setting out the terms of the decision.

**11 Application for order of review not limited to grounds in application**

The applicant for an order of review is not limited to the grounds set out in the application but, if the applicant wishes to rely on a ground not set out in the application, the Supreme Court may direct the application be amended to state the ground.

**12 Application to be made a party to a proceeding**

- (1) A person interested in a decision, conduct or failure in relation to which an application has been made to the Supreme Court under this Act may apply to the Supreme Court to be made a party to the application.
- (2) The Supreme Court may, in its discretion—



- (a) grant the application either unconditionally or subject to the conditions that it considers appropriate; or
- (b) refuse the application.

### **13 Reasons for decision may be obtained**

- (1) If a person (the *decision-maker*) makes a decision to which this section applies, a person (the *requester*) who is entitled to make an application to the Supreme Court under section 5 in relation to the decision may, in writing, request the decision-maker to provide a written statement of reasons in relation to the decision.

*Note* For the meaning of *statement of reasons*, see the dict.

- (2) The decision-maker must, as soon as practicable and in any event not later than 28 days after the day the decision-maker receives the request (the *request day*), prepare the statement and give it to the requester.
- (3) If the decision-maker is of the opinion that the requester was not entitled to make the request, the decision-maker may, not later than 28 days after the request day—
  - (a) give to the requester written notice of the decision-maker's opinion; or
  - (b) apply to the Supreme Court under subsection (6) for an order declaring that the requester was not entitled to make the request.
- (4) Despite subsection (2), if the decision-maker gives notice under subsection (3) or applies to the Supreme Court under subsection (6), the decision-maker is not required to comply with the request unless—
  - (a) the court, on an application under subsection (6), orders the decision-maker to give the statement; or
  - (b) the decision-maker has applied to the court under subsection (6) for an order declaring that the requester was not

entitled to make the request and the court refuses the application.

- (5) If subsection (4) (a) or (b) applies, the decision-maker must prepare the statement and give it to the requester not later than 28 days after the day of the Supreme Court's decision.
- (6) On the application of either the decision-maker or requester under this subsection, the Supreme Court may make an order declaring that the requester was, or was not, entitled to make the request.
- (7) Despite subsection (2), the decision-maker may refuse to prepare and give the statement to the requester if—
  - (a) for a decision the terms of which were recorded in writing and set out in a document that was given to the requester—the request was made later than 28 days after the day the document was given to the requester; or
  - (b) in any other case—the relevant request was not made within a reasonable time after the decision was made.
- (8) If subsection (7) (a) or (b) applies, the decision maker must give to the requester, not later than 14 days after the request day, written notice stating—
  - (a) that the statement will not be given to the requestor; and
  - (b) the reasons why it will not be given.
- (9) For subsection (7) (b), a request for a statement in relation to a decision is taken to have been made within a reasonable time after the decision was made if the Supreme Court, on application by the requester, declares that the request was made within a reasonable time after the decision was made.
- (10) On application by the requester under this subsection, the Supreme Court may order the decision-maker to give the requester, within a stated period, an additional statement containing better particulars in relation to stated matters if the court considers that the statement

given to the requester does not contain adequate particulars, in relation to the decision.

- (11) A regulation may declare decisions not to be decisions to which this section applies.
- (12) A regulation made under subsection (11) applies only in relation to decisions made after the regulation takes effect.
- (13) In this section:

*decision to which this section applies* means a decision to which this Act applies, other than—

- (a) a decision to which the *Administrative Appeals Tribunal Act 1989*, section 26 (Person affected by decision may obtain reasons for decision) applies; or
- (b) a decision that includes, or is accompanied by, a statement of reasons; or
- (c) a decision mentioned in schedule 2.

#### **14 Certain information not required to be disclosed**

- (1) This section applies in relation to any information to which a request made to a person under section 13 (1) relates if the information—
  - (a) relates to the personal affairs or business affairs of a person other than the person making the request; and
  - (b) is information—
    - (i) that was supplied in confidence; or
    - (ii) the publication of which would reveal a trade secret; or
    - (iii) that was provided in compliance with a duty imposed by an enactment; or
    - (iv) the giving of which in accordance with the request would be in contravention of an enactment that expressly

imposes on the person to whom the request is made a duty not to divulge or communicate information of that kind—

