

2008

LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY

**ACT CIVIL AND ADMINISTRATIVE TRIBUNAL LEGISLATION
AMENDMENT BILL 2008**

EXPLANATORY STATEMENT

**Presented by the authority of
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ACT CIVIL AND ADMINISTRATIVE TRIBUNAL LEGISLATION AMENDMENT BILL 2008

Explanatory Statement

This explanatory statement relates to the Bill as introduced into the ACT Legislative Assembly.

Overview of Bill

This Bill makes amendments to legislation related to the related ACT Civil and Administrative Tribunal Act 2008 (the “ACAT Act/Bill”). The amendments make changes consequent on the establishment of the tribunal, and in some cases simplify or standardise the language used in the legislation concerning the tribunal.

Outline of Provisions

Clause 1 Name of Act

States the title of the Act, which is the *ACT Civil and Administrative Tribunal Legislation Amendment Bill 2008*.

Clause 2 Commencement

Provides for the commencement of the Act. In general, the Act commences on the day section 6 of the ACT Civil and Administrative Tribunal Act 2008 commences. The Act makes provision for the commencement of a number of amendments to Acts, which are being amended by other legislation.

The Act provides that, despite these commencement provisions, the Minister may determine another day for the commencement of the amendment. This provision will provide some additional capability to choose the time at which various jurisdictions will come into the ACT Civil and Administrative Tribunal.

Clause 3 Legislation amended

Provides that the Act amends the legislation in Schedule 1.

In the Act (and this explanatory statement) the ACT Civil and Administrative Tribunal is referred to as the ACAT. A reference in the Schedule below to “the Act” is to the relevant Act being amended.

Schedule 1 Amendments

ACT Civil and Administrative Tribunal Act 2008

This part makes a series of amendments to the ACAT Bill, principally to include within the Act a number of provisions formerly found in the *Administrative Appeals Tribunals Act 1989* (new Part 4A of the ACAT Act). These provisions deal with:

- reasons statements (the written statement a decision maker must provide to an applicant on request) and the circumstances in which reasons might not be provided;
- the issuance of non-disclosure certificates (where disclosure about a stated matter would not be in the public interest); and
- other provisions relating to the conduct of administrative review proceedings (including provisions defining the class of persons whose interests are affected by a decision for the purposes of the law and what is a question of law for the proceedings, allowing the tribunal to make rules about the joining of persons to proceedings, and protecting people appearing before the tribunal).

These provisions are modeled on existing law and practice.

In addition, the part provides for standard provisions for reviewable decision notices, ensuring that there is an ACT-wide practice in relation to informing persons whose interests are affected by a decision of their right to a review.

Other amendments in the part help standardise the powers of the tribunal in relation to occupational discipline. Amendments will permit the ACAT to place or remove conditions on a licence or registration, where the regulator has such a power (at present, this is not the case in relation to surveyors). Amendments will permit the ACAT to disqualify a person from holding a licence or registration for a period or indefinitely if the ACAT has the power to cancel a licence or registration.

Transitional arrangements are also included in the amendments. The transitional amendments allow regulations to be made which may modify the operation of these amendments – an exceptional power to ensure that the amendments do not result in injustice during the first year of operation of the ACAT. The part allows the ACAT to hear matters that arose prior to the commencement of the ACAT Act. The part also permit ACAT to hear matters that arose before various tribunals or decision making bodies (including the Consumer and Trader Tribunal, Architects Board, the Registrar under the Construction Occupation (Licensing) Act 2004, Credit Tribunal, and the Commissioner for Fair Trading) provided that the body had variously not commenced hearing an application, commenced an inquiry or had not made a decision at the time of commencement. The provision also deems various orders made by bodies to have been made by the ACAT.

Administrative Decisions (Judicial Review) Act 1989

This part provides substitutes the ACAT for the Administrative Appeals Tribunal.

Agents Act 2003

This part provides substitutes the ACAT for the Consumer and Trader Tribunal.

This part also makes a number of related consequential amendments – for example, it replaces references in the Act to “ground for disciplinary action” to “ground for occupational discipline”.

Note that while the amendments appear to leave open the possibility that licences or registrations issued under other legislation might be cancelled, definitions confine the operation of these provisions to licences and registrations issued under this Act.

This part also provides that an application may be made for a review of specified administrative decisions in the Act to the ACAT.

Architects Act 2004

This part provides that, in future, the Architects Board may apply to the ACAT for an occupational discipline order for an architect (previously the Board itself held a hearing and imposed disciplinary sanctions). In hearing a matter, the ACAT consider a number of matters. These are similar to those previously required to be considered by the Board but now also include the more general considerations set out in section 65(3) of the ACAT Bill.

