



Australian Capital Territory

# **Consumer and Trader Tribunal Act 2003**

**A2003-16**

**Republication No 2**

**Effective: 9 April 2004 – 9 January 2005**

Republication date: 9 April 2004

Last amendment made by A2004-15

Authorised by the ACT Parliamentary Counsel

## **About this republication**

### **The republished law**

This is a republication of the *Consumer and Trader Tribunal Act 2003* (including any amendment made under the *Legislation Act 2001*, part 11.3 (Editorial changes)) as in force on 9 April 2004. It also includes any amendment, repeal or expiry affecting the republished law to 9 April 2004.

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 does not include 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

# Consumer and Trader Tribunal Act 2003

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09/04/04

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Australian Capital Territory

# Consumer and Trader Tribunal Act 2003

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An Act to establish a consumer and trader tribunal, and for other purposes

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R2  
09/04/04

Consumer and Trader Tribunal Act 2003  
Effective: 09/04/04-09/01/05

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## Part 1 Preliminary

### 1 Name of Act

This Act is the *Consumer and Trader Tribunal Act 2003*.

### 3 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 words and expressions used in this Act.

*Note 2* A definition in the dictionary 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)).

### 4 Notes

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

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

### 5 Offences against Act—application of Criminal Code etc

Other legislation applies in relation to offences against this Act.

*Note 1* *Criminal Code*

The Criminal Code, ch 2 applies to all offences against this Act (see Code, pt 2.1).

The chapter sets out the general principles of criminal responsibility (including burdens of proof and general defences), and defines terms used for offences to which the Code applies (eg *conduct*, *intention*, *recklessness* and *strict liability*).

*Note 2* *Penalty units*

The Legislation Act, s 133 deals with the meaning of offence penalties that are expressed in penalty units.



**6 Objects of Act**

The objects of this Act are—

- (a) to establish a consumer and trader tribunal to—
  - (i) review decisions by decision-makers under other Acts if authorised under the Acts; and
  - (ii) make decisions about the disciplinary action to be taken against licensees under other Acts if authorised under the Acts; and
- (b) to ensure that the tribunal is accessible; and
- (c) to ensure that proceedings in the tribunal are as simple, quick, inexpensive and as informal as possible (see section 21); and
- (d) to ensure that decisions of the tribunal are fair.

## **Part 2                    The consumer and trader tribunal**

### **Division 2.1            Establishment and constitution**

#### **7                    Establishment of tribunal**

- (1) The Consumer and Trader Tribunal (the *tribunal*) is established.
- (2) The tribunal has a general division.
- (3) The regulations may create other tribunal divisions.

#### **8                    Constitution of tribunal**

- (1) The tribunal consists of—
  - (a) the president; or
  - (b) the president and members appointed by the president under subsection (2); or
  - (c) 1 or more members appointed by the president under subsection (2).
- (2) After considering the nature and complexity of a matter to be decided by the tribunal, the president may appoint from the tribunal panel 1 or more members of the tribunal for the hearing of the matter.

*Note* For the making of appointments (including acting appointments), see Legislation Act, div 19.3.

- (3) In appointing members under subsection (2) for the hearing of a matter, the president must consider whether a member with qualifications or experience in consumer affairs should be appointed.
- (4) If the president appoints more than 1 member for subsection (1) (c) for a hearing, the president must nominate one of the members to be the presiding member.

## **Division 2.2 Tribunal members and staff**

### **9 Appointment of president**

- (1) The Executive may appoint a person to be the president of the tribunal.

*Note* For the making of appointments (including acting appointments), see Legislation Act, div 19.3.

- (2) However, the Executive may not appoint a person under subsection (1) unless the person is a lawyer and has been a lawyer for 5 years or more.
- (3) An appointment must be for a term of not longer than 5 years.

*Note* A person may be reappointed to a position if the person is eligible to be appointed to the position (see Legislation Act, s 208 and dict, pt 1, def *appoint*).