- (A) to anyone; or
  - (B) to anyone, other than a particular person; or
  - (C) except in particular circumstances.
- (2) If a person has been requested under section 13 (1) to give a statement to a person—
- (a) the person to whom the request is made is not required to include in the statement any information in relation to which this section applies; and
  - (b) if the statement would be false or misleading if it did not include the information—the person is not required to give the statement.
- (3) If, under subsection (2), information is not included in a statement provided by a person or a statement is not provided by a person, the person must provide written notice to the person who requested the statement—
- (a) if information is not included in a statement—stating that the information is not so included and giving the reason for not including the information; or
  - (b) if a statement is not provided—stating that the statement will not be provided and giving the reason for not providing the statement.
- (4) This section does not affect the power of the Supreme Court to make an order for the discovery of documents or to require the giving of evidence or the production of documents to the court.

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**15 Ministerial certificate about disclosure of information**

- (1) This section applies to information relating to a matter if the Minister certifies, in writing, that the disclosure of information relating to the matter would be contrary to the public interest—
  - (a) because it would involve the disclosure of deliberations or a decision of the Executive or of a committee of the Executive; or
  - (b) for any other stated reason that could form the basis for a claim in a judicial proceeding that the information should not be disclosed.
- (2) If a person has been requested under section 13 to give a statement to a person—
  - (a) the person to whom the request is made is not required to include in the statement any information in relation to which this section applies; and
  - (b) if the statement would be false or misleading if it did not include the information—the person is not required to give the statement.
- (3) If, under subsection (2), information is not included in a statement provided by a person or a statement is not provided by a person, the person must give a written notice to the person who requested the statement—
  - (a) if information is not included in a statement—stating that the information is not so included and giving the reason for not including the information; or
  - (b) if a statement is not provided—stating that the statement will not be provided and giving the reason for not providing the statement.

- (4) This section does not affect the power of the Supreme Court to make an order for the discovery of documents or to require the giving of evidence or the production of documents to the court.

**16 Stay of proceedings**

- (1) The making of an application to the Supreme Court under section 5 in relation to a decision does not affect the operation of the decision or prevent the implementation of the decision, but—
- (a) the Supreme Court may, by order, on the conditions (if any) that the court decides, suspend the operation of the decision; and
  - (b) the Supreme Court may order, on the conditions (if any) that the court decides, a stay of all or any proceedings under the decision.
- (2) The Supreme Court may make an order under subsection (1) on its own initiative or on the application of the person who made the application under section 5.

**17 Powers of Supreme Court in relation to applications for order of review**

- (1) On an application for an order of review in relation to a decision, the Supreme Court may, in its discretion, make all or any of the following orders:
- (a) an order quashing or setting aside the decision, or a part of the decision, with effect from the date of the order or from the earlier or later date that the court specifies;
  - (b) an order referring the matter to which the decision relates to the person who made the decision for further consideration, subject to the directions that the court considers appropriate;
  - (c) an order declaring the rights of the parties in relation to any matter to which the decision relates;

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- (d) an order directing any of the parties to do, or to refrain from doing, anything to do justice between the parties.
- (2) On an application for an order of review in relation to conduct that has been, is being, or is proposed to be, engaged in for the purpose of the making of a decision, the Supreme Court may, in its discretion, make either or both of the following orders:
    - (a) an order declaring the rights of the parties in relation to any matter to which the conduct relates;
    - (b) an order directing any of the parties to do, or to refrain from doing, anything to do justice between the parties.
  - (3) On an application for an order of review in relation to a failure to make a decision, or in relation to a failure to make a decision within the period within which the decision was required to be made, the Supreme Court may, in its discretion, make all or any of the following orders:
    - (a) an order directing the making of the decision;
    - (b) an order declaring the rights of the parties in relation to the making of the decision;
    - (c) an order directing any of the parties to do, or to refrain from doing, anything to do justice between the parties.
  - (4) The Supreme Court may at any time, on its own initiative or on the application of any party, revoke, vary, or suspend the operation of any order made by it under this section.

**18 Change in person holding, or performing the duties of, an office**

- (1) This section applies if—
  - (a) a person has, in the performance of the duties of an office, made a decision in relation to which an application may be made to the Supreme Court under this Act; and

- (b) the person no longer holds, or, for whatever reason, is not performing the duties of, that office.
- (2) This Act has effect as if the decision had been made by—
  - (a) the person for the time being holding or performing the duties of that office; or
  - (b) if there is no person for the time being holding or performing the duties of that office or that office no longer exists—the person that the Minister administering the enactment under which the decision was made, or a person authorised by that Minister, specifies.