This part also makes a number of related consequential amendments – for example, it replaces references in the Act to “disciplinary ground” to “ground for occupational discipline”.

This part also provides that an application may be made for a review of specified administrative decisions in the Act (previously brought before the Administrative Appeals Tribunal) to the ACAT. A review is not provided for taking disciplinary action (old s 85(f) as that decision is now taken by the ACAT itself).

Architects Regulation 2004

This part makes a consequential amendment, replacing references to “disciplinary action” to “occupational discipline”.

Bail Act 1992

This part makes consequential amendments to the Act, to replace references to other tribunals with references to the ACAT.

Building Act 2004

This part provides that an application may be made for a review of prescribed administrative decisions in the Act (previously brought before the Administrative Appeals Tribunal) to the ACAT. Similar limitations on the powers of the Administrative Appeals Tribunal are retained in section 142D of the Act.

Building (General) Regulation 2008

This part provides that an application may be made for a review of prescribed administrative decisions in the Act (previously brought before the Administrative Appeals Tribunal) to the ACAT.

Children and Young People Act 2008

This part provides substitutes the ACAT for other tribunals.

This part also provides that an application may be made for a review of prescribed administrative decisions in the Act (previously brought before the Administrative Appeals Tribunal) to the ACAT.

Construction Occupations (Licensing) Act 2004

This part provides that, in future, the registrar may apply to the ACAT for an occupational discipline order for an licensee under this Act (previously the registrar held a hearing and imposed disciplinary sanctions). In hearing a matter, the ACAT consider a number of matters. These are similar to those previously required to be considered by the Board but now also include the more general considerations set out in section 65(3) of the ACAT Bill.

This part also makes a number of related consequential amendments – for example, it replaces references in the Act to “disciplinary ground” to “ground for occupational discipline”.

This part also provides that an application may be made for a review of specified administrative decisions in the Act (previously brought before the Administrative Appeals Tribunal) to the ACAT. A review is not provided for taking disciplinary action (as that decision is now taken by the ACAT itself). A new ground of review is included in respect of the demerits scheme (Part 8).

Construction Occupations (Licensing) Regulation 2004

This part provides that an application may be made for a review of specified administrative decisions in the Act (previously brought before the Administrative Appeals Tribunal) to the ACAT. A new ground of review is included in respect of the removal of material from the register (s111 of the *Construction Occupations (Licensing) Act 2004*).

Consumer Credit Act 1995

This part makes amendments to the Act, consequent on the Australian Capital Territory Credit Tribunal being replaced by the ACAT.

Consumer Credit Regulation 1996

This part makes amendments to the regulation, consequent on the Credit Tribunal being replaced by the ACAT.

Consumer Credit (Administration) Act 1996

This part provides that, in future, the Commissioner for Fair Trading (Commissioner) may apply to the ACAT for an occupational discipline order in relation to a credit provider or finance broker (previously the Commissioner for Fair Trading held a hearing and imposed disciplinary sanctions). These provisions have been modelled on the approach in the *Architects Act 2004*, pt 4 and the *Construction Occupations (Licensing) Act 2004*, pt 11.

In particular, these provisions provide for complaints to the Commissioner, the investigation of complaints, an application by the Commissioner to ACAT for an occupational discipline order and for the ACAT to make various orders. Note that in hearing a matter, the ACAT consider the general considerations set out in section 65(3) of the ACAT Bill.

This part also provides that the Executive may appoint either the Commissioner or another person to undertake an inquiry into the provision of credit or the consequences of the provision of credit (previously such references were given to the Credit Tribunal).

This part also provides that an application may be made for a review of specified administrative decisions in the Act (previously brought before the Administrative Appeals Tribunal) to the ACAT. Review is not now provided for taking certain disciplinary action (where those actions are now taken by the ACAT itself).

Court Procedures Act 2005

This part makes consequential amendments to the Act, to effect necessary changes consequent on other tribunals being replaced by the ACAT. Note that old section 15(3) is omitted because this issue is now addressed in section 48 of the ACAT Bill.

This part also provides that an application may be made for a review of specified administrative decisions in the Act (previously brought before the Administrative Appeals Tribunal) to the ACAT.

This part will also permit presidential members to control security within the precincts of the tribunal (previously, in respect of tribunal collocated with the Magistrates Court, also provides that an application may be made for a review

of specified administrative decisions in the Act (previously brought before the Administrative Appeals Tribunal) to the ACAT.