### **10 Appointment of deputy president**

- (1) The Executive may appoint a person as a deputy president for a stated division of the tribunal if satisfied that the person's experience or expertise qualify the person to exercise the functions of deputy president.

*Note* For the making of appointments (including acting appointments), see Legislation Act, div 19.3.

- (2) The Executive may not appoint more than 1 deputy president for a division of the tribunal.
- (3) An appointment must be for a term of not longer than 3 years.

### **11 Appointment of tribunal panel**

- (1) The Executive may appoint a person to a tribunal panel if satisfied that the person's experience or expertise qualify the person to be a member of the tribunal.

- (2) In appointing people to the tribunal panel, the Executive must ensure that the panel includes members with qualifications or experience in consumer affairs.
- (3) An appointment must be for a term of not longer than 3 years.

## **12 Appointment of tribunal registrar**

- (1) The chief executive may appoint a public servant to be the tribunal registrar (the *registrar*).

*Note 1* For the making of appointments (including acting appointments), see Legislation Act, div 19.3.

*Note 2* In particular, an appointment may be made by naming a person or nominating the occupant of a position (see s 207).

- (2) The registrar may delegate any function to a public servant.

*Note* For the making of delegations and the exercise of delegated functions, see Legislation Act, pt 19.4.

## **13 Appointment of deputy tribunal registrars**

- (1) The chief executive may appoint 1 or more public servants to be deputy registrars for the tribunal.
- (2) A deputy registrar may exercise a function of the registrar, subject to any direction of the registrar.

## **14 Ending appointments**

The Executive may end the appointment of a person as a tribunal member or tribunal panel member—

- (a) for misbehaviour; or
- (b) for physical or mental incapacity, if the incapacity affects the exercise of the person's functions.

*Note* A person's appointment also ends if the person resigns (see Legislation Act, s 210).

## Part 3 Applications to tribunal

### 15 What applications may be made?

An Act may provide that an application may be made to the tribunal—

- (a) for review of a decision made in the exercise of a function under the Act; or
- (b) for disciplinary action to be taken against a person under the Act.

*Note* The following Acts provide that applications may be made to the tribunal:

- *Agents Act 2003*
- *Security Industry Act 2003*.

### 16 Acts providing for application for review

- (1) This section applies if an Act makes provision under section 15 (a).
- (2) The Act—
  - (a) must state the person whose decisions may be reviewed; and
  - (b) may be expressed to apply to all decisions of a person, or to stated decisions of the person; and
  - (c) may state conditions subject to which applications may be made.
- (3) A failure by a person to do something required or allowed to be done within the period prescribed by the Act for doing the thing is taken to be a decision by the person not to do the thing.
- (4) A decision mentioned in subsection (3) is taken to have been made at the end of the prescribed period mentioned in subsection (3).

## 17 Making an application

An application must—

- (a) be in writing; and
- (b) contain a statement of reasons for making the application; and
- (c) contain the details (if any) prescribed under the regulations; and
- (d) for an application for review of a decision—be made within 60 days after the day the decision to which the application relates is made; and
- (e) be given to the registrar.

*Note 1* If a form is approved under s 62 (Approved forms) for an application, the form must be used.

*Note 2* A fee may be determined under s 63 (Determination of fees) for this section.

## 18 Help with applications etc

The registrar may give a person making an application, or considering making an application, the help the registrar considers appropriate.

### Example

The registrar may advise the person about the role of the tribunal.

*Note* An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

## 19 Withdrawal of application

- (1) An applicant may withdraw an application at any time by giving written notice of the withdrawal to the registrar.
- (2) As soon as practicable after receiving notice of withdrawal of an application, the registrar must give a copy of the notice to each other party to the application.

**20 Preliminary conferences**

- (1) The registrar may require the parties to an application to attend a preliminary conference.
- (2) The registrar may make inquiries, or require further information from a party, for or during a preliminary conference.

**Example**

The registrar may talk to the consumer who made a complaint to which an application for disciplinary action relates.