## **19 Intervention by Minister**

- (1) The Minister may, on behalf of the Territory, intervene in a proceeding before the Supreme Court under this Act.
- (2) If the Minister intervenes in a proceeding—
  - (a) the Minister is taken to be a party to the proceeding; and
  - (b) the Supreme Court may, in the proceeding, make orders about costs against the Territory that the court considers appropriate.

## **20 Act not to apply to certain decisions**

- (1) A regulation may declare decisions to be decisions that are not subject to judicial review by the Supreme Court under this Act.
- (2) If a regulation is so made in relation to a decision—
  - (a) section 5 does not apply in relation to that decision; and
  - (b) section 6 does not apply in relation to conduct that has been, is being, or is proposed to be, engaged in for the purpose of making that decision; and
  - (c) section 7 does not apply in relation to a failure to make that decision.



- (3) A regulation made for subsection (1) applies only in relation to decisions made after the regulation take effect.

**21 Regulation-making power**

The Executive may make regulations for this Act.

*Note* A regulation must be notified, and presented to the Legislative Assembly, under the Legislation Act.

## Schedule 1 Decisions to which this Act does not apply

(see dict, def *decision to which this Act applies*)

column 1 item	column 2 enactment	column 3 decision under enactment
1	<i>Building Act 2004</i>	<ul style="list-style-type: none"> <li>a decision under section 96 (Approval of fidelity fund schemes)</li> <li>a decision under section 107 (Suspension or cancellation of approval of approved scheme)</li> </ul>
2	<i>Confiscation of Criminal Assets Act 2003</i>	<ul style="list-style-type: none"> <li>any decision</li> </ul>
3	<i>Crimes (Restorative Justice) Act 2004</i>	<ul style="list-style-type: none"> <li>any decision</li> </ul>
4	<i>Duties Act 1999</i>	<ul style="list-style-type: none"> <li>a decision making or forming part of the process of making, or leading up to the making of, an assessment</li> <li>a decision disallowing, completely or partly, an objection to an assessment</li> <li>a decision refusing to amend, completely or partly, an assessment</li> </ul>
5	<i>Electoral Act 1992</i>	<ul style="list-style-type: none"> <li>a decision under part 4 (Electoralates)</li> </ul>
6	<i>Financial Institutions Duty Act 1987</i> (which has been repealed)	<ul style="list-style-type: none"> <li>a decision making or forming part of the process of making, or leading up to the making, of an assessment</li> <li>a decision disallowing, completely or partly, an objection to an assessment</li> <li>a decision refusing to amend, completely or partly, an assessment</li> </ul>

<b>column 1 item</b>	<b>column 2 enactment</b>	<b>column 3 decision under enactment</b>
7	<i>Gene Technology (GM Crop Moratorium) Act 2004</i>	<ul style="list-style-type: none"> <li>• a decision of the Minister under section 7 (Moratorium orders)</li> <li>• a decision of the Minister under section 8 (Exemptions)</li> </ul>
8	<i>Gunghalin Drive Extension Authorisation Act 2004</i>	<ul style="list-style-type: none"> <li>• any decision</li> </ul>
9	<i>Inquiries Act 1991</i>	<ul style="list-style-type: none"> <li>• any decision</li> </ul>
10	<i>Judicial Commissions Act 1994</i>	<ul style="list-style-type: none"> <li>• a decision of the Executive under section 5 (1), section 16 (3) or section 18</li> <li>• a decision of a member of the Legislative Assembly to propose a motion in accordance with section 14 (3) (a) or to give notice of the motion to the Attorney-General in accordance with section 14 (3) (b)</li> <li>• a decision of the Attorney-General under section 16 (1), section 17 (1) or section 23 (3)</li> <li>• a resolution passed by the Legislative Assembly for the examination by a judicial commission of a complaint in relation to a judicial officer</li> <li>• a decision of a judicial commission</li> </ul>
11	<i>Legislation Act 2001</i>	<ul style="list-style-type: none"> <li>• a decision under chapter 5 (Regulatory impact statements for subordinate laws and disallowable instruments)</li> </ul>
12	<i>Payroll Tax Act 1987</i>	<ul style="list-style-type: none"> <li>• a decision making or forming part of the process of making, or leading up to the making, of an assessment</li> <li>• a decision disallowing, completely or partly, an objection to an assessment</li> <li>• a decision refusing to amend, completely or partly, an assessment</li> </ul>