Court Procedures Regulation 2004

This part omits an unnecessary regulation (the power to provide for fees is now found in Part 3 of the *Court Procedures Act 2005*).

Credit Act 1985

This part makes amendments to the Act, consequent on the Australian Capital Territory Credit Tribunal being replaced by the ACAT.

Crimes Act 1900

This part makes consequential amendments to the Act, to effect necessary changes consequent on other tribunals (particularly the Mental Health Tribunal) being replaced by the ACAT.

Crimes (Child Sex Offenders) Regulation 2005

This part makes a consequential amendment to the Act, to effect necessary changes consequent on the Mental Health Tribunal being replaced by the ACAT.

Discrimination Act 1991

This part makes a consequential amendment to the Act, to effect necessary changes consequent on the Discrimination Tribunal being replaced by the ACAT.

Amendments remove provisions establishing the Discrimination Tribunal and other unnecessary or duplicative provisions dealing with the hearing of complaints.

This part also provides that an application may be made for a review of specified administrative decisions in the Act (previously brought before the Administrative Appeals Tribunal) to the ACAT.

Drugs of Dependence Act 1989

This part provides that an application may be made for a review of specified administrative decisions in the Act (previously brought before the Administrative Appeals Tribunal) to the ACAT.

Executive Documents Release Act 2001

This part provides that an application may be made for a review of specified administrative decisions in the Act (previously brought before the Administrative Appeals Tribunal) to the ACAT.

Fair Trading (Consumer Affairs) Act 1973

This part includes the *Liquor Act 1975* within the definition of consumer and trader legislation. An effect of this change is to trigger the operation of the standard powers of inspectors in the Act.

This part also removes a definition which is not used, and to replace it with a definition of 'identity card'.

Firearms Act 1996

This part provides that an application may be made for a review of specified administrative decisions in the Act (previously brought before the Administrative Appeals Tribunal) to the ACAT.

Freedom of Information Regulation 1991

This part provides that an application may be made for a review of specified administrative decisions in the Act (previously brought before the Administrative Appeals Tribunal) to the ACAT.

Guardianship and Management of Property Act 1991

This part provides substitutes the ACAT for other tribunals, particularly the Guardianship and Management of Property Tribunal. The amendments replace the concept of "inquiry" with "hearing" (eg, s 19), in conformity with the functions of the tribunal.

This part also provides that an application may be made for a review of specified administrative decisions in the Act (previously brought before the Administrative Appeals Tribunal) to the ACAT.

Health Professionals Act 2004

This part makes amendments to the Act, to effect necessary changes consequent on the Health Profession Tribunal being replaced by the ACAT.

Amendments remove provisions establishing the Health Profession Tribunal and other unnecessary or duplicative provisions dealing with the hearing of complaints. For example, a number of orders previously included in the Act, are part of the standard disciplinary order set in the ACAT Bill.

This part also provides that an application may be made for a review of specified administrative decisions in the Act (previously brought before the Administrative Appeals Tribunal) to the ACAT.

Health Professionals Regulation 2004

This part makes consequential amendments to the Act, to effect necessary changes consequent on the Health Profession Tribunal being replaced by the ACAT.

This part also provides that an application may be made for a review of specified administrative decisions in the Act (previously brought before the Administrative Appeals Tribunal) to the ACAT.

Heritage Act 2004

This part provides that an application may be made for a review of specified administrative decisions in the Act (previously brought before the Administrative Appeals Tribunal) to the ACAT.

Human Rights Act 2004

This part makes consequential amendments to the Act, to effect necessary changes consequent on various tribunals being replaced by the ACAT.

Human Rights Commission Act 2005

This part makes consequential amendments to the Act, to effect necessary changes consequent on the Discrimination Tribunal being replaced by the ACAT.

Judicial Commissions Act 1994

This Act provides for the examination of complaints in relation to judicial officers, and to provide for a formal transparent process for their removal from office in certain circumstances. The Act derives from the requirements in ss48C and 48D of the *Australian Capital Territory (Self-Government) Act 1988*.

The amendment provides that presidential members of the ACAT are judicial officers for the purposes of the Act and subject to the same complaint and removal processes as judges and magistrates. The amendment removes references to the Administrative Appeals Tribunal, which is replaced by the ACAT.

Legal Profession Act 2006

This part makes consequential amendments to the Act, to effect necessary changes consequent on the Discrimination Tribunal being replaced by the ACAT.

