

Version No. 031
Administrative Law Act 1978

Act No. 9234/1978

Version incorporating amendments as at 1 July 1997

TABLE OF PROVISIONS

<i>Section</i>	<i>Page</i>
1. Short title and commencement	1
2. Definitions	1
3. Tribunal decisions may be reviewed	2
4. Procedure for review	2
5. As to orders for review	3
6. Power to impose terms on granting an order for review	4
7. Powers of Court	4
8. Reasons for decision to be furnished by tribunal on request by party concerned	5
9. Interim relief	6
10. Reasons to be part of record	6
11. As to who may seek prerogative writ declaration or injunction	6
12. Provisions excluding jurisdiction by Court not to prevail	7
13. Exemption of Ministerial Council	7
14. <u>Review of matters within jurisdiction of Visitor of a University</u>	8
NOTES	10
1. General Information	10
2. Table of Amendments	11
3. Explanatory Details	13

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An Act to make Provision with respect to the Review of certain Decisions made by certain Administrative Tribunals, and for other purposes.

BE IT ENACTED by the Queen's Most Excellent Majesty by and with the advice and consent of the Legislative Council and the Legislative Assembly of Victoria in this present Parliament assembled and by the authority of the same as follows (that is to say):

1. *Short title and commencement*

- (1) This Act may be cited as the **Administrative Law Act 1978**.
- (2) This Act shall come into operation on a day to be fixed by proclamation of the Governor in Council published in the Government Gazette.

2. *Definitions*

In this Act unless the context or subject-matter otherwise requires—

"decision" means a decision operating in law to determine a question affecting the rights of any person or to grant, deny, terminate, suspend or alter a privilege or licence and includes a refusal or failure to perform a duty or to exercise a power to make such a decision;

Administrative Law Act 1978
Act No. 9234/1978

"person affected" in relation to a decision, means a person whether or not a party to proceedings, whose interest (being an interest that is greater than the interest of other members of the public) is or will or may be affected, directly or indirectly, to a substantial degree by a decision which has been made or is to be made or ought to have been made by the tribunal;

"tribunal" means a person or body of persons (not being a court of law or a tribunal constituted or presided over by a Judge of the Supreme Court) who, in arriving at the decision in question, is or are by law required, whether by express direction or not, to act in a judicial manner to the extent of observing one or more of the rules of natural justice.

S. 3
amended by
No. 110/1986
s. 140(2).

3. *Tribunal decisions may be reviewed*

Any person affected by a decision of a tribunal may make application (hereinafter called an application for review) to the Supreme Court for an order calling on the tribunal or the members thereof (hereinafter called an order for review) and also any party interested in maintaining the decision to show cause why the same should not be reviewed.

4. *Procedure for review*

- (1) An application for review shall be made *ex parte* not later than thirty days after the giving of notification of the decision or the reasons therefor (whichever is the later) supported by evidence on affidavit showing a *prima facie* case for relief under section 7.

Administrative Law Act 1978
Act No. 9234/1978

s. 5

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| <p>(2) The Court, notwithstanding that a prima facie case for relief is disclosed, may refuse any such application if satisfied that no matter of substantial importance is involved or that in all the circumstances such refusal will impose no substantial injustice upon the applicant.</p> | <p>S. 4(2)
amended by
No. 110/1986
s. 140(2).</p> |
| <p>(3) Where the application for review relates to a proceeding taken or to be taken by or before a Small Claims Tribunal or the Credit Tribunal the Court shall refuse the application unless it is satisfied that the applicant has made out a prima facie case for relief under section 7 on the ground that the Tribunal had or has no jurisdiction under the Small Claims Tribunals Act 1973 or under the Credit Act 1984 or the Credit (Administration) Act 1984 or the Consumer Credit (Victoria) Code in relation to the matter or that there has been a denial of natural justice to a party in the proceedings before the Tribunal.</p> | <p>S. 4(3)
amended by
Nos 10097
s. 174(8)(a)(i)(ii),
110/1986
s. 140(2),
4/1989
s. 8(1)(a),
41/1995 s.62
(Sch. 1 item 1).</p> |
| <p>(4) Where an application for review relates to an application to, proceedings before or a determination of, the Residential Tenancies Tribunal, the Court shall refuse the application unless it is satisfied that the applicant has made out a prima facie case for relief under section 7 on the ground that the Tribunal had or has no jurisdiction under the Residential Tenancies Act 1980 in relation to the matter or that there has been a denial of natural justice to the applicant or to a party to the proceedings before the Tribunal.</p> | <p>S. 4(4)
inserted by
No. 9514
s. 159,
amended by
No. 110/1986
s. 140(2).</p> |