**Schedule 1** Decisions to which this Act does not apply

<b>column 1 item</b>	<b>column 2 enactment</b>	<b>column 3 decision under enactment</b>
13	<i>Plant Diseases Act 2002</i>	<ul style="list-style-type: none"> <li>• a decision of the Minister under part 3 (Measures for the control of diseases and pests)</li> </ul>
14	<i>Royal Commissions Act 1991</i>	<ul style="list-style-type: none"> <li>• any decision</li> </ul>
15	<i>Stamp Duties and Taxes Act 1987</i> (which has been repealed)	<ul style="list-style-type: none"> <li>• a decision making or forming part of the process of making, or leading up to the making, of an assessment</li> <li>• a decision disallowing, completely or partly, an objection to an assessment</li> <li>• a decision refusing to amend, completely or partly, an assessment</li> </ul>
16	<i>Taxation Administration Act 1999</i>	<ul style="list-style-type: none"> <li>• a decision making or forming part of the process of making, or leading up to the making, of an assessment</li> <li>• a decision disallowing, completely or partly, an objection to an assessment</li> <li>• a decision refusing to amend, completely or partly, an assessment</li> </ul>
17	<i>Water Resources Act 1998</i>	<ul style="list-style-type: none"> <li>• a decision under section 63A (Moratorium on granting licences etc)</li> </ul>

## Schedule 2      Decisions to which s 13 does not apply

(see s 13 (13))

### 2.1      Administration of criminal justice

A decision relating to the administration of criminal justice and, in particular—

- (a) a decision in relation to the investigation or prosecution of a person for an offence against a law in force in the ACT; and
- (b) a decision in relation to the appointment of an investigator or inspector for the purposes of such an investigation; and
- (c) a decision in relation to the issue of a search warrant under a law in force in the ACT; and
- (d) a decision under a law in force in the ACT requiring the production of a document, the giving of information or the issue of a subpoena or summons to a person as a witness.

### 2.2      Civil proceedings

A decision relating to the bringing or conduct of a civil proceeding, including a decision relating to, or that may result, in the bringing of a civil proceeding for the recovery of a financial penalty arising from a contravention of an enactment and, in particular—

- (a) a decision in relation to the investigation of a person for such a contravention; and
- (b) a decision in relation to the appointment of an investigator or inspector for the purposes of such an investigation; and
- (c) a decision in relation to the issue of a search warrant under an enactment; and

- (d) a decision under an enactment requiring the production of a document, the giving of information or the issue of a subpoena or summons to a person as a witness.

### **2.3 Decisions relating to territory finance**

The following decisions:

- (a) a decision authorised by an Act to issue an amount out of the public money of the Territory;
- (b) a decision of the Treasurer under the *Financial Management Act 1996*, section 18 (Treasurer's advance);
- (c) a decision in relation to the enforcement of a judgment or order for the recovery of an amount by—
  - (i) the Territory; or
  - (ii) a public servant in an official capacity;

### **2.4 Decisions relating to administration of the public service**

A decision relating to—

- (a) personnel management (including recruitment, training, promotion and organisation) in relation to the public service, other than a decision relating to, and having regard to the particular characteristics of, or other circumstances relating to, a particular person; or
- (b) the promotion, transfer, temporary performance of duties, of or by an individual officer of the public service; or
- (c) the making of an appointment to the public service; or
- (d) the engagement of a person as an employee under the *Public Sector Management Act 1994*; or
- (e) the prevention or settlement of an industrial dispute, or otherwise relating to industrial matters, in relation to the public service; or

- (f) the appointment, or ending of the appointment, of a chief executive under the *Public Sector Management Act 1994*.

## **2.5 Certain other appointment decisions**

A decision relating to—

- (a) the making of an appointment under an enactment or to an office established under an enactment; or
- (b) the appointment, or the ending of the appointment, of the commissioner for public administration; or
- (c) the employment, or the ending of employment, of staff under the *Legislative Assembly (Members' Staff) Act 1989*.

## Dictionary

(see s 2)

*Note 1* The Legislation Act contains definitions and other provisions relevant to this Act.

