



Australian Capital Territory

ACT Civil and Administrative Tribunal Legislation Amendment Act 2008

A2008-36

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Australian Capital Territory

ACT Civil and Administrative Tribunal Legislation Amendment Act 2008

A2008-36

An Act to amend legislation in relation to tribunals and other bodies, the functions of which are to be conferred on the ACT Civil and Administrative Tribunal, and for other purposes

The Legislative Assembly for the Australian Capital Territory enacts as follows:

1 Name of Act

This Act is the *ACT Civil and Administrative Tribunal Legislation Amendment Act 2008*.

2 Commencement

- (1) This Act, other than the following parts, commences on the commencement of the *ACT Civil and Administrative Tribunal Act 2008*, section 6 (Objects of Act):
- (a) part 1.9 (Children and Young People Act 2008);
 - (b) part 1.21 (Drugs of Dependence Act 1989);
 - (c) part 1.24 (Firearms Act 1996);
 - (d) part 1.37 (Medicines, Poisons and Therapeutic Goods Act 2008);
 - (e) part 1.41 (Prohibited Weapons Act 1996);
 - (f) part 1.42 (Public Health Act 1997).
- Note* The naming and commencement provisions automatically commence on the notification day (see Legislation Act, s 75 (1)).
- (2) Part 1.9, other than a provision that has a special commencement provision, commences on the later of—
- (a) the commencement of the *ACT Civil and Administrative Tribunal Act 2008*, section 6 (Objects of Act); and
 - (b) the commencement of the *Children and Young People Act 2008*, part 14.11 (Mental health tribunal provisions).
- (3) Part 1.24 commences on the later of—
- (a) the commencement of the *ACT Civil and Administrative Tribunal Act 2008*, section 6; and

- (b) the commencement of the *Firearms Amendment Act 2008*, part 2 (Firearms Act 1996).
- (4) Part 1.41 commences on the later of—
 - (a) the commencement of the *ACT Civil and Administrative Tribunal Act 2008*, section 6; and
 - (b) immediately after the commencement of the *Firearms Amendment Act 2008*, schedule 1, part 1.2 (Prohibited Weapons Act 1996), amendment 1.14.
- (5) Parts 1.21, 1.37 and 1.42 commence on the later of—
 - (a) the commencement of the *ACT Civil and Administrative Tribunal Act 2008*, section 6; and
 - (b) immediately after the commencement of the *Medicines, Poisons and Therapeutic Goods Act 2008*, section 6 (Objects).
- (6) The Minister may determine a day for commencement of a provision of this Act, whether or not another day for commencement is set for the provision under this section or in a special commencement provision.
- (7) A determination is a disallowable instrument.

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

(8) In this section:

special commencement provision, for an amendment made by this Act, is a provision, in brackets beginning with the text ‘commencement:’, at the end of the amendment.

Example

An amendment followed by ‘(commencement: 1 July 2008)’ means that the amendment is taken to have commenced on 1 July 2008.

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).

3 Legislation amended—sch 1

This Act amends the legislation mentioned in schedule 1.

Schedule 1 Legislation amended

(see s 3)

Part 1.1 ACT Civil and Administrative Tribunal Act 2008

[1.1] New part 4A

insert

Part 4A Administrative review

Division 4A.1 Definitions—pt 4A

22A Definitions—pt 4A

certifying authority, in relation to a non-disclosure certificate, means the entity that gives the certificate.

decision-maker, for a reviewable decision, means—

- (a) the person who makes the decision; or
- (b) if no-one is occupying the decision-maker's position, or the position no longer exists—someone else declared by the tribunal to be the decision-maker for the decision.

Note A reference to the occupant of a position (however expressed) includes a reference to anyone for the time being occupying the position (see Legislation Act, s 185).

non-disclosure certificate means a certificate under section 22I.

reasons statement—see section 22B.

reviewable decision means a decision that may be reviewed by the tribunal.

Division 4A.2 Reasons statements

22B Requirement to give reasons statements

- (1) This section applies if—
 - (a) a decision-maker makes a reviewable decision; and
 - (b) within 28 days after the day the decision is made, a person (the *applicant*) who may apply for review of the decision asks the decision-maker in writing for a statement of reasons for the decision (a *reasons statement*).

Note The rules may prescribe a longer period for asking for a statement of reasons (see s 25 (1) (e) and (2)).

- (2) The decision-maker must give the applicant a written reasons statement for the decision within 28 days after the day the applicant asks for the statement unless—
 - (a) the decision contains the matters that a reasons statement would contain; or
 - (b) a document that contains the matters that a reasons statement would contain has already been given to the applicant; or
 - (c) section 22E (Certain material not required to be disclosed) applies in relation to the decision.

Note The Legislation Act, s 179 deals with the information that must be included in a statement of reasons.

22C Reasons statement—declaration by tribunal

- (1) A person (the *declaration applicant*) to whom a reasons statement has been given may apply to the tribunal for a declaration under this section.

- (2) If the tribunal considers that the information included in the reasons statement is not sufficient, the tribunal may declare that the statement is not sufficient.

Examples—why reasons statement is insufficient

- 1 insufficient particulars of findings on material questions of fact
- 2 insufficient reference to evidence or other material on which findings based
- 3 insufficient particulars of reasons for decision

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).

- (3) The declaration must explain why the reasons statement is not sufficient.
- (4) A copy of the declaration must be given to the declaration applicant and decision-maker.

22D Reasons statement declared insufficient

- (1) This section applies if the tribunal declares under section 22C that a reasons statement is insufficient.
- (2) The decision-maker must, within 28 days after the day the tribunal makes the declaration, give the person who applied for the declaration an additional statement containing the information, evidence, material or anything else required to make the reasons statement sufficient.
- (3) For this Act—
- (a) the additional statement is taken to be part of the reasons statement; and
 - (b) the reasons statement is taken to have been given when the additional statement is given.

22E Certain material not required to be disclosed

- (1) This section applies if the Minister certifies in writing that the disclosure of a stated matter proposed to be included in a decision-maker's reasons statement is not in the public interest—
 - (a) because it would involve the disclosure of deliberations or decisions of the Executive or an Executive committee; or
 - (b) for any other reason stated in the certificate that could form the basis for a claim by the Territory in a judicial proceeding that the matter should not be disclosed.
- (2) The decision-maker—
 - (a) is not required to include the matter in the statement; and
 - (b) if the statement would be false or misleading if it did not include the matter—is not required to give the statement.
- (3) The decision-maker must, within 28 days after the day the Minister makes the certificate, tell the applicant in writing—
 - (a) if the matter is not included in the reasons statement—that the matter is not included, and the reason for not including the matter; or
 - (b) if the statement is not given—that the statement will not be given, and the reason for not giving the statement.

22F Certain reasons statements—application of divs 4A.3 and 4A.4

- (1) This section applies if—
 - (a) the Minister has given a certificate in relation to a reasons statement mentioned in section 22E (3) (a) about a decision; and
 - (b) the decision is the subject of an application for review to the tribunal.

- (2) Division 4A.3 and division 4A.4 apply in relation to the certificate as if it were a non-disclosure certificate.

Division 4A.3 Tribunal hearings—non-disclosure

22G Meaning of *prescribed reason*—div 4A.3

In this division:

prescribed reason, for the giving of a non-disclosure certificate, means a reason mentioned in section 22I in relation to the certifying authority, other than a reason stated in the certificate that could form the basis for a claim in a judicial proceeding that the information or matter should not be disclosed.

22H Public interest rules excluded from div 4A.3

- (1) This division excludes the operation of any rule of law that relates to the public interest and would otherwise apply in relation to the disclosure of information, or a matter stated in a document, in a proceeding before the tribunal.
- (2) However, this division does not exclude the operation of the *Human Rights Act 2004*.

22I Non-disclosure certificates

- (1) The Minister may certify in writing that the disclosure of information about a stated matter, or a matter stated in a document, is not in the public interest—
- (a) because it would involve the disclosure of deliberations or decisions of the Executive or an Executive committee; or
- (b) for any other reason stated in the certificate that could form the basis for a claim by the Territory in a judicial proceeding that the information or matter should not be disclosed.

- (2) The Commonwealth Attorney-General may certify in writing that the disclosure of information about a stated matter, or a matter stated in a document, is not in the public interest—
- (a) because it would prejudice the security, defence or international relations of the Commonwealth; or
 - (b) because it would involve the disclosure of deliberations or decisions of the Commonwealth Cabinet or a Cabinet committee; or
 - (c) for any other reason stated in the certificate that could form the basis for a claim by the Commonwealth in a judicial proceeding that the information or matter should not be disclosed.
- (3) The Attorney-General of a State or another Territory may certify in writing that the disclosure of information about a stated matter, or a matter stated in a document, is not in the public interest—
- (a) because it would involve the disclosure of deliberations or decisions of the Cabinet or Executive, or a committee of the Cabinet or Executive, of the State or other Territory; or
 - (b) for any other reason stated in the certificate that could form the basis for a claim by the State or other Territory in a judicial proceeding that the information or matter should not be disclosed.

22J Dealing with non-disclosable matters—tribunal

- (1) This section applies if—
- (a) a person (the *relevant person*) is required under this Act to—
 - (i) disclose information for a tribunal proceeding; or
 - (ii) produce a document to, or lodge a document with, the tribunal; and

- (b) the information is, or the document states, a matter (the *non-disclosable matter*) to which a non-disclosure certificate relates.
- (2) The relevant person must disclose the information, or produce or lodge the document, as required.
- (3) However, the tribunal must do everything reasonably necessary to ensure that—
 - (a) the non-disclosable matter is not disclosed to anyone other than a tribunal member hearing the proceeding; and
 - (b) for a document produced to or lodged with the tribunal—the document is returned to the relevant person.
- (4) This section does not prevent the disclosure of the non-disclosable matter to a member of the staff of the tribunal in the course of the exercise of the member's functions as a staff member.
- (5) This section is subject to section 22K and section 87 (Sending documents and things to Supreme Court).

22K Non-disclosure certificate without prescribed reason

- (1) This section applies if—
 - (a) a certifying authority gives a non-disclosure certificate in relation to information or a matter; and
 - (b) the non-disclosure certificate does not include a prescribed reason for the giving of the certificate.
- (2) The certifying authority is a party to the proceeding in which the information or matter is to be considered.
- (3) The tribunal must decide whether the information or matter should be disclosed to a party to the proceeding.

- (4) Before making the decision, the tribunal must consider the following:
 - (a) that the parties to a proceeding should be made aware of all relevant matters;
 - (b) any reason why the disclosure of the information or matter is not in the public interest that is stated in the non-disclosure certificate.
- (5) If the tribunal decides that the information or matter should be disclosed, the tribunal must—
 - (a) give each party to the proceeding written notice of the decision; and
 - (b) make the information available or allow the part of the document stating the matter to be inspected.

22L Certifying authority may intervene

- (1) This section applies if a person (the *asked person*) is asked a question while giving evidence at a tribunal hearing.
- (2) A certifying authority may tell the tribunal that, in the authority's opinion, answering the question would not be in the public interest for a stated reason mentioned in section 22I (Non-disclosure certificates).
- (3) The certifying authority is a party to the proceeding.
- (4) The asked person is excused from answering the question unless—
 - (a) if the reason stated is, or the reasons stated include, a prescribed reason—the Supreme Court, on a reference under section 84 or an appeal under section 85, decides that it would not be against the public interest to answer the question; or
 - (b) in any other case—the tribunal decides that it would not be against the public interest to answer the question.

- (5) If the tribunal decides that it would not be against the public interest to answer the question, the tribunal must give each party written notice of the decision.

22M Appearance etc of certifying authority

A certifying authority may—

- (a) appear before the tribunal personally, or may be represented before the tribunal by a lawyer or someone else, to tell the tribunal the authority's opinion under section 22L; or
- (b) tell the tribunal the authority's opinion by giving the tribunal a signed certificate setting out the opinion.

Division 4A.4 Non-disclosure—Supreme Court proceedings

22N Dealing with non-disclosable matters—Supreme Court

- (1) This section applies if—
- (a) a person is required under this Act to—
 - (i) disclose information for a tribunal proceeding; or
 - (ii) produce a document to, or lodge a document with, the tribunal; and
 - (b) the information is, or the document states, a matter (the *non-disclosable matter*) to which a non-disclosure certificate relates; and
 - (c) a Supreme Court proceeding begins in relation to the tribunal proceeding.

Note This section also applies to a certificate in relation to a reasons statement mentioned in s 22E (3) (a) (see s 22F).

- (2) The Supreme Court must do everything reasonably necessary to ensure that the non-disclosable matter is not disclosed to anyone other than a member of the court as constituted for the proceeding.

Note At the end of the Supreme Court proceeding, the court must return a document or thing that was sent to the court by the tribunal to the tribunal (see s 87).

- (3) This section does not prevent the disclosure of the non-disclosable matter to a member of the staff of the court in the course of the exercise of the member's functions as a staff member.

- (4) In this section:

Supreme Court proceeding—see section 87.

220 Non-disclosure certificate without prescribed reason— Supreme Court

- (1) This section applies if—
- (a) a certifying authority gives a non-disclosure certificate in relation to information or a matter; and
 - (b) the non-disclosure certificate does not include a prescribed reason for the giving of the certificate; and
 - (c) a question for decision by the Supreme Court is whether the information or matter should be disclosed to a party to the tribunal proceeding; and
 - (d) the court decides that the information or matter should be disclosed.
- (2) The court must make the information available or allow the part of the document stating the matter to be inspected.

Note This section also applies to a certificate in relation to a reasons statement mentioned in s 22E (3) (a) (see s 22F).

Division 4A.5 Miscellaneous

22P Time for deciding land, planning and environment applications

- (1) This section applies in relation to an application for review by the tribunal of a decision under any of the following Acts:
 - *Heritage Act 2004*
 - *Planning and Development Act 2007*
 - *Tree Protection Act 2005*.
- (2) The tribunal must decide the application within 120 days after the day the application is made.
- (3) However, the general president may, in writing, extend the period for deciding the application if satisfied that the extension is in the interests of justice.
- (4) If the tribunal does not decide the application within the 120 days, the general president must ensure that the tribunal's annual report for the year when the application was decided includes—
 - (a) details of the period of time it took to decide the application; and
 - (b) if the 120 day period was extended under subsection (3)—the reasons for the extension.
- (5) A failure to comply with this section in relation to an application does not affect the validity of a decision on the application.
- (6) In this section:

tribunal's annual report means the report prepared by the tribunal under the *Annual Reports (Government Agencies) Act 2004*.

22Q People whose interests are affected

- (1) In an authorising law, a reference to a person whose interests are affected by a decision (however described) includes a reference to an unincorporated body, the Territory, the Commonwealth, a territory authority or Commonwealth authority.
- (2) A body has interests that are affected by a decision if the decision relates to a matter included in the objects or purposes of the body.
- (3) Subsection (2) does not apply in relation to a decision given before the body was formed or before the objects or purposes of the body included the matter.
- (4) The tribunal may decide whether or not a person's interests are affected by a decision, and the tribunal's decision is conclusive.
- (5) In this section:

Commonwealth authority means a body established under a Commonwealth law.

22R Questions of law

For this Act, each of the following is a question of law:

- (a) the question whether information, or matter contained in a document, should be disclosed to the parties to a proceeding;
- (b) the question whether the answering by a person of a question would be contrary to the public interest.

[1.2] New section 25 (1) (g) and (h)

insert

- (g) to prescribe when the tribunal must make a person a party to a proceeding before the tribunal;
- (h) to prescribe what happens if a decision that is the subject of an application for review to the tribunal is reconsidered.

[1.3] New section 29 (3A)

insert

- (3A) The party to an application for an advisory opinion is the applicant.

[1.4] New section 41A

insert

41A Protection of lawyers etc and witnesses

- (1) A lawyer or anyone else appearing before the tribunal for a party has the same protection and immunity as a barrister has in appearing for a party in a proceeding in the Supreme Court.
- (2) A person appearing as a witness before the tribunal—
- (a) has the same protection as a witness in a proceeding in the Supreme Court; and
 - (b) in addition to the penalties provided by this Act, is subject to the same liabilities as a witness in a proceeding in the Supreme Court.

[1.5] Section 66 (2) (g)

substitute

- (g) if a regulatory body may put conditions on the person's licence or registration under an authorising law—direct the regulatory body to—
- (i) put a condition on the person's licence or registration; or
 - (ii) remove or amend a condition put on the person's licence or registration;

[1.6] New section 66 (2A)

insert

- (2A) If the ACAT cancels a person's licence or registration, the ACAT may disqualify the person from applying for a licence or registration for a stated period or indefinitely.

[1.7] New section 67A

in division 6.3, insert

67A Reviewable decision notice

- (1) A person who makes a reviewable decision must take reasonable steps to give written notice (a *reviewable decision notice*) of the decision to any person whose interests are affected by the decision.
- (2) Subsection (1) does not apply to a decision not to impose a liability, penalty or limitation on a person if the decision does not adversely affect the interests of another person.
- (3) A regulation may prescribe—
 - (a) the time within which a reviewable decision notice must be given; and
 - (b) what a notice must or may contain; and
 - (c) any document or thing that must accompany a notice; and
 - (d) anything else in relation to a notice.
- (4) A failure to comply with this section in relation to a reviewable decision does not affect the validity of the decision.
- (5) In this section:
reviewable decision means a decision that, under an authorising law, is reviewable by the tribunal.

[1.8] New part 30

insert

Part 30 Transitional

Division 30.1 Transitional—general

300 Meaning of *commencement day*—pt 30

In this part:

commencement day means the day this Act, section 6 (Objects of Act) commences.

301 Transitional regulations

- (1) A regulation may prescribe transitional matters necessary or convenient to be prescribed because of the enactment of—
 - (a) this Act; or
 - (b) the *ACT Civil and Administrative Tribunal Legislation Amendment Act 2008*; or
 - (c) the *ACT Civil and Administrative Tribunal Legislation Amendment Act 2008 (No 2)*.
- (2) A regulation may modify this part (including in relation to another territory law) to make provision in relation to anything that, in the Executive's opinion, is not, or is not adequately or appropriately, dealt with in this part.
- (3) A regulation under subsection (2) has effect despite anything else in this Act or another territory law.

302 Transitional effect—Legislation Act, s 88

This part is a law to which the Legislation Act, section 88 (Repeal does not end effect of transitional laws etc) applies.

303 Expiry—pt 30

This part expires 1 year after the commencement day.

Division 30.2 Transitional—general ACAT power

304 ACAT’s power to hear applications about pre-commencement activities

- (1) This section applies if, immediately before the commencement day, an application relating to pre-commencement activity could have been made to a replaced entity.
- (2) To remove any doubt, the ACAT may decide an application relating to the activity, whether or not an application was made to the replaced entity before the commencement day.
- (3) In this section:

pre-commencement activity means an activity that happened before the commencement day that, if it had happened on or after the commencement day, would have been a ground for occupational discipline.

replaced entity means an entity that—

- (a) immediately before the commencement day, could hear applications; and
- (b) has ceased to exist; and
- (c) 1 or more functions of which have been taken over by the ACAT.

Division 30.3 Transitional—Agents Act 2003

305 Definitions—div 30.3

In this division:

consumer and trader tribunal means the Consumer and Trader Tribunal established by the *Consumer and Trader Tribunal Act 2003* (repealed).

pre-amendment Act means the *Agents Act 2003*, as in force at any time before the commencement day.

306 Certain applications under pre-amendment Act—no hearing

- (1) This section applies if—
 - (a) the commissioner for fair trading applied to the consumer and trader tribunal for the tribunal to take disciplinary action against—
 - (i) an agent under the pre-amendment Act, section 42 (Commissioner may refer matter to tribunal—agents); or
 - (ii) a registered salesperson under that Act, section 66 (Commissioner may refer matter to tribunal—salespeople); and
 - (b) immediately before the commencement day, the consumer and trader tribunal had not begun hearing the application.
- (2) The application is taken to be an application to the ACAT for an occupational discipline order against the agent or registered salesperson.

306A Certain applications under pre-amendment Act—hearing

- (1) This section applies if—
 - (a) the commissioner for fair trading applied to the consumer and trader tribunal for the tribunal to take disciplinary action against—
 - (i) an agent under the pre-amendment Act, section 42 (Commissioner may refer matter to tribunal—agents); or
 - (ii) a registered salesperson under that Act, section 66 (Commissioner may refer matter to tribunal—salespeople); and
 - (b) immediately before the commencement day, the consumer and trader tribunal had begun, but not finished, hearing the application.
- (2) The *Consumer and Trader Tribunal Act 2003* (repealed) continues to apply in relation to the application despite its repeal.

307 Disciplinary action under pre-amendment Act, s 43 or s 67

- (1) This section applies to disciplinary action taken by the consumer and trader tribunal under the following provisions of the pre-amendment Act:
 - (a) section 43 (Disciplinary action tribunal may take—agents);
 - (b) section 67 (Disciplinary action tribunal may take—salespeople).

- (2) The disciplinary action is taken to be an occupational discipline order made by the ACAT under—
 - (a) section 66 (Orders for occupational discipline); or
 - (b) the *Agents Act 2003*, section 43 (Occupational discipline orders—agents) or section 66 (Occupational discipline orders—salespeople).

309 Review of disqualifications—consumer and trader tribunal

- (1) This section applies if—
 - (a) the commissioner for fair trading or a disqualified person applied to the consumer and trader tribunal under the pre-amendment Act, section 172 (1) (Review of disqualifications) for a review of a decision to disqualify the person from being licensed or registered; and
 - (b) immediately before the commencement day, the consumer and trader tribunal had begun hearing but not decided the application.
- (2) To remove any doubt, the pre-amendment Act continues to apply for the purposes of deciding the application.
- (3) To remove any doubt, this section is additional to, and does not limit, the Legislation Act, section 84 (Saving of operation of repealed and amended laws).

310 Review of disqualifications—ACAT

- (1) This section applies if—
 - (a) the commissioner for fair trading or a disqualified person applied to the consumer and trader tribunal under the pre-amendment Act, section 172 (1) (Review of disqualifications) for a review of a decision to disqualify the person from being licensed or registered; and
 - (b) immediately before the commencement day, the consumer and trader tribunal had not begun hearing the application.
- (2) The application is taken to be an application for review of a reviewable decision under the *Agents Act 2003*, section 168 (Review of reviewable decisions).

Division 30.4 Architects Act 2004

311 Meaning of *pre-amendment Act*—div 30.4

In this division:

pre-amendment Act means the *Architects Act 2004*, as in force at any time before the commencement day.

312 Disciplinary notices

- (1) This section applies if—
 - (a) a disciplinary notice was given to an architect under the pre-amendment Act, section 44 (Disciplinary notices); and
 - (b) immediately before the commencement day the architects board had not made a decision under that Act, section 45 about whether to take disciplinary action in relation to the architect.
- (2) To remove any doubt, the pre-amendment Act continues to apply for the purposes of making the decision in relation to the disciplinary notice.

- (3) To remove any doubt, this section is additional to, and does not limit, the Legislation Act, section 84 (Saving of operation of repealed and amended laws).

313 Decisions about disciplinary action

- (1) This section applies if—
- (a) a disciplinary notice is given to an architect under the pre-amendment Act, section 44 (Disciplinary notices); and
 - (b) the architects board has decided under that Act, section 45 (3) to take disciplinary action against the architect.
- (2) The decision is taken to be an application to ACAT for an occupational discipline order in relation to the architect.

314 Disciplinary action

- (1) This section applies to disciplinary action taken by the architects board under the pre-amendment Act, part 5 (Disciplinary matters).
- (2) The disciplinary action is taken to be an occupational discipline order made by the ACAT under section 66 (Orders for occupational discipline).

315 Disciplinary inquiries

- (1) This section applies if—
- (a) the architects board began an inquiry in relation to an architect under the pre-amendment Act, division 5.2 (Disciplinary inquiries); and
 - (b) immediately before the commencement day, had not finished the inquiry.

- (2) To remove any doubt—
- (a) the pre-amendment Act, division 5.2 continues to apply in relation to the inquiry for the purposes of finishing it; and
 - (b) this section is additional to, and does not limit, the Legislation Act, section 84 (Saving of operation of repealed and amended laws).

Division 30.5 Construction Occupations (Licensing) Act 2004

316 Meaning of *pre-amendment Act*—div 30.5

In this division:

pre-amendment Act means the *Construction Occupations (Licensing) Act 2004*, as in force at any time before the commencement day.

317 Disciplinary notices

- (1) This section applies if—
- (a) a disciplinary notice is given to a licensee or former licensee under the pre-amendment Act, section 56 (Disciplinary notices); and
 - (b) the registrar has not made a decision under that Act, section 60 (Decision about disciplinary action) about whether to take disciplinary action in relation to the licensee or former licensee.
- (2) To remove any doubt, the pre-amendment Act continues to apply for the purposes of making the decision in relation to the disciplinary notice.

- (3) To remove any doubt, this section is additional to, and does not limit, the Legislation Act, section 84 (Saving of operation of repealed and amended laws).