*Note* An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

## **Part 4 Tribunal procedures**

### **Division 4.1 Procedures generally**

#### **21 Principles about tribunal procedures**

The procedures of the tribunal are to be as simple, quick and inexpensive as is consistent with achieving justice.

#### **22 Natural justice**

The tribunal must observe natural justice.

#### **23 Procedure generally**

- (1) The tribunal may decide its own procedure in relation to a particular matter in a hearing or a step in a proceeding if no procedure is prescribed under this Act.

*Note* A reference to an Act includes a reference to the statutory instruments made or in force under the Act, including regulations (see Legislation Act, s 104).

- (2) However, tribunal proceedings should be as informal as possible.

#### **24 Arrangement of business**

- (1) The president is responsible for ensuring the orderly and prompt discharge of tribunal business.
- (2) Without limiting subsection (1), the president may give directions that are not inconsistent with this Act about any of the following:
  - (a) the arrangement of tribunal business;
  - (b) the procedure of the tribunal generally.

#### **25 Time and place of proceedings**

The tribunal is to sit at the times and places the president decides.



## **Division 4.2 Tribunal proceedings**

### **26 Laws of evidence**

The tribunal is not required to apply the laws of evidence, subject to section 22 (Natural justice).

### **27 Tribunal may inform itself**

The tribunal may inform itself in any way it considers appropriate in a particular proceeding, subject to section 22 (Natural justice).

### **28 Parties**

- (1) The parties to a tribunal proceeding are—
  - (a) for an application for review of a decision—the applicant and the decision-maker; or
  - (b) for an application in relation to disciplinary action—the commissioner and the person to whom the application relates.
- (2) Also, the tribunal may join any person as a party to the proceeding.

### **29 Representation**

A person may be represented in a proceeding by a lawyer or someone else.

### **30 Appearance by corporation**

A corporation may appear before the tribunal by a director or an authorised officer.

### **31 Hearings**

- (1) The tribunal must hear each application made to it, unless the tribunal—
  - (a) decides not to conduct a hearing under section 41 (Decision without hearing); or

- (b) refuses to hear the application, or dismisses it, under section 44 (1) (a) (Other actions by tribunal).
- (2) A tribunal hearing must be in public unless there are exceptional circumstances that, in the tribunal's opinion, justify the hearing being closed.

### **32 Procedure in absence of party**

- (1) This section applies if, at the time set for the hearing of an application, a party to the application fails to appear either personally or by a representative.
- (2) The tribunal may—
  - (a) order that the application be set down for hearing at another time; or
  - (b) order that stated other steps be taken before the hearing proceeds as the tribunal directs; or
  - (c) adjourn the proceeding; or
  - (d) if the party is the applicant—dismiss the application; or
  - (e) proceed with the hearing in the absence of the party either generally or in relation to any relief claimed in the proceeding.

### **33 Witnesses**

- (1) For a tribunal hearing, the member presiding, the registrar or a deputy registrar may summon a person to appear as a witness before the tribunal—
  - (a) to give evidence; or
  - (b) to give evidence and produce a document or thing stated in the summons that is in the person's possession, custody or control; or

- (c) to produce a document or thing stated in the summons that is in the person's possession, custody or control.
- (2) The tribunal may give a party leave to inspect a document produced under a summons.
- (3) A person is taken to have complied with a summons to produce a document or thing if the person gives the document or thing to the registrar before the date stated in the summons.
- (4) A summons must be in writing and served on the person named in the summons.
- (5) A person commits an offence if—
- (a) a summons is served on the person; and
  - (b) the person does not comply with the summons.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

- (6) An offence against subsection (5) is a strict liability offence.

*Note* The Legislation Act, s 170 and s 171 deal with the application of the privilege against selfincrimination and client legal privilege.

### **34 Taking part by telephone etc**

The registrar at a preliminary conference, or the tribunal hearing a proceeding, may allow a person to take part or give evidence by telephone, closed-circuit television or other means of communication.

