

1993

**LEGISLATIVE ASSEMBLY FOR THE
AUSTRALIAN CAPITAL TERRITORY**

ADMINISTRATIVE APPEALS TRIBUNAL (AMENDMENT) BILL 1993

EXPLANATORY MEMORANDUM

Circulated by authority of

**Terry Connolly MLA
ATTORNEY GENERAL**

ADMINISTRATIVE APPEALS TRIBUNAL (AMENDMENT) BILL 1993

OUTLINE

The *Administrative Appeals Tribunal Act 1989* (the Principal Act) provides for the establishment of the ACT Administrative Appeals Tribunal. The Administrative Appeals Tribunal (Amendment) Bill 1993 will amend those provisions of the Principal Act relating to the determination of fees by providing a broad based scheme for determining fees and charges payable to the Tribunal. The Bill will also provide for the payment of only one application fee in some instances where two or more applications relate to the same applicant and provide a review mechanism of decisions that are made in relation to fees and charges.

FINANCIAL CONSIDERATIONS

The amendments themselves will have some financial impact in that they provide for certain exemptions from payment of or refund of some fees. The determinations of fees and charges that may be made under the determining power will have financial implications for parties before the Tribunal.

DETAILS

Clause 1, 2 and 3 are formal provisions relating to the short title of the Bill and its commencement and defining the "Principal Act" to mean the *Administrative Appeals Tribunal Act 1989*.

Clause 4 will amend section 59 of the Principal Act, which provides for the determination of fees and allowances for expenses, by omitting those provisions of section 59 which do not deal with witnesses' fees and allowances for expenses and by making a clarifying amendment of subsection 59(2).

Clause 5 will insert sections 59A, 59B, 59C, 59D and 59E into the Principal Act.

Section 59A

Section 59A deals with the determination of fees and charges.

Subsection 59A(1) provides the power for the Minister to determine fees and charges by notice in writing published in the *Gazette*. The power is wide enough to enable the determination of fees and charges in respect of any matter associated with or incidental to proceedings in and the operation of the Tribunal.

Subsection 59A(2) allows a high degree of flexibility by providing that a determination may provide for exemptions from payment of application fees, in whole or in part, and for the remission, refund or deferral of liability for the payment of fees or charges, in whole or in part, by the Registrar of the Tribunal.

Determinations currently are disallowable instruments and will, under subsection 59A(3), be disallowable instruments for the purposes of section 10 of the *Subordinate Laws Act 1989*.

Section 59B

Section 59B deals with the payment of fees and charges.

Subsection 59B(1) imposes the obligation, subject to section 59B, to pay a fee or charge, and to pay the fee or charge in advance, in accordance with the determination.

Subsection 59B(2) requires payment to be made on notification from the Registrar if a fee or charge cannot be calculated until a function is performed or a facility or service provided.

Subsection 59B(3) makes it clear that the Registrar or the Tribunal is not obliged to perform a function or provide a facility or service if a fee or charge payable in advance is not paid when due. This provision overcomes the effect of the Federal Court's decision in the case of *Angus Fire Armour Australia Pty Ltd-v-Collector of Customs (NSW)* (1988) 83 ALR 449 that an application for review by the Federal Administrative Appeals Tribunal did not have to be accompanied by the prescribed fee in order to be validly lodged.

Section 59C

Section 59C deals with circumstances when fees and charges are not required to be paid.

Subsection 59C(1) provides that a fee or charge may be remitted, refunded or liability for its payment deferred in accordance with the determination.

Subsection 59C (2) deals with the circumstances, additional to those which might be set out in a determination, in which determined fees and charges are not payable. No fees or charges will be payable by a person -

(a) if the person otherwise liable to pay the fee or charge is -

(i) exempt from paying the fee or charge under subsection 93(1) of the *Legal Aid Act 1977*; or

(ii) assisted under section 62 of the Principal Act; or

(iii) legally assisted under a scheme or service provided or approved by the Attorney-General; or

(b) if the Registrar waives payment of the fee or charge in whole or in part because he or she considers that it would impose hardship on the person liable to pay the fee or charge - to the extent of the waiver.

Subsection 93(1) of the *Legal Aid Act 1977* provides, in effect, that no fees are payable in respect of a proceeding on behalf of a legally assisted person in a court or tribunal.

Subsection 59C(3) provides that an application fee is to be refunded if the application terminates in a manner favourable to the applicant and reflects a provision of the current determination.

Section 59D

Section 59D provides that the Registrar may order that only one application fee is payable where two or more applications relate to the same applicant and the applications may, in the opinion of the Registrar, conveniently be heard by the Tribunal together.

Section 59E

Section 59E provides a person who claims to be entitled to a remission, refund, deferral of liability for payment or waiver of payment of fees and charges or to the relief obtainable by an order of the Registrar under section 59D with a right to apply to the Tribunal for a review of the decision of the Registrar. No fee or charge is payable in relation to an application for review.

Clause 6 will ensure that the current determination continues in force until the first determination under subsection 59A(1) commences.