318 Decisions about disciplinary action

- (1) This section applies if—
- (a) a disciplinary notice is given to a licensee or former licensee under the pre-amendment Act, section 56 (Disciplinary notices); and
 - (b) the registrar has decided under that Act, section 60 (3) to take disciplinary action against the licensee or former licensee.
- (2) The decision is taken to be an application to ACAT under the *Construction Occupations (Licensing) Act 2004*, section 56 (Application to ACAT for occupational discipline) for an occupational discipline order in relation to the licensee or former licensee.

319 Disciplinary action

- (1) This section applies to disciplinary action taken by the registrar under the pre-amendment Act, part 5 (Automatic licence suspension and disciplinary action).
- (2) The disciplinary action is taken to be an occupational discipline order made by the ACAT under—
- (a) section 66 (Orders for occupational discipline); or
 - (b) the *Construction Occupations (Licensing) Act 2004*, section 58 (Occupational discipline orders—licensees).

320 Disciplinary inquiries

- (1) This section applies if the registrar has begun an inquiry in relation to a licensee or former licensee under the pre-amendment Act, division 5.3 (Disciplinary inquiries) but has not finished the inquiry.
- (2) To remove any doubt—
 - (a) the pre-amendment Act, division 5.3 continues to apply in relation to the inquiry for the purposes of finishing it; and
 - (b) this section is additional to, and does not limit, the Legislation Act, section 84 (Saving of operation of repealed and amended laws).

Division 30.6 Consumer Credit Regulation 1996

321 Meaning of *pre-amendment Regulation*—div 30.6

In this division:

pre-amendment Regulation means the *Consumer Credit Regulation 1996*, as in force at any time before the commencement day.

322 Transfer of proceedings to credit tribunal

- (1) This section applies if—
 - (a) a proceeding is transferred to the credit tribunal under the pre-amendment Regulation, section 4 (1) (Transfer of proceedings); and
 - (b) immediately before the commencement day, the credit tribunal has not finished hearing the proceeding.

- (2) To remove any doubt—
 - (a) the pre-amendment Regulation continues to apply in relation to the proceeding for the purposes of finishing it; and
 - (b) this section is additional to, and does not limit, the Legislation Act, section 84 (Saving of operation of repealed and amended laws).

Division 30.7 Consumer Credit (Administration) Act 1996

323 Meaning of *pre-amendment Act*—div 30.7

In this division:

pre-amendment Act means the *Consumer Credit (Administration) Act 1996*, as in force at any time before the commencement day.

324 Notice to show cause

- (1) This section applies if—
 - (a) a notice to show cause is given to a credit provider under the pre-amendment Act, section 23 (1) (Notice to show cause); and
 - (b) the commissioner has not made a decision about whether to take disciplinary action under the pre-amendment Act, section 24 (1) (Disciplinary action) in relation to the credit provider.
- (2) To remove any doubt, the pre-amendment Act, section 23 and section 24 continue to apply for the purposes of making a decision in relation to the disciplinary notice.
- (3) To remove any doubt, this section is additional to, and does not limit, the Legislation Act, section 84 (Saving of operation of repealed and amended laws).

325 Decisions about disciplinary action

- (1) This section applies if—
 - (a) a notice to show cause is given to a credit provider under the pre-amendment Act, section 23 (1); and
 - (b) the registrar has decided under that Act, section 24 (1) to take disciplinary action against the credit provider.
- (2) The decision is taken to be an application to ACAT under the *Consumer Credit (Administration) Act 1996*, section 21 (Application to ACAT for occupational discipline—credit provider) for an occupational discipline order in relation to the credit provider.

326 Disciplinary action

- (1) This section applies to disciplinary action taken by the commissioner under the pre-amendment Act, section 24 (Disciplinary action).
- (2) The disciplinary action is taken to be an occupational discipline order made by the ACAT under—
 - (a) section 66 (Orders for occupational discipline); or
 - (b) the *Consumer Credit (Administration) Act 1996*, section 22 (Orders for occupational discipline).

[1.9] Dictionary, note 2, new dot points

insert

- body
- territory authority

[1.10] Dictionary, new definition of *certifying authority*

insert

certifying authority, in relation to a non-disclosure certificate, for part 4A (Administrative review)—see section 22A.

[1.11] Dictionary, definition of *decision*, paragraph (c)

substitute

(c) an advisory opinion on a matter stated in an application; or

[1.12] Dictionary, new definitions

insert

decision-maker, for a reviewable decision, for part 4A (Administrative review)—see section 22A.

non-disclosure certificate, for part 4A (Administrative review)—see section 22A.

prescribed person, for division 4A.3 (Tribunal hearings—non-disclosure)—see section 22G.

reasons statement, for part 4A (Administrative review)—see section 22B.

reviewable decision, for part 4A (Administrative review)—see section 22A.

reviewable decision notice—see section 67A.

Part 1.2 Administrative Decisions (Judicial Review) Act 1989

[1.13] Section 13 (13), definition of *decision to which this section applies*, paragraph (a)

substitute

- (a) a decision to which the *ACT Civil and Administrative Tribunal Act 2008*, section 22B (Requirement to give reasons statement) applies; or

[1.14] Schedule 2, new section 2.7

insert

2.7 Decisions of the ACAT

A decision of the ACAT.

[1.15] Dictionary, note 2, new dot point

insert

- ACAT

[1.16] Dictionary, new definition of *decision*

insert

decision, of the ACAT—see the *ACT Civil and Administrative Tribunal Act 2008*, dictionary.

Part 1.3 Agents Act 2003

[1.17] Sections 33 (2), note and 36 (2), note

substitute

Note Failure to do an act within the period set out is taken to be a decision not to do the act (see *ACT Civil and Administrative Tribunal Act 2008*, s 12).

[1.18] Division 3.4 heading (except note)

substitute

Division 3.4 Occupational discipline—agents

[1.19] Section 41 heading

substitute

41 Grounds for occupational discipline—agents

[1.20] Section 41 (1)

omit everything before paragraph (a), substitute

- (1) Each of the following is a ***ground for occupational discipline*** in relation to an agent:

[1.21] Sections 42 and 43

substitute

42 Application to ACAT for occupational discipline—agents

If the commissioner for fair trading believes on reasonable grounds that a ground for occupational discipline exists in relation to an agent, the commissioner may apply to the ACAT for an occupational discipline order in relation to the agent.

Note The *ACT Civil and Administrative Tribunal Act 2008*, s 65 sets out when the ACAT may make an occupational discipline order, and s 66 sets out the occupational discipline orders the ACAT may make.

43 Occupational discipline orders—agents

- (1) This section applies if the ACAT makes an occupational discipline order to cancel or suspend an agent's licence.
- (2) The ACAT may cancel or suspend any other licence held by the agent.

Note *Licence*—see the dictionary.

[1.22] Sections 57 (2), note and 60 (2), note

substitute

Note Failure to do an act within the period set out is taken to be a decision not to do the act (see *ACT Civil and Administrative Tribunal Act 2008*, s 12).

[1.23] Division 4.4 heading (except note)

substitute

Division 4.4 Occupational discipline—registered salespeople

[1.24] Section 65 heading

substitute

65 Grounds for occupational discipline—salespeople

[1.25] Section 65 (1)

omit everything before paragraph (a), substitute

- (1) Each of the following is a **ground for occupational discipline** in relation to a registered salesperson:

[1.26] Sections 66 and 67

substitute

**66 Application to ACAT for occupational discipline—
salespeople**

If the commissioner for fair trading believes on reasonable grounds that a ground for occupational discipline exists in relation to a registered salesperson, the commissioner may apply to the ACAT for an occupational discipline order in relation to the salesperson.

Note The *ACT Civil and Administrative Tribunal Act 2008*, s 65 sets out when the ACAT may make an occupational discipline order, and s 66 sets out the occupational discipline orders the ACAT may make.

67 Occupational discipline orders—salespeople

- (1) This section applies if the ACAT makes an occupational discipline order to cancel or suspend a registered salesperson's registration.
- (2) The ACAT may cancel or suspend any other registration held by the registered salesperson.

Note **Registration**—see the dictionary.

[1.27] Section 161 (j)

substitute

- (j) each occupational discipline order made by the ACAT;

[1.28] Section 163 (2) (g)

substitute

- (g) reimbursing the Territory for the cost of administering this Act and the *ACT Civil and Administrative Tribunal Act 2008*.

[1.29] Part 12

substitute

Part 12 Notification and review of decisions

166 Meaning of *reviewable decision*—pt 12

In this part:

reviewable decision means a decision mentioned in schedule 1, column 3 under a provision of this Act mentioned in column 2 in relation to the decision.

167 Reviewable decision notices

If a person makes a reviewable decision, the person must give a reviewable decision notice to each entity mentioned in schedule 1, column 4 in relation to the decision.

Note 1 The person must also take reasonable steps to give a reviewable decision notice to any other person whose interests are affected by the decision (see *ACT Civil and Administrative Tribunal Act 2008*, s 67A).

Note 2 The requirements for reviewable decision notices are prescribed under the *ACT Civil and Administrative Tribunal Act 2008*.

168 Applications for review

- (1) The following may apply to the ACAT for a review of a reviewable decision of a relevant person:
- (a) an entity mentioned in schedule 1, column 4 in relation to the decision;
 - (b) any other person whose interests are affected by the decision.
- (2) In this section:

relevant person means—

- (a) for a reviewable decision mentioned in schedule 1, column 3, items 1 to 17—the commissioner for fair trading; or
- (b) for a reviewable decision mentioned in schedule 1, column 3, item 18—the chief executive.

Note If a form is approved under the *ACT Civil and Administrative Tribunal Act 2008* for the application, the form must be used.

[1.30] Section 172

omit

[1.31] Section 173 (1)

omit everything before paragraph (a), substitute

- (1) In a proceeding under this Act or the *ACT Civil and Administrative Tribunal Act 2008*, a certificate signed by the commissioner for fair trading stating any of the following matters is evidence of the matter stated:

[1.32] Schedule 1, column 4 heading

substitute

**column 4
entity**

[1.33] Dictionary, note 2, new dot point

insert

- ACAT

[1.34] Dictionary, note 2, dot point

omit

- consumer and trader tribunal

[1.35] Dictionary, note 2, new dot points

insert

- occupational discipline order
- reviewable decision notice

[1.36] Dictionary, definitions of *agent*

substitute

agent—

- (a) means a person who carries on business as—
- a business agent; or
 - an employment agent; or
 - a real estate agent; or
 - a stock and station agent; or
 - a travel agent; and
- (b) for division 3.4 (Occupational discipline—agents)—see section 40.

[1.37] Dictionary, definition of *ground for disciplinary action*

substitute

ground for occupational discipline—

- (a) for a licensed agent—see section 41; and

(b) for a registered salesperson—see section 65.

[1.38] Dictionary, definitions of *registered salesperson*

substitute

registered salesperson—

- (a) means—
- (i) a registered business salesperson; or
 - (ii) a registered real estate salesperson; or
 - (iii) a registered stock and station salesperson; and
- (b) for division 4.4 (Occupational discipline—salespeople)—see section 64.

[1.39] Further amendments, mentions of *consumer and trader tribunal*

omit

consumer and trader tribunal

substitute

ACAT

in

- section 27
- section 34 (2) (c)
- section 41 (1) (f)
- section 51
- section 58 (2) (c)
- section 65 (1) (e)
- section 172

Part 1.4 Architects Act 2004

[1.40] Section 9 (2), note

substitute

Note An individual may be disqualified from applying for registration under the *ACT Civil and Administrative Tribunal Act 2008*, s 66 (2A).

[1.41] Section 10 (1), note

substitute

Note The ACAT may also direct the registrar to place a condition on a person's registration (see *ACT Civil and Administrative Tribunal Act 2008*, s 66 (2) (g) (i)).

[1.42] Section 15 (1) and (2)

substitute

- (1) This section applies to an occupational discipline order in relation to a person.
- (2) A matter included in the register in relation to the occupational discipline order may be open for public inspection under section 14 only if—
 - (a) the time for any appeal of the decision has ended and no application for appeal has been made; or
 - (b) an application for appeal has been made, the decision has been confirmed on appeal and the time for further appeal has ended.

Note An occupational discipline order is a decision of the ACAT that may be appealed under the *ACT Civil and Administrative Tribunal Act 2008*, pt 8.

[1.43] Section 34

omit

disciplinary ground

substitute

ground for occupational discipline

[1.44] Section 40 (1) (a)

substitute

(a) if the board is satisfied that a ground for occupational discipline exists in relation to the complaint—

(i) apply to the ACAT for occupational discipline in relation to the architect; and

(ii) tell the complainant in writing that the application has been made; or

[1.45] Section 40 (1) (b) and (2)

omit

disciplinary ground

substitute

ground for occupational discipline

- (2) A ground for occupational discipline applies to an architect who is no longer registered if the ground applied to the architect while registered.

43 Application to ACAT for occupational discipline

If the architects board believes on reasonable grounds that a ground for occupational discipline exists in relation to an architect, the board may apply to the ACAT for an occupational discipline order in relation to the architect.

Note The *ACT Civil and Administrative Tribunal Act 2008*, s 66 sets out occupational discipline orders the ACAT may make.

44 Considerations before making occupational discipline orders

- (1) This section applies if the ACAT is considering an application for occupational discipline in relation to an architect.
- (2) Without limiting the matters the ACAT must consider in relation to the architect, the ACAT must consider the following:
- (a) the degree of responsibility of the architect for the act or omission that made up the ground for occupational discipline;
 - (b) the extent to which it is necessary to discourage the architect and others from doing something, or not doing something, that made up the disciplinary ground;
 - (c) whether, and the extent to which, it is necessary to protect the public from the architect;
 - (d) the desirability of making the architect responsible for the consequences of the architect's actions or omissions;

- (e) the desirability of maintaining public confidence in the regulatory system set up by this Act.

Note The *ACT Civil and Administrative Tribunal Act 2008*, s 65 (3) sets out other considerations that must be taken into account by the ACAT.

45 Giving local registering authorities information about cancelling or suspending registration

- (1) This section applies if the ACAT cancels or suspends an architect's registration or disqualifies an architect from applying for registration.
- (2) The architects board must give each local registering authority the following information about the architect:
 - (a) the name and any other identifying details of the architect;
 - (b) a short description of the ground for occupational discipline on which the occupational discipline order was based;
 - (c) whether the registration has been cancelled or suspended or the architect disqualified;
 - (d) if the registration has been suspended—the period of suspension;
 - (e) if the architect has been disqualified—the period of disqualification.
- (3) This section does not limit any other requirement or power, under this Act or another law in force in the ACT, to give information to a local registering authority.

[1.47] Section 65 (1) (c)

substitute

- (c) to consider whether it is necessary for occupational discipline to be used against registered architects, including former registered architects, and, if it is, to apply to the ACAT for occupational discipline orders;

[1.48] Part 9

substitute

Part 9 Notification and review of decisions

85 Meaning of *reviewable decision*—pt 9

In this part:

reviewable decision means a decision mentioned in schedule 1, column 3 under a provision of this Act mentioned in column 2 in relation to the decision.

86 Reviewable decision notices

If a person makes a reviewable decision, the person must give a reviewable decision notice to each entity mentioned in schedule 1, column 4 in relation to the decision.

Note 1 The person must also take reasonable steps to give a reviewable decision notice to any other person whose interests are affected by the decision (see *ACT Civil and Administrative Tribunal Act 2008*, s 67A).

Note 2 The requirements for reviewable decision notices are prescribed under the *ACT Civil and Administrative Tribunal Act 2008*.

86A Applications for review

The following may apply to the ACAT for a review of a reviewable decision:

- (a) an entity mentioned in schedule 1, column 4 in relation to the decision;
- (b) any other person whose interests are affected by the decision.

Note If a form is approved under the *ACT Civil and Administrative Tribunal Act 2008* for the application, the form must be used.

[1.49] New schedule 1

insert

Schedule 1 Reviewable decisions

(see pt 9)

column 1 item	column 2 section	column 3 decision	column 4 entity
1	9	refuse to register person	applicant for registration
2	10	put condition on registration	applicant for registration or renewal of registration
3	19 (2)	remove details of person's registration from register	person whose registration details are removed
4	20	remove details of person's registration from register	person whose registration details are removed

column 1 item	column 2 section	column 3 decision	column 4 entity
5	28	refuse to approve resignation of nominee of firm	nominee or firm
6	29	refuse to revoke nominee's appointment	nominee or firm

[1.50] Dictionary, note 2, new dot points

insert

- ACAT
- occupational discipline order
- reviewable decision notice

[1.51] Dictionary, definition of *architect*, paragraph (b)

substitute

(b) for part 5 (Occupational discipline—architects)—see section 41.

[1.52] Dictionary, definitions of *disciplinary ground* and *disciplinary notice*

omit

[1.53] Dictionary, new definition of *ground for occupational discipline*

insert

ground for occupational discipline—see section 42.

[1.54] Dictionary, definition of *reviewable decision*

substitute

reviewable decision, for part 9 (Notification and review of decisions)—see section 85.

Part 1.5 Architects Regulation 2004

[1.55] Section 11, definition of *architect*, paragraph (b) (ii)

omit

a disciplinary action

insert

occupational discipline

[1.56] Section 11, definition of *contravention*

substitute

contravention, for occupational discipline against an architect, means what the architect did that caused occupational discipline to be taken.

[1.57] Section 12 (2)

omit

disciplinary action

substitute

occupational discipline

Part 1.6 Bail Act 1992

[1.58] Sections 25 (4) (e), example 2 and 26 (2) (b), example 2

substitute

2 a direction to comply with a mental health assessment or treatment order made by the ACAT

[1.59] Dictionary, note 2, new dot point

insert

- ACAT

[1.60] Dictionary, note 2, dot points

omit

- mental health tribunal

Part 1.7 Building Act 2004

[1.61] Section 139

omit

administrative appeals tribunal

substitute

ACAT

[1.62] New parts 9A and 9B

insert

Part 9A Notification and review of decisions

142A Definitions—pt 9A

In this part:

decision-maker, for a reviewable decision, means an entity prescribed by regulation.

reviewable decision means a decision prescribed by regulation.

142B Reviewable decision notices

A decision-maker for a reviewable decision must give a reviewable decision notice to each entity prescribed by regulation in relation to the decision.

Note 1 The decision-maker must also take reasonable steps to give a reviewable decision notice to any other person whose interests are affected by the decision (see *ACT Civil and Administrative Tribunal Act 2008*, s 67A).

Note 2 The requirements for reviewable decision notices are prescribed under the *ACT Civil and Administrative Tribunal Act 2008*.

142C Applications for review

The following may apply to the ACAT for a review of a reviewable decision:

- (a) an entity prescribed by regulation for the decision;
- (b) any other person whose interests are affected by the decision.

Note If a form is approved under the *ACT Civil and Administrative Tribunal Act 2008* for the application, the form must be used.

Part 9B Powers of ACAT

142D Powers of ACAT—proposed buildings etc forming part of development

The ACAT must not, in relation to a proposed building, or a building as proposed to be altered, forming part of a development—

- (a) vary a decision to issue a stop notice under section 53 (Stop notices) or a notice under section 58 (2) or (4) (Further notices relating to stop notices) or section 62 (1) (Notice to carry out building work), or substitute a decision for a decision it has set aside, in a way that would be contrary to a development approval for the development; or
- (b) vary a decision to issue a notice under section 58 (4), or substitute a decision for a decision the ACAT has set aside, unless there is a development approval for the development.

[1.63] Section 148

omit

administrative appeals tribunal

substitute

ACAT

[1.64] Dictionary, note 2, new dot points

insert

- ACAT
- reviewable decision notice

44C Right of review and notice—Act, s 142B and s 142C (a)

An entity (a *relevant entity*) mentioned in schedule 4, column 4 is prescribed.

[1.68] Section 46

omit

[1.69] Schedule 4 heading

substitute

Schedule 4 Reviewable decisions

(see pt 5A)

[1.70] Dictionary, note 2, new dot point

insert

- ACAT

Part 1.9 Children and Young People Act 2008

[1.71] Section 421, new definition of *ACAT mental health provision*

insert

ACAT mental health provision, in a care and protection order—see section 491.

[1.72] Section 421, definition of *mental health tribunal provision*

omit

[1.73] Section 421, definition of *provision*, paragraph (d)

substitute

(d) an ACAT mental health provision;

[1.74] Section 422, definition of *care and protection order*, paragraph (b) (iv)

substitute

(iv) an ACAT mental health provision;

[1.75] Section 433 (2) (c)

substitute

(c) an ACAT mental health provision;

[1.76] Section 464 (2) (d)

substitute

(d) an ACAT mental health provision;

[1.77] Part 14.11

substitute

Part 14.11 ACAT mental health provisions

491 What is an *ACAT mental health provision*?

In this Act:

ACAT mental health provision, in a care and protection order, or an interim care and protection order, for a child or young person means a provision directing the child or young person to submit to the jurisdiction of the ACAT to allow the ACAT—

(a) to decide whether the child or young person has a mental illness or mental dysfunction; and

- (b) if the ACAT decides that the child or young person has a mental illness or mental dysfunction—to make recommendations to the Childrens Court about how the child or young person should be dealt with.

[1.78] Section 545 (2)

omit everything before paragraph (a), substitute

- (2) The order must contain a provision directing the child or young person to submit to the jurisdiction of the ACAT to allow the ACAT—

[1.79] Section 549 (e), note

substitute

Note The Childrens Court must make an interim therapeutic protection order for a child or young person if an application for a therapeutic protection order for the child or young person has been made but not finally decided and the court suspects on reasonable grounds that the child or young person is suffering from a mental illness or mental dysfunction. The order must direct the child or young person to submit to the jurisdiction of the ACAT (see s 545).

[1.80] Division 24.1.3 and section 839

substitute

Division 24.1.3 Notification and review of decisions

839 Meaning of *reviewable decision*—div 24.1.3

reviewable decision means a decision mentioned in table 839.1, 839.2 or 839.3, column 3 under a provision of this Act mentioned in column 2 in relation to the decision.

Table 839.1 Review of decisions—ch 15 (Care and protection—chief executive has aspect of parental responsibility)

column 1 item	column 2 section	column 3 decision	column 4 entity
1	516	refuse to authorise person as kinship carer	person
2	517	refuse to authorise entity as foster care service	entity
3	518 or 519	refuse to authorise person as foster carer	person
4	520	refuse to authorise entity as residential care service	person
5	522 (4) or 523 (4)	revoke authorisation of entity or person as foster carer	entity or person
6	524 (4)	revoke authorisation of entity as residential care service	entity
7	525 (1)	refuse to approve place operated by residential care service as place of care	residential care service
8	525 (4)	revoke approval of place operated by residential care service as place of care	residential care service

Table 839.2 Review of decisions—ch 20 (Childcare services)

column 1 item	column 2 section	column 3 decision	column 4 entity
1	747 (3)	refuse to give proprietor childcare service licence	proprietor
2	751 (4)	refuse to extend childcare service licence	licensed proprietor
3	752 (3)	refuse to amend childcare service licence	licensed proprietor
4	753 (3)	refuse to transfer childcare service licence	licensed proprietor
5	758 (3)	refuse to renew childcare service licence	licensed proprietor
6	760 (4) (a)	confirm compliance notice	licensed proprietor
7	761 (2)	suspend childcare service licence	proprietor whose licence suspended
8	762 (3) (a)	confirm suspension of childcare service licence	proprietor whose licence suspended
9	763 (2)	immediately suspend childcare service licence	proprietor whose licence suspended
10	765 (3)	cancel childcare service licence	proprietor whose licence cancelled

Table 839.3 Review of decisions—ch 21 (Employment of children and young people)

column 1 item	column 2 section	column 3 decision	column 4 entity
1	786	suspend educational institution's exemption (in relation to work experience program)	educational institution
2	787	revoke educational institution's exemption (in relation to work experience program)	educational institution
3	788	prohibit employer from employing, or continuing to employ, child or young person	<ul style="list-style-type: none">• employer• child or young person
4	790	state conditions in relation to employment of child or young person that must be complied with	<ul style="list-style-type: none">• employer• child or young person
5	800 (2)	refuse to issue high risk employment permit	<ul style="list-style-type: none">• employer• child or young person
6	800 (3)	issue high risk employment permit subject to conditions	<ul style="list-style-type: none">• employer• child or young person

839A Reviewable decision notices

If a person makes a reviewable decision, the person must give a reviewable decision notice to each entity mentioned in table 839.1, 839.2 or 839.3, column 4 in relation to the decision.

Note 1 The person must also take reasonable steps to give a reviewable decision notice to any other person whose interests are affected by the decision (see *ACT Civil and Administrative Tribunal Act 2008*, s 67A).

Note 2 The requirements for reviewable decision notices are prescribed under the *ACT Civil and Administrative Tribunal Act 2008*.

839B Applications for review

The following may apply to the ACAT for a review of a reviewable decision:

- (a) an entity mentioned in a table in this part, column 4 in relation to the decision;
- (b) any other person whose interests are affected by the decision.