*Note 2* For example, the Legislation Act, dict, pt 1 defines the following terms:

- fail
- judge
- Minister (see s 162)
- regulation
- Supreme Court
- the Territory.

***conduct engaged in*** for the purpose of making a decision—see section 3C.

***decision to which this Act applies*** means a decision of an administrative character made, proposed to be made or required to be made (whether in the exercise of a discretion or not) under an enactment, other than a decision mentioned in schedule 1.

***duty*** includes a duty imposed on a person in his or her capacity as a public employee.

***enactment*** means—

- (a) an Act or subordinate law; or
- (b) the *Canberra Water Supply (Googong Dam) Act 1974* (Cwlth).

*Note* A reference to an Act or subordinate law includes a reference to a provision of an Act or subordinate law (see Legislation Act, s 7 and s 8).

***failure to make*** a decision—see section 3A.

***making*** a decision—see section 3A.

***order of review***, in relation to a decision, in relation to conduct engaged in for the purpose of making a decision or in relation to a



failure to make a decision, means an order on an application made under section 5, section 6 or section 7 in relation to the decision, conduct or failure.

*person aggrieved*—see section 3B.

*statement of reasons*, for a decision, means a statement—

- (a) of the findings on material questions of fact; and
- (b) referring to the evidence or other material on which the findings were based; and
- (c) giving the reasons for the decision.

## Endnotes

1 About the endnotes

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## Endnotes

### 1 About the endnotes

Amending and modifying laws are annotated in the legislation history and the amendment history. Current modifications are not included in the republished law but are set out in the endnotes.

Not all editorial amendments made under the *Legislation Act 2001*, part 11.3 are annotated in the amendment history. Full details of any amendments can be obtained from the Parliamentary Counsel's Office.

Uncommenced amending laws and expiries are listed in the legislation history and the amendment history. These details are underlined. Uncommenced provisions and amendments are not included in the republished law but are set out in the last endnote.

If all the provisions of the law have been renumbered, a table of renumbered provisions gives details of previous and current numbering.

The endnotes also include a table of earlier republications.

### 2 Abbreviation key

am = amended	ord = ordinance
amdt = amendment	orig = original
ch = chapter	par = paragraph/subparagraph
def = definition	pres = present
dict = dictionary	prev = previous
disallowed = disallowed by the Legislative Assembly	(prev...) = previously
div = division	pt = part
exp = expires/expired	r = rule/subrule
Gaz = gazette	renum = renumbered
hdg = heading	reloc = relocated
IA = Interpretation Act 1967	R[X] = Republication No
ins = inserted/added	RI = reissue
LA = Legislation Act 2001	s = section/subsection
LR = legislation register	sch = schedule
LRA = Legislation (Republication) Act 1996	sdiv = subdivision
mod = modified/modification	sub = substituted
o = order	SL = Subordinate Law
om = omitted/repealed	<u>underlining</u> = whole or part not commenced or to be expired

### 3 Legislation history

This Act was originally a Commonwealth ordinance—the *Administrative Decisions (Judicial Review) Ordinance 1989* No 33 (Cwlth).

The *Australian Capital Territory (Self-Government) Act 1988* (Cwlth), s 34 (4) converted most former Commonwealth ordinances in force in the ACT into ACT enactments. This allowed the ACT Legislative Assembly to amend and repeal the laws. This Act was converted into an ACT enactment on 11 May 1989 (self-government day).

As with most ordinances in force in the ACT, the name was changed from *Ordinance* to *Act* by the *Self-Government (Citation of Laws) Act 1989* No 21, s 5 on 11 May 1989 (self-government day).

#### Legislation before becoming Territory enactment

##### **Administrative Decisions (Judicial Review) Act 1989 A1989-33**

notified 10 May 1989

commenced 11 May 1989 (s 2)

as amended by

#### Legislation after becoming Territory enactment

##### **Royal Commissions and Inquiries (Consequential Provisions) Act 1991 A1991-3 sch**

notified 1 March 1991 (Gaz 1991 No S7)

s 1, s 2 commenced 1 March 1991 (s 2 (1))

sch commenced 1 May 1991 (s 2 (2) and Gaz 1991 No 16)

##### **Administrative Decisions (Judicial Review) (Amendment) Act 1991 A1991-102**

notified 15 January 1992 (Gaz 1991 No S3)

s 1, s 2 commenced 15 January 1992 (s 2 (1))

remainder (ss 3-5) commenced 15 July 1992 (s 2 (3))