Note that:

- because the Act is part of a uniform national scheme, minimal changes have been made to the existing scheme - in particular, these

amendments disapply the specific ACAT Bill provisions dealing with discipline (particularly relating to orders under the Act);

- the opportunity has been taken to correct a reference to “disciplinary tribunal” in section 46(1)(c) of the Act by replacing it with a reference to “relevant council”;
- the second limb of s400(5) has been deleted as the ACAT will make rules about how applications will be handled;
- old s 425 of the Act has been scaled down because a number of matters are dealt with ss 29 and 30 of the ACAT Bill;
- old s 426 of the Act has been omitted because these matters are dealt with ss 38, 39 and 40 of the ACAT Bill;
- new s 423 (formerly s 427) has been limited to lapses before an application (as the procedure for dealing with an application are dealt with by the ACAT Bill);
- old s 428 of the Act has been omitted because these matters are dealt with s 41 of the ACAT Bill;
- old s 429 of the Act has been omitted because these matters are dealt with s 92 of the ACAT Bill;
- old s 434 of the Act has been omitted because these matters are dealt with s 48 of the ACAT Bill;
- new 429 combines old ss 420 and 435 (s 420(1) has been omitted because this is now dealt with in s 36 of the ACAT Bill)

This part also provides that an application may be made for a review of specified administrative decisions in the Act (previously brought before the Administrative Appeals Tribunal) to the ACAT.

Legislation Act 2001

This part makes consequential amendments to the Act, to effect necessary changes consequent on other tribunals being replaced by the ACAT.

Liquor Act 1975

This Act regulates the sale of Liquor.

Unlike many of the other Acts being amended, regulatory activities were undertaken by a statutory committee (the Liquor Board) and the registrar of the Liquor Board. Under other schemes, such as the Agents Act, the Commissioner for Fair Trading undertakes licensing and investigatory functions with an independent tribunal making disciplinary orders.

The amendments in this Part provide for the abolition of the Liquor Board.

The tribunal functions of the Board are transferred to ACAT. This part provides for a new Division 5.2 which provides that, in future, the Commissioner for Fair Trading may apply to the ACAT for an occupational discipline order (based on the same considerations previously found in old ss 79(g) and 82(1)(i) of the Act) in relation to a licensee (previously the Liquor

Board held a hearing and imposed disciplinary sanctions). These provisions have been modelled on the approach in the *Architects Act 2004*, pt 4 and the *Construction Occupations (Licensing) Act 2004*, pt 11.

The administrative and regulatory functions of the Board (and the Registrar) are transferred to the Commissioner for Fair Trading. In this regard, these systemic changes are comparable to those occasioned by the *Agents Act 2003*. These amendments also need to be considered in conjunction with amendments to the *Fair Trading (Consumer Affairs) Act 1973*, which will in future provide the administrative framework and powers of the Commissioner and the Commissioner's staff to administer the Act.

In relation to the amendments:

- old Divisions 2.1 and 2.2 has been largely omitted - it formerly dealt with the liquor board and the regulatory infrastructure under the Act (the later now encompassed within the *Fair Trading (Consumer Affairs) Act 1973*);
- new s 10 has been redrafted to move as the existing provisions used terms no longer used in the Act (for example, the concept of “suspect on reasonable grounds” has been replaced by “believes on reasonable grounds”);
- old ss 30 – 33 have been redrafted (now Division 2.2) as the existing provisions used terms no longer used in the Act (note that old s30(3) has been omitted as it is now covered by the *Fair Trading (Consumer Affairs) Act 1973*);
- new section 16 recasts the more complex old s 30(8) and (9) in modern terms;
- a number of matters dealing with evidence have been omitted because they are dealt with by the *Evidence Act 1971* (see the amendments to ss 33 and 38);
- the Act now provides for the Commissioner to revoke permits (this decision is reviewable by the ACAT)

This part also provides that an application may be made for a review of specified administrative decisions in the Act (previously brought before the Administrative Appeals Tribunal) to the ACAT.

Magistrates Court Act 1930

This part makes consequential amendments to the Act, consequent on the replacement of tribunals by the ACAT.

Medicines, Poisons and Therapeutic Goods Act 2008

This part provides that an application may be made for a review of specified administrative decisions in the Act (previously brought before the Administrative Appeals Tribunal) to the ACAT.

Mental Health (Treatment and Care) Act 1994

This part provides substitutes the ACAT for other tribunals, particularly the Mental Health Tribunal.

This part also provides that an application may be made for a review of specified administrative decisions in the Act (previously brought before the Administrative Appeals Tribunal) to the ACAT.

Planning and Development Act 2007

This part provides substitutes the ACAT for the Administrative Appeals Tribunal.

This part also provides that an application may be made for a review of specified administrative decisions in the Act (previously brought before the Administrative Appeals Tribunal) to the ACAT.