Note If a form is approved under the *ACT Civil and Administrative Tribunal Act 2008* for the application, the form must be used.

(commencement: on the later of—

- (a) the day the *ACT Civil and Administrative Tribunal Act 2008*, section 6 (Objects of Act) commences; or
- (b) immediately after the *Children and Young People Act 2008*, chapter 24 (Appeals and review) commences.)

[1.81] Section 840 (1)

substitute

- (1) The ACAT must not make an interim order staying or otherwise affecting the operation or implementation of a decision under section 747 (3) (Childcare service licence—decision on application) to refuse to give a childcare service licence.

(commencement: on the later of—

- (a) the day the *ACT Civil and Administrative Tribunal Act 2008*, section 6 (Objects of Act) commences; or
- (b) immediately after the *Children and Young People Act 2008*, chapter 24 (Appeals and review) commences.)

[1.82] Section 840, table 840

omit

(commencement: on the later of—

- (a) the day the *ACT Civil and Administrative Tribunal Act 2008*, section 6 (Objects of Act) commences; or
- (b) immediately after the *Children and Young People Act 2008*, chapter 24 (Appeals and review) commences.)

[1.83] Section 927 (2) (e) and note

substitute

- (e) for an order mentioned in the repealed Act, section 246 (3) (e)—a care and protection order with an ACAT mental health provision under this Act, section 464 (2) (d); and

Note Under s 246 (3) (e) a specific issues order may include an order that the child or young person submit to the jurisdiction of the ACAT for a decision whether the child or young person has a mental impairment.

[1.84] Section 929 (2) (d) and note

substitute

- (d) for an order mentioned in the repealed Act, section 255 (4) (d)—a care and protection order with an ACAT mental health provision under this Act, section 464 (2) (d); and

Note Under s 255 (4) (d) a final care and protection order may include an order that the child or young person submit to the jurisdiction of the ACAT for a decision whether the child or young person has a mental impairment.

[1.85] Section 941

substitute

941 ACAT review of decisions

- (1) On application for review of a decision of the chief executive under the repealed Act, section 384 (Review of decisions), the ACAT must—
- (a) if it proposes to vary the decision under review—vary it in a way that as far as possible is consistent with a power exercisable under this Act; and
 - (b) if it proposes to make a decision in substitution for the decision under review—make a decision that could be made by the chief executive under this Act.
- (2) The ACAT may make any decision it considers appropriate to facilitate the application of subsection (1).

(commencement: on the later of—

- (a) the day the *ACT Civil and Administrative Tribunal Act 2008*, section 6 (Objects of Act) commences; or
- (b) immediately after the *Children and Young People Act 2008*, section 2 commences.)

[1.86] Dictionary, note 2, new dot point

insert

- ACAT

[1.87] Dictionary, note 2, dot points

omit

- administrative appeals tribunal
- mental health tribunal

[1.88] Dictionary, note 2, new dot point

insert

- reviewable decision notice

[1.89] Dictionary, new definition of *ACAT mental health provision*

insert

ACAT mental health provision—see section 491.

[1.90] Dictionary, definition of *mental health tribunal provision*

omit

[1.91] Dictionary, new definition of *reviewable decision*

insert

reviewable decision, for division 24.1.3 (ACAT review)—see section 839.

(commencement: on the later of—

- (a) the day the *ACT Civil and Administrative Tribunal Act 2008*, section 6 (Objects of Act) commences; or
- (b) immediately after the *Children and Young People Act 2008*, chapter 24 (Appeals and review) commences.)

Part 1.10 Construction Occupations (Licensing) Act 2004

[1.92] Section 19 (4)

substitute

- (4) If an application for occupational discipline in relation to an applicant or nominee of an applicant has been made by the registrar under division 5.2 (Occupational discipline—licensees), the registrar need not decide whether to licence the applicant until the application has been dealt with by the ACAT, and any appeal or review arising from the occupational discipline, is finished.

[1.93] Section 37 (4) (a)

substitute

- (a) if the entity applied for review of the decision to authorise a licensee under this section within the period for review (the ***review period***) of the decision allowed under the *ACT Civil and Administrative Tribunal Act 2008*—the review is finally disposed of; or

[1.94] Section 41 (4) (a)

substitute

- (a) if the ordered entity applied for review of the decision within the period for review (the ***review period***) of the decision to make the rectification order allowed under the *ACT Civil and Administrative Tribunal Act 2008*—the review is finally disposed of; or

55 Grounds for occupational discipline

- (1) Each of the following is a *ground for occupational discipline* in relation to a licensee:
- (a) the licensee, or a nominee or employee of the licensee, contravened, or is contravening, this Act or an operational Act (including a direction given to the licensee under an operational Act);
 - (b) the licensee, knowingly or recklessly, gave someone information in relation to a construction service provided, or to be provided, by the licensee that was false or misleading in a material particular;
 - (c) the licensee or a director, partner or nominee of the licensee, has been found guilty, whether in the Territory or anywhere else, of an offence that—
 - (i) involves fraud, dishonesty or violence; and
 - (ii) is punishable by imprisonment for at least 1 year;
 - (d) if the licensee is an individual—the licensee executes a personal insolvency agreement;
 - (e) if the licensee is a corporation—
 - (i) the licensee enters into a scheme of arrangement; or
 - (ii) a receiver, manager, receiver and manager or administrator is appointed over the licensee or any of its assets;
 - (f) if the licensee is a corporation or partnership—the licensee has, or had, no nominee;
 - (g) the licensee's licence has been automatically suspended under division 5.1 (Automatic licence suspension) and the cause of the suspension still exists.

- (2) In subsection (1) (a), a reference to a contravention of this Act or an operational Act includes a reference to the following:
 - (a) a contravention of the Criminal Code, part 2.4 (Extensions of criminal responsibility) in relation to an offence against this Act or an operational Act or otherwise in relation to this Act or an operational Act;
 - (b) a contravention of the Criminal Code in relation to a document given, or required to be given, under this Act or an operational Act;
 - (c) a contravention of the Criminal Code in relation to anything done, or not done, under this Act or an operational Act.
- (3) A ground for occupational discipline applies to a former licensee if the ground applied to the former licensee while licensed.
- (4) A regulation may prescribe a short description of a ground for occupational discipline under subsection (1) (a).

56 Application to ACAT for occupational discipline

- (1) If the registrar believes on reasonable grounds that a ground for occupational discipline exists in relation to a licensee, the registrar may apply to the ACAT for an occupational discipline order in relation to the licensee.
- (2) If a regulation prescribes a short description of a ground for occupational discipline under section 55 (1) (a), the registrar may use the short description in the application.

57 Considerations before making occupational discipline orders

- (1) This section applies if the ACAT is considering an application for an occupational discipline order in relation to a licensee.

- (2) Without limiting the matters the ACAT must consider in relation to a licensee, the ACAT must consider the following:
- (a) the degree of responsibility of the licensee for the act or omission that made up the ground for occupational discipline;
 - (b) the number of people detrimentally affected by the doing of something, or not doing something, that made up the ground for occupational discipline;
 - (c) the extent to which it is necessary to discourage the licensee and others from doing something, or not doing something, that made up the ground for occupational discipline;
 - (d) whether, and the extent to which, it is necessary to protect the public from the licensee;
 - (e) the desirability of making the licensee responsible for the consequences of the licensee's acts or omissions;
 - (f) the desirability of maintaining public confidence in the regulatory system set up by this Act;
 - (g) the licensee's regard, or disregard, for public safety and protection of the environment when doing something, or not doing something, that made up the ground for occupational discipline.

Note The *ACT Civil and Administrative Tribunal Act 2008*, s 65 (3) sets out other considerations that must be taken into account by the ACAT.

58 Occupational discipline orders—licensees

- (1) This section applies if the ACAT may make an occupational discipline order in relation to a licensee.

Note The *ACT Civil and Administrative Tribunal Act 2008*, s 65 sets out when the ACAT may make an order.

- (2) In addition to any other occupational discipline order the ACAT may make, the ACAT may, if the licensee is licensed in more than 1 occupation class—
- (a) cancel or suspend a single occupational class or each of the occupational classes; or
 - (b) direct the registrar to place a condition on or remove or amend a condition of a single occupational class or each of the occupational classes.

Note The *ACT Civil and Administrative Tribunal Act 2008*, s 66 sets out other occupational discipline orders the ACAT may make.

59 Interim licence suspension

- (1) This section applies if the registrar has applied to the ACAT for occupational discipline in relation to a licensee.
- (2) The registrar may, by written notice given to the licensee, suspend (an *interim suspension*) a licensee's licence.

Note For how documents may be served, see the Legislation Act, pt 19.5.

- (3) However, the registrar may only suspend the licence under subsection (2) if the registrar—
- (a) has taken into account the ground for occupational discipline; and
 - (b) believes on reasonable grounds that it is in the public interest to suspend the licence before the ACAT makes an occupational discipline order.
- (4) An interim suspension may be for 2 weeks or less, but may be extended once for 1 week if the registrar is satisfied that it is in the public interest to extend the suspension.

Note An interim suspension must be recorded on the register (see s 110).

60 Effect of interim suspension

- (1) This section applies if the registrar suspends a licence under section 59.
- (2) The licence is suspended as soon as the licensee receives the notice of suspension.
- (3) The suspension ends when the earlier of the following happens:
 - (a) the licensee receives a notice of revocation under section 61;
 - (b) the ACAT makes an occupational discipline order in relation to the licensee.

61 Revocation of interim suspension

- (1) This section applies if the registrar suspends a licence under section 59 (Interim licence suspension).
- (2) The registrar may, at any time before the ACAT makes an occupational discipline order, revoke the suspension by written notice given to the licensee.
- (3) If the registrar revokes the suspension of a licensee licensed as a builder, the registrar must notify in writing each entity notified of the suspension under section 62.

62 Builders licence affected by occupational discipline or other action

- (1) This section applies if a licensee has a builders licence and 1 of the following applies:
 - (a) the registrar becomes aware that the licence has been automatically suspended under division 5.1;
 - (b) the registrar suspends the licence under section 59 (Interim licence suspension);

- (c) a defined occupational discipline order is made in relation to the licensee.
- (2) The registrar must notify each building certifier in writing about the action taken in relation to the licence as soon as practicable.
- (3) The registrar must notify each building certifier in writing if—
 - (a) the registrar notified the building certifiers about the action; and
 - (b) the action, or the decision to take the action, is reversed, stayed, varied or set aside.
- (4) In this section:
defined occupational discipline order means an occupational discipline order of a kind mentioned in—
 - (a) section 58 (2) (a); or
 - (b) the *ACT Civil and Administrative Tribunal Act 2008*, section 66 (2) (e), (f) or (g).

63 Effect of non-renewal on suspended licence

- (1) This section applies if—
 - (a) a licence (the *original licence*) for a construction occupation or occupation class has been suspended for a period; and
 - (b) the original licence expires before the end of the suspension period without being renewed; and
 - (c) the licensee is issued with a licence (the *new licence*) in the same construction occupation or occupation class within 3 years after the day the original licence expired.
- (2) The new licence is suspended for the remainder of the suspension period.

64 Requirement to return surrendered licence

- (1) This section applies if a person surrenders the person's licence because the licence is suspended.

Note It is an offence not to surrender a licence that has been suspended or cancelled (see s 86).

- (2) The registrar must return the licence to the person not later than the last day of the suspension.
- (3) If the licence is varied during the suspension, the licence as varied must be returned.
- (4) However, the registrar need not return the licence if the licence expires, or is cancelled, during the suspension.

[1.99] Divisions 5.3 and 5.4

omit

[1.100] Section 89

substitute

89 Definitions—pt 8

In this part:

demerit ground for occupational discipline, in relation to a licensee—

- (a) means a ground for occupational discipline in relation to the licensee for which the ACAT may make an occupational discipline order; but
- (b) does not include a ground for occupational discipline if—
- (i) the ground is a contravention of this Act or an operational Act; and

- (ii) an infringement notice may be issued in relation to the contravention.

demerit points register means the register under section 91.

disciplinary incident, for a demerit ground for occupational discipline, means the circumstances that gave rise to the demerit ground for occupational discipline.

infringement notice—see the *Magistrates Court Act 1930*, section 117.

licensee, in relation to a demerit ground for occupational discipline, includes an entity that was licensed when the disciplinary incident for the demerit ground for occupational discipline happened.

[1.101] Sections 91 and 92

omit

demerit disciplinary ground

substitute

demerit ground for occupational discipline

[1.102] Sections 93 (1) (c)

substitute

- (c) other action (*disciplinary action*) allowed to be taken under section 95 (2) (c).

[1.103] Section 95 (2) (c)

substitute

- (c) take any other action against the licensee that—
 - (i) the ACAT could take or direct the registrar to take; and
 - (ii) the registrar considers appropriate.

[1.104] Section 104 (1) (b)

substitute

- (b) to administer operational Acts;

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).

[1.105] Section 104 (1) (d) (i)

substitute

- (i) acting on complaints made about construction practitioners, including by applying to the ACAT for occupational discipline if appropriate; and

[1.106] Section 108 (2) (a) and (b)

substitute

- (a) has not applied for review of the decision to make the order within the period allowed under the *ACT Civil and Administrative Tribunal Act 2008*; or
- (b) has applied for review of the decision but the ACAT has not set aside the rectification order.

[1.107] Section 110

omit

section 57

substitute

section 59

[1.108] Section 116 (b)

substitute

- (b) to help with investigations for the construction occupation if asked by the registrar;

[1.109] Section 123 (1) (a) and (b)

substitute

- (a) if satisfied that a ground for occupational discipline exists in relation to the complaint—
 - (i) apply to the ACAT for occupational discipline order in relation to the licensee; and
 - (ii) tell the complainant in writing that the application has been made; or
- (b) if not satisfied that a ground for occupational discipline exists in relation to the complaint—
 - (i) tell the complainant in writing that the registrar will take no further action on the complaint; and
 - (ii) take no further action on the complaint; or

[1.110] Section 123 (2)

omit

disciplinary ground

substitute

ground for occupational discipline

[1.111] New part 11A

insert

Part 11A Notification and review of decisions

123A Meaning of *reviewable decision*—pt 11A

In this part:

reviewable decision means a decision prescribed by regulation.

123B Reviewable decision notices

If a person makes a reviewable decision, the person must give a reviewable decision notice to each entity prescribed by regulation in relation to the decision.

Note 1 The person must also take reasonable steps to give a reviewable decision notice to any other person whose interests are affected by the decision (see *ACT Civil and Administrative Tribunal Act 2008*, s 67A).

Note 2 The requirements for reviewable decision notices are prescribed under the *ACT Civil and Administrative Tribunal Act 2008*.

123C Review of reviewable decisions

The following may apply to the ACAT for a review of a reviewable decision:

- (a) an entity prescribed by regulation for the decision;
- (b) any other person whose interests are affected by the decision.

Note If a form is approved under the *ACT Civil and Administrative Tribunal Act 2008* for the application, the form must be used.

[1.112] Section 124

omit

[1.113] Section 125 (1)

substitute

- (1) This section applies to a person who is, or has been—
- (a) the registrar or a deputy registrar; or
 - (b) an advisory board member.

[1.114] Section 154 (1)

omit

(Automatic licence suspension and disciplinary action)

substitute

(Automatic licence suspension and occupational discipline)

[1.115] Dictionary, note 2, new dot points

insert

- ACAT
- occupational discipline order
- reviewable decision notice

[1.116] Dictionary, definitions of *disciplinary action*, *disciplinary ground* and *disciplinary notice*

omit

[1.117] Dictionary, new definition of *ground for occupational discipline*

insert

ground for occupational discipline—see section 55.

[1.118] Dictionary, definition of *inquiry*

omit

[1.119] Dictionary, definition of *licensee*

substitute

licensee—

- (a) for division 5.2 (Occupational discipline—licensees)—see section 54; and
- (b) for part 8 (Demerit points system)—see section 89.

[1.120] Dictionary, new definition of *occupational discipline*

insert

occupational discipline means—

- (a) something done by the ACAT by an occupational discipline order; or
- (b) something done by the registrar in accordance with an occupational discipline order; or
- (c) something done by the registrar under section 95.

[1.121] Dictionary, definition of *reviewable decisions*

substitute

reviewable decision, for part 11A (Notification and review of decisions)—see section 123A.

Part 1.11 Construction Occupations (Licensing) Regulation 2004

[1.122] Section 9 (1) (h) and (i)

substitute

- (h) details of any occupational discipline taken in relation to the licensee, if available;

[1.126] Section 43

substitute

43 Short descriptions and demerit points

- (1) The short description for a demerit ground for occupational discipline that is a contravention of the Act or an operational Act mentioned in schedule 2, column 2 is the description mentioned in the item, column 3.
- (2) The short description for a demerit ground for occupational discipline under the Act, section 55 (1) (other than paragraph (a)) that is mentioned in schedule 3, column 2 is the description mentioned in the item, column 3.
- (3) The number of demerit points mentioned in schedule 2, column 4 or schedule 3, column 4 is prescribed in relation to a demerit disciplinary notice based on the demerit ground for occupational discipline mentioned in the item, column 2.

[1.127] Section 44 (2) and (3)

omit

disciplinary action

substitute

occupational discipline

[1.128] Section 45

omit

[1.129] Section 48

substitute

**48 Meaning of *licensee* and *occupational discipline*—
s 9 (1) (h)**

In section 9 (1) (h):

licensee includes a person registered under the repealed Act.

occupational discipline is taken to include action taken under the repealed Act, section 22 (6) (Procedure).

[1.130] Schedule 2 heading

substitute

**Schedule 2 Demerit grounds for
occupational discipline**

(see s 43)

[1.131] Schedule 2, part 2.1 heading

substitute

**Part 2.1 Builders licence demerit grounds
for occupational discipline—Act,
s 55 (1) (a)**

[1.132] Schedule 2, part 2.1, column 2 heading

substitute

demerit grounds for occupational discipline

[1.133] Schedule 2, part 2.2 heading

substitute

**Part 2.2 Building surveyors licence
demerit grounds for occupational
discipline—Act, s 55 (1) (a)**

[1.134] Schedule 2, part 2.2, column 2 heading

substitute

demerit grounds for occupational discipline

[1.135] Schedule 2, part 2.3 heading

substitute

**Part 2.3 Drainers licence demerit grounds
for occupational discipline—Act,
s 55 (1) (a)**

[1.136] Schedule 2, part 2.3, column 2 heading

substitute

demerit grounds for occupational discipline

[1.137] Schedule 2, part 2.4 heading

substitute

**Part 2.4 Electricians licence demerit
grounds for occupational
discipline—Act, s 55 (1) (a)**

[1.138] Schedule 2, part 2.4, column 2 heading

substitute

demerit grounds for occupational discipline

[1.139] Schedule 2, part 2.5 heading

substitute

**Part 2.5 Gasfitters licence demerit
 grounds for occupational
 discipline—Act, s 55 (1) (a)**

[1.140] Schedule 2, part 2.5, column 2 heading

substitute

demerit grounds for occupational discipline

[1.141] Schedule 2, part 2.6 heading

substitute

**Part 2.6 Plumbers licence demerit
 grounds for occupational
 discipline—Act, s 55 (1) (a)**

[1.142] Schedule 2, part 2.6, column 2 heading

substitute

demerit grounds for occupational discipline

[1.143] Schedule 2, part 2.7 heading

substitute

**Part 2.7 Plumbing plan certifiers licence
demerit grounds for occupational
discipline—Act, s 55 (1) (a)**

[1.144] Schedule 2, part 2.7, column 2 heading

substitute

demerit grounds for occupational discipline

[1.145] Schedule 2, part 2.8 heading

substitute

**Part 2.8 All licences demerit grounds for
occupational discipline—Act,
s 55 (1) (a)**

[1.146] Schedule 2, part 2.8, column 2 heading

substitute

demerit grounds for occupational discipline

[1.147] Schedule 3 heading

substitute

**Schedule 3 Licence demerit grounds for
occupational discipline under
Act, s 55 (1) (other than par (a))**

[1.148] Schedule 3, item 3.1, column 2

substitute

s 55 (1) (b)

[1.149] New schedule 4

insert

Schedule 4 Reviewable decisions

(see pt 6A)

column 1 item	column 2 section	column 3 decision	column 4 entity
1	Act, 19 (1)	refuse to issue licence	applicant for licence
2	Act, 19 (1)	issue licence for period less than maximum period for which licence may be issued	applicant for licence
3	Act, 19 (2)	issue licence other than licence applied for	applicant for licence
4	Act, 21 (2)	amend licence by putting condition on licence, or amending or cancelling licence	licensee
5	Act, 21 (2)	refuse to amend licence	licensee

column 1 item	column 2 section	column 3 decision	column 4 entity
6	Act, 22	refuse to endorse licence	licensee
7	Act, 25	renew licence for period less than the maximum period for which licence may be renewed	applicant for renewal
8	Act, 25 (2)	refuse to renew licence	person whose licence renewal refused
9	Act, 26	refuse to cancel licence	licensee
10	Act, 29	refuse to approve resignation of nominee of corporation or partnership	nominee, corporation or partnership
11	Act, 37	authorise licensee to enter land	entity given notice under s 34 in relation to land or licensee
12	Act, 38	make rectification order	entity to which rectification order relates
13	Act, 53	refuse to revoke automatic suspension	licensee
14	Act, 59 (2)	suspend licence	licensee

Schedule 1
Part 1.11

Legislation amended
Construction Occupations (Licensing) Regulation 2004

Amendment [1.149]

column 1 item	column 2 section	column 3 decision	column 4 entity
15	Act, 61 (2)	refuse to revoke suspension	licensee
16	Act, 95	take disciplinary action	licensee
17	Act, 96	refuse application for licence or renewal	applicant for licence or renewal
18	Act, 97	give notice of licence suspension or disqualification without opportunity to make representations	person whose licence suspended or disqualified
19	Act, 109 (3)	include details of contravention in register	entity to which details of contravention relate
20	Act, 111	refuse to remove information from the register	entity to which information relates
21	30	refuse to endorse builders licence	licensee or applicant for endorsement
22	30	endorse builders licence subject to conditions	licensee
23	31	refuse to endorse plumbers licence	licensee

column 1 item	column 2 section	column 3 decision	column 4 entity
24	33	refuse to issue replacement licence	licensee

Part 1.12 Consumer Credit Act 1995

[1.150] Section 7 heading

substitute

7 Conferment of judicial functions on courts and ACAT

[1.151] Section 7 (1) (a) and (b)

substitute

- (a) for the code, sections 34 (5), 36 (6) and (7), 44 (4), 47 (3), 77 (1), 79, 82 (b), 83 (1), 88, 89, 91 (1) (a), 92, 93, 98 and 162 (2) and any jurisdiction prescribed by regulation—only by the ACAT; or
- (b) in any other case—either by the ACAT or any court.

[1.152] Section 7 (2) and (3)

omit

credit tribunal

substitute

ACAT

[1.153] Dictionary, note 2, new dot point

insert

- ACAT

[1.154] Dictionary, definition of *credit tribunal*

omit

Part 1.13 Consumer Credit Regulation 1996

[1.155] Section 4

substitute

4 Removing proceedings from court to ACAT

- (1) This section applies to a proceeding begun in a court if the subject matter of the proceeding is within the jurisdiction of the ACAT.
- (2) On joint application by the parties to the proceeding, the court must order the application be removed to the ACAT.
- (3) The court may order the application be removed to the ACAT on application by a party to the proceeding or on its own initiative.

4A Removing proceedings from ACAT to Magistrates Court

- (1) This section applies to a proceeding begun in the ACAT if the subject matter of the proceeding is within the jurisdiction of the Magistrates Court.
- (2) On joint application by the parties to the proceeding, the ACAT must order the application be removed to the Magistrates Court.
- (3) The ACAT may order the application be removed to the Magistrates Court on application by a party to the proceeding or on its own initiative.

Note Removal of applications from the ACAT to the Supreme Court is dealt with under the *ACT Civil and Administrative Tribunal Act 2008*, s 83.

Part 1.14 Consumer Credit (Administration) Act 1996

[1.156] Section 2, note 1

substitute

Note 1 The dictionary at the end of this Act defines certain terms used in this Act, and includes references (*signpost definitions*) to other terms defined elsewhere in this Act.

For example, the signpost definition ‘*finance broker*, for division 3.4 (Occupational discipline—finance brokers)—see section 50.’ means that the term ‘finance broker’ is defined in that section for division 3.4.

[1.157] Section 18 (2)

substitute

- (2) If the commissioner has applied to the ACAT for occupational discipline in relation to the registered credit provider, the credit provider must not surrender the registration before the ACAT has decided the application.

[1.158] Division 2.4

substitute

Division 2.3A Complaints—credit providers

18A Meaning of *credit provider*—div 2.3A

In this division:

credit provider, in relation to an act or omission, means a registered person or a person who was registered at the time of the act or omission.

18B Who may complain?

Anyone who believes on reasonable grounds that a ground for occupational discipline exists in relation to a credit provider may complain to the commissioner.