5. As to orders for review

* * * * *

S. 5(1)
amended by
No. 110/1986
s. 140(2),
repealed by
No. 109/1994
s. 34(3)(a).

Administrative Law Act 1978
Act No. 9234/1978

S. 5(2)
amended by
Nos 110/1986
s. 140(2),
109/1994
s. 34(3)(b)-(c).

(2) An order for review shall contain such directions as the Court thinks fit with respect to the service of the order nisi for review, and as to its return, but unless for good cause shown shall be expressed to be returnable on a date not more than 30 days after its pronouncement.

S. 5(3)
amended by
No. 110/1986
s. 140(2).

(3) The order for review shall state the grounds upon which it is sought to review the decision, but on the return of the order the Court shall have power to amend any of such grounds or to allow such additional grounds as to it seems fit.

S. 6
amended by
No. 110/1986
s. 140(2).

6. *Power to impose terms on granting an order for review*

The Court in granting an order for review may grant it on such terms as to costs or security as to it seems fit and may provide for the stay of any proceedings on the decision and may order any implementation of the decision to be restrained.

S. 7
amended by
Nos 9549
s. 2(1),
110/1986
s. 140(2),
57/1989
s. 3(Sch. item
5.1).

7. *Powers of Court*

Upon the return of the order for review, the Court may discharge the order or may exercise all or any of the jurisdiction or powers and grant all or any of the remedies which upon the material adduced and upon the grounds stated in the order might be exercised or granted in proceedings for relief or remedy in the nature of certiorari, mandamus, prohibition or quo warranto or in proceedings for a declaration of invalidity in respect of the decision or for an injunction to restrain the implementation thereof and may extend the period limited by statute for the making of the decision but shall not exercise any other jurisdiction or power or grant any other remedy.

8. Reasons for decision to be furnished by tribunal on request by party concerned

- (1) A tribunal shall, if requested to do so by any person affected by a decision made or to be made by it, furnish him with a statement of its reasons for the decision.
- (2) The request may be made orally or in writing to the tribunal or to any member or officer thereof but must be made, in case of a Small Claims Tribunal or the Residential Tenancies Tribunal or the Credit Tribunal either before or at the time of the giving or notification of the decision, and in any other case either before the giving or notification of the decision or else within thirty days after the decision has come to the knowledge of the person making the request and in any event not later than ninety days after the giving or notification of the decision.
- (3) The statement of reasons shall be in writing and furnished within a reasonable time.
- (4) The Supreme Court, upon being satisfied by the person making the request that a reasonable time has elapsed without any such statement of reasons for the decision having been furnished or that the only statement furnished is not adequate to enable a Court to see whether the decision does or does not involve any error of law, may order the tribunal to furnish, within a time specified in the order, a statement or further statement of its reasons and if the order is not complied with the Court, in addition to or in lieu of any order to enforce compliance by the tribunal or any member thereof, may make any such order as might have been made if error of law had appeared on the face of the record.

S. 8(2)
amended by
Nos 10097
s. 174(8)(b),
63/1987
s. 7,
4/1989
s. 8(1)(b).

S. 8(4)
amended by
No. 110/1986
s. 140(2).

Administrative Law Act 1978
Act No. 9234/1978

s. 9

s. 8(5)
amended by
No. 110/1986
s. 140(2).

- (5) Notwithstanding anything in this section a tribunal shall not be bound to furnish a statement of reasons, and the Court shall not be bound to order it to do so, where to furnish the reasons would, in the opinion of the Court, be against public policy, or the person making the request is not a person primarily concerned with the decision and to furnish the reasons would, in the opinion of the Court, be against the interests of a person primarily concerned.

s. 9
amended by
No. 110/1986
s. 140(2).