### **35 Amendments**

At any stage of a proceeding, the tribunal may—

- (a) on application by a party or on its own initiative, order that a document in the proceeding be amended; or

- (b) with the agreement of the parties, give leave to a party to amend a document of the party.

**36 Costs**

The parties to a hearing must bear their own costs unless the tribunal requires otherwise under section 44 (1) (b) (Other actions by tribunal).

**37 Disclosure of interests by members**

- (1) This section applies if—
  - (a) a person is, or is to be, a tribunal member for a proceeding; and
  - (b) the person has or acquires an interest, financial or otherwise, that could conflict with the exercise of the member’s functions in relation to the proceeding.
- (2) The person—
  - (a) must tell the parties to the proceeding about the interest; and
  - (b) must not take part, or continue to take part, in the proceeding, or exercise any function in relation to the proceeding, unless each party consents to the person taking part, or continuing to take part, in the proceeding.
- (3) If the president becomes aware that a person is, or is to be, a tribunal member for a proceeding and that the member has an interest mentioned in subsection (1) (b) in relation to the proceeding—
  - (a) if the president considers that the person should not take part, or should not continue to take part, in the proceeding—the president must direct the person not to take part or continue to take part; or
  - (b) in any other case—the president must cause the interest of the person to be disclosed to the parties to the proceeding.

(4) In this section:

*interest* means a direct or indirect interest.

**38 Adjourment of proceedings**

The tribunal may, at any time, adjourn the hearing of, or the further hearing of, an application in the way and on the conditions the tribunal considers appropriate.

## Part 5 Decisions and powers of tribunal

### 39 Decisions by majority or president

- (1) Questions for decision by the tribunal may be decided by a majority of the votes of tribunal members.
- (2) If the votes of tribunal members on a question are equally divided, the decision of the president or, if the president is not a tribunal member, the presiding member is the decision of the tribunal on the question.

### 40 Applications to extend time or amend orders

- (1) This section applies if the tribunal is constituted by the president or the president and other members.

*Note* **President**, for a proceeding in a tribunal division, includes the deputy president of the division (see dict).

- (2) The tribunal may, on application—
  - (a) extend the time for compliance with a tribunal order; or
  - (b) amend an interim tribunal order.

### 41 Decision without hearing

- (1) The tribunal may give each party to the proceeding on an application written notice to the effect that—
  - (a) the tribunal proposes to make a decision on the application without conducting a hearing; and
  - (b) if the party wishes to make representations about the proposal—the party must make the representations within 21 days after the day the notice is given.

- (2) The tribunal may decide not to conduct a hearing in relation to the application only if the tribunal—
- (a) has given notice under subsection (1); and
  - (b) has taken into consideration any representation made by a party to the proceeding on the application within the 21 days; and
  - (c) is satisfied that it is in the public interest not to conduct a hearing; and
  - (d) is satisfied that it has sufficient information to make an informed decision on the application.

#### **42 Review of decisions on application**

- (1) This section applies if the tribunal is reviewing a decision on application.
- (2) The tribunal may exercise the powers and discretions given by any relevant Act to the person who made the decision.
- (3) The tribunal must make a decision in writing—
- (a) confirming the decision under review; or
  - (b) varying the decision under review; or
  - (c) setting aside the decision under review and—
    - (i) making a decision in substitution for the decision set aside; or
    - (ii) remitting the matter for reconsideration in accordance with any direction or recommendation of the tribunal.

#### **43 Orders for disciplinary action**

- (1) This section applies if the tribunal is considering an application for disciplinary action against a person.

- (2) The tribunal may make an order for disciplinary action in relation to the person if satisfied on reasonable grounds that grounds for disciplinary action against the person exist.
- (3) In considering what disciplinary action to take against the person, the tribunal must consider the following:
  - (a) whether the person took reasonable steps to avoid the action (the *contravention*) that is the grounds for disciplinary action;
  - (b) whether disciplinary action has previously been taken against the person for a similar act;
  - (c) whether the person has taken steps to mitigate the effect of the contravention;
  - (d) the impact of the contravention on any consumer;
  - (e) the likelihood that the person will act in a way that is grounds for disciplinary action in the future;
  - (f) whether the commissioner has applied for particular disciplinary action to be taken and, if so, the kind of disciplinary action applied for.