Examples—people who may complain

- 1 a member of the public
- 2 a user of a service

Note 1 **Ground for occupational discipline**—see s 20.

Note 2 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).

18C Form of complaint

- (1) A complaint must—
 - (a) be in writing; and
 - (b) be signed by the person (the *complainant*) making the complaint; and
 - (c) include the complainant's name and address.
- (2) However, the commissioner may accept a complaint for consideration even if it does not comply with subsection (1).
- (3) If the commissioner accepts for consideration a complaint that is not in writing, the commissioner must require the complainant to put the complaint in writing unless there is a good reason for not doing so.

18D Withdrawal of complaints

- (1) A complainant may withdraw the complaint at any time by written notice to the commissioner.
- (2) If the complainant withdraws the complaint, the commissioner—
 - (a) need not take further action on the complaint; and

- (b) may take further action on the complaint if the commissioner considers it appropriate to do so; and
- (c) need not report to the complainant under section 18H (Action after investigating complaint) on the results of taking the action.

18E Further information about complaint etc

- (1) The commissioner may, at any time, require a complainant—
 - (a) to give the commissioner further information about the complaint; or
 - (b) to verify all or part of the complaint by statutory declaration.
- (2) When making a requirement under this section, the commissioner must give the complainant a reasonable period of time to satisfy the requirement and may extend that period, whether before or after it ends.
- (3) If the complainant does not comply with a requirement under subsection (1), the commissioner need not, but may, take further action in relation to the complaint.

18F Investigation of complaint

The commissioner must take reasonable steps to investigate each complaint the commissioner accepts for consideration.

18G No further action on complaint

The commissioner must not take further action on a complaint if satisfied that—

- (a) the complaint lacks substance; or
- (b) the complaint is frivolous, vexatious or was not made genuinely; or

(c) the complaint has been adequately dealt with.

Note The commissioner may also take no further action on a complaint if the complainant has not complied with a requirement made under s 18E (see s 18E (3)).

18H Action after investigating complaint

- (1) After investigating a complaint against a credit provider, the commissioner must—
- (a) if satisfied on reasonable grounds that a ground for occupational discipline exists in relation to the complaint—
 - (i) apply to the ACAT for an occupational discipline order in relation to the credit provider; and
 - (ii) tell the complainant in writing that the application has been made; or
 - (b) if not satisfied that a ground for occupational discipline exists in relation to the complaint—
 - (i) tell the complainant in writing that the commissioner will not take further action on the complaint; and
 - (ii) not take further action on the complaint.
- (2) Subsection (1) (b) (ii) does not prevent the commissioner from taking further action in relation to a complaint if the commissioner becomes satisfied that a ground for occupational discipline exists in relation to the complaint.

Note The commissioner need not notify the complainant under s (1) if the complainant has withdrawn the complaint (see s 18D).

Division 2.4 Occupational discipline—credit providers

19 Meaning of *credit provider*—div 2.4

In this division, to remove any doubt:

credit provider includes the following:

- (a) an unregistered credit provider;
- (b) a credit provider whose registration is suspended;
- (c) a bank;
- (d) an entity that pretends to be a credit provider.

20 Grounds for occupational discipline

Each of the following is a *ground for occupational discipline* in relation to a credit provider:

- (a) the credit provider has provided consumer credit inefficiently, dishonestly or unfairly;
- (b) the credit provider has provided false or misleading information to the commissioner in relation to an application for registration under this Act;
- (c) the credit provider has contravened, or is contravening—
 - (i) the consumer credit legislation; or
 - (ii) an occupational discipline order; or
 - (iii) an undertaking under section 105;
- (d) the credit provider has provided consumer credit while the credit provider's registration was suspended or cancelled, or the credit provider was disqualified;

- (e) if the credit provider was licensed or registered at any time under the *Credit Act 1985*—
 - (i) the credit provider provided false or misleading information in relation to an application for the licence or the registration; or
 - (ii) the credit provider breached a condition to which the licence or registration was subject.

21 Application to ACAT for occupational discipline—credit provider

If the commissioner believes on reasonable grounds that a ground for occupational discipline exists in relation to a credit provider, the commissioner may apply to the ACAT for an occupational discipline order in relation to the credit provider.

22 Orders for occupational discipline

- (1) This section applies if the ACAT may make an occupational discipline order in relation to a credit provider.

Note The *ACT Civil and Administrative Tribunal Act 2008*, s 65 sets out when the ACAT may make an order.

- (2) In addition to any other occupational discipline order the ACAT may make, the ACAT may make 1 or more of the following orders for occupational discipline in relation to the credit provider:
 - (a) suspend the registration for a period not longer than 1 year;
 - (b) cancel the registration and disqualify the credit provider from obtaining registration as a credit provider or as a finance broker for a stated period;

- (c) disqualify the credit provider, or a stated defined influential person in relation to the credit provider, from obtaining registration as a credit provider or as a finance broker for a stated period.

Note The *ACT Civil and Administrative Tribunal Act 2008*, s 66 sets out other occupational discipline orders the ACAT may make.

23 Credit provider not liable for penalties

- (1) This section applies if—
 - (a) a credit provider has been convicted of an offence; and
 - (b) the conduct giving rise to the offence forms, wholly or partly, a ground for occupational discipline against the credit provider.
- (2) The credit provider is not liable to pay an amount ordered to be paid under the *ACT Civil and Administrative Tribunal Act 2008*, section 66 (2) (h) in relation to the conduct.

24 Extension of time for complying with directions

- (1) The ACAT may extend the time for complying with an ACAT order in relation to a credit provider.
- (2) The extension may be made—
 - (a) before or after the end of the time for compliance given in the order; and
 - (b) on application by the credit provider or on the ACAT's own initiative.

24AA Powers of inquiry

- (1) The commissioner may make the inquiries about a credit provider for this division that the commissioner considers appropriate.

- (2) The chief police officer must—
 - (a) make any reasonable inquiry about the credit provider asked for by the commissioner; and
 - (b) report the outcome of the inquiry to the commissioner.
- (3) In this section:
credit provider includes—
 - (a) a defined influential person in relation to a credit provider; and
 - (b) an employee of a credit provider.

24AB Cancellation or suspension for insolvency etc

- (1) This section applies to a credit provider if the credit provider is—
 - (a) an individual and—
 - (i) becomes bankrupt, executes a personal insolvency agreement or otherwise applies to take the benefit of any law for the relief of bankrupt or insolvent debtors; or
 - (ii) is convicted in the ACT or elsewhere of an offence involving fraud or dishonesty punishable, on conviction, by imprisonment for 3 months or more; or
 - (iii) has a mental incapacity that affects the exercise of the credit provider's functions; or
 - (b) a body corporate and—
 - (i) is dissolved, is under administration, is being wound up or has ceased to carry on business; or
 - (ii) a receiver, or a receiver and manager, has been appointed under the Corporations Act in relation to any property of the body; or

- (iii) has entered into a compromise or scheme of arrangement with its creditors.
- (2) The commissioner may suspend the credit provider's registration for a stated period or cancel the registration.
- (3) If the commissioner cancels the registration of a credit provider, the commissioner must disqualify the credit provider from obtaining registration as a credit provider or finance broker for the period stated in the notice of cancellation under section 129.
- (4) On application by the credit provider, the commissioner may—
 - (a) remove the credit provider's suspension at any time before the expiry of the stated period of suspension; or
 - (b) revoke the credit provider's disqualification at any time before the expiry of the stated period of disqualification.

Division 2.4A Offences—credit providers

24AC Offence—comply with orders

A credit provider must comply with an order under the *ACT Civil and Administrative Tribunal Act 2008*, section 66 (2) (d), (h) or (i) that applies to the credit provider.

Maximum penalty: 50 penalty units.

24AD Offence—return registration to place conditions etc

- (1) This section applies if the ACAT directs the commissioner to place a condition on a credit provider's registration, or to remove or amend a condition on a credit provider's registration, under the *ACT Civil and Administrative Tribunal Act 2008*, section 66 (2) (g).

- (2) The credit provider must, on written notice from the commissioner and within 14 days after the date of the notice, return the certificate of registration to the commissioner to allow the commissioner—
- (a) to place the condition on the registration; or
 - (b) to remove or amend the condition on the registration.

Maximum penalty: 10 penalty units.

24AE Offence—return suspended or cancelled registration

If the ACAT suspends or cancels the registration of a credit provider, the credit provider must return the certificate of registration to the commissioner within 14 days after the date of suspension or cancellation.

Maximum penalty: 10 penalty units.

24AF Offence—disqualified credit providers to have no concern in credit businesses

A person who is disqualified from obtaining registration as a credit provider by the ACAT must not exercise a function in relation to the direction, management or control of a business providing consumer credit or a finance broking business during the disqualification period.

Maximum penalty: 50 penalty units.

[1.159] Section 24A (1) (a)

substitute

- (a) a credit provider's registration was or is suspended or cancelled under this part or by the ACAT; and

[1.160] Section 24A (6)

substitute

- (6) In this section, to remove any doubt, a ***credit provider*** is a credit provider under section 19.

[1.161] Section 25 (3) (a) and (b)

substitute

- (a) as a credit provider under this part or by the ACAT; or
(b) as a finance broker under part 3 or by the ACAT.

[1.162] Section 49 (2)

substitute

- (2) If the commissioner has applied to the ACAT for occupational discipline in relation to the registered finance broker, the finance broker must not surrender the registration before the ACAT has decided the application.

[1.163] Division 3.4

substitute

Division 3.3A Complaints—finance brokers

49A Meaning of *finance broker*—div 3.3A

In this division:

finance broker, in relation to an act or omission, means a registered person or a person who was registered at the time of the act or omission.

49B Who may complain?

Anyone who believes on reasonable grounds that a ground for occupational discipline exists in relation to a finance broker may complain to the commissioner.

Examples—people who may complain

- 1 a member of the public
- 2 a user of a service

Note 1 **Ground for occupational discipline**—see s 51.

Note 2 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).

49C Form of complaint

- (1) A complaint must—
 - (a) be in writing; and
 - (b) be signed by the person (the *complainant*) making the complaint; and
 - (c) include the complainant's name and address.
- (2) However, the commissioner may accept a complaint for consideration even if it does not comply with subsection (1).
- (3) If the commissioner accepts for consideration a complaint that is not in writing, the commissioner must require the complainant to put the complaint in writing unless there is a good reason for not doing so.

49D Withdrawal of complaints

- (1) A complainant may withdraw the complaint at any time by written notice to the commissioner.
- (2) If the complainant withdraws the complaint, the commissioner—
 - (a) need not take further action on the complaint; and

- (b) may take further action on the complaint if the commissioner considers it appropriate to do so; and
- (c) need not report to the complainant under section 49H (Action after investigating complaint) on the results of taking the action.

49E Further information about complaint etc

- (1) The commissioner may, at any time, require a complainant—
 - (a) to give the commissioner further information about the complaint; or
 - (b) to verify all or part of the complaint by statutory declaration.
- (2) When making a requirement under this section, the commissioner must give the complainant a reasonable period of time to satisfy the requirement and may extend that period, whether before or after it ends.
- (3) If the complainant does not comply with a requirement under subsection (1), the commissioner need not, but may, take further action in relation to the complaint.

49F Investigation of complaint

The commissioner must take reasonable steps to investigate each complaint the commissioner accepts for consideration.

49G No further action on complaint

The commissioner must not take further action on a complaint if satisfied that—

- (a) the complaint lacks substance; or
- (b) the complaint is frivolous, vexatious or was not made genuinely; or

(c) the complaint has been adequately dealt with.

Note The commissioner may also take no further action on a complaint if the complainant has not complied with a requirement made under s 49E (see s 49E (3)).

49H Action after investigating complaint

- (1) After investigating a complaint against a finance broker, the commissioner must—
 - (a) if satisfied on reasonable grounds that a ground for occupational discipline exists in relation to the complaint—
 - (i) apply to the ACAT for an occupational discipline order in relation to the finance broker; and
 - (ii) tell the complainant in writing that the application has been made; or
 - (b) if not satisfied that a ground for occupational discipline exists in relation to the complaint—
 - (i) tell the complainant in writing that the commissioner will not take further action on the complaint; and
 - (ii) not take further action on the complaint.
- (2) Subsection (1) (b) (ii) does not prevent the commissioner from taking further action in relation to a complaint if the commissioner becomes satisfied that a ground for occupational discipline exists in relation to the complaint.

Note The commissioner need not notify the complainant under s (1) if the complainant has withdrawn the complaint (see s 49D).

Division 3.4 Occupational discipline—finance brokers

50 Meaning of *finance broker*—div 3.4

In this division, to remove any doubt:

finance broker includes the following:

- (a) an unregistered finance broker;
- (b) a finance broker whose registration is suspended;
- (c) an entity exempted under section 29 (Exemption—particular entities) or section 30 (Exemption—finance broking in the course of another business);
- (d) an entity that pretends to be a finance broker.

51 Grounds for occupational discipline

Each of the following is a *ground for occupational discipline* in relation to a finance broker:

- (a) the finance broker has exercised the functions of a finance broker inefficiently, dishonestly or unfairly;
- (b) the finance broker has provided false or misleading information to the commissioner in relation to an application for registration under this Act;
- (c) the finance broker has contravened, or is contravening—
 - (i) the consumer credit legislation; or
 - (ii) an occupation discipline order; or
 - (iii) an undertaking under section 105;

- (d) the finance broker has exercised the functions of a finance broker while the finance broker's registration was suspended or cancelled, or while the finance broker was disqualified;
- (e) if the finance broker was licensed at any time under the *Credit Act 1985*—
 - (i) the finance broker provided false or misleading information in relation to an application for the licence; or
 - (ii) the finance broker breached a condition to which the licence was subject.

52 Application to ACAT for occupational discipline—finance brokers

If the commissioner believes on reasonable grounds that a ground for occupational discipline exists in relation to a finance broker, the commissioner may apply to the ACAT for an occupational discipline order in relation to the finance broker.

53 Orders for occupational discipline

- (1) This section applies if the ACAT may make an occupational discipline order in relation to a finance broker.

Note The *ACT Civil and Administrative Tribunal Act 2008*, s 65 sets out when the ACAT may make an order.

- (2) In addition to any other occupational discipline order the ACAT may make, the ACAT may make 1 or more of the following occupational discipline orders in relation to the finance broker:
 - (a) suspend the registration for a period not longer than 1 year;
 - (b) cancel the registration and disqualify the finance broker from obtaining registration as a finance broker or as a credit provider for a stated period;

- (c) disqualify the finance broker, or a stated defined influential person in relation to the finance broker, from obtaining registration as a finance broker or as a credit provider for a stated period.

Note The *ACT Civil and Administrative Tribunal Act 2008*, s 66 sets out other occupational discipline orders the ACAT may make.

54 Finance broker not liable for penalties

- (1) This section applies if—
 - (a) a finance broker has been convicted of an offence; and
 - (b) the conduct giving rise to the offence forms, wholly or partly, a ground for occupational discipline in relation to the finance broker.
- (2) The finance broker is not liable to pay any amount ordered to be paid by the ACAT under the *ACT Civil and Administrative Tribunal Act 2008*, section 66 (2) (h) in relation to the conduct.

55 Extension of time for complying with directions

- (1) The ACAT may extend the time for complying with an ACAT order in relation to a finance broker.
- (2) The extension may be made—
 - (a) before or after the end of the time for compliance given in the order; and
 - (b) on application by the finance broker or on the ACAT's own initiative.

55AA Powers of inquiry

- (1) The commissioner may make the inquiries about a finance broker for this division that the commissioner considers appropriate.

- (2) The chief police officer must—
 - (a) make any reasonable inquiry about a credit provider asked for by the commissioner; and
 - (b) report on the outcome of the inquiry to the commissioner.
- (3) In this section:
finance broker includes—
 - (a) a defined influential person in relation to a finance broker; and
 - (b) an employee of a finance broker.

55AB Cancellation or suspension for insolvency etc

- (1) This section applies to a finance broker if the finance broker is—
 - (a) an individual and—
 - (i) becomes bankrupt, executes a personal insolvency agreement or otherwise applies to take the benefit of any law for the relief of bankrupt or insolvent debtors; or
 - (ii) is convicted in the ACT or elsewhere of an offence involving fraud or dishonesty punishable, on conviction, by imprisonment for 3 months or more; or
 - (iii) has a mental incapacity that affects the exercise of the credit provider's functions; or
 - (b) a body corporate and—
 - (i) is dissolved, is under administration, is being wound up or has ceased to carry on business; or
 - (ii) if a receiver, or a receiver and manager, has been appointed under the Corporations Act in relation to any property of the body; or

- (iii) has entered into a compromise or scheme of arrangement with its creditors.
- (2) The commissioner may suspend the finance broker's registration for a stated period or cancel the registration.
- (3) If the commissioner cancels the registration of a finance broker, the commissioner must disqualify the finance broker from obtaining registration as a finance broker or credit provider for the period stated in the notice of cancellation under section 129.
- (4) On application by the finance broker, the commissioner may—
 - (a) remove the finance broker's suspension at any time before the expiry of the stated period of suspension; or
 - (b) revoke the finance broker's disqualification at any time before the expiry of the stated period of disqualification.

Division 3.4A Offences—finance brokers

55AC Offence—comply with orders

A finance broker must comply with an order of the ACAT under the *ACT Civil and Administrative Tribunal Act 2008*, section 66 (2) (d), (h) or (i).

Maximum penalty: 50 penalty units.

55AD Offence—return registration for conditions

- (1) This section applies if the ACAT directs the commissioner to place a condition on a finance broker's registration, or to remove or amend a condition on a finance broker's registration, under the *ACT Civil and Administrative Tribunal Act 2008*, section 66 (2) (g).

- (2) The finance broker must, on written notice from the commissioner and within 14 days after the date of the notice, return the certificate of registration to the commissioner to allow the commissioner to—
- (a) place the condition on the registration; or
 - (b) remove or amend the condition on the registration.

Maximum penalty: 10 penalty units.

55AE Offence—return suspended or cancelled registration

If the ACAT suspends or cancels the registration of a finance broker, the finance broker must return the certificate of registration to the commissioner within 14 days after the date of suspension or cancellation.

Maximum penalty: 10 penalty units.

55AF Offence—disqualified finance brokers

A person who is disqualified from obtaining registration as a finance broker by order of the ACAT must not exercise any function in relation to the direction, management or control of a finance broking business or a business providing consumer credit during the disqualification period.

Maximum penalty: 50 penalty units.

[1.164] Section 55A (1) (a)

substitute

- (a) the registration of a finance broker was or is suspended or cancelled under this part or by the ACAT; and

[1.165] Section 55A (6)

substitute

- (6) In this section, to remove any doubt, a *finance broker* is a finance broker under section 50.

[1.166] Section 56 (3) (a) and (b)

substitute

- (a) as a finance broker under this part or by the ACAT; or
(b) as a credit provider under part 2 or by the ACAT.

[1.167] Section 79

relocate as section 138A

[1.168] Parts 4 (as amended) and 5

substitute

Part 5 Inquiries

99 Meaning of *inquirer*—pt 5

In this part:

inquirer—see section 100.

100 Executive may order inquiry

- (1) The Executive may appoint 1 of the following entities (the *inquirer*) to inquire into matters about the provision of credit, or the consequences of the provision of credit:
- (a) the commissioner;

(b) another entity.

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

Note 2 In particular, a person may be appointed for a particular provision of a law (see Legislation Act, s 7 (3)) and an appointment may be made by naming a person or nominating the occupant of a position (see Legislation Act, s 207).

(2) The appointment is subject to any condition stated in the appointment.

(3) Subject to the appointment, the inquirer has the functions given under this part.

Note **Function** includes power and **under** includes by (see Legislation Act, dict, pt 1).

(4) The appointment is a notifiable instrument.

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

(5) The Executive must also publish the terms of each appointment in a daily newspaper circulating in the ACT.

101 Notice of inquiry

(1) Before beginning an inquiry, the inquirer must prepare a written notice setting out the following matters in relation to the inquiry:

(a) the way in which the inquiry will be held;

(b) the subject matter of the inquiry;

(c) the time and day and location of the inquiry.

(2) The notice may include anything else the inquirer considers appropriate.

(3) The notice is a notifiable instrument.

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

- (4) The inquirer must also publish the notice in a daily newspaper circulating in the ACT.

102 Application of Inquiries Act 1991

The *Inquiries Act 1991*, part 3 (other than sections 14 and 14A) and part 4 apply in relation to an inquiry under this part as if, in those provisions—

- (a) a reference to an inquiry were a reference to an inquiry under this part; and
- (b) a reference to any of the following were a reference to the inquirer:
 - (i) a board of inquiry;
 - (ii) the chairperson of a board of inquiry;
 - (iii) a member of a board of inquiry.

103 Findings and recommendations

On finishing an inquiry, the inquirer must, as soon as practicable—

- (a) give a written report of the results of the inquiry to the Minister; and
- (b) make the recommendations in the report about the results that the inquirer thinks fit.

[1.169] Section 105 (1) (b)

substitute

- (b) apply to the ACAT for an order under section 107 (1).

[1.170] Section 105 (2)

substitute

- (2) The commissioner must not apply for an order under section 107 (1) in relation to the conduct that is in accordance with an undertaking.

[1.171] Section 105 (4)

substitute

- (4) A prosecution for an offence against subsection (3) must not be begun except by the commissioner with the leave of the ACAT.

[1.172] Section 106 (3) (b) (ii)

substitute

- (ii) the registrar of the ACAT.

[1.173] Section 107

substitute

107 Orders by ACAT

- (1) The commissioner may apply to the ACAT for an order under this section in relation to a person.
- (2) On application, the ACAT may make the following orders:
- (a) if satisfied that the person has engaged in unjust conduct—require the person to refrain from engaging in the conduct;
 - (b) if satisfied that the person has contravened an undertaking under section 105—require the person to comply with the undertaking within a stated period;
 - (c) if satisfied that the person has engaged in defined conduct—prohibit the person from engaging in the defined conduct.

- (3) In this section, a person engages in *defined conduct* if the person—
- (a) is a defined influential person in relation to a body corporate;
and
 - (b) has consented to or connived at—
 - (i) the body corporate engaging in unjust conduct as a credit provider or finance broker; or
 - (ii) the body corporate contravening an undertaking mentioned in section 105.
- (4) An order under this section is subject to any condition stated in the order.
- (5) This section does not limit the orders the ACAT may make.

[1.174] Section 109 (e) (except note)

substitute

- (e) at the request of the ACAT, to prepare reports for, and to provide other assistance to, the ACAT.

[1.175] Sections 111 and 112

substitute

111 Representing other people before ACAT

- (1) Despite anything in the consumer credit legislation, the commissioner may represent a party in a proceeding before the ACAT.
- (2) For subsection (1), the commissioner may—
- (a) appear in person; or
 - (b) be represented by a legal practitioner or another person.

112 Taking or defending proceedings for other people

- (1) This section applies to a complaint about a matter arising under the consumer credit legislation made by—
 - (a) an individual; or
 - (b) a strata corporation under the Credit Code.
- (2) The commissioner may begin or defend a proceeding on behalf of, and in the name of, the complainant.
- (3) However, the commissioner may begin or defend a proceeding only if—
 - (a) the commissioner is satisfied that—
 - (i) the complainant has a right to begin or defend the proceeding—
 - (A) in a court or the ACAT; and
 - (B) in relation to the matter complained about; and
 - (ii) it would be in the public interest for the commissioner to take or defend the proceeding on behalf of the complainant; and
 - (b) the commissioner has the written consent of the complainant and the Minister.
- (4) A complainant who has given consent under subsection (3) (b) cannot revoke the consent after the commissioner has taken a step in the proceeding unless the commissioner agrees.

[1.176] Section 113 (4) and (5)

omit

tribunal

substitute

ACAT

[1.177] Section 114

substitute

114 Intervention by Minister or commissioner

- (1) The Minister or commissioner may intervene in a proceeding under the consumer credit legislation before a court or the ACAT if satisfied that it would be in the public interest to do so.
- (2) However—
 - (a) the commissioner must only intervene with the Minister's consent; and
 - (b) the Minister and commissioner must not intervene in a proceeding for an offence.
- (3) If the Minister or commissioner intervenes in a proceeding, the Minister or commissioner—
 - (a) is, by force of this section, a party to the proceeding; and
 - (b) may—
 - (i) appear in person; or
 - (ii) despite any other law in force in the ACT, be represented by a legal practitioner or another person.

130 Applications for review

The following may apply to the ACAT for a review of a reviewable decision:

- (a) an entity mentioned in schedule 1, column 4 in relation to the decision;
- (b) any other person whose interests are affected by the decision.

Note If a form is approved under the *ACT Civil and Administrative Tribunal Act 2008* for the application, the form must be used.