9. *Interim relief*

The Supreme Court, in order to prevent irreparable damage pending judicial review, may by order suspend the operation, or postpone the coming into effect, of a decision made or to be made by a tribunal or restrain the implementing thereof until the expiration of fourteen days from the furnishing by the tribunal of a statement of reasons as provided by sub-section (1) of section 8 or for such further time as the Court shall deem fit.

10. *Reasons to be part of record*

Any statement by a tribunal or inferior court whether made orally or in writing, and whether or not made pursuant to a request or order under section 8, of its reasons for a decision shall be taken to form part of the decision and accordingly to be incorporated in the record.

s. 11
amended by
No. 57/1989
s. 3(Sch. item
5.2(a)(b)).

11. *As to who may seek prerogative writ declaration or injunction*

Any person affected by the decision of a tribunal or inferior court shall have sufficient standing to maintain proceedings for relief or remedy in the nature of certiorari, mandamus or prohibition or in proceedings for a declaration of invalidity or an

injunction in relation to the decision but nothing in this section shall take away or impair any right to relief otherwise existing or the discretion to refuse any such relief.

12. *Provisions excluding jurisdiction by Court not to prevail*

S. 12
amended by
No. 57/1989
s. 3(Sch. item
5.3(a)(b)).

Any provision in an Act passed before the commencement of this Act that any proceedings shall not be removed, or that any decision of a tribunal or inferior court shall be final or shall not be quashed or shall not be called in question, and any provision in any such Act which by any similar words excludes any of the powers of the Supreme Court, shall not, as from the commencement of this Act, prevent the removal of proceedings of a tribunal or inferior court into the Supreme Court, nor the quashing of a decision of a tribunal or inferior court by that Court, whether for error of law on the face of the record or otherwise, in proceedings for relief or remedy in the nature of certiorari, nor prejudice the powers of that Court to grant relief or remedy in the nature of mandamus or prohibition or by way of declaration of invalidity or injunction in relation to a decision of a tribunal or inferior court or to make any order for review or other order provided for in this Act.

13. *Exemption of Ministerial Council*

S. 13
inserted by
No. 9865
s. 2.

- (1) The provisions of this Act shall not apply to a decision of the Ministerial Council.
- (2) In this section—

"Agreement" means the Agreement made on 22 December 1978 between the Commonwealth and the States in relation to a proposed scheme for the co-operative regulation of

companies and the securities industry or, if that agreement is or has been amended or affected by another agreement, that agreement as so amended or affected;

"Ministerial Council" means the Ministerial Council for Companies and Securities established by the Agreement.

14. *Review of matters within jurisdiction of Visitor of a University*

- (1) A person affected by a decision of a tribunal may apply for and be granted an order for review under this Act notwithstanding that the matter which is the subject of the application is within the jurisdiction of the Visitor of a University.
- (2) If an application for review relates to a visitation which has been made, a judgment which has been given or any other act which has been performed by a Visitor of a University, the Court to which the application is made shall refuse the application unless satisfied that the applicant has made out a prima facie case for relief under section 7 on the ground that the Visitor had or has no jurisdiction in relation to the matter or that there has been a denial of natural justice to the applicant or to a person who petitioned the visitation or judgment.
- (3) If a Court grants an order to review a decision of a tribunal, a Visitor of a University has no jurisdiction concerning the matter which is the subject of the order.
- (4) In this section—

Administrative Law Act 1978
Act No. 9234/1978

s. 14

"university" means:

- (a) Deakin University; or
- (b) La Trobe University; or
- (c) Monash University; or
- (ca) Royal Melbourne Institute of Technology;
- (cb) Swinburne University of Technology;
- (d) The University of Melbourne;
- (da) University of Ballarat;
- (e) Victoria University of Technology.

S. 14(4) def. of "university" amended by Nos 44/1992 s. 70(a), 45/1992 s. 66(a)(i)(ii), 107/1993 s. 60.

"visitor", in relation to a University, means the person who, under the Act by which the University is established, is the visitor of the University.