**Example for par (e)**

The trader has changed a method of work or given a direction to staff to prevent further contraventions.

*Note* An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (4) The tribunal may consider any other relevant matter.

#### **44 Other actions by tribunal**

- (1) The tribunal may—
  - (a) if the tribunal considers an application is frivolous or vexatious—refuse to hear the application, or dismiss it; or



- (b) if the tribunal considers that a party to a proceeding caused unreasonable delay or obstruction before or during the proceeding—require the party to pay the reasonable costs of the other party arising from the delay or obstruction; or
  - (c) hear an application jointly with another application that arises from the same or similar facts; or
  - (d) with the president’s consent, amend or set aside a tribunal order.
- (2) The tribunal may take any other action it considers appropriate that is consistent with this Act and the Act under which the decision appealed from was made or under which the person against whom disciplinary action is sought is licensed or registered.

*Note* A reference to an Act includes a reference to the statutory instruments made or in force under the Act, including regulations (see Legislation Act, s 104).

- (3) This section does not limit any other power given to the tribunal under this Act or another Territory law.

#### **45 Interim orders**

- (1) This section applies if, before a hearing—
- (a) a party to the proceeding applies to the tribunal for an order under this section; and
  - (b) the tribunal is satisfied that, if an order under this section were not made before the beginning of the hearing, the party applying for the order would be disadvantaged or suffer harm.
- (2) The tribunal may make any order (an *interim order*) it considers appropriate to protect the position of the party that applied for the order.

- (3) An interim order remains in force until the earliest of the following happens:
  - (a) the end of 2 weeks after the day it is made;
  - (b) the tribunal orders otherwise;
  - (c) the tribunal makes an order at the conclusion of the hearing to which the interim order relates.
- (4) The tribunal may, on application by a party while an interim order is in force—
  - (a) vary the order; or
  - (b) revoke the order; or
  - (c) extend the order for a further 2 weeks.
- (5) If the person against whom an interim order is made is not present when the order is made, the registrar must arrange for a copy of the order to be served on the person as soon as practicable after the order is made.

#### **46 Other disciplinary action**

- (1) In addition to any other order the tribunal may make, the tribunal may, in relation to a person who is the subject of a disciplinary proceeding—
  - (a) order the person to pay an amount to the Territory or someone else, of not more than—
    - (i) if the person is an individual—\$1 000; or
    - (ii) if the person is a corporation—\$5 000; or
  - (b) reprimand the person; or
  - (c) order the person to give a written undertaking; or
  - (d) direct the commissioner to—

- (i) place a condition on the person's licence or registration;  
or
  - (ii) remove or amend a condition placed on the person's licence or registration; or
- (e) give the person directions.
- (2) The tribunal must not give a direction for subsection (1) (d) that would result in inconsistency with an express requirement placed on the person's licence or registration by the Act under which the person is licensed or registered.

*Note* A reference to an Act includes a reference to the statutory instruments made or in force under the Act, including regulations (see Legislation Act, s 104).

#### **47 Kinds of directions**

- (1) The tribunal may issue the kinds of directions under section 46 (e) that the tribunal considers appropriate in a particular case.
- (2) The directions the tribunal may issue include a direction to comply with a requirement under an Act or a licence.
- (3) A direction must state the period within which the person is to comply with the direction.
- (4) The tribunal may, on application, extend the period for compliance stated in a direction either before or after the end of the stated period.

#### **48 Notice of orders**

The tribunal must give each party to a proceeding written notice setting out the terms of any order made under this part within 7 days after the day the tribunal makes the order.

#### **49 Statement of reasons**

- (1) This section applies if—

**Part 5** Decisions and powers of tribunal

Section 49

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- (a) the tribunal makes an order; and
  - (b) within 14 days after the day the order is made a party to the proceeding asks for a statement of reasons for the making of the order.
- (2) The tribunal must give the party a written statement of reasons for the making of the order.