[1.180] Division 9.1

omit

[1.181] Division 9.2 heading

omit

[1.182] Section 137

omit

tribunal

substitute

ACAT

[1.183] New schedule 1

insert

Schedule 1 Reviewable decisions

(see pt 8A)

column 1 item	column 2 section	column 3 decision	column 4 entity
1	24AB (2)	suspend credit provider's registration	credit provider
2	24AB (2)	cancel credit provider's registration	credit provider
3	24AB (4) (a)	refuse to remove credit provider's suspension	credit provider
4	24AB (4) (b)	refuse to revoke credit provider's disqualification	credit provider
5	55AB (2)	suspend finance broker's registration	finance broker
6	55AB (2)	cancel finance broker's registration	finance broker

column 1 item	column 2 section	column 3 decision	column 4 entity
7	55AB (4) (a)	refuse to remove finance broker's suspension	finance broker
8	55AB (4) (b)	refuse to revoke finance broker's disqualification	finance broker

[1.184] Dictionary, note 2, new dot points

insert

- ACAT
- may (see s 146)
- must (see s 146)
- occupational discipline order
- reviewable decision notice

[1.185] Dictionary, definition of *consumer member*

omit

[1.186] Dictionary, definition of *credit provider*, paragraph (b)

substitute

- (b) for division 2.3A (Complaints—credit providers)—see section 18A; and
- (c) for division 2.4 (Occupational discipline—credit providers)—see section 19.

[1.187] Dictionary, definition of *deputy president*

omit

[1.188] Dictionary, definition of *finance broker*, paragraph (b)

substitute

- (b) for division 3.3A (Complaints—finance brokers)—see section 49A; and
- (c) for division 3.4 (Occupational discipline—finance brokers)—see section 50.

[1.189] Dictionary, definitions of *industry member*, *member*, *non-presidential member*, *president*, *presidential member*, *proceeding* and *registrar*

omit

[1.190] Dictionary, new definition of *reviewable decision*

insert

reviewable decision, for part 8A (Notification and review of decisions)—see section 128.

[1.191] Dictionary, definition of *tribunal*

omit

Part 1.15 Court Procedures Act 2004

[1.192] New division 3.1 heading

insert

Division 3.1 Fees generally

[1.193] Section 12, definition of *relevant legislation*

substitute

relevant legislation means any of the following:

- (a) the *ACT Civil and Administrative Tribunal Act 2008*;

- (b) the *Coroners Act 1997*;
- (c) this Act;
- (d) the *Leases (Commercial and Retail) Act 2001*;
- (e) the *Magistrates Court Act 1930*;
- (f) the *Supreme Court Act 1933*;
- (g) any other legislation prescribed by regulation.

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).

[1.194] Section 12, definition of *tribunal*

omit

[1.195] Section 13

omit

tribunal

substitute

the ACAT

[1.196] Section 14 (2)

substitute

- (2) A determined fee is payable on notice from the registrar of the court or ACAT if it is worked out by reference to expenses actually incurred in exercising the function, or in providing the facility or service, for which the fee is payable.

[1.197] Section 15 (2) (b)

substitute

- (b) if the registrar of the court or ACAT waives payment by a person of the fee completely or partly because the registrar considers that payment of the fee would impose hardship on the person—to the extent of the waiver; or

[1.198] Section 15 (2) (c) (v) (C)

substitute

- (C) a decision of the ACAT in relation to an application under the *Guardianship and Management of Property Act 1991*; or

[1.199] Section 15 (3)

omit

[1.200] Section 16 (1)

omit everything before paragraph (a), substitute

- (1) This section applies in relation to a civil proceeding in the Supreme Court or the Magistrates Court, or an application in the ACAT, between at least 2 parties (the *first party* and the *second party*), if—

[1.201] Section 16 (2)

substitute

- (2) If this section applies, the second party must pay to the registrar of the court or ACAT the amount of the fee exempted, remitted, refunded or waived.

[1.202] Section 18

substitute

Division 3.2 Review of decisions—fees

18 Meaning of *reviewable decision*—div 3.2

In this division:

reviewable decision means a decision of a registrar of a court or the registrar of the ACAT mentioned in table 18, column 3 under a provision of this Act mentioned in column 2 in relation to the decision.

Table 18 Reviewable decisions

column 1 item	column 2 section	column 3 decision	column 4 person
1	15 (1)	refuse to remit fee completely or partly	person who paid fee
2	15 (1)	refuse to refund fee completely or partly	person who paid fee
3	15 (1)	refuse to defer liability to pay fee completely or partly	person liable to pay fee
4	15 (2) (b)	refuse to waive fee completely or partly	person liable to pay fee

column 1 item	column 2 section	column 3 decision	column 4 person
5	15 (2)	refuse to allow benefit of an exemption to pay fee	person liable to pay fee

18A Reviewable decisions—court

- (1) If the registrar of a court makes a reviewable decision, the registrar must give written notice of the decision to each person mentioned in table 18, column 4 in relation to the decision.
- (2) The notice must tell the person that the person may—
 - (a) apply to the registrar for a statement of reasons for the decision; and
 - (b) apply for review of the decision under this section.
- (3) The entity may apply to the registrar for a statement of reasons for the decision within 28 days after the day when the person is given the notice.
- (4) A person who receives a notice under subsection (1) may apply to the court from which the registrar gave the notice for review of the decision within—
 - (a) 28 days after the day the person is given notice of the decision by the registrar; or
 - (b) if the person applies within the 28-day period for a statement of reasons for the decision—28 days after the day the person is given the statement of reasons.
- (5) For the review, the court—
 - (a) must be constituted by—
 - (i) for the Supreme Court—a judge or the master; or

- (ii) for the Magistrates Court—a magistrate; and
- (b) may make the orders the court considers appropriate.

18B Reviewable decisions—ACAT

- (1) If the registrar of the ACAT makes a reviewable decision, the registrar must give a reviewable decision notice to each person mentioned in table 18, column 4 in relation to the decision.

Note 1 The registrar must also take reasonable steps to give a reviewable decision notice to any other person whose interests are affected by the decision (see *ACT Civil and Administrative Tribunal Act 2008*, s 67A).

Note 2 The requirements for reviewable decision notices are prescribed under the *ACT Civil and Administrative Tribunal Act 2008*.

- (2) The following may apply to the ACAT for review of a reviewable decision by the registrar of the ACAT:
 - (a) a person mentioned in table 18, column 4 in relation to the decision;
 - (b) any other person whose interests are affected by the decision.

Note If a form is approved under the *ACT Civil and Administrative Tribunal Act 2008* for the application, the form must be used.

18C No fee for review by court or ACAT

A fee is not payable for an application under this division.

[1.203] Section 20, definitions of *judgment* and *proceeding*

substitute

judgment means a judgment or order of a court or the ACAT.

proceeding means a civil proceeding or proceeding before the ACAT.

[1.204] Section 21 (1)

omit everything before paragraph (a), substitute

- (1) Subject to this part, any relevant rules of court, the *ACT Civil and Administrative Tribunal Act 2008* and the *Judiciary Act 1903* (Cwlth)—

[1.205] Section 27 (1)

omit everything before paragraph (a), substitute

- (1) This section applies if any of the following are in issue in a court proceeding or proceeding before the ACAT:

[1.206] Section 27 (4)

after

court

insert

or ACAT

[1.207] Section 28 heading

substitute

28 Fees and charges in proceedings

[1.208] Section 28 (3), new definition of *court*

insert

court includes the ACAT.

[1.209] Section 29 (1)

after

court

insert

or the ACAT

[1.210] Section 30

after

ACT court

insert

or the ACAT

[1.211] Section 31

substitute

31 Enforcement of judgments by the Crown

Subject to this part, any relevant rules of court and the *ACT Civil and Administrative Tribunal Act 2008*, a judgment recovered by the Crown may be enforced in the same way as a judgment in a proceeding between subjects, and not in any other way.

[1.212] Section 40, definition of *court*, paragraphs (e) to (k)

substitute

(e) the ACAT; or

[1.213] New section 41 (2) (aa)

before paragraph (a), insert

(aa) the *ACT Civil and Administrative Tribunal Act 2008*, section 39 (Hearings in private or partly in private); and

[1.214] Section 41 (2) (b), (c) and (g)

omit

[1.215] Section 50

omit

judge or magistrate

substitute

judge, magistrate or presidential member

[1.216] New section 50 (5)

insert

(5) In this section:

presidential member—see the *ACT Civil and Administrative Tribunal Act 2008*, dictionary.

[1.217] Dictionary, note 2, new dot point

insert

- ACAT

[1.218] Dictionary, note 2, dot points

omit

- administrative appeals tribunal
- consumer and trader tribunal
- credit tribunal
- discrimination tribunal
- residential tenancies tribunal

[1.219] Dictionary, note 2, new dot point

insert

- reviewable decision notice

[1.220] Dictionary, new definition of *reviewable decision*

insert

reviewable decision, for division 3.2 (Review of decisions—fees)—
see section 18.

**Part 1.16 Court Procedures Regulation
2004**

[1.221] Section 3A

omit

Part 1.17 Credit Act 1985

[1.222] Section 6

substitute

6 Jurisdiction of courts and ACAT

- (1) In this Act, a reference to a court in relation to any contract or other matter is—
 - (a) if a proceeding in relation to the contract or matter has been begun in, or is before, a court—a reference to the court; or
 - (b) in any other case—a reference to the ACAT.
- (2) If a court and the ACAT each have jurisdiction to determine the same matter, a proceeding to determine the matter may be begun before the court or ACAT, but not before both.

7 Removing proceedings from ACAT to Magistrates Court

- (1) This section applies to a proceeding begun in the ACAT if the subject matter of the proceeding is within the jurisdiction of the Magistrates Court.

- (2) On joint application by the parties to the proceeding, the ACAT must order the application be removed to the Magistrates Court.
- (3) The ACAT may order the application be removed to the Magistrates Court on application by a party to the proceeding or on its own initiative.

Note Removal of applications from the ACAT to the Supreme Court is dealt with under the *ACT Civil and Administrative Tribunal Act 2008*, s 83.

[1.223] Section 24 (14)

substitute

- (14) In this section:
court does not include the ACAT.

[1.224] Section 32 (1) (e)

substitute

- (e) in the prescribed position or, in a particular case, in a position approved by the ACAT, on the document.

[1.225] Section 32 (3) (b)

substitute

- (b) in the prescribed position or, in a particular case, in a position approved by the ACAT, on the document.

[1.226] Section 85A heading

omit

tribunal's

substitute

ACAT's

[1.227] Section 241A (5)

substitute

- (5) This section does not apply to a liability to pay a credit charge determined by the Australian Capital Territory Credit Tribunal before the commencement of the *Credit (Amendment) Act 1991*, section 8.

[1.228] Section 241B (3)

substitute

- (3) This section does not apply to a liability to pay a credit charge determined by the Australian Capital Territory Credit Tribunal before the commencement of the *Credit (Amendment) Act 1991*, section 8.

[1.229] Sections 241C and 241D

substitute

241C Operation of amendments of s 85 and s 86

Section 85 and section 86, as amended by the *Credit (Amendment) Act 1991*, section 5 and section 7, apply to a proceeding in the Australian Capital Territory Credit Tribunal begun before or after the commencement of the sections.

241D Operation of s 85A

Section 85A does not apply to a proceeding pending in the Australian Capital Territory Credit Tribunal on the commencement of the *Credit (Amendment) Act 1991*, section 6, but applies to a proceeding begun after the commencement of the section even if the contraventions or failures to which the proceeding relate occurred before the commencement.

[1.230] Section 246

substitute

246 Restriction on form of document

- (1) This section applies to a form of document given by a credit provider or mortgagee under this Act.
- (2) The ACAT may direct the credit provider or mortgagee not to use a document in the form of the document given if the document is—
 - (a) expressed in language that is not readily comprehensible; or
 - (b) written or printed in a colour, or on paper of a colour, that detracts from the legibility of the document; or
 - (c) written or printed in a style or way that detracts from the legibility of the document.

[1.231] Dictionary, note 2, new dot point

insert

- ACAT

[1.232] Dictionary, definition of *proceedings*

substitute

proceeding, in relation to the ACAT, includes any matter arising for determination by the ACAT under this Act.

[1.233] Dictionary, definition of *tribunal*

omit

[1.234] Further amendments, mentions of *tribunal*

omit

tribunal

substitute

ACAT

in

- section 47
- section 62
- section 74
- section 76 (3)
- section 81
- section 85
- section 85AA
- section 85A
- section 86
- section 93 (3)
- section 94 (1)
- section 95
- section 102
- section 104
- section 110 (1)
- section 112 (1)
- section 116
- section 118
- section 139
- section 146

- section 147
- section 148
- section 151
- section 152
- section 153 (3)
- section 247

Part 1.18 Crimes Act 1900

[1.235] Section 300, new definition of *ACAT*

insert

ACAT means the ACAT exercising its jurisdiction under the *Mental Health (Treatment and Care) Act 1994*.

[1.236] Section 300, definition of *tribunal*

omit

[1.237] Section 308 (e)

substitute

- (e) any recommendation made by the ACAT about how the accused should be dealt with.

[1.238] Section 315D (2) (b)

substitute

- (b) an order requiring the defendant to submit to the jurisdiction of the ACAT to allow the ACAT to make a mental health order.

[1.239] Section 316 (3)

substitute

- (3) The Supreme Court must direct the ACAT to appoint a guardian with power to make an election under subsection (2) (a) (i) if satisfied that—
- (a) the accused is incapable of making the election; and
 - (b) a guardian who has power to make an election of that kind has not been appointed by the ACAT under the *Guardianship and Management of Property Act 1991*.

[1.240] Section 318 (2) (a) and (b)

substitute

- (a) that the accused be detained in custody until the ACAT orders otherwise;
- (b) that the accused submit to the jurisdiction of the ACAT to allow the ACAT to make a mental health order.

[1.241] Section 319A (1) (c) (except note)

substitute

- (c) the ACAT later decides the accused is fit to plead in relation to the offence.

[1.242] Division 13.5 heading

substitute

Division 13.5 Referring people with mental impairment to ACAT after conviction

[1.243] Section 335A (1) (c) (except note)

substitute

- (c) the ACAT later decides the accused is fit to plead in relation to the offence.

[1.244] Dictionary, note 2, new dot point

insert

- ACAT

[1.245] Dictionary, new definition of ACAT

insert

ACAT, for part 13 (Unfitness to please and mental impairment)—see section 300.

[1.246] Further amendments, mentions of *tribunal*

omit

tribunal

substitute

ACAT

in

- section 301 (1)
- section 302 (1)
- section 304 (1)
- section 305 (1)
- section 309 (1)
- section 319 (2)
- section 323
- section 324 (1)
- section 328

- section 329 (1)
- section 331
- section 334
- section 335

Part 1.19 Crimes (Child Sex Offenders) Regulation 2005

[1.247] Section 12 (1) (d) (ii)

substitute

- (ii) for an offender released from detention under the *Mental Health (Treatment and Care) Act 1994*, part 4 (Mental health orders) or part 5 (Emergency detention and care)—the ACAT; or

[1.248] Dictionary, note 2, new dot point

insert

- ACAT

Part 1.20 Discrimination Act 1991

[1.249] Section 30 (1) (d)

substitute

- (d) an order of the ACAT.

[1.250] Section 68 (1) (a) (i) and (ii)

substitute

- (i) begun a proceeding in the ACAT in relation to this Act;
or

- (ii) given evidence, or produced a document or thing, to the ACAT in relation to this Act; or

[1.251] Part 9

omit

[1.252] Section 109 (6)

substitute

- (6) A notice mentioned in subsection (4) or (5) is a reviewable decision notice.

[1.253] Section 110

substitute

110 Review by ACAT

An application may be made to the ACAT for review of a decision of the HRC under section 109.

[1.254] Part 11

omit

[1.255] Section 121 (1), definition of *person to whom this section applies*

substitute

person to whom this section applies means a person who exercises, or has exercised, a function under this Act.

[1.256] Dictionary, note 2, new dot points

insert

- ACAT
- reviewable decision notice

[1.257] Dictionary, definitions of *complainant, complaint, complaint about unlawful discrimination, deputy president, HRC Act, member, party, president, respondent and tribunal*

omit

Part 1.21 Drugs of Dependence Act 1989

[1.258] Part 12

substitute

Part 12 Notification and review of decisions

198 Meaning of *reviewable decision*—pt 12

In this part:

reviewable decision means a decision mentioned in schedule 1, column 3 under a provision of this Act mentioned in column 2 in relation to the decision.

198A Reviewable decision notices

If a person makes a reviewable decision, the person must give a reviewable decision notice to each entity mentioned in schedule 1, column 4 in relation to the decision.

Note 1 The person must also take reasonable steps to give a reviewable decision notice to any other person whose interests are affected by the decision (see *ACT Civil and Administrative Tribunal Act 2008*, s 67A).

Note 2 The requirements for reviewable decision notices are prescribed under the *ACT Civil and Administrative Tribunal Act 2008*.

199 Applications for review

The following may apply to the ACAT for a review of a reviewable decision:

- (a) an entity mentioned in schedule 1, column 4 in relation to the decision;
- (b) any other person whose interests are affected by the decision.

Note If a form is approved under the *ACT Civil and Administrative Tribunal Act 2008* for the application, the form must be used.

[1.259] Schedule 2

substitute

Schedule 1 Reviewable decisions

(see pt 12)

column 1 item	column 2 section	column 3 decision	column 4 entity
1	150	refuse to grant approval to conduct treatment centre	applicant for approval
2	150	grant approval to conduct treatment centre subject to conditions	applicant for approval
3	152	vary, revoke or refuse to vary or revoke condition on approval to conduct treatment centre	person who holds approval

column 1 item	column 2 section	column 3 decision	column 4 entity
4	154	cancel approval to conduct treatment centre	person who held approval
5	155	refuse to restore approval to conduct treatment centre	person who held approval

[1.260] Dictionary, note 2, new dot point

insert

- ACAT

[1.261] Dictionary, new definition of *reviewable decision*

insert

reviewable decision, for part 12 (Notification and review of decisions)—see section 198.

Part 1.22 Executive Documents Release Act 2001

[1.262] Section 6 (3)

substitute

- (3) The entry on the list for any release restraint determination must include a notice in accordance with a reviewable decision notice.

[1.263] Section 10

substitute

10 Review by ACAT

- (1) A person whose interest are affected by a release restraint determination may apply to the ACAT for review of the determination.

Note If a form is approved under the *ACT Civil and Administrative Tribunal Act 2008* for the application, the form must be used.

- (2) The chief executive must give notice of a release restraint determination to each person whose interests are affected by the determination.

- (3) The notice must be in accordance with a reviewable decision notice.

Note The requirements for reviewable decision notices are prescribed under the *ACT Civil and Administrative Tribunal Act 2008*.

[1.264] Dictionary, note 2, new dot points

insert

- ACAT
- reviewable decision notice

**Part 1.23 Fair Trading (Consumer Affairs)
Act 1973**

[1.265] Section 8 (2), definition of *consumer and trader legislation*, new paragraph (ba)

insert

(ba) the *Liquor Act 1975*;

[1.266] Dictionary, definition of *certificate of identification*

omit

[1.267] Dictionary, new definition of *identity card*

insert

identity card means an identity card issued to an investigator under section 10.

Part 1.24 Firearms Act 1996

[1.268] Section 93A (c) (i), note

substitute

Note A firearm is *temporarily stored* by a licensed firearms dealer for a person who inherits the firearm and applies for a licence or permit in relation to the firearm if the dealer stores the firearm until the application is finally decided (including any application to the ACAT for review of the decision and any subsequent appeal) (see dict, def *temporarily store*).

[1.269] Part 10

substitute

Part 10 Notification and review of decisions

113 Meaning of *reviewable decision*—pt 10

In this part:

reviewable decision means a decision mentioned in schedule 4, column 3 under a provision of this Act mentioned in column 2 in relation to the decision.

114 Reviewable decision notices

If a person makes a reviewable decision, the person must give a reviewable decision notice to each entity mentioned in schedule 4, column 4 in relation to the decision.

Note 1 The person must also take reasonable steps to give a reviewable decision notice to any other person whose interests are affected by the decision (see *ACT Civil and Administrative Tribunal Act 2008*, s 67A).

Note 2 The requirements for reviewable decision notices are prescribed under the *ACT Civil and Administrative Tribunal Act 2008*.

114A Applications for review

The following may apply to the ACAT for a review of a reviewable decision:

- (a) an entity mentioned in schedule 4, column 4 in relation to the decision;
- (b) any other person whose interests are affected by the decision.

Note If a form is approved under the *ACT Civil and Administrative Tribunal Act 2008* for the application, the form must be used.

[1.270] Schedule 4

substitute

Schedule 4 Reviewable decisions

(see pt 10)

column 1 item	column 2 section	column 3 decision	column 4 entity
1	4BJ	refuse to approve firearms training course, shooting competition, paintball competition or event involving firearms	person refused approval
2	14	refuse to authorise licensee or member of approved club	person refused authorisation
3	15	refuse to approve a club, or revoking the approval of a club	club refused approval
4	15A (2)	refuse to approve possession of ammunition by ammunition collector	person refused approval
5	21	refuse to issue or renew adult firearms licence refuse to issue or renew adult firearms licence because Minister has not authorised issue under s 26	person refused licence or renewal

Schedule 1
Part 1.24

Legislation amended
Firearms Act 1996

Amendment [1.270]

column 1 item	column 2 section	column 3 decision	column 4 entity
6	26 (2)	issue category D adult firearms licence subject to condition required by Minister	licensee
7	32	refuse to issue replacement adult firearms licence	applicant for replacement
8	36 (1) (e)	refuse to authorise possession of more than prescribed amount of ammunition	person refused authorisation
9	36 (2)	put condition on adult firearms licence	licensee
10	39 (1) (c)	end date less than 12 months after day licence begins	licensee
11	40, 40A	suspend adult firearms licence	licensee
12	41	cancel adult firearms licence	person who held licence
13	42	cancel category H adult firearms licence issued for genuine reason of sport or target shooting	person who held licence
14	42G	refuse to issue minors firearms licence	applicant for licence
15	42M	refusing to issue replacement minors firearms licence	applicant for replacement

column 1 item	column 2 section	column 3 decision	column 4 entity
16	42N (1) (b)	refuse to authorise possession of more than prescribed amount of ammunition	person refused authorisation
17	42N (2)	put condition on minors firearms licence	licensee
18	42O (2)	refuse to extend period minors firearms licence in force	applicant for extension
19	42P, 42Q	suspend minors firearms licence	licensee
20	42R	cancel minors firearms licence	person who held licence
21	42X	refuse to issue or renew composite entity firearms licence	applicant for licence or renewal
22	42ZJ	refuse to issue replacement composite entity firearms licence	applicant for replacement
23	42ZK (1) (f)	refuse to authorise possession of more than prescribed amount of ammunition	person refused authorisation
24	42ZK (3)	put condition on composite entity firearms licence	licensee
25	42ZM, 42ZMA	suspend composite entity firearms licence	licensee
26	42ZN	cancel composite entity firearms licence	person who held licence

Schedule 1
Part 1.24

Legislation amended
Firearms Act 1996

Amendment [1.270]

column 1 item	column 2 section	column 3 decision	column 4 entity
27	42ZPB	refuse to issue or renew temporary international firearms licence	applicant for licence or renewal
28	42ZQB (1) (e)	refuse to authorise possession of more than prescribed amount of ammunition	person refused authorisation
29	42ZQB (2)	put condition on temporary international firearms licence	licensee
30	42ZR (1)	end date less than 3 months after day licence begins	licensee
31	42ZRA	cancel temporary international firearms licence	person who held licence
32	42ZV	make direction in relation to interstate licence	licensee
33	45B	refuse to issue permit to acquire a firearm	applicant for permit
34	47 (2)	refuse to extend period permit to acquire a firearm in force	applicant for extension
35	48	refusing to issue replacement permit to acquire a firearm	applicant for replacement
36	48B	suspend or cancel permit to acquire a firearm	licensee or person who held licence

column 1 item	column 2 section	column 3 decision	column 4 entity
37	51B	refuse to register firearm	application for registration
38	52	cancel registration of firearm	person who held licence
39	52BB	refuse to register user of firearm	applicant for registration
40	52G	cancel registration of user of firearm	person who was registered
41	100 (2)	refuse to approve the modification of a firearm	person refused approval
42	121 (2)	cancel a licence	person who held licence
43	211 (3)	cancel registration of firearm	person whose firearm was registered
44	212 (4)	cancel registration of user of firearm	person who was registered

[1.271] Dictionary, note 2, dot points

omit

- AAT

[1.272] Dictionary, note 2, new dot points

insert

- ACAT
- reviewable decision notice

[1.273] Dictionary, definition of *reviewable decision*

substitute

reviewable decision, for part 10 (Notification and review of decisions)—see section 113.

[1.274] Dictionary, definition of *temporarily store*, paragraph (b)

omit

AAT

substitute

ACAT

Part 1.25 Freedom of Information Regulation 1991

[1.275] New sections 1A and 1B

insert

1A Dictionary

The dictionary at the end of this regulation is part of this regulation.

Note 1 The dictionary at the end of this regulation defines certain terms used in this regulation, and includes references (*signpost definitions*) to other terms defined elsewhere.