S. 14(4) def. of "visitor" amended by No. 44/1992 s. 70(b), substituted by No. 45/1992 s. 66(b).

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Administrative Law Act 1978
Act No. 9234/1978

NOTES

1. General Information

The **Administrative Law Act 1978** was assented to on 19 December 1978 and came into operation on 1 May 1979: Government Gazette 7 March 1979 page 617.

Administrative Law Act 1978
Act No. 9234/1978

Notes

2. Table of Amendments

This Version incorporates amendments made to the **Administrative Law Act 1978** Acts and subordinate instruments.

Residential Tenancies Act 1980, No. 9514/1980

Assent Date: 23.12.80
Commencement Date: 9.11.81: Government Gazette 21.10.81 p. 3431
Current State: All of Act in operation

Statute Law Revision Act 1981, No. 9549/1981

Assent Date: 19.5.81
Commencement Date: 19.5.81: subject to s. 2(2)
Current State: All of Act in operation

Administrative Law (Amendment) Act 1983, No. 9865/1983

Assent Date: 29.3.83
Commencement Date: 29.3.83
Current State: All of Act in operation

Credit Act 1984, No. 10097/1984

Assent Date: 22.5.84
Commencement Date: S. 174(8) on 28.2.85: Government Gazette 19.12.84 p. 4483
Current State: This information relates only to the provision amending the **Administrative Law Act 1978**

Administrative Law (University Visitor) Act 1986, No. 2/1986

Assent Date: 25.3.86
Commencement Date: 1.7.86: Government Gazette 18.6.86 p. 2066
Current State: All of Act in operation

Supreme Court Act 1986, No. 110/1986

Assent Date: 16.12.86
Commencement Date: 1.1.87: s. 2
Current State: All of Act in operation

Residential Tenancies (Amendment) Act 1987, No. 63/1987

Assent Date: 4.11.87
Commencement Date: 1.2.88: Government Gazette 23.12.87 p. 3472
Current State: All of Act in operation

Credit (Administration) (Amendment) Act 1989, No. 4/1989

Assent Date: 2.5.89
Commencement Date: Ss 1–3, 5 on 2.5.89: s. 2(1); ss 4, 6–9 on 29.4.91: Government Gazette 6.3.91 p. 483
Current State: All of Act in operation

Administrative Law Act 1978
Act No. 9234/1978

Magistrates' Court (Consequential Amendments) Act 1989, No. 57/1989

Assent Date: 14.6.89
Commencement Date: S. 4(1)(a)–(e)(2) on 1.9.89: Government Gazette 30.8.89 p. 2210; rest of Act on 1.9.90: Government Gazette 25.7.90 p. 2217
Current State: All of Act in operation

Swinburne University of Technology Act 1992, No. 44/1992

Assent Date: 23.6.92
Commencement Date: 1.7.92: Government Gazette 1.7.92 p. 1628
Current State: All of Act in operation

Royal Melbourne Institute of Technology Act 1992, No. 45/1992

Assent Date: 23.6.92
Commencement Date: 1.7.92: Government Gazette 1.7.92 p. 1626
Current State: All of Act in operation

University of Ballarat Act 1993, No. 107/1993

Assent Date: 26.11.93
Commencement Date: Ss 1, 2, 45 on 26.11.93: s. 2(1); rest of Act on 1.1.94: Government Gazette 23.12.93 p. 3380
Current State: All of Act in operation

Constitution (Court of Appeal) Act 1994, No. 109/1994

Assent Date: 20.12.94
Commencement Date: Pt 1 (ss 1, 2) on 20.12.94: s. 2(1); rest of Act on 7.6.95: Special Gazette (No. 41) 23.5.95 p. 1
Current State: All of Act in operation

Consumer Credit (Victoria) Act 1995, No. 41/1995

Assent Date: 14.6.95
Commencement Date: S. 62(Sch. 1 item 1) on 1.11.96: Government Gazette 29.8.96 p. 2274
Current State: This information relates only to the provision amending the **Administrative Law Act 1978**

3. Explanatory Details

No entries at date of publication.