##### **Electoral Act 1992 A1992-71 s 53**

notified 8 December 1992 (Gaz 1992 No S218)

s 1, s 2 commenced 8 December 1992 (s 2 (1))

s 53 commenced 21 December 1992 (s 2 (2) and Gaz 1992 No S243)

## Endnotes

3 Legislation history

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**Administrative Decisions (Judicial Review) (Amendment) Act 1993  
A1993-65**

notified 6 September 1993 (Gaz 1993 No S172)  
commenced 6 September 1993 (s 2)

**Supreme Court (Amendment) Act (No 2) 1993 A1993-91 sch 3**

notified 17 December 1993 (Gaz 1993 No S258)  
sch 3 commenced 17 December 1993 (s 2)

**Judicial Commissions (Consequential Amendments) Act 1994  
A1994-10 s 4**

notified 14 March 1994 (Gaz 1994 No S44)  
s 4 commenced 14 March 1994 (s 2)

**Public Sector Management (Consequential and Transitional  
Provisions) Act 1994 A1994-38 sch 1 pt 3**

notified 30 June 1994 (Gaz 1994 No S121)  
s 1, s 2 commenced 30 June 1994 (s 2 (1))  
sch 1 pt 3 commenced 1 July 1994 (s 2 (2) and Gaz 1994 No S142)

**Financial Management and Audit (Consequential and Transitional  
Provisions) Act 1996 A1996-26 sch pt 1**

notified 1 July 1996 (Gaz 1996 No S130)  
sch pt 1 commenced 1 July 1996 (s 2)

**Land (Planning and Environment) (Amendment) Act (No 3) 1996  
A1996-85 s 88**

notified 24 December 1996 (Gaz 1996 No S345)  
s 1, s 2 commenced 24 December 1996 (s 2 (1))  
s 88 commenced 24 June 1997 (s 2 (3))

**Tobacco Licensing (Amendment) Act 1998 A1998-18 sch 1**

notified 10 July 1998 (Gaz 1998 No S190)  
commenced 10 July 1998 (s 2)

**Taxation Administration (Consequential and Transitional Provisions)  
Act 1999 A1999-5 sch 2**

notified 1 March 1999 (Gaz 1999 No S8)  
s 1, s 2 commenced 1 March 1999 (s 2 (1))  
sch 2 commenced 1 March 1999 (s 2 (2))

**Duties (Consequential and Transitional Provisions) Act 1999 A1999-8 s 33**

notified 1 March 1999 (Gaz 1999 No S8)  
ss 1-3 commenced 1 March 1999 (s 2 (1))  
commenced 1 March 1999 (s 2 (2))

**Law Reform (Miscellaneous Provisions) Act 1999 A1999-66 sch 3**

notified 10 November 1999 (Gaz 1999 No 45)  
commenced 10 November 1999 (s 2)

**Tobacco Amendment Act 2000 A2000-16 sch 3 pt 1**

notified 20 April 2000 (Gaz 2000 No 16)  
s 1, s 2 commenced 20 April 2000 (s 2 (1))  
sch 3 pt 1 commenced 1 July 2000 (s 2 (3))

**Subordinate Laws Amendment Act 2000 A2000-71 sch 2**

notified 21 December 2000 (Gaz 2000 No S69)  
s 1, s 2 commenced 21 December 2000 (IA s 10B)  
sch 2 commenced 21 June 2001 (IA s 10E)

**Legislation (Consequential Amendments) Act A2001-44 pt 6**

notified 26 July 2001 (Gaz 2001 No 30)  
s 1, s 2 commenced 26 July 2001 (IA s 10B)  
pt 6 commenced 12 September 2001 (s 2 and see Gaz 2001 No S65)

**Building Amendment Act 2002 A2002-15 s 14**

notified LR 17 May 2002  
s 1, s 2 commenced 17 May 2002 (LA s 75)  
s 14 commenced 18 May 2002 (s 2)

**Plant Diseases Act 2002 A2002-42 s 44**

notified LR 2 December 2002  
s 1, s 2 commenced 2 December 2002 (LA s 75 (1))  
s 44 commenced 2 June 2003 (s 2 and LA s 79)

**Confiscation of Criminal Assets Act 2003 A2003-8 sch 1 pt 1.1**

notified LR 27 March 2003  
s 1, s 2 commenced 27 March 2003 (LA s 75 (1))  
sch 1 pt 1.1 commenced 15 August 2003 (s 2 and CN2003-7)