For example, the signpost definition ‘*non-presidential member*—see the *ACT Civil and Administrative Tribunal Act 2008*, dictionary.’ means that the term ‘non-presidential member’ is defined in that Act and the definition applies to this regulation.

Note 2 A definition in the dictionary (including a signpost definition) applies to the entire regulation unless the definition, or another provision of the regulation, provides otherwise or the contrary intention otherwise appears (see Legislation Act, s 155 and s 156 (1)).

1B Notes

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

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

[1.276] New section 2A

insert

2A Prescribed authorities—tribunals etc—Act, s 5 (1), (2) and (3)

- (1) A tribunal, authority or body mentioned in schedule 1A, column 2 is a prescribed authority for the Act.
- (2) The holder of an office mentioned in column 3 in relation to a tribunal, authority or body is not a prescribed authority for the Act.
- (3) A registry or other office, and the staff of the registry or other office, mentioned in column 4 in relation to a tribunal, authority or body are taken to be part of the tribunal, authority or body.

[1.277] New schedule 1A

insert

Schedule 1A Prescribed authorities— tribunals etc

(see s 2A)

column 1 item	column 2 tribunal, authority or body	column 3 holder of office of tribunal authority or body	column 4 registry or other office of tribunal, authority or body
1	ACAT	presidential member, non-presidential member	registry of ACAT

[1.278] New dictionary

insert

Dictionary

(see s 1A)

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

Note 2 For example, the Legislation Act, dict, pt 1, defines the following terms:

- ACAT
- body.

non-presidential member—see the *ACT Civil and Administrative Tribunal Act 2008*, dictionary.

presidential member—see the *ACT Civil and Administrative Tribunal Act 2008*, dictionary.

Part 1.26 **Guardianship and Management of Property Act 1991**

[1.279] Section 7A

substitute

7A Appointment of guardians under direction

If the Supreme Court gives a direction under the *Crimes Act 1900*, section 316 (Special hearing), the ACAT must appoint a guardian as directed.

[1.280] Section 8 (2) and note

substitute

- (2) The ACAT may, by order, appoint a manager to manage all, or a stated part of, the person's property, with the powers that the tribunal is satisfied are necessary or desirable to allow the manager to make decisions in relation to the property, in accordance with the decision-making principles.

Note The ACAT's power to appoint a manager is restricted under s 8A.

[1.281] Section 8AA (4) and note

substitute

- (4) The ACAT may, by order, appoint a manager to manage all, or a stated part, of the missing person's property, with the powers that the ACAT is satisfied are necessary or desirable to allow the manager to make decisions in relation to the property in accordance with the decision-making principles as if the missing person were a protected person.

Note The ACAT's power to appoint a manager is restricted under s 8A.

[1.282] Section 8AC (4)

substitute

- (4) An appointment under section 8AA (4) must be for not longer than 2 years, but the ACAT may, on application by the manager or a person mentioned in section 8AB, extend the term for up to 2 more years.

[1.283] Section 8C (1)

substitute

- (1) The ACAT may appoint a guardian or manager for a person who is a child.

[1.284] Section 14 (1)

omit everything before paragraph (a), substitute

- (1) Unless the ACAT, on application, orders otherwise—

[1.285] Section 17

substitute

17 Restrictions on ACAT's power to give directions

- (1) This section applies to an order that affects a person—
- (a) who has a guardian; or
 - (b) for whom a manager is appointed.
- (2) The ACAT must not give a direction that is inconsistent with the order.

[1.286] Section 19

substitute

19 Regular review of guardians and managers

- (1) The ACAT may at any time, on application or on its own initiative, hold a hearing to consider—
 - (a) whether an order appointing a guardian or manager should be—
 - (i) varied; or
 - (ii) revoked on the ground that the need for guardianship or management no longer exists; or
 - (b) whether a guardian or manager should be removed under section 31.
- (2) The ACAT must consider an order appointing a guardian or manager at least once every 3 years.
- (3) The ACAT must consider the suitability of a person as a replacement guardian or manager as soon as practicable after the person becomes a replacement guardian or manager.
- (4) For this section:
 - (a) **order** includes an order registered under section 12 (Recognition of interstate etc guardians and managers); and
 - (b) an order registered under section 12 is taken to have been made when the order is registered.
- (5) In this section:

replacement guardian or manager means a person who becomes a guardian or manager when—

 - (a) a previous guardian or manager dies; and

- (b) the previous guardian or manager's appointment provides for the person to become the guardian or manager.

[1.287] Section 20

substitute

20 Access to records

Unless the ACAT otherwise orders, a manager of a person's property is entitled to inspect a will or other testamentary instrument made by the person and to inspect any other document relating to the property.

[1.288] Section 22

substitute

22 Receipt of amounts

- (1) Unless the ACAT otherwise orders, the manager of a person's property becomes the manager of the following amounts received by the manager:
- (a) interest or income in relation to the property;
 - (b) the proceeds of the realisation of the property.
- (2) Unless the ACAT otherwise orders, if there is an accretion to property in relation to which a manager has been appointed, the manager becomes manager of the extra property.

[1.289] Section 24

substitute

24 Investments

- (1) A manager must not invest amounts held in the capacity as manager except—
 - (a) in investments in which trust money may, in accordance with the *Trustee Act 1925*, be invested; or
 - (b) as the ACAT, by order, allows.
- (2) Subsection (1) has effect despite the *Public Trustee Act 1985*.

[1.290] Section 26 (3)

omit everything before paragraph (a), substitute

- (3) The ACAT may, on application, by order—

[1.291] Section 28

substitute

28 Resignation

A guardian or manager may resign by writing given to the ACAT.

[1.292] Parts 3 and 4

substitute

Part 3 Powers of attorney and ACAT

61 Definitions—pt 3

In this part:

decision-making capacity—see the *Powers of Attorney Act 2006*, dictionary.

interested person—see the *Powers of Attorney Act 2006*, dictionary.

power of attorney—see the *Powers of Attorney Act 2006*, dictionary.

principal—see the *Powers of Attorney Act 2006*, dictionary.

62 ACAT directions etc for enduring powers of attorney

- (1) This section applies in relation to an enduring power of attorney if the principal has impaired decision-making capacity.
- (2) On application, or on its own initiative on hearing a matter under this Act, the ACAT may, by order—
 - (a) give a direction, not inconsistent with the *Powers of Attorney Act 2006* or the power of attorney, that the attorney do or not do a stated act; or
 - (b) direct the attorney to produce stated books, accounts or other records of transactions carried out by the attorney for the principal; or
 - (c) revoke the enduring power of attorney, or part of it; or
 - (d) make a declaration about the interpretation or effect of the enduring power of attorney.
- (3) An application under subsection (2) may be made by an interested person or, with leave of the ACAT, someone else.
- (4) If the ACAT revokes an enduring power of attorney, the ACAT may appoint a guardian or manager for the person who was the principal for the power.

63 Reference of power of attorney matters to Supreme Court

- (1) This section applies in relation to an application to the ACAT under section 62.

- (2) The ACAT may refer the matter, or part of the matter, to the Supreme Court.
- (3) In deciding whether to refer a matter to the Supreme Court, the ACAT—
 - (a) must take into consideration the following matters:
 - (i) whether the matter relates to the effect of the enduring power of attorney on people other than the attorney or principal;
 - (ii) whether the matter is likely to raise for consideration complex or novel legal issues that the Supreme Court is better suited to decide; and
 - (b) may take into consideration anything else the ACAT considers relevant.

64 Giving accounts to public advocate—enduring powers of attorney

- (1) This section applies in relation to an enduring power of attorney if the principal has impaired decision-making capacity.
- (2) The public advocate may, by written notice given to a person who is or has been an attorney under the enduring power of attorney, require the person to give the public advocate stated books, accounts or other records of transactions carried out by the person for the principal under the power of attorney.

Note The public trustee may be an attorney and, if the public trustee is an attorney, the public advocate may give the public trustee a notice under this section.

65 Declaration about decision-making capacity

- (1) The ACAT may, on application, declare that a person who is the principal for an enduring power of attorney has decision-making capacity or impaired decision-making capacity.

- (2) The declaration may be general or relate only to a property matter, personal care matter or health care matter.

66 Removing attorneys

- (1) This section applies in relation to an enduring power of attorney if the principal has impaired decision-making capacity.
- (2) The ACAT may, by order, remove an attorney under the enduring power of attorney if satisfied that it is in the interests of the principal to remove the attorney.

[1.293] Section 67

substitute

67 Emergency appointments

- (1) The ACAT may make an emergency order without holding a hearing if satisfied that there are special circumstances of urgency that make it proper to do so.
- (2) The emergency order has effect for the period, not longer than 10 days, stated in the order.
- (3) In this section:

emergency order means an order appointing—

- (a) the public advocate to be the guardian for a person under section 7; or
- (b) the public advocate or public trustee to be a manager of a person's property under section 8 or section 8AA.

[1.294] Section 68 (1) and (6)

omit

presidential member

substitute

general president of the ACAT

[1.295] Section 68 (7)

substitute

- (7) As soon as practicable after the person is removed, the ACAT must hold a hearing and, if there is no guardian available, the public advocate must apply to be appointed as the person's guardian.

[1.296] Sections 68A and 68B

substitute

68A Emergency orders—enduring powers of attorney

- (1) This section applies if the ACAT is satisfied that there are special circumstances of urgency that make it proper to make an order under this section.
- (2) The ACAT may make an order under section 62 (ACAT directions etc for enduring powers of attorney) in relation to an enduring power of attorney without holding a hearing.

68B ACAT's power to revoke health direction

- (1) This section applies if—
- (a) a person has made a health direction under the *Medical Treatment (Health Directions) Act 2006*; and
- (b) the person becomes a person with impaired decision-making capacity; and

- (c) the ACAT appoints a guardian for the principal after the making of the health direction.
- (2) The ACAT may revoke the health direction, or part of it, if the tribunal considers appropriate.

[1.297] Section 70 heading

substitute

70 ACAT may consent to prescribed medical procedures

[1.298] Section 70 (2)

substitute

- (2) The ACAT must appoint the person's guardian, or the public advocate or some other independent person, to represent the person in relation to the hearing relating to the consent.

[1.299] New sections 72A and 72B

insert

72A Notice of hearing

- (1) This section applies in relation to the hearing by the ACAT of a matter under this Act.
- (2) Notice of the hearing must, as far as practicable, be given to—
 - (a) the person the subject of the hearing; and
 - (b) the person's domestic partner, parents, brothers and sisters; and
 - (c) each child of the person; and
 - (d) if the person has a carer who would not otherwise be given notice of the hearing under this section—the carer; and
 - (e) if the person has a guardian—the guardian; and

- (f) if there is a manager of the person's property—the manager; and
- (g) if an application is made under section 8AA (Manager for missing person's property)—the applicant; and
- (h) the public advocate; and
- (i) if the matter relates to property—the public trustee; and
- (j) if the matter relates to an enduring power of attorney—each attorney under the power of attorney.

Example—people who must be given notice of hearing

Mr B has dementia and requires constant care. Mr B's brother (and guardian), his niece and a close family friend share his care. Each person must be given notice of a hearing in relation to a matter affecting Mr B.

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).

- (3) Subsection (2) does not limit the people to whom notice of the hearing may be given.

72B Authority for medical or other examinations

- (1) The ACAT may, for a hearing, authorise a medical or other examination of the person who is the subject of the hearing.
- (2) The authority has effect as a valid consent for anything done during the examination.

[1.300] Section 77 (2)

omit

[1.301] Dictionary, note 2, new dot point

insert

- ACAT

[1.302] Dictionary, new definition of *decision-making power*

insert

decision-making capacity, for part 3 (Powers of Attorney and ACAT)—see the *Powers of Attorney Act 2006*, dictionary.

[1.303] Dictionary, definition of *deputy president*

omit

[1.304] Dictionary, new definition of *general president*

insert

general president, of the ACAT—see the *ACT Civil and Administrative Tribunal Act 2008*, dictionary.

[1.305] Dictionary, definition of *inquiry*

omit

[1.306] Dictionary, new definition of *interested person*

insert

interested person, for part 3 (Powers of Attorney and ACAT)—see the *Powers of Attorney Act 2006*, dictionary.

[1.307] Dictionary, definitions of *member* and *non-presidential member*

omit

[1.308] Dictionary, new definition of *power of attorney*

insert

power of attorney, for part 3 (Powers of Attorney and ACAT)—see the *Powers of Attorney Act 2006*, dictionary.

[1.309] Dictionary, definitions of *president* and *presidential member*

omit

[1.310] Dictionary, new definition of *principal*

insert

principal, for part 3 (Powers of Attorney and ACAT) —see the *Powers of Attorney Act 2006*, dictionary.

[1.311] Dictionary, definition of *tribunal*

omit

[1.312] Further amendments, mentions of *tribunal*

omit

tribunal

substitute

ACAT

in

- section 7
- section 8 (1)
- section 8AA
- section 8A
- section 8B
- section 10
- section 12
- section 16
- section 18
- section 27
- section 31
- section 32

- section 69 (2)
- section 70
- section 71
- section 72

Part 1.27 Health Professionals Act 2004

[1.313] Section 7 (4)

substitute

- (4) The ACAT hears applications to review decisions, and makes occupational discipline orders (see part 7).

[1.314] Section 11 (2)

substitute

- (2) The professional standards panel may require the registered health professional to take certain action, accept a voluntary undertaking from the health professional or apply to the ACAT for occupational discipline orders.

[1.315] Section 13 (2) (i)

omit

[1.316] Section 26 (3)

substitute

- (3) If a health profession board wants a health professional's registration suspended or cancelled, the board cannot suspend or cancel the registration itself, but may apply to the ACAT for suspension or cancellation.

[1.317] Section 37

omit

section 64 (1) (l)

substitute

section 44 (2) (f)

[1.318] Section 38 (1) (b)

substitute

(b) if the health professional has been required to take part in the review by the ACAT or a professional standards panel.

[1.319] Part 7

substitute

Part 7 Occupational discipline—health professionals

40 Meaning of *health professional*—pt 7

In this part:

health professional means—

- (a) a registered health professional; or
- (b) a person who was, but is no longer, a registered health professional.

41 Grounds for occupational discipline

- (1) Each of the following is a *ground for occupational discipline* in relation to a health professional:
 - (a) the health professional has contravened, or is contravening, a standard of practice that applies to the health professional;
 - (b) the health professional has put, or is putting, public safety at risk;
 - (c) the health professional does not satisfy the suitability to practise requirements.
- (2) A ground for occupational discipline applies to a health professional who is no longer registered if the ground applied to the health professional while registered.

42 Application to ACAT for occupational discipline

If the health profession board believes on reasonable grounds that a ground for occupational discipline exists in relation to a health professional, the board may apply to the ACAT for an occupational discipline order in relation to the health professional.

43 Considerations before making occupational discipline orders—suspension or cancellation of registration

- (1) This section applies if the ACAT is considering whether to suspend or cancel the health professional's registration.
- (2) The ACAT must consider the following:
 - (a) whether the health professional has contravened a standard of practice that applied to the health professional;

- (b) whether the health professional has put, or is putting, public safety at risk.

Note The *ACT Civil and Administrative Tribunal Act 2008*, s 65 sets out considerations for the ACAT when considering what other occupational discipline orders to make.

44 Occupational discipline orders

- (1) This section applies if the ACAT may make an order for occupational discipline in relation to a health professional.

Note The *ACT Civil and Administrative Tribunal Act 2008*, s 65 sets out when the ACAT may make an order.

- (2) In addition to any other occupational discipline order the ACAT may make, the ACAT may make 1 or more of the following orders for occupational discipline in relation to the health professional:

- (a) require the person to undergo stated medical, psychiatric or psychological assessment, counselling or both;
- (b) require the person to take part in a review of the person's professional practice;
- (c) require the person to report on the person's practice at stated times, in the way stated and to a named person;
- (d) require the person to seek and take advice from a stated entity about the management of the person's practice;
- (e) require the supervision, monitoring or reporting about the effect of something the person is required to do by the ACAT;

- (f) if the person is not registered—declare that, if the person had been registered, the ACAT would have found that the person had contravened the required standard of practice or did not satisfy the suitability to practise requirements.

Note 1 If an unregistered person is found to have contravened a required standard of practice, or to not satisfy the suitability to practise requirements, this may be taken into consideration if the person applies for registration (see the regulations).

Note 2 The *ACT Civil and Administrative Tribunal Act 2008*, s 66 sets out other occupational discipline orders the ACAT may make.

45 Emergency orders

- (1) The ACAT may make an occupational discipline order in relation to a health professional as an emergency order.
- (2) However, the ACAT may only make an emergency order if satisfied that it is necessary to make the order to protect the public or the wellbeing of the health professional.
- (3) An emergency order has effect—
 - (a) for the period stated in the order; or
 - (b) until an order made at the end of an application comes into force; or
 - (c) until the ACAT otherwise orders.

46 Referral to panel by ACAT

- (1) The ACAT may refer an application, or part of an application, to a health profession board for consideration by a personal assessment panel or professional standards panel.
- (2) If the health profession board to which the application, or part of the application, is referred gives a report (the *referral report*) to the ACAT, the ACAT must consider the referral report.

- (3) The ACAT may adopt the referral report or a decision made in the report as its own decision in relation to the application, or part of the application.

Part 7A **Notification and review of decisions**

47 **Definition of *reviewable decision*—pt 7A**

In this part:

reviewable decision means a decision prescribed by regulation.

48 **Reviewable decision notices**

If a person makes a reviewable decision, the person must give a reviewable decision notice to each entity prescribed by regulation in relation to the decision.

Note 1 The person must also take reasonable steps to give a reviewable decision notice to any other person whose interests are affected by the decision (see *ACT Civil and Administrative Tribunal Act 2008*, s 67A).

Note 2 The requirements for reviewable decision notices are prescribed under the *ACT Civil and Administrative Tribunal Act 2008*.

49 **Applications for review**

The following may apply to the ACAT for review of a reviewable decision:

- (a) an entity prescribed by regulation for the decision;
- (b) any other person whose interests are affected by the decision.

Note If a form is approved under the *ACT Civil and Administrative Tribunal Act 2008* for the application, the form must be used.

[1.320] Section 86 (3)

substitute

- (3) The action that may be taken in relation to a report, from most serious to least serious, is as follows:
- (a) apply to the ACAT for an emergency order in relation to the registered health professional to whom the report relates;
 - (b) apply to the ACAT for—
 - (i) the suspension or cancellation of the registration of the health professional to whom the report relates; or
 - (ii) if the health professional is not registered—a declaration under section 44 (2) in relation to the health professional;
 - (c) consideration under the *Human Rights Commission Act 2005* of a report by the commission;
 - (d) refer the health professional to whom the report relates to a professional standards panel;
 - (e) refer the health professional to whom the report relates to a personal assessment panel;
 - (f) refuse to investigate the report further.

[1.321] Section 89 heading

substitute

89 Referral of application by ACAT

[1.322] Section 89 (1)

substitute

- (1) The health profession board must refer an application, or part of an application, to a personal assessment panel if the ACAT refers the application, or part, under section 46 (Referral to panel by ACAT).

[1.323] Section 89 (3)

substitute

- (3) After inquiring into the application, or part of the application, the personal assessment panel must give a report (the *referral report*) to the ACAT about the application, or part of the application.

[1.324] Section 100 (4) (c) and (d)

substitute

- (c) ask the ACAT to suspend or cancel the health professional's registration; or
- (d) ask the ACAT to make any other occupational discipline order the ACAT considers appropriate in relation to the health professional or matter;

[1.325] Section 109 (1)

substitute

- (1) The health profession board must refer an application, or part of an application, to a professional standards panel if the ACAT refers the application, or part, under section 46 (Referral to panel by ACAT).

[1.326] Section 109 (3) and (4)

substitute

- (3) After inquiring into the application, or part of the application, the professional standards panel must give a report (the *referral report*) to the ACAT about the application, or part of the application.
- (4) The referral report about an application relating to a health professional may recommend that the ACAT make a stated occupational discipline order in relation to a report.

[1.327] Section 122 (2) (j) (i)

substitute

- (i) a recommendation that an application be made to the ACAT for a declaration under section 44 (2) (f) in relation to the health professional; and

[1.328] Section 125

substitute

125 Meaning of *informed person*—pt 13

In this part:

informed person means anyone who is, or has been—

- (a) a member of a health profession board; or
- (b) a member of a personal assessment panel or professional standards panel; or
- (c) a member of the staff of a health profession board; or
- (d) acting under the direction or authority of a health profession board.

[1.329] Section 126 (1) (a)

substitute

- (a) a person who is or has been a participant in a proceeding about a report, or an application for a condition review, before a health profession board, a personal assessment panel or a professional standards panel; or

[1.330] Dictionary, note 2, new dot points

insert

- ACAT
- occupational discipline order
- reviewable decision notice

[1.331] Dictionary, definition of *deals with*

omit

[1.332] Dictionary, definition of *emergency order*

substitute

emergency order means an emergency order under section 45.

[1.333] Dictionary, definitions of *health professional representative list, health professions tribunal and presidential member*

omit

[1.334] Dictionary, new definition of *reviewable decision*

insert

reviewable decision, for part 7A (Notification and review of decisions)—see section 47.

Part 1.28 Health Professionals Regulation 2004

[1.335] Section 18, example 1

substitute

- 1 by providing expert opinion to the ACAT in relation to a report about a health professional registered by the board

[1.336] Section 113 (2), (3) and (4)

substitute

- (2) If the health profession board registers a person, whether unconditionally or conditionally, the board must give the person a unique registration number.

[1.337] Section 115 (3), example 2 (except note)

substitute

- 2 the ACAT has previously declared that, if the person had been registered at the time the ACAT considered the person, the ACAT would have found that the person had contravened the required standard of practice or did not satisfy the suitability to practise requirements

[1.338] Section 124 (1) (b)

substitute

- (b) the ACAT cancels the person's registration; or

[1.339] Section 125 (3)

substitute

- (3) If the health professional does not produce the certificate within the stated period, the health profession board may apply to the ACAT for the cancellation of the health professional's registration.

[1.340] Section 135

substitute

135 Pattern of practice or particular acts

In deciding whether a registered health professional's standard of practice meets the required standard of practice, the ACAT, the relevant health profession board or a panel formed by the relevant health profession board may consider the health professional's act or acts and the health professional's pattern of practice.

Note *Act* includes fail to act (see dict).

[1.341] Section 151 (5)

substitute

- (5) If a court or the ACAT orders the health profession board to make a change to the register, the board must make the change.

[1.342] New chapter 5A

insert

Chapter 5A Reviewable decisions

157AA Reviewable decisions—Act, s 47

A decision mentioned in schedule 20, column 3 made under a provision mentioned in column 2 in relation to the decision is prescribed.

157AB Right of review and notice—Act, s 48 and s 49 (a)

An entity mentioned in schedule 20, column 4 is prescribed.

[1.343] New schedule 20

insert

Schedule 20 Reviewable decisions

(see ch 5A)

column 1 item	column 2 section	column 3 decision	column 4 entity
1	Act, 122	decision of the professional standard panel	applicant for registration
2	113 (1) (a)	register person	applicant for registration
3	113 (1) (b)	register person conditionally	applicant for registration
4	113 (1) (c)	refuse to register person	applicant for registration
5	120	register someone for less than 1 year	applicant for registration

Part 1.29 Heritage Act 2004

[1.344] Sections 59, note 4 and 60, note 2

omit

AAT

substitute

ACAT

[1.345] Part 17

substitute

Part 17 Notification and review of decisions

111 Meaning of *reviewable decision*

In this Act:

reviewable decision means a decision mentioned in schedule 1, column 3 under a provision of this Act mentioned in column 2 in relation to the decision.

112 Definitions—pt 17

In this part:

decision-maker, for a reviewable decision, means an entity mentioned in schedule 1, column 4 for the decision.

interested person means each of the following:

- (a) for a decision under section 40 (Decision about registration)—anyone who made comments to the council about the decision before the end of the public consultation period for the decision;
- (b) for a decision under section 47 (Decision about cancellation proposal)—the following:
 - (i) anyone who proposed the cancellation under section 43;
 - (ii) anyone who made comments to the council about the decision before the end of the public consultation period for the decision;

- (c) for a decision under section 56 (Approval to publish restricted information)—the applicant for approval;
- (d) for a decision under section 62 (Heritage direction by Minister) to make or not revoke a heritage direction—the person to whom the direction is given;
- (e) for a decision under section 95 (Information discovery order)—the person to whom the order is given;
- (f) for any reviewable decision—any other person mentioned in section 13 (1) (d) or (e).

113 Reviewable decision notices

A decision-maker for a reviewable decision must take reasonable steps to give a reviewable decision notice only to each interested person for the decision.

Note The requirements for reviewable decision notices are prescribed by regulation under the *ACT Civil and Administrative Tribunal Act 2008*.

114 Applications for review

An interested person for the decision may apply to the ACAT for a review of a reviewable decision.

Note If a form is approved under the *ACT Civil and Administrative Tribunal Act 2008* for the application, the form must be used.