*Note* The Legislation Act, s 179 deals with what must be included in a statement of reasons.

## Part 6 Referrals and appeals to Supreme Court

### 50 Referral of questions of law

- (1) If the tribunal considers that a question of law raises an issue of public importance, the tribunal may refer the question to the Supreme Court.
- (2) The tribunal may act under subsection (1) on its own initiative or on application by a party.

### 51 Appeals from decisions of tribunal

- (1) A party to a tribunal proceeding may, with the Supreme Court's leave, appeal to the court on a question of law from a decision of the tribunal in the proceeding.
- (2) An appeal by a person under subsection (1) must be begun within—
  - (a) 28 days after the day when a notice under section 48 is given to the person; or
  - (b) if the person has asked for a statement of reasons under section 49—28 days after the day the statement is given to the person; or
  - (c) any further time the Supreme Court allows (whether on, before or after a day mentioned in paragraph (a) or (b)).
- (3) The Supreme Court must decide the appeal, and may make any of the following orders:
  - (a) an order confirming or setting aside the decision of the tribunal;

**Part 6** Referrals and appeals to Supreme Court

Section 51

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- (b) an order remitting the case to be heard and decided again, either with or without the hearing of further evidence, by the tribunal in accordance with the court's directions;
  - (c) an order for costs.
- (4) The Supreme Court may also make any other order the court considers appropriate.

## Part 7 Enforcement and offences

### 52 Contravention of requirement to take oath

- (1) A person commits an offence if—
  - (a) the person is required to take an oath or make an affirmation before the tribunal; and
  - (b) the person does not take an oath or make an affirmation.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

### 53 Failure to comply

- (1) A party to a hearing must not, without reasonable excuse, fail to comply with a tribunal order or direction.
- (2) If a person contravenes subsection (1), the tribunal may order the person to pay a stated amount (not larger than the amount (if any) prescribed under the regulations) to the Territory.

### 54 Orders for payment of amounts

If the tribunal orders a person to pay an amount, the tribunal must tell the person about the effect of section 55.

### 55 Nonpayment of amounts ordered to be paid

- (1) This section applies if—
  - (a) the tribunal orders the payment within a stated period of an amount by a person who is licensed or registered under an Act mentioned in section 15 (b); and
  - (b) the person does not make the payment within the period, or any further period allowed by the tribunal, for payment.

- (2) The registrar must give the person written notice that the person's licence or registration will be automatically cancelled if the person does not make the payment within 7 days after the day the person receives the notice.
- (3) If the person does not make the payment within the period mentioned in subsection (2), the person's licence or registration is automatically cancelled on the day after the end of the period.

**56 Obstruction and hindering**

- (1) A person commits an offence if the person obstructs or hinders the tribunal in the exercise of the tribunal's functions.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

- (2) An offence against this section is a strict liability offence.

**57 False or misleading information**

- (1) A person commits an offence if—
  - (a) the person gives information to the tribunal, the registrar or a deputy registrar; and
  - (b) the person does so knowing that the information—
    - (i) is false or misleading; or
    - (ii) omits something without which the information is false or misleading.

Maximum penalty: 200 penalty units, imprisonment for 2 years or both.

- (2) Subsection (1) (b) (i) does not apply if the information is not false or misleading in a material particular.
- (3) Subsection (1) (b) (ii) does not apply if the omission does not make the information false or misleading in a material particular.



**58 False or misleading documents**

- (1) A person commits an offence if—
- (a) the person produces a document to the tribunal, the registrar or a deputy registrar; and
  - (b) the person does so knowing that the document is false or misleading.

Maximum penalty: 200 penalty units, imprisonment for 2 years or both.