## Endnotes

3 Legislation history

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### **Construction Occupations Legislation Amendment Act 2004 A2004-13 sch 2 pt 2.1**

notified LR 26 March 2004  
s 1, s 2 commenced 26 March 2004 (LA s 75 (1))  
sch 2 pt 2.1 commenced 1 September 2004 (s 2 and see Construction  
Occupations (Licensing) Act 2004 A2004-12, s 2 and CN2004-8)

### **Gungahlin Drive Extension Authorisation Act 2004 A2004-27 s 15**

notified LR 26 May 2004  
s 1, s 2 commenced 26 May 2004 (LA s 75 (1))  
s 15 commenced 27 May 2004 (s 2)

### **Gene Technology (GM Crop Moratorium) Act 2004 A2004-40 s 40**

notified LR 9 July 2004  
s 1, s 2 commenced 9 July 2004 (LA s 75 (1))  
s 40 commenced 10 July 2004 (s 2)

### **Heritage Act 2004 A2004-57 sch 1 pt 1.2**

notified LR 9 September 2004  
s 1, s 2 commenced 9 September 2004 (LA s 75 (1))  
sch 1 pt 1.2 commenced 9 March 2005 (s 2 and LA s 79)

### **Court Procedures (Consequential Amendments) Act 2004 A2004-60 sch 1 pt 1.3**

notified LR 2 September 2004  
s 1, s 2 commenced 2 September 2004 (LA s 75 (1))  
sch 1 pt 1.3 commenced 10 January 2005 (s 2 and see Court  
Procedures Act 2004 A2004-59, s 2 and CN2004-29)

### **Crimes (Restorative Justice) Act 2004 A2004-65 s 76**

notified LR 6 September 2004  
s 1, s 2 commenced 6 September 2004 (LA s 75 (1))  
s 76 commenced 31 January 2005 (s 2 and CN2004-28)

### **Statute Law Amendment Act 2005 (No 2) A2005-62 sch 3 pt 3.1**

notified LR 21 December 2005  
s 1, s 2 commenced 21 December 2005 (LA s 75 (1))  
sch 3 pt 3.1 commenced 11 January 2006 (s 2 (1))

## 4 Amendment history

### Dictionary

s 2 om A2001-44 amdt 1.42  
ins A2005-62 amdt 3.5

### Notes

s 3 am A1991-102 s 4; A1993-65 s 4; A1996-85 s 88; A2001-44  
amds 1.43-1.45  
defs reloc to dict A2005-62 amdt 3.4  
sub A2005-62 amdt 3.5  
def **failure** om A2005-62 amdt 3.2  
def **judge** om A2005-62 amdt 3.2  
def **rules of court** am A1993-91 sch 3  
om A2004-60 amdt 1.7

### Meaning of *making and failure to make a decision*

s 3A ins A2005-62 amdt 3.6

### Meaning of *person aggrieved*

s 3B ins A2005-62 amdt 3.6

### Meaning of *conduct engaged in for purpose of making decision*

s 3C ins A2005-62 amdt 3.6

### Act to operate despite anything in existing laws

s 4 am A2005-62 amdt 3.7

### Applications for review of decisions

s 5 am A2005-62 amds 3.8-3.15

### Applications for review of conduct related to making of decisions

s 6 am A2005-62 amds 3.16-3.23

### Applications for failures to make decisions

s 7 hdg sub A2005-62 amdt 3.24  
s 7 am A2005-62 amds 3.25-3.30

### Effect of Act on other rights

s 8 orig s 8 om A2005-62 amdt 3.31  
(prev s 9) am A1991-102 s 5; A1993-65 s 5; A1999-66 sch 3;  
A2004-57 amdt 1.3; A2005-62 amds 3.32-3.34  
renum A2005-62 amdt 3.35

## Endnotes

### 4 Amendment history

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#### **Applications for order of review must set out grounds**

s 9 hdg (prev s 10 hdg) sub A2005-62 amdt 3.36  
s 9 orig s 9 renum as s 8  
(prev s 10 hdg) am A2004-60 amdt 1.8; ss and pars renum  
R13 LA (see A2004-60 amdt 1.9); A2005-62 amdt 3.37, amdt  
3.38  
renum A2005-62 amdt 3.39