[1.346] New schedule 1

insert

Schedule 1 Reviewable decisions

(see s 111 and s 112)

column 1 item	column 2 section	column 3 decision	column 4 decision-maker
1	32	not to provisionally register place or object	council
2	36	to extend, or not extend, period of provisional registration	Minister
3	40	register, or not register, place or object	council
4	47	to cancel, or not cancel, registration of place or object	council
5	56	to approve, or not approve, publication of restricted information	council
6	62	to make, or not make, heritage direction	Minister
7	62	revoke, or not revoke, heritage direction	Minister
8	95	give information discovery order	council

[1.347] Dictionary, note 2, new dot points

insert

- ACAT
- reviewable decision notice

[1.348] Dictionary, definition of *appeal*

substitute

appeal, in relation to a reviewable decision, means an application to the ACAT to review the decision.

[1.349] Dictionary, definition of *interested person*

substitute

interested person means—

- (a) for this Act generally—see section 13; and
- (b) for part 17 (Notification and review of decisions)—see section 112.

[1.350] Dictionary, definition of *reviewable decision*

substitute

reviewable decision—see section 111.

Part 1.30 Human Rights Act 2004

[1.351] Dictionary, definition of *court*

substitute

court includes the following:

- (a) the ACAT;
- (b) an entity prescribed by regulation.

Part 1.31 **Human Rights Commission Act 2005**

[1.352] Section 47 (4)

omit

section 53A

substitute

section 52A

[1.353] Section 48 (3) (b), example 3

substitute

- 3 It may be possible for action in relation to the complaint to be taken under another Act if the complaint is substantiated by, for example, reporting a health professional to a health profession board or making an application for an occupation discipline order in relation to the health professional to the ACAT.

[1.354] Section 53

substitute

Division 4.2A Discrimination complaints to ACAT

53 Meaning of *unlawful act*—div 4.2A

In this division:

unlawful act means an act that is unlawful under the *Discrimination Act 1991*, part 3 (Unlawful discrimination), part 5 (Sexual harassment), section 66 (Unlawful vilification—race sexuality etc) or part 7 (Other unlawful acts).

53A Referral of discrimination complaints

- (1) This section applies if—
 - (a) either—
 - (i) a complainant is given a discrimination referral statement under section 45 (2) (d) or section 64; or
 - (ii) a statement under section 82 (1) is included in a final report in relation to a complaint; and
 - (b) within 60 days after the statement is given, the complainant requires the commission to refer the complaint to the ACAT.
- (2) The commission must—
 - (a) refer the complaint to the ACAT; and
 - (b) tell the complainant and the person complained about in writing about the referral.

Note The commissioner must also close the complaint (see s 78 (2) (d)).

53B Late application in exceptional circumstances

- (1) This section applies if—
 - (a) a complainant has been given a statement under section 45 (2) (d), section 64 or section 82 (1); and
 - (b) the complainant has not required the commission to refer the complaint to the ACAT within 60 days after the day the statement is given to the complainant.
- (2) The complainant may apply to the ACAT for the complaint to be heard by the ACAT.
- (3) The ACAT may grant the application only if satisfied on reasonable grounds that exceptional circumstances prevented the complainant from requiring the complaint to be referred to the ACAT within the 60-day period.

- (4) If the ACAT grants the application, the complaint is, for this Act, taken to have been referred to the ACAT.

53C Parties to ACAT proceeding on discrimination complaint

The parties to a complaint referred to the ACAT under this division are—

- (a) the complainant; and
- (b) the person complained about; and
- (c) if, on application by the commission, the ACAT joins the commission as a party to the complaint—the commission.

53D Reliance on exceptions and exemptions

In considering whether an act is an unlawful act, the ACAT need not consider any exception in the *Discrimination Act 1991*, part 4 or exemption in the *Discrimination Act 1991*, part 10, unless the ACAT has information suggesting the exception or exemption applies to the act.

53E Kinds of orders—unlawful acts under the Discrimination Act

- (1) This section applies if—
 - (a) the commission refers a complaint to the ACAT under this division; and
 - (b) the ACAT is satisfied that the person complained about engaged in an unlawful act.
- (2) The ACAT must make 1 or more of the following orders:
 - (a) that the person complained about not repeat or continue the unlawful act;

- (b) that the person complained about perform a stated reasonable act to redress any loss or damage suffered by a person because of the unlawful act;
 - (c) unless the complaint has been dealt with as a representative complaint—that the person complained about pay to a person a stated amount by way of compensation for any loss or damage suffered by the person because of the unlawful act.
- (3) In this section:

representative complaint means a complaint that is dealt with by the commission as a representative complaint under section 71.

[1.355] Section 53A

relocate as section 52A

[1.356] Section 62 (3) (b)

substitute

- (b) if the complaint is a discrimination complaint—give the agreement to the ACAT.

[1.357] Section 62 (4)

substitute

- (4) If the complaint to which the conciliation agreement relates is a discrimination complaint, the agreement is enforceable as if it were an order of the ACAT.

[1.358] Section 78 (2) (d)

substitute

- (d) the complaint is a discrimination complaint that has been referred to the ACAT; or

[1.359] Section 78 (2) (f)

omit

section 53A

substitute

section 52A

[1.360] Section 88

substitute

88 Discrimination referral statements

A *discrimination referral statement* is a statement in a notice in relation to a complaint to the effect that—

- (a) the commission has closed the complaint; and
- (b) the complainant may ask the commission to refer the complaint to the ACAT within 60 days after the day the notice is given to the complainant; and
- (c) after the 60-day period, the complainant may apply to the ACAT under section 53B (Late application in exceptional circumstances) for the complaint to be heard.

Note The commission must refer the complaint to the ACAT if the complainant asks it to refer the complaint within the 60-day period (see s 53A).

[1.361] Dictionary, note 2, new dot point

insert

- ACAT

[1.362] Dictionary, note 2, dot points

omit

- discrimination tribunal

[1.363] Dictionary, note 2, new dot point

insert

- occupational discipline order

[1.364] Dictionary, new definition of *unlawful act*

insert

unlawful act, for division 4.2A (Discrimination complaints to ACAT)—see section 53.

Part 1.32 Judicial Commissions Act 1994

[1.365] Dictionary, note 2, dot points

omit

- administrative appeals tribunal

substitute

- ACAT

[1.366] Dictionary, new definition of *general president*

insert

general president, of the ACAT—see the *ACT Civil and Administrative Tribunal Act 2008*, dictionary.

[1.367] Dictionary, definition of *head of jurisdiction*, paragraph (c)

substitute

(c) for a member of the ACAT—the general president of the ACAT.

[1.368] Dictionary, definition of *judicial officer*, paragraph (d)

substitute

(d) a presidential member of the ACAT.

[1.369] Dictionary, new definition of *presidential member*

insert

presidential member, of the ACAT—see the *ACT Civil and Administrative Tribunal Act 2008*, dictionary.

Part 1.33 Legal Profession Act 2006

[1.370] Section 36 (2) (d) (i)

substitute

(i) an order of the ACAT; or

[1.371] Section 46 (1) (c)

substitute

(c) any conditions imposed or amended by a relevant council under section 69 (Imposition of conditions on local practising certificate pending criminal proceedings etc); and

[1.372] Section 71 (1) (a)

substitute

(a) is amended, suspended or cancelled by the relevant council or because of an order of the ACAT under section 425 (ACAT orders—Australian legal practitioners); or

[1.373] Section 175 (2) (c)

substitute

- (c) the applicant has contravened an order of the ACAT or a corresponding disciplinary body, including (for example) an order to pay any fine or costs; or

[1.374] Section 192 (1) (c)

substitute

- (c) any conditions imposed or amended by the ACAT under section 194 (Imposition and amendment of conditions on local registration pending criminal proceedings); and

[1.375] Section 194

omit

disciplinary tribunal

substitute

ACAT

[1.376] Section 303

substitute

303 Referring matters to ACAT

- (1) If, on a costs assessment, the Supreme Court considers that the legal costs charged by a law practice are grossly excessive, the court must refer the matter to the ACAT to consider whether orders should be made in relation to any Australian legal practitioner or Australian-registered foreign lawyer involved.

- (2) If the Supreme Court considers that a costs assessment raises any other matter that may amount to unsatisfactory professional conduct or professional misconduct on the part of an Australian legal practitioner or Australian-registered foreign lawyer, the court may refer the matter to the ACAT to consider whether orders should be made in relation to an Australian legal practitioner or Australian-registered foreign lawyer.

[1.377] Section 389 (f)

substitute

- (f) conduct of an Australian legal practitioner in failing to comply with an order of the ACAT made under this Act or an order of a corresponding disciplinary body made under a corresponding law (including but not limited to a failure to pay all or part of a fine imposed under this Act or a corresponding law);

[1.378] Section 400 (5)

substitute

- (5) A complaint may be withdrawn even though the relevant council has started or finished an investigation of the complaint.

[1.379] Section 401 (2)

substitute

- (2) This section does not apply to a complaint about an Australian legal practitioner if the relevant council considers that the practitioner would be likely to be found guilty of professional misconduct if an application were made to the ACAT in relation to the complaint.

[1.380] Section 410 (1) (c)

substitute

- (c) make an application to the ACAT under part 4.7.

[1.381] Section 411

substitute

411 Decision of council without investigation

- (1) This section applies to a complaint against an Australian legal practitioner if the relevant council is satisfied that action should be taken under this section because of—
 - (a) the nature of the subject matter of the complaint; and
 - (b) the reasonable likelihood that the practitioner will be found guilty by the ACAT of either unsatisfactory professional conduct or professional misconduct.
- (2) This section also applies to a complaint against an employee of a solicitor if the relevant council is satisfied that action should be taken under this section because of—
 - (a) the nature of the subject matter of the complaint; and
 - (b) the reasonable likelihood that the employee will be found guilty by the ACAT of unsatisfactory employment conduct.
- (3) If this section applies to a complaint, the relevant council may make an application to the ACAT under part 4.7 for an occupational discipline order in relation to the person complained about without starting or finishing an investigation of the complaint.

[1.382] Section 412 (1) (a)

substitute

- (a) there is no reasonable likelihood that the practitioner will be found guilty by the ACAT of either unsatisfactory professional conduct or professional misconduct; or

[1.383] Section 412 (2)

substitute

- (2) After finishing an investigation of a complaint against an employee of a solicitor, the relevant council may dismiss the complaint if satisfied that there is no reasonable likelihood that the employee will be found guilty by the ACAT of unsatisfactory employment conduct.

[1.384] Section 413 (1) (b)

substitute

- (b) is satisfied that there is a reasonable likelihood that the practitioner will be found guilty by the ACAT of unsatisfactory professional conduct (but not professional misconduct); and

[1.385] Section 415 (b)

substitute

- (b) a decision to make an application to the ACAT under part 4.7 in relation to the complaint;

[1.386] Section 415 (e)

substitute

- (e) a decision to omit, from the allegations particularised in an application made by it to the ACAT under part 4.7 in relation to the complaint, matter that was originally part of the complaint.

[1.387] Section 416

substitute

416 Appeals to ACAT against decisions of relevant council

- (1) A person mentioned in table 416, column 2 may appeal a decision mentioned in column 3 to the ACAT.

- (2) The appeal must be made not later than—
 - (a) 28 days after the day the relevant council gave the person making the appeal a statement of reasons under section 415; or
 - (b) any further time allowed by the ACAT.
- (3) The ACAT may make any order it considers appropriate on the appeal.
- (4) Without limiting subsection (3), the ACAT may make 1 or more of the orders mentioned in section 425 (3) to (5) (ACAT orders—Australian legal practitioners).

Table 416 Appealable decisions

column 1 item	column 2 person	column 3 decision
1	complainant	dismiss a complaint under s 412
2	complainant	omit matter from application to ACAT that was originally part of complaint
3	Australian legal practitioner complained about	take action under s 413 in relation to practitioner

[1.388] Section 418 (2) (b)

substitute

- (b) a decision to make an application to the ACAT under part 4.7 in relation to the complaint;

[1.389] Section 418 (2) (e)

substitute

- (e) a decision to omit, from the allegations particularised in an application made by it to the ACAT for an order under part 4.7 in relation to the person about whom a complaint is made, matter that was originally part of the complaint.

[1.390] Section 418 (3)

substitute

- (3) For a decision by the relevant council to dismiss a complaint, the right of the complainant, under section 416 (1), to appeal to the ACAT against a decision of the relevant council to dismiss the complaint must be included in the notice to the complainant.
- (3A) A notice under this section is taken to be a reviewable decision notice.

[1.391] Part 4.7

substitute

Part 4.7 Disciplinary action

419 Application to ACAT

- (1) The relevant council for an Australian legal practitioner may apply to the ACAT for an order in relation to a complaint against the practitioner.
- (2) The relevant council for an employee of a solicitor may apply to the ACAT for an order under this part in relation to a complaint against the employee.

- (3) The application must include the charge of unsatisfactory professional conduct, professional misconduct or unsatisfactory employment conduct that the relevant council considers arise out of the complaint.

420 Application of rules of evidence to ACAT—disciplinary action

The ACAT is bound by the rules of evidence in hearing an application under this part.

421 Amendment of complaint application

- (1) The ACAT may, on application by the relevant council or on its own initiative, amend an application to omit an allegation or to include an additional allegation, if satisfied that it is reasonable to make the amendment having regard to all the circumstances.
- (2) Without limiting subsection (1), in considering whether or not it is reasonable to amend an application, the ACAT must have regard to whether amending the application will affect the fairness of the proceeding.
- (3) The ACAT may amend an application to include an additional allegation even though the alleged conduct—
- (a) happened more than 3 years before the amendment is made; or
 - (b) has not been the subject of a complaint or investigation under this chapter.

422 Nature of allegations in complaint applications

- (1) An application to the ACAT in relation to a complaint cannot be challenged on the ground that the allegations contained in the application do not deal with all of the matters raised in the complaint or deal differently with matters raised in the complaint or deal with additional matters.
- (2) This section applies whether the allegations were included in the application as made or were included by amendment of the application.

423 Parties to application

- (1) The parties to an application to the ACAT for an order in relation to an Australian legal practitioner arising from a complaint are—
 - (a) the practitioner; and
 - (b) the relevant council.
- (2) The parties to an application to the ACAT for an order in relation to an employee of a solicitor arising from a complaint are—
 - (a) the employee; and
 - (b) the relevant council.
- (3) The complainant is entitled to appear at the hearing in relation to—
 - (a) the aspects of the hearing that relate to a request by the complainant for a compensation order under this chapter; and
 - (b) any other aspect of the hearing for which the disciplinary tribunal gives leave to the complainant to appear.

424 ACAT power to disregard procedural lapses

The ACAT may order that a failure by the relevant council to observe a procedural requirement in relation to a complaint before an application is made to the ACAT is to be disregarded if satisfied that the parties to the hearing have not been prejudiced by the failure.

Note The ACAT may make rules about its practice and procedure under the *ACT Civil and Administrative Tribunal Act 2008*, s 24.

425 ACAT orders—Australian legal practitioners

- (1) If, after the ACAT has finished considering an application under this part in relation to an Australian legal practitioner, the ACAT is satisfied that the practitioner is guilty of unsatisfactory professional conduct or professional misconduct, the ACAT may—
 - (a) make 1 or more of the orders mentioned in subsections (3) to (5); or
 - (b) any other order it considers appropriate.
- (2) The ACAT may find an Australian legal practitioner guilty of unsatisfactory professional conduct even though the complaint or charge alleged professional misconduct.
- (3) The ACAT may make the following orders in relation to the Australian legal practitioner:
 - (a) an order recommending that the name of the practitioner be removed from the local roll;
 - (b) an order that the practitioner's local practising certificate be suspended for a stated period or cancelled;
 - (c) an order that a local practising certificate not be granted to the practitioner before the end of a stated period;

- (d) an order that—
 - (i) stated conditions be imposed on the practitioner's practising certificate granted or to be granted under this Act; and
 - (ii) the conditions be imposed for a stated period; and
 - (iii) states the time (if any) after which the practitioner may apply to the tribunal for the conditions to be amended or removed;
 - (e) an order publicly reprimanding the practitioner or, if there are special circumstances, privately reprimanding the practitioner.
- (4) The ACAT may make the following orders in relation to the Australian legal practitioner:
- (a) an order recommending that the name of the practitioner be removed from an interstate roll;
 - (b) an order recommending that the practitioner's interstate practising certificate be suspended for a stated period or cancelled;
 - (c) an order recommending that an interstate practising certificate not be granted to the practitioner before the end of a stated period;
 - (d) an order recommending—
 - (i) that stated conditions be imposed on the practitioner's interstate practising certificate; and
 - (ii) that the conditions be imposed for a stated period; and
 - (iii) a stated time (if any) after which the practitioner may apply to the tribunal for the conditions to be amended or removed.

- (5) The ACAT may make the following orders in relation to the Australian legal practitioner:
- (a) an order that the practitioner pay a fine of a stated amount of not more than the amount mentioned in section 427;
 - (b) an order that the practitioner undertake and complete a stated course of further legal education;
 - (c) an order that the practitioner undertake a stated period of practice under stated supervision;
 - (d) an order that the practitioner do or not do something in relation to the practice of law;
 - (e) an order that the practitioner cease to accept instructions as a public notary in relation to notarial services;
 - (f) an order that the practitioner's practice be managed for a stated period in a stated way or subject to stated conditions;
 - (g) an order that the practitioner's practice be subject to periodic inspection by a stated person for a stated period;
 - (h) an order that the practitioner seek advice in relation to the management of the practitioner's practice from a stated person;
 - (i) an order that the practitioner not apply for a local practising certificate before the end of a stated period.

426 Dismiss complaint—Australian legal practitioners

If, after the ACAT has finished a hearing under this part in relation to a complaint against an Australian legal practitioner, the ACAT is not satisfied that the practitioner is guilty of unsatisfactory professional conduct or professional misconduct, the ACAT must dismiss the complaint.

427 Fines—Australian legal practitioners

- (1) The maximum amount that can be imposed by way of fine under section 425 (5) (a) is—
 - (a) for a finding of unsatisfactory professional conduct that does not amount to professional misconduct—\$10 000; and
 - (b) for a finding of professional misconduct—\$75 000; and
 - (c) for a finding of professional misconduct and unsatisfactory professional conduct not amounting to professional misconduct—\$75 000.
- (2) A fine is payable to the relevant council in the way and within the reasonable period required by the relevant council.
- (3) If an amount is received by a council as complete or partial payment of a fine imposed under this section, the council must pay the amount into a statutory interest account.

428 Interim orders—Australian legal practitioners

Without limiting the *ACT Civil and Administrative Tribunal Act 2008*, section 53 (Interim orders), an order mentioned in section 425 (ACAT orders—Australian legal practitioners) may be made as an interim order.

429 ACAT orders—employees of solicitors

If, after the ACAT has finished considering an application under this part in relation to an employee of a solicitor, the ACAT is satisfied that the employee is guilty of unsatisfactory employment conduct, the ACAT may make 1 or more of the following orders:

- (a) an order that, after a stated date, no solicitor employ or otherwise remunerate the employee in relation to the solicitor's practice as a solicitor except with the approval of the law society council;

- (b) an order under section 442 (Compensation orders) against the solicitor who employed the employee;
- (c) an order publicly reprimanding the solicitor who employed the employee or, if there are special circumstances, privately reprimanding the solicitor.

430 Dismiss complaint—employees of solicitors

If, after the ACAT has finished a hearing under this part in relation to a complaint against an employee of a solicitor, the ACAT is not satisfied that the employee is guilty of unsatisfactory employment conduct, the ACAT must dismiss the complaint.

431 Compliance with ACAT orders

- (1) Entities with relevant functions under this Act must—
 - (a) give effect to the following orders:
 - (i) any order of the ACAT made under section 425 (3) (ACAT orders—Australian legal practitioners);
Note Section 425 (3) is about orders requiring official implementation in the ACT.
 - (ii) any interim order of the ACAT so far as it is an order of the kind mentioned in section 425 (3) or otherwise needs to be, or can be, given effect to in the ACT; and
 - (b) enforce the following orders (to the extent that they relate to an Australian legal practitioner’s practice of law in the ACT):
 - (i) any order of the ACAT made under section 425 (5);
Note Section 425 (5) is about orders requiring compliance by practitioners.
 - (ii) any interim order of the ACAT so far as it is an order of the kind mentioned in section 425 (5) or otherwise needs to be, or can be, enforced in the ACT; and

- (c) enforce any order of the ACAT (to the extent that it relates to a solicitor's practice as a solicitor in the ACT) made under section 429 (a) or (b) (ACAT orders—employees of solicitors).

Note Section 460 contains provisions relating to compliance in the ACT with orders made under corresponding laws.

- (2) The relevant council for an Australian legal practitioner must ensure that entities with relevant functions under a corresponding law of another jurisdiction are told about the making and contents of—

- (a) the following orders in relation to the practitioner:

- (i) an order of the ACAT made under section 425 (4) in relation to the corresponding law;

Note Section 425 (4) is about orders requiring official implementation in another jurisdiction.

- (ii) any interim order of the ACAT so far as it is an order of the kind mentioned in section 425 (4) or otherwise needs to be, or can be, given effect to in the other jurisdiction; and

- (b) the following orders (to the extent that they relate to the practitioner's practice of law in the other jurisdiction):

- (i) an order of the ACAT made under section 425 (5);

Note Section 425 (5) is about orders requiring compliance by practitioners.

- (ii) any interim order of the ACAT so far as it is an order of the kind mentioned in section 425 (5) or otherwise needs to be, or can be, enforced in the other jurisdiction.

- (3) If the ACAT makes an order recommending that the name of an Australian legal practitioner who is a local lawyer be removed from the local roll—

- (a) a copy of the order may be filed in the Supreme Court; and

- (b) the Supreme Court may order the removal of the name from the roll.
- (4) If the ACAT makes an order that an Australian legal practitioner pay a fine, a copy of the order may be filed in the Supreme Court and the order may be enforced as if it were an order of the court.
- (5) In this section:
interim order, of the ACAT, means an order under the *ACT Civil and Administrative Tribunal Act 2008*, section 53.

432 Notice to complainant of application and decision

- (1) The relevant council that makes an application in relation to a complaint must tell the complainant in writing about—
 - (a) the date (the *hearing date*) set by the ACAT to start hearing an application arising from the complaint not later than 14 days before the hearing date; and
 - (b) the ACAT's decision in relation to the application.
- (2) This section does not apply in relation to an official complaint.

433 Costs orders by ACAT

- (1) If the ACAT finds an Australian legal practitioner guilty of unsatisfactory professional conduct or professional misconduct, the tribunal must order the practitioner to pay costs (including costs of the relevant council and the complainant), unless the disciplinary tribunal is satisfied that exceptional circumstances exist.

- (2) Even if the ACAT does not find an Australian legal practitioner guilty of unsatisfactory professional conduct or professional misconduct, the ACAT may order the practitioner to pay costs (including costs of the relevant council and the complainant), if satisfied that—
- (a) the only or main reason why the proceeding was started in the ACAT was a failure of the practitioner to cooperate with a council; or
 - (b) there is some other reason justifying the making of an order in the particular circumstances.
- (3) The ACAT may make orders requiring the relevant council for an Australian legal practitioner to pay costs, but may do so only if satisfied that the practitioner is not guilty of unsatisfactory professional conduct or professional misconduct and the ACAT considers that special circumstances justify the making of the orders.
- (4) The ACAT may make orders requiring an Australian legal practitioner in relation to whom a proceeding is pending before the tribunal to pay costs on a interlocutory or interim basis.
- Note* Alternatively, the ACAT might order that costs be payable from a particular fund (eg a statutory interest account) in these circumstances.
- (5) An order for costs—
- (a) may be for a stated amount; or
 - (b) may be for an unstated amount but must state the basis on which the amount is to be decided.
- (6) An order for costs may state the terms on which costs must be paid.

434 Application of ACT Civil and Administrative Tribunal Act

The following provisions of the *ACT Civil and Administrative Tribunal Act 2008* do not apply in relation to a proceeding under this Act:

- (a) section 8 (Rules of evidence);
- (b) section 48 (Costs of proceedings);
- (c) division 6.2 (Powers and decisions in applications for occupational discipline).

435 Pt 4.7 does not affect other remedies of complainant

This part does not affect any other remedy available to a complainant.

[1.392] Section 442 (1), note

substitute

Note An order may be made by the ACAT in relation to a solicitor arising from a complaint about unsatisfactory employment conduct of an employee of the solicitor (see s 429).

[1.393] Section 443 (1), note

substitute

Note A compensation order may be made in relation to a solicitor arising from a complaint about unsatisfactory employment conduct of an employee of the solicitor (see s 429).

[1.394] Section 444 (1)

substitute

- (1) The ACAT may make a compensation order if it has found a person guilty of unsatisfactory professional conduct, professional misconduct or unsatisfactory employment conduct in relation to a complaint.

[1.395] Section 448 (1), note

substitute

Note Action may be taken against a solicitor in relation to a complaint about unsatisfactory employment conduct of an employee of the solicitor (see s 429).