- (2) Subsection (1) does not apply if the document is not false or misleading in a material particular.
- (3) Subsection (1) also does not apply to a person who produces a document if the document is accompanied by a written statement signed by the person (or, for a corporation, by a competent officer of the corporation)—
- (a) stating that the document is, to the person's knowledge, false or misleading in a material particular; and
  - (b) setting out, or referring to, the material particular in which the document is, to the person's knowledge, false or misleading.

**59 Secrecy**

- (1) In this section:

***court*** includes any tribunal, authority or person with power to require the production of documents or the answering of questions.

***informed person*** means anyone who is, or has been—

- (a) a tribunal member; or
- (b) a member of the staff of the tribunal; or
- (c) acting under the direction or authority of the tribunal; or
- (d) providing advice or expertise to the tribunal.

*produce* includes allow access to.

*protected information* means information about a person that is disclosed to, or obtained by, an informed person because of the exercise of a function under this Act.

- (2) An informed person commits an offence if the person—
- (a) makes a record of protected information; or
  - (b) directly or indirectly, divulges or communicates protected information about someone else.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

- (3) Subsection (2) does not apply if the record is made, or the information is divulged or communicated—
- (a) under this or any other Act; or
  - (b) in relation to the exercise of a function, as an informed person, under this or any other Act; or
  - (c) with the consent of the person from whom the information was obtained; or
  - (d) to a person administering or enforcing a corresponding law of a local jurisdiction; or
  - (e) to a law enforcement authority.
- (4) An informed person need not divulge or communicate protected information to a court, or produce a document containing protected information to a court, unless it is necessary to do so for this or another Act.

## Part 8                      Miscellaneous

### 60                      Protection of members etc

- (1) This section applies to a person who is, or has been—
  - (a) a tribunal member; or
  - (b) the registrar or deputy registrar; or
  - (c) acting under the direction or authority of the tribunal; or
  - (d) taking part in a proceeding; or
  - (e) a public servant providing administrative assistance to the tribunal.
- (2) A civil proceeding does not lie against a person to whom this section applies in relation to loss, damage or injury of any kind to someone else because of an act done, or omitted to be done honestly in the exercise (or purported exercise) of a function under this Act.

### 61                      Admissibility of evidence

- (1) Evidence given before the registrar during a preliminary conference is not admissible against a person in a criminal proceeding.
- (2) Evidence of any words spoken at a preliminary conference must not be admitted in a civil proceeding under this Act.

### 62                      Approved forms

- (1) The president may, in writing, approve forms for this Act.
- (2) If the president approves a form for a particular purpose, the approved form must be used for that purpose.

*Note*            For other provisions about forms, see Legislation Act, s 255.

- (3) An approved form is a notifiable instrument.

*Note* A notifiable instrument must be notified under the Legislation Act.

### **63 Determination of fees**

- (1) The Minister may, in writing, determine fees for this Act.

*Note* The Legislation Act contains provisions about the making of determinations and regulations relating to fees (see pt 6.3)

- (2) A determination is a disallowable instrument.

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

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

- (1) The Executive may make regulations for this Act.

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

- (2) The regulations may make provision in relation to the following:

- (a) preliminary conferences;
- (b) giving notice to parties before a tribunal hearing;
- (c) record-keeping;
- (d) tribunal practice and procedures.

## Part 9 Transitional provisions and consequential amendments

### 65 Definitions for pt 9

In this part:

*commencement day* means the day this part commences.

*Agents Act* means the *Agents Act 1968* (repealed).

*agents board* means the Agents Board of the Australian Capital Territory established under the Agents Act, section 8 (1).

*agents board chairperson* means the chairperson of the board appointed under the Agents Act, section 10 (1).

### 66 Agents board members

- (1) This section applies to a person other than the agents board chairperson who was, immediately before commencement day, a member of the agents board.
- (2) The person is taken to be a tribunal panel member.
- (3) The person remains a tribunal panel member until the day the person would have stopped being a member of the agents board if the Agents Act had not been repealed.

### 67 Agents board chairperson

- (1) The agents board chairperson is taken to be the deputy president of the general division of the tribunal.
- (2) The agents board chairperson remains deputy chairperson until the day the chairperson would have stopped being chairperson if the Agents Act had not been repealed.

