

2009

**THE LEGISLATIVE ASSEMBLY FOR THE
AUSTRALIAN CAPITAL TERRITORY**

**ACT CIVIL AND ADMINISTRATIVE TRIBUNAL (TRANSITIONAL
PROVISIONS) AMENDMENT REGULATION 2009 (No 1)
SL2009-51**

EXPLANATORY STATEMENT

Circulated by the authority of
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Attorney General

**ACT Civil and Administrative Tribunal (Transitional Provisions) Amendment
Regulation 2009 (No 1)
SL2009-51**

Overview

This regulation amends the *ACT Civil and Administrative Tribunal (Transitional Provisions) Regulation 2009* to address additional transitional matters arising from the initial operation of the ACT Civil and Administrative Tribunal (ACAT). Matters dealt with include:

- references in court documents to the now defunct Small Claims Court;
- provisions to clarify the process for payment of application fees by government agencies;
- reviving a former provision of the *Legal Profession Act 2006* dealing with the naming of lawyers prior to the expiry of an appeal period for occupational discipline matters;
- provisions to allow for continuation of legal representation in the Magistrates Court for enforcement proceedings; and
- inserting a provision dealing with ACAT into the annual licence fee determination provisions of the *Utilities Act 2000*.

The detail of each regulation is set out below.

Regulation Notes

In this regulation:

- “commencement day” means the day section 6 of the *ACT Civil and Administrative Tribunal Act 2008* commences;
- “ACAT” means the ACT Civil and Administrative Tribunal; and
- “ACAT (TP) Regulation” means the *ACT Civil and Administrative Tribunal (Transitional Provisions) Regulation 2009*.

Detail of the Regulation

Regulation 1 Name of regulation

Provides that the name of the regulation is the *ACT Civil and Administrative Tribunal (Transitional Provisions) Amendment Regulation 2009 (No 1)*.

Regulation 2 Commencement

Provides that the regulation commences on the day after its notification day.

Regulation 3 Legislation amended

Provides that this regulation amends the *ACT Civil and Administrative Tribunal (Transitional Provisions) Regulation 2009*.

Regulation 4 New section 52A

This regulation inserts a new section 52A to provide that where a document written before commencement day included a reference to the Small Claims Court, that reference shall not only be taken as a reference to the ACAT but will also be taken as a reference to the Magistrates Court in relation to enforcement proceedings.

This regulation preserves the intent of persons executing instruments (such as a power of attorney) which might have been premised on enforcement proceedings being undertaken in the Small Claims Court. It complements existing provisions in Part 13 of the ACAT (TP) Regulation which recognise such references as applying to the ACAT in appropriate circumstances.

Regulation 5 Section 67(1), new modification 301AA

This regulation inserts a new modification 301AA to provide clarity surrounding the procedure for Territory entities which do not pay a filing fee up-front for the commencement of proceedings, and to reduce the transaction costs associated with recurrent payments.

Agencies are required to pay a filing fee when commencing proceedings in the ACAT, for example, proceedings for occupational discipline and other regulatory purposes. This regulation mandates the payment, but permits an agency to remit the fee to the ACAT trust account on a quarterly basis, to reduce the transaction costs involved in more frequent payments.

Regulation 6 Section 67(1), new modifications to 301D to 301F

This regulation inserts new modifications 301D, 301E and 301F, which modify the *Legal Profession Act 2006*, *Magistrates Court Act 1930* and *Utilities Act 2000* in new schedules 3, 4 and 5 of the ACAT (TP) Regulation respectively. The modifications are detailed below.

Regulation 7 **New schedule 3**

This regulation inserts a new schedule 3 into the ACAT (TP) Regulation, modifying the *Legal Profession Act 2006* by inserting new section 432A dealing with the naming of legal professionals prior to the expiry of the appeal process for an occupational discipline matter. A similar provision (former section 426A) was included in an earlier republication of the *Legal Profession Act 2006*, but was omitted by the *ACT Civil and Administrative Tribunal Amendment Act 2008*, which replaced Part 4.7 of the *Legal Profession Act 2006*.

Regulation 8 **New schedule 4**

This regulation inserts a new schedule 4 into the ACAT (TP) Regulation, modifying the *Magistrates Court Act 1930* by inserting new section 266B dealing with representation for enforcement proceedings.

In many civil dispute proceedings in the ACAT, enforcement action is required after an order is made. In law and practice, enforcement action is simply another step in the same application, although for reasons of convenience, ACAT orders are enforced in the Magistrates Court. New section 266B provides that where a person represented another person in proceedings before the ACAT, that person may continue to represent the other person in any enforcement proceedings before the Magistrates Court. This new section is consistent with the former practice in small claims and residential tenancy matters prior to commencement of the ACAT.

Regulation 9 **New schedule 5**

This regulation inserts a new schedule 5 into the ACAT (TP) Regulation, modifying the *Utilities Act 2000* by replacing previous section 45(2) with a new section to permit the Independence Competition and Regulatory Commission to continue to determine an annual licence fee payable by a utility for the costs incurred by the ACAT in dealing with utility matters not otherwise met from appropriation (in particular, the costs incurred in relation to water and sewerage).

Pursuant to the establishment of ACAT, the *ACT Civil and Administrative Tribunal Amendment Act 2008 (No 2)* amended the *Utilities Act 2000* to remove a reference to the Energy and Water Consumer Council in section 45(2). New section 45(2) will continue previous funding arrangements for the former Energy and Water Consumer Council for the ACAT.