#### **Period in which application for order of review must be made**

s 10 orig s 10 renum as s 9  
ins A2005-62 amdt 3.40

#### **Application for order of review not limited to grounds in application**

s 11 sub A2005-62 amdt 3.40

#### **Reasons for decision may be obtained**

s 13 am A2005-62 amdt 3.41, amdt 3.42, amdt 3.44, amdt 3.45,  
amdt 3.47; ss renum A2005-62 amdt 3.43, amdt 3.46

#### **Certain information not required to be disclosed**

s 14 am A2005-62 amdts 3.48-3.51

#### **Ministerial certificate about disclosure of information**

s 15 hdg sub A2005-62 amdt 3.52  
s 15 am A2005-62 amdts 3.53-3.55; ss renum A2005-62 amdt 3.56

#### **Stay of proceedings**

s 16 am A1999-66 sch 3; A2005-62 amdt 3.57, amdt 3.58

#### **Powers of Supreme Court in relation to applications for order of review**

s 17 hdg sub A2005-62 amdt 3.59  
s 17 am A2005-62 amdt 3.60-3.62

#### **Change in person holding, or performing the duties of, an office**

s 18 am A2005-62 amdt 3.63; ss renum R17 LA

#### **Intervention by Minister**

s 19 sub A2005-62 amdt 3.64

#### **Act not to apply to certain decisions**

s 20 am A2005-62 amdt 3.65; ss renum A2005-62 amdt 3.66

#### **Regulation-making power**

s 21 sub A2001-44 amdt 1.46

#### **Transitional—sch 1, clause 5**

s 22 ins A2004-13 amdt 2.1  
exp 1 July 2005 (s 22 (2))

#### **Decisions to which this Act does not apply**

sch 1 am A1991-3 sch; A1992-71 s 53; A1994-10 s 4; A1998-18  
sch 1; A1999-5 sch 2; A1999-8 s 33; A2000-16 sch 3 pt 1;  
A2001-44 amdt 1.47; A2002-15 s 14; A2002-42, s 44;



A2003-8 amdt 1.1; A2004-13 amdt 2.2; A2004-27 s 15;  
A2004-40 s 40; A2004-65 s 76  
sub A2005-62 amdt 3.67

**Decisions to which s 13 does not apply**

sch 2 am A1994-38 sch 1 pt 3; A1996-26 sch  
sub A2005-62 amdt 3.68

**Dictionary**

dict ins A2005-62 amdt 3.69  
def **conduct engaged in** ins A2005-62 amdt 3.69  
def **decision to which this Act applies** reloc from s 3  
A2005-62 amdt 3.4  
def **duty** am A1994-38 sch 1 pt 3  
reloc from s 3 A2005-62 amdt 3.4  
def **enactment** am A1999-66 sch 3  
sub A2005-62 amdt 3.1  
reloc from s 3 A2005-62 amdt 3.4  
def **failure to make** ins A2005-62 amdt 3.69  
def **making** ins A2005-62 amdt 3.69  
def **order of review** am A2005-62 amdt 3.3  
reloc from s 3 A2005-62 amdt 3.4  
def **person aggrieved** ins A2005-62 amdt 3.69  
def **statement of reasons** ins A2005-62 amdt 3.69

## 5 Earlier republications

Some earlier republications were not numbered. The number in column 1 refers to the publication order.

Since 12 September 2001 every authorised republication has been published in electronic pdf format on the ACT legislation register. A selection of authorised republications have also been published in printed format. These republications are marked with an asterisk (\*) in column 1. Electronic and printed versions of an authorised republication are identical.

Republication No	Amendments to	Republication date
1	A1991-102	15 July 1992
2	A1993-91	31 January 1994
3	A1994-38	31 January 1995
4	A1996-26	30 November 1996
5	A1999-8	1 March 1999

## Endnotes

5 Earlier republications

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<b>Republication No</b>	<b>Amendments to</b>	<b>Republication date</b>
6	A2001-44	18 October 2001
7	A2002-15	20 May 2002
8	<u>A2003-8</u>	2 June 2003
9	A2003-8	15 August 2003
10	A2004-27	27 May 2004
11	A2004-40	10 July 2004
12	A2004-40	1 September 2004
13	<u>A2004-65</u>	10 January 2005
14	A2004-65	31 January 2005
15	A2004-65	9 March 2005
16	A2004-65	2 July 2005

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