Powers of Attorney Act 2006

This part provides substitutes the ACAT for the Guardianship and Management of Property Tribunal. Note that Part 3 of the *Guardianship and Management of Property Act 1991* deals with proceedings in relation to enduring powers of attorney by the ACAT.

Prohibited Weapons Act 1996

This part also provides that an application may be made for a review of specified administrative decisions in the Act (previously brought before the Administrative Appeals Tribunal) to the ACAT.

Public Health Act 1997

This part also provides that an application may be made for a review of specified administrative decisions in the Act (previously brought before the Administrative Appeals Tribunal) to the ACAT.

Remuneration Tribunal Act 1995

This part makes consequential amendments to the Act, consequent on the establishment of the ACAT.

Residential Tenancies Act 1997

This part makes consequential amendments to the Act, consequent on the replacement of the Residential Tenancies Tribunal by the ACAT.

A number of provisions have been recast to simplify or reorder the existing provisions. A number of pre-hearing and hearing provisions have been

omitted, as these will be dealt with under the ACAT Act (in the ACAT Act itself or by way of Rule under the ACAT Act). For example:

- the requirement to conduct a public hearing (old s 90) is now found in Division 5.4 of the ACAT Bill;
- the equivalent of existing power for the tribunal to make an order under old s104 (j) (ie 'any other order the tribunal considers appropriate') is now found in s 56(d) of the ACAT Bill; and
- rules will be made under the ACAT Act relevant to the settlement of matters where the applicant is a child (old s131(2) of the Act).

Residential Tenancies Regulation 1998

This part makes consequential amendments to the Act, consequent on the replacement of the Residential Tenancies Tribunal by the ACAT.

Sale of Motor Vehicles Act 1977

This part provides that, in future, the Commissioner for Fair Trading (Commissioner) may apply to the ACAT for an occupational discipline order in relation to a licensee (previously the Commissioner for Fair Trading held a hearing and imposed disciplinary sanctions). These provisions have been modelled on the approach in the *Architects Act 2004*, pt 4 and the *Construction Occupations (Licensing) Act 2004*, pt 11.

In particular, these provisions provide for complaints to the Commissioner, the investigation of complaints, an application by the Commissioner to ACAT for an occupational discipline order and for ACAT to make various orders. Note that in hearing a matter, the ACAT consider the general considerations set out in section 65(3) of the ACAT Bill.

This part also provides that an application may be made for a review of specified administrative decisions in the Act (previously brought before the Administrative Appeals Tribunal) to the ACAT. Review is not now provided for taking certain disciplinary action (where those actions are now taken by the ACAT itself).

The part makes a number of drafting changes to the Act to remedy the structure of the Act (eg, old s 13(1)(a) has been recast in s 13A).

Security Industry Act 2003

This part provides substitutes the ACAT for the Consumer and Trader Tribunal.

This part removes unnecessary provisions (such as old s33 of the Act).

Surveyors Act 2007

This part provides that, in future, the Chief Surveyor may apply to the ACAT for an occupational discipline order for an architect (previously the Chief

Surveyor held a hearing and imposed disciplinary sanctions). In hearing a matter, the ACAT consider a number of matters. These matters include the more general considerations set out in section 65(3) of the ACAT Bill.

This part also makes a number of desirable or related consequential amendments – for example, the definitions in old s 25 of disciplinary notice and inquiry and a number of provisions dealing with inquiries by the Chief Surveyor are removed as they are no longer required.

This part also provides that an application may be made for a review of specified administrative decisions in the Act (previously brought before the Administrative Appeals Tribunal) to the ACAT. Review is not now provided for taking certain disciplinary action (where those actions are now taken by the ACAT itself).

Territory Records Act 2002

This part makes consequential amendments to the Act, consequent on the establishment of the ACAT.

Tobacco Act 1927

This part provides that, in future, the Registrar may apply to the ACAT for an occupational discipline order for a licensee (previously the Registrar held a hearing and imposed disciplinary sanctions). In hearing a matter, the ACAT consider a number of matters. These matters now expressly include a range of industry specific matters, as well as the more general considerations set out in section 65(3) of the ACAT Bill.

This part also makes a number of desirable or related consequential amendments.

This part also provides that an application may be made for a review of specified administrative decisions in the Act (previously brought before the Administrative Appeals Tribunal) to the ACAT. Review is not now provided for taking certain disciplinary action (where those actions are now taken by the ACAT itself).

Transplantation and Anatomy Act 1978

This part provides substitutes the ACAT for the Administrative Appeals Tribunal.