

2009

THE LEGISLATIVE ASSEMBLY FOR THE
AUSTRALIAN CAPITAL TERRITORY

ACT CIVIL AND ADMINISTRATIVE TRIBUNAL REGULATION 2009

SL2009-1

EXPLANATORY STATEMENT

Circulated by the authority of
Simon Corbell MLA
Attorney General

ACT Civil and Administrative Tribunal Regulation 2009

Outline

This regulation prescribes a number of matters under the *ACT Civil and Administrative Tribunal Act 2008*. It sets the maximum amount which the ACAT can order a person to pay as part of an occupational disciplinary order and for failure to comply with a tribunal order. It sets out the considerations relevant to the appointment of non-presidential members. It sets out the requirements for reviewable decision notices and internal review notices in relation to administrative decisions. Finally it sets out the purposes for which certain trust moneys paid into the ACAT trust account under an authorising law may be used.

Regulation Notes

Regulation 1 – Name of regulation – provides that the regulation is the ACT Civil and Administrative Tribunal Regulation 2009.

Regulation 2 – Commencement – provides that the regulation commences on the day section 6 of the *ACT Civil and Administrative Tribunal Act 2008* commences.

Regulation 3 – Notes – provides that notes in the regulation have explanatory effect only.

Regulation 4 – Maximum amount payable under occupational discipline order—Act, s 66 (2) (h) – Section 66 of the *ACT Civil and Administrative Tribunal Act 2008* provides a standard set of occupational discipline orders that the ACAT may make (eg, reprimand or cancellation of a licence/registration). One of the powers allows ACAT to order that a person being disciplined may pay a stated amount (not more than any amount prescribed by regulation). The regulation prescribes the amount of \$1,000 for an individual and \$5,000 for a

corporation, setting the maximum order that the ACAT can make under section 66(2)(h).

Regulation 5 – Maximum amount payable for failure to comply with occupational discipline order—Act, s 74 (2) (a) – Section 74 of the *ACT Civil and Administrative Tribunal Act 2008* provides that a party to an application must not, without reasonable excuse, fail to comply with a tribunal order. If a person contravenes this rule, the tribunal may take certain steps, including ordering the person to pay an amount to the territory. The regulation prescribes the amount of \$4,000 for an individual and \$20,000 for a corporation, setting the maximum order that the ACAT can make under section 74(2)(a).

Regulation 6 – Appointment of senior and ordinary members of the tribunal—Act, s 96 – Section 96 of the *ACT Civil and Administrative Tribunal Act 2008* provides for the appointment of non-presidential members of the Tribunal. The Act provides that a regulation may make provision about these appointments. The regulation provides guidance about the desirable interests, qualifications and experience of members which the Attorney General should take into consideration when considering an appointment.

The regulation also permits the Health Minister to nominate persons to the Attorney General for consideration (persons previously appointed may be reappointed without further nomination). It also permits the Health Minister to set different categories of health professions for the purpose of the nomination process. For example, the Health Minister might determine that it is appropriate for the ACAT to have persons experienced in the ‘X’ health profession. Having made that nomination under Regulation 6(4), the Health Minister may then nominate a person or persons that has experience in ‘X’ health profession. The Attorney General must then consider the desirability of appointing the nominated person/persons.

Regulation 7 – Requirements for reviewable decision notices—Act, s 67A (3) – Section 67A of the *ACT Civil and Administrative Tribunal Act 2008*

provides that a person who makes a reviewable decision must take reasonable steps to give written notice in the form of a reviewable decision notice to any person whose interests are affected by the decision. The Act provides that the regulation may prescribe various aspects of the notice, including the timeframe in which the notice must be given and what the notice must/may contain.

The regulation sets out the requirements for reviewable decision notices. It provides what information must be included in the notice (including the decision, the person's administrative review options, and information on how a person may make an application to the ACAT for a review of the decision). The regulation preserves the effect of notices issued prior to commencement of the *ACT Civil and Administrative Tribunal Act 2008*. The content requirements of this regulation reflect previous requirements under ACT law (eg, clause 4 of the Code of Practice for Notification of Reviewable Decisions and Rights of Review, No.148 of 1994).

Regulation 8 – Requirements for internal review notices—Act, s 67B(3) – Section 67B of the *ACT Civil and Administrative Tribunal Act 2008* provides that a person who makes a decision subject to internal review under an authorising law must take reasonable steps to give written notice in the form of an internal review notice to any person whose interests are affected by the decision. The Act provides that the regulation may prescribe various aspects of the notice, including the timeframe in which the notice must be given and what the notice must/may contain.

The regulation sets out the requirements for internal review notices. It sets out the information which must be included in the notice (including the decision, the person's administrative review options, and information on how a person may make an application to the ACAT for a review of the decision). The regulation preserves the effect of notices issued prior to commencement of the *ACT Civil and Administrative Tribunal Act 2008*. The content requirements of this regulation reflect previous requirements under ACT law (eg, clause 4 of the Code of Practice for Notification of Reviewable Decisions and Rights of Review, No.148 of 1994).

Regulation 9 – Use of trust amounts—Act, s 115C (b) – Section 115C of the *ACT Civil and Administrative Tribunal Act 2008* provides that a regulation may prescribe the purposes for which trust moneys paid into the ACAT trust account under an authorising law may be used. The regulation provides that trust money paid into the ACAT trust account from *Agents Act 2003* may be used for the following purposes:

- (a) promoting education and understanding of the *Agents Act 2003* for licensed agents, registered salespeople and the public;
- (b) providing dispute resolution services for disputes involving licensed agents or registered salespeople;
- (c) paying additional amounts to the compensation fund;
- (d) researching issues of concern to licensed agents and people using the services of licensed agents, whether or not the issues arise under the *Agents Act 2003*;
- (e) paying or reimbursing costs incurred by the commissioner for fair trading on behalf of the Territory for applications to the ACAT in relation to a licensed agent or registered salesperson;
- (f) paying reasonable costs and expenses incurred by an administrator under the *Agents Act 2003*, section 143 (Remuneration of administrators); and
- (g) reimbursing the Territory for the cost of administering the *Agents Act 2003* and the *ACT Civil and Administrative Tribunal Act 2008*.

These provisions are to similar effect to provisions previously dealing with excess trust money in the *Agents Act 2003* and the *Agents Regulation 2003*.