**71 Modification of pt 9's operation**

The regulations may modify the operation of this part to make provision in relation to any matter that is not already, or is not (in the Executive's opinion) adequately, dealt with in this part.

**72 Expiry of pt 9**

This part expires 2 years after the commencement day.

## Dictionary

(see s 3)

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

*Note 2* In particular, the Legislation Act, dict, pt 1, defines the following terms:

- appoint
- chief executive
- contravene
- Executive
- exercise
- function
- interest
- lawyer
- public servant.

***commissioner*** means the commissioner for fair trading.

***deputy president***, for a tribunal division, means the deputy president appointed under section 10 for the division.

***disciplinary action***, in relation to a person who is licensed or registered under an Act mentioned in section 15 (b)—

- (a) means any action the tribunal may take in relation to the person under that Act; and
- (b) includes action under section 46 (Other disciplinary action).

***grounds for disciplinary action***, in relation to a person who is licensed or registered under an Act mentioned in section 15 (b)—see that Act, dictionary.

***president***—

- (a) means the president appointed under section 9; and
- (b) for a proceeding in a tribunal division—includes the deputy president for the division.

***tribunal*** means the Consumer and Trader Tribunal established under section 7.

***tribunal member***, for a hearing on an application, means a person making up the tribunal for the hearing.

***tribunal panel*** means the people appointed by the Executive under section 11.



## 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                                      |
| cl = clause   | pres = present  |
| def = definition                                    | prev = previous   |
| dict = dictionary                                   | (prev...) = previously  |
| disallowed = disallowed by the Legislative Assembly | pt = part   |
| div = division                                      | r = rule/subrule  |
| exp = expires/expired                               | reg = regulation/subregulation                                    |
| 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 |

## Endnotes

3 Legislation history

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### 3 Legislation history

#### **Consumer and Trader Tribunal Act 2003 A2003-16**

notified LR 9 April 2003

s 1, s 2 commenced 9 April 2003 (LA s 75 (1))

remainder commenced 9 October 2003 (s 2 and LA s 79)

as amended by

#### **Criminal Code (Theft, Fraud, Bribery and Related Offences) Amendment Act 2004 A2004-15 sch 2 pt 2.20**

notified LR 26 March 2004

s 1, s 2 commenced 26 March 2004 (LA s 75 (1))

sch 2 pt 2.20 commenced 9 April 2004 (s 2 (1))

### 4 Amendment history

#### **Commencement**

s 2 om LA s 89 (4)

#### **Transitional provisions and consequential amendments**

pt 9 hdg exp 9 October 2005 (s 72)

#### **Obstruction and hindering**

s 56 am A2004-15 amdt 2.47

#### **Definitions for pt 9**

s 65 exp 9 October 2005 (s 72)

#### **Agents board members**

s 66 exp 9 October 2005 (s 72)

#### **Agents board chairperson**

s 67 exp 9 October 2005 (s 72)

#### **Court Security Act 2001**

##### **Dictionary, definition of *court*, new paragraph (ea)**

s 68 om LA s 89 (3)

#### **Court Security Act 2001**

##### **Dictionary, definition of *court***

s 69 om LA s 89 (3)

#### **Legislation Act 2001**

##### **Dictionary, part 1, new definition of *consumer and trader tribunal***

s 70 om LA s 89 (3)

**Modification of pt 9's operation**s 71 exp 9 October 2005 (s 72)**Expiry of pt 9**s 72 exp 9 October 2005 (s 72)**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. Except for the footer, electronic and printed versions of an authorised republication are identical.

| <b>Republication No and date</b> | <b>Effective</b>         | <b>Last amendment made by</b> | <b>Republication for</b> |
|----------------------------------|--------------------------|-------------------------------|--------------------------|
| R1<br>9 Oct 2003                 | 9 Oct 2003<br>8 Apr 2004 | not amended                   | new Act                  |

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