[1.396] Section 454 (1)

substitute

- (1) This part is subject to any order, so far as the order prohibits or restricts the disclosure of information, made by—
 - (a) the ACAT in relation to disciplinary action taken under this chapter; or
 - (b) a corresponding disciplinary body in relation to disciplinary action taken under provisions of a corresponding law that correspond to this chapter; or
 - (c) a court or tribunal of the ACT or another jurisdiction.

[1.397] Section 456 (2)

substitute

- (2) The report may be used and taken into consideration by the council or ACAT in dealing with the complaint under this chapter if received from—
 - (a) the corresponding authority; or
 - (b) an entity authorised by the corresponding authority to conduct the investigation.

[1.398] Section 458 (b)

substitute

- (b) any action taken in relation to any complaints made or investigations conducted under this chapter, including decisions of the ACAT under this chapter.

[1.399] Section 464

substitute

464 Failure to comply with disciplinary orders

- (1) A person must comply with an order made in relation to the person by the ACAT under this Act or a corresponding disciplinary body under a corresponding law.
- (2) If an Australian legal practitioner fails to comply with an order of the ACAT or a corresponding disciplinary body, the practitioner is not entitled to apply for the grant or renewal of a local practising certificate while the failure continues.

[1.400] Section 468 (2) (e)

omit

[1.401] Section 469 (1)

substitute

- (1) A protected person under section 468 is not compellable in any legal proceeding (including an application before the ACAT) to give evidence or produce documents in relation to any matter in which the person was involved in the course of the administration of this chapter.

[1.402] Section 471

omit

disciplinary tribunal

substitute

ACAT

[1.403] Part 7.2

omit

[1.404] Sections 598 to 600

substitute

598 Meaning of *reviewable decision*—ch 9

In this chapter:

reviewable decision means a decision mentioned in table 598, column 3 under a provision of this Act mentioned in column 2 in relation to the decision.

Table 598 Reviewable decisions

column 1 item	column 2 section	column 3 decision	column 4 entity
1	338	completely or partly disallow claim	person who makes claim
2	338 (6)	reduce amount payable on claim	person who makes claim

599 Reviewable decision notices

If the law society makes a reviewable decision, the law society must give a reviewable decision notice to each entity mentioned in table 598, column 4 in relation to the decision.

Note 1 The law society must also take reasonable steps to give a reviewable decision notice to any other person whose interests are affected by the decision (see *ACT Civil and Administrative Tribunal Act 2008*, s 67A).

Note 2 The requirements for reviewable decision notices are prescribed under the *ACT Civil and Administrative Tribunal Act 2008*.

600 Applications for review

The following may apply to the ACAT for a review of a reviewable decision:

- (a) an entity mentioned in table 598, column 4 in relation to the decision;
- (b) any other person whose interests are affected by the decision.

Note If a form is approved under the *ACT Civil and Administrative Tribunal Act 2008* for the application, the form must be used.

[1.405] Dictionary, note 2, new dot points

insert

- ACAT
- reviewable decision notice

[1.406] Dictionary, definition of *corresponding disciplinary body*, paragraph (a)

substitute

- (a) a court or tribunal with functions under a corresponding law that correspond to any of the functions of the ACAT under this Act; or

[1.407] Dictionary, definitions of *disciplinary tribunal, judicial member and non-judicial member*

omit

[1.408] Dictionary, new definition of *reviewable decision*

insert

reviewable decision, for chapter 9 (General provisions)—see section 598.

Part 1.34 Legislation Act 2001

[1.409] Dictionary, part 1, new definition of *ACAT*

insert

ACAT means the ACT Civil and Administrative Tribunal established under the *ACT Civil and Administrative Tribunal Act 2008*.

[1.410] Dictionary, part 1, definitions of *consumer and trader tribunal, credit tribunal, discrimination tribunal, guardianship tribunal and mental health tribunal*

omit

[1.411] Dictionary, part 1, new definition of *occupational discipline order*

insert

occupational discipline order means an order for occupational discipline made by the ACAT.

Note Occupational discipline orders are made under the *ACT Civil and Administrative Tribunal Act 2008*, s 66 and under authorising laws (*authorising law*—see *ACT Civil and Administrative Tribunal Act 2008*, dict).

[1.412] Dictionary, part 1, definition of *residential tenancies tribunal*

omit

[1.413] Dictionary, part 1, new definition of *reviewable decision notice*

insert

reviewable decision notice—see the *ACT Civil and Administrative Tribunal Act 2008*, section 67A.

[1.414] Dictionary, part 1, definition of *Small Claims Court*

omit

Part 1.35 Liquor Act 1975

[1.415] Section 8

substitute

8 Approval for training programs

The commissioner may, in writing, approve a person or body to conduct a training program for this Act.

[1.416] Part 2 heading

substitute

Part 2 Enforcement

[1.417] Divisions 2.1 and 2.2

omit

[1.418] Division 2.3 heading

omit

[1.419] Section 33 (1) and (2)

substitute

- (1) The commissioner must, in writing, make a manual (the *licensing standards manual*, or *manual*).
- (2) The commissioner must set out in the manual the general standards, approved in writing by the Minister, with which licensed premises and their licensees are required to comply.

[1.420] Section 33, note

substitute

Note 1 A disallowable instrument must be notified, and presented to the Legislative Assembly, under the Legislation Act.

Note 2 The *Evidence Act 1971*, s 15 sets out when a machine copy or reproduction of a document is admissible as evidence.

[1.421] Section 34 (1)

substitute

- (1) With the Minister's written approval, the commissioner may, in writing, amend or repeal the manual.

[1.422] Section 37

substitute

37 Inspection of manual

- (1) The commissioner must keep a copy of the manual at the commissioner's office at all times.
- (2) Any person may, on request made when the office of the commissioner is open for business, inspect the copy of the manual kept by the commissioner.

[1.423] Section 38

omit

[1.424] Section 40

substitute

40 Public areas

- (1) This section applies to premises if—
 - (a) a general, club or special licence is in force for the premises; or
 - (b) an application for a general, club, on or special licence has been made for the premises.
- (2) The commissioner must, in writing, decide which parts of the premises are indoor public areas and which are outdoor public areas for this Act.
- (3) If the commissioner makes a decision under subsection (2) in relation to an indoor public area, the commissioner must give the chief officer (fire brigade) written notice of the decision.

[1.425] Section 40A (2)

substitute

- (2) The commissioner must, in writing, decide which areas of the premises are bar-rooms and which are not bar-rooms for this Act.

[1.426] Section 41 (2) and (3)

substitute

- (2) The chief officer (fire brigade) must, on receiving notice of the commissioner's decision under section 40 (2), give the commissioner the chief officer's written recommendation, made having regard to the building code, part D1.13, about the occupancy loading of each relevant indoor public area.

- (3) On receiving the recommendation of chief officer (fire brigade), the commissioner must, by written notice given to the relevant licensee or applicant for a licence, decide the occupancy loading for each relevant indoor public area.

[1.427] Section 41 (4)

omit everything before paragraph (a), substitute

- (4) In deciding the occupancy loading for an indoor public area, the commissioner—

[1.428] Section 42 (1) and (2)

substitute

- (1) In this section:
- occupancy loading***, in relation to an outdoor public area, means the maximum number of people that the area can accommodate, in the commissioner's opinion, having regard to the matters mentioned in this section.
- (2) If the commissioner has made a decision in relation to an outdoor public area under section 40 (2), the commissioner must, by written notice, decide the occupancy loading for the area.

[1.429] Section 43

substitute

43 Display of signs

If the commissioner has decided an occupancy loading under section 41 (3) or section 42 (2) in relation to a public area within premises, the licensee must, while a licence is in force in relation to the premises, display at each entrance to the public area a sign, approved by the commissioner, stating the occupancy loading for the public area.

[1.430] Section 44 (except heading)

omit everything before paragraph (a), substitute

The commissioner may authorise the issue of licences of the following classes:

[1.431] Sections 50 and 51

substitute

50 Application for licence

- (1) An application for the issue of a licence must be made to the commissioner.
- (2) As soon as reasonably practicable, the commissioner must consider the application and, subject to the requirements of this Act in relation to the application, must, in writing—
 - (a) if satisfied that, on the material being considered, there is no substantial ground on which to refuse to issue the licence applied for—agree to issue the licence; and
 - (b) if satisfied that, on the material being considered, there is no substantial ground on which to issue the licence applied for—refuse to issue the licence.

51 Class of licences

If a decision is made to issue a licence to an applicant, the licence must be issued for the class applied for, unless the commissioner believes on reasonable grounds that a licence of a different class should be issued.

[1.432] Section 53 (1) and (2)

substitute

- (1) If the commissioner believes on reasonable grounds that an applicant for a licence does not sufficiently understand the obligations of a licensee under this Act, the commissioner may issue the licence subject to the condition that the applicant undertake a stated approved training program in relation to the obligations within a stated reasonable time after the issue of the licence.
- (2) If the commissioner believes on reasonable grounds that an applicant for a licence intends to hold the licence for a partnership, a reference in this section to the applicant includes a reference to each of the partners the commissioner believes on reasonable grounds intends to be concerned in, or to take part in, the management of the partnership's business in relation to the licence, whether or not the partner's name appears on the application.

[1.433] Section 54 (6)

omit everything before paragraph (a), substitute

- (6) Except with the consent of the commissioner, the constitution or rules of a club that is the holder of a club licence must not be amended in relation to—

[1.434] Section 55 (1)

substitute

- (1) If the commissioner authorises the issue of a special licence, the licence must be issued subject to the conditions the commissioner considers to be in the public interest.

[1.435] Section 56 and 57

substitute

56 Licence not to be issued if premises incomplete

- (1) This section applies if—
 - (a) the commissioner agrees to issue a licence for premises; and
 - (b) the premises have not been erected or altered in accordance with plans and specifications lodged with the application for the licence.
- (2) The commissioner must not issue the licence until the person to whom the licence is to be issued produces a certificate (a *completion certificate*) issued under the *Building Act 2004*, part 5 (Building occupancy) for the premises.
- (3) If a completion certificate is not produced to the commissioner before the end of 1 year after the day the commissioner agreed to issue the licence, or any further time the commissioner allows, the authority for the issue of the licence is taken to have been revoked.

57 Issue of licences

- (1) If the commissioner agrees to issue a licence to an applicant, the commissioner must issue the licence.

Note A fee may be determined under s 179 for the issue of a licence.
- (2) The commissioner must endorse on the licence any relevant particulars about the applicant that were in the application or were given to the commissioner under division 4.7 (Licences held by partnerships) or division 4.8 (Licences held by corporations).

[1.436] Section 58 (2) (b)

substitute

- (b) if, at the request of the applicant for the licence, the commissioner directs that the licence end on a day earlier than the day when, apart from the direction, the licence would have ended—until the end of the day stated in the direction; and

[1.437] Section 58 (3)

substitute

- (3) The commissioner may by notice in writing decide that licences cease to be in force on a day other than the day mentioned in subsection (2) (c).

Note The power of the commissioner to decide that licences cease to be in force includes the power to decide in relation to a particular class of licence (see Legislation Act, s 48).

- (4) A notice under subsection (3) in relation to a class of licence is a notifiable instrument.

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

[1.438] Section 60

substitute

60 Duration of renewal

If the commissioner renews a licence, the licence continues in force, subject to this Act, for 1 year beginning on the day after the day, apart from its renewal, the licence would have ended.

[1.439] Section 63

substitute

63 Transfer

- (1) An application for the transfer of a licence must be made to the commissioner.

Note A fee may be determined under s 179 for the transfer of a licence.

- (2) As soon as reasonably practicable, the commissioner must consider the application and, subject to the requirements of this Act in relation to the application, must, in writing—
- (a) if satisfied that, on the material being considered, there is no substantial ground on which to refuse to authorise the transfer of the licence—authorise the transfer of the licence; and
 - (b) if satisfied that, on the material being considered, there is no substantial ground on which to authorise the transfer of the licence—refuse to authorise the transfer of the licence.
- (3) The transfer of a licence takes effect on the day after the day the commissioner authorises the transfer, or on a later day fixed by the commissioner.
- (4) If the commissioner authorises the transfer of a licence, the licensee must give the licence, and any records kept by the licensee under section 62, to the commissioner.
- (5) The commissioner must endorse the transfer on the licence, and give the endorsed licence and the records to the new licensee.

[1.440] Section 65 (1) and (2)

substitute

- (1) If the commissioner believes on reasonable grounds that the proposed transferee does not sufficiently understand the obligations of a licensee under this Act, the commissioner may transfer the licence subject to the condition that the proposed transferee undertake a stated approved training program in relation to the obligations within a reasonable stated time after the transfer of the licence.
- (2) If the commissioner believes on reasonable grounds that a proposed transferee intends to hold the licence for a partnership, a reference in subsection (1) to the proposed transferee includes a reference to each of the partners the commissioner believes on reasonable grounds intends to be concerned in, or to take part in, the management of the partnership's business in relation to the licence, whether or not the partner's name appears on the application for the transfer of the licence.

[1.441] Parts 5, 6 and 7

substitute

Part 5 Control and conduct of licensees

Division 5.1 Preliminary

76 Application to partnerships

If a licence is held for a partnership, a reference in this part to a licensee includes a reference to each of the partners who is concerned in, or takes part in, the management of the partnership's business in relation to the licence—

- (a) whether or not the partner's name appears on the licence; and

- (b) whether or not section 69 (1), (2) or (3) (Notice of partnership) has been complied with in relation to the licence.

Division 5.2 Complaints

77 Who may complain?

A person who believes on reasonable grounds that a ground for occupational discipline exists in relation to a licensee may complain to the commissioner.

Examples—people who may complain

- 1 a member of the public
- 2 a user of a service

Note 1 **Ground for occupational discipline**—see s 84.

Note 2 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).

78 Form of complaint

- (1) A complaint must—
 - (a) be in writing; and
 - (b) be signed by the person (the **complainant**) making the complaint; and
 - (c) include the complainant's name and address.
- (2) However, the commissioner may accept a complaint for consideration even if it does not comply with subsection (1).
- (3) If the commissioner accepts for consideration a complaint that is not in writing, the commissioner must require the complainant to put the complaint in writing unless there is a good reason for not doing so.

79 Withdrawal of complaints

- (1) A complainant may withdraw the complaint at any time by written notice to the commissioner.
- (2) If the complainant withdraws the complaint, the commissioner—
 - (a) need not take further action on the complaint; and
 - (b) may take further action on the complaint if the commissioner considers it appropriate to do so; and
 - (c) need not report to the complainant under section 83 (Action after investigating complaint) on the results of taking the action.

80 Further information about complaint etc

- (1) The commissioner may, at any time, require a complainant—
 - (a) to give the commissioner further information about the complaint; or
 - (b) to verify all or part of the complaint by statutory declaration.
- (2) When making a requirement under this section, the commissioner must give the complainant a reasonable period of time to satisfy the requirement and may extend that period, whether before or after it ends.
- (3) If the complainant does not comply with a requirement under subsection (1), the commissioner need not, but may, take further action in relation to the complaint.

81 Investigation of complaint

The commissioner must take reasonable steps to investigate each complaint the commissioner accepts for consideration.

82 No further action on complaint

The commissioner must not take further action on a complaint if satisfied that—

- (a) the complaint lacks substance; or
- (b) the complaint is frivolous, vexatious or was not made genuinely; or
- (c) the complaint has been adequately dealt with.

Note The commissioner may also take no further action on a complaint if the complainant has not complied with a requirement made under s 80 (see s 80 (3)).

83 Action after investigating complaint

- (1) After investigating a complaint against a licensee, the commissioner must—
 - (a) if satisfied on reasonable grounds that a ground for occupational discipline exists in relation to the complaint—
 - (i) apply to the ACAT for an occupational discipline order in relation to the licensee; and
 - (ii) tell the complainant in writing that the application has been made; or
 - (b) if not satisfied that a ground for occupational discipline exists in relation to the complaint—
 - (i) tell the complainant in writing that the commissioner will not take further action on the complaint; and
 - (ii) not take further action on the complaint.

- (2) Subsection (1) (b) (ii) does not prevent the commissioner from taking further action in relation to a complaint if the commissioner becomes satisfied that a ground for occupational discipline exists in relation to the complaint.

Note The commissioner need not notify the complainant under s (1) if the complainant has withdrawn the complaint (see s 79).

Division 5.3 Occupational discipline—licensees

84 Grounds for occupational discipline

- (1) Each of the following is a *ground for occupational discipline* in relation to a licensee:
- (a) the licensee has contravened, or is contravening, a provision of this Act;
 - (b) the licensee has allowed the licensed premises to be used in a way that causes undue disturbance or inconvenience to people lawfully on the premises;
 - (c) the licensee has allowed the licensed premises to be used in a way that causes undue disturbance or inconvenience to people occupying premises in the neighbourhood;
 - (d) the licensed premises do not comply with the licensing standards manual;
 - (e) the licensee's conduct of the licensed premises has not complied with the manual;
 - (f) the licensee has, in the licensed premises, created a fire hazard to life or property or allowed the hazard to develop;
 - (g) a loss of amenity has arisen in the vicinity of the licensed premises that is attributable to the premises and about which there has been a complaint;

- (h) a licensee has allowed people to smoke in a part of the licensed premises that is an enclosed public place;
- (i) the licensee has failed to take reasonable steps to prevent smoke from another area occupied by the licensee entering an enclosed public place;
- (j) there are grounds to suspend the licensee's licence;
- (k) the licensee is not a suitable person to hold a licence;

Note For what to consider in deciding whether a licensee is suitable, see s (3).

- (l) the licensed premises are not suitable for the purposes of the licence.

Note For what to consider in deciding whether premises are suitable, see s (4).

- (2) There are grounds to suspend a licence if—
 - (a) the licensee has contravened—
 - (i) a direction; or
 - (ii) a training condition, or requirement, imposed under section 53, section 65, section 70 or section 75 (which are about training on the issue or transfer of licences, partnership change or the change of an influential person); and
 - (b) it is in the public interest to suspend the licence; and
 - (c) it is not appropriate to cancel the licence.

- (3) In deciding whether a licensee is a suitable person to hold a licence, the ACAT must consider the following:
- (a) if the licence has previously been suspended for the contravention of a direction—whether, after the end of the period of suspension the licensee has again contravened that direction, or has contravened a direction to the same or similar effect;
 - (b) whether the licensee has been convicted of a defined offence;
 - (c) whether the licensee is bankrupt;
 - (d) if the licensee is a corporation—
 - (i) whether the corporation has been placed in liquidation; or
 - (ii) whether, in consideration of the matters mentioned in paragraphs (b) or (c) or otherwise, any defined influential person in relation to the corporation would not be a suitable person to hold a licence.
- (4) In deciding whether premises are suitable for the purpose of the licence, the ACAT must consider the following:
- (a) whether the licensed premises comply with the licensing standards manual;
 - (b) whether the licensee’s conduct of the licensed premises has complied with the manual.
- (5) In this section:
- enclosed public place***—see the *Smoking (Prohibition in Enclosed Public Places) Act 2003*, dictionary.
- smoke***—see the *Smoking (Prohibition in Enclosed Public Places) Act 2003*, dictionary.

85 Application to ACAT for occupational discipline

If the commissioner believes on reasonable grounds that a ground for occupational discipline exists in relation to a licensee, the commissioner may apply to the ACAT for an occupational discipline order in relation to the licensee.

Note The *ACT Civil and Administrative Tribunal Act 2008*, s 65 sets out when the ACAT may make an occupational discipline order, and s 66 sets out the orders the ACAT may make.

Part 6 Alteration of licensed premises

86 Application for alteration

- (1) The licensee of licensed premises may apply to the commissioner for permission to alter the licensed premises.
- (2) The application must be accompanied by 2 copies of the plans and specifications for the alteration.

87 Decision by commissioner

As soon as is reasonably practicable, the commissioner must consider the application and, subject to the requirements of this Act in relation to the application, the commissioner must, in writing—

- (a) if satisfied that, on the material being considered, there is no substantial ground on which to refuse to approve the alteration—approve the alteration; or
- (b) if satisfied that, on the material being considered, there is no substantial ground on which to approve the alteration—refuse to approve the alteration.

88 Relevant considerations

In making a decision in relation to an application for alteration of the licensed premises, the commissioner must consider whether the licensed premises would, if the proposed alteration were made, substantially comply with the licensing standards manual.

89 Offences

- (1) A licensee must not, except with the approval of the commissioner, alter the licensed premises.

Maximum penalty: 50 penalty units.

- (2) If the commissioner approves an alteration of licensed premises, the licensee must not, until the commissioner declares that the alteration is complete, conduct any business in relation to the licence on the licensed premises except in accordance with arrangements approved by the commissioner.

Maximum penalty: 50 penalty units.

- (3) A licensee must not, without reasonable excuse, fail to tell the commissioner in writing about any alteration of fittings prescribed by regulation.

Maximum penalty: 10 penalty units.

Part 7 Closure of licensed premises

90 Application for closure

- (1) The holder of a general licence, an on licence or a special licence may apply to the commissioner to close the licensed premises—
- (a) on 1 or more days; or
 - (b) for stated periods.

- (2) The application must—
- (a) be in writing signed by the licensee; and
 - (b) be lodged with the commissioner—
 - (i) not less than 21 days before the first day for which approval is sought; or
 - (ii) before a later date (before the first day) that the commissioner allows.

91 Decision of commissioner

As soon as is reasonably practicable, the commissioner must consider the application and, subject to the requirements of this Act in relation to the application, the commissioner must, in writing—

- (a) if satisfied that, on the material being considered, there is no substantial ground on which to refuse to approve the closure—approve the closure; or
- (b) if satisfied that, on the material being considered, there is no substantial ground on which to approve the closure—refuse to approve the closure.

92 Relevant considerations

In making a decision in relation to an application for closure of licensed premises, the commissioner must consider whether the licensed premises would, if the proposed closure were made, stop meeting the reasonable requirements of the public.

93 Offences

- (1) If the commissioner approves the closure of licensed premises, the licensee must not, without reasonable excuse, for not less than 7 days before the first day when the closure of the premises has been approved, fail to display in the premises a notice setting out the day or days and times when the premises will be closed under the approval.

Maximum penalty: 5 penalty units.

- (2) A licensee must not open any part of the licensed premises for the sale of liquor on a day for which an approval has been granted under this part.

Maximum penalty: 5 penalty units.

[1.442] Section 104

substitute

104 Authorisation—off licences

For this Act, on notice by the holder of an off licence to the commissioner in accordance with section 105, the stated premises are, during the stated period, taken to be part of the licensed premises.

[1.443] Section 105 (1)

omit everything before paragraph (a), substitute

- (1) For section 104, a licensee must give the commissioner written notice stating—

[1.444] Section 107 (except notes)

substitute

107 Application for permit

A person may apply to the commissioner for a permit.

[1.445] Section 108

substitute

108 Consideration of application

As soon as is reasonably practicable, the commissioner must consider an application for a permit and, subject to the requirements of this Act in relation to the application, must, in writing—

- (a) if satisfied that, on the material being considered, there is no substantial ground on which to refuse to issue a permit requested by the applicant—issue the permit; or
- (b) if satisfied that, on the material being considered, there is no substantial ground on which to issue a permit requested by the applicant—refuse to issue the permit.

[1.446] Section 109

omit

[1.447] Section 109A (1)

omit everything before paragraph (a), substitute

- (1) The commissioner may issue a liquor permit to an applicant only if satisfied on reasonable grounds that—

[1.448] Section 109A (2)

substitute

- (2) If the commissioner is satisfied on reasonable grounds that the amount of liquor for which the permit is sought is more than the amount reasonably needed for the event to which the permit would apply, a permit may be issued to the applicant authorising the sale of the amount of liquor the commissioner considers appropriate for the event.

[1.449] Section 109B (1)

omit everything before paragraph (a), substitute

- (1) The commissioner may issue a non-profit organisation wine permit to an applicant only if satisfied on reasonable grounds that—

[1.450] Section 109C (1)

omit everything before paragraph (a), substitute

- (1) The commissioner may issue a tourism wine permit to an applicant only if satisfied on reasonable grounds that—

[1.451] Section 110

substitute

110 Permit conditions may differ from application

- (1) If the commissioner is satisfied on reasonable grounds that the times for which the permit is sought are not appropriate, the commissioner may issue a permit to the applicant for the times the commissioner considers appropriate.
- (2) If the commissioner is satisfied on reasonable grounds that aspects of the sale of liquor for which the permit is sought would not be in the public interest, the commissioner may issue a permit to the applicant subject to the conditions the commissioner considers necessary to protect the public interest.

[1.452] Sections 113 and 114

substitute

113 Refund of permit fees

- (1) This section applies if—
 - (a) for any reason other than the cancellation of a permit, a permit-holder does not conduct any entertainment in relation to which the permit was issued; and
 - (b) the permit-holder gives the permit to the commissioner with a signed statement to the effect that—
 - (i) the liquor purchased for sale under the permit has been returned to each person from whom it was purchased; or
 - (ii) no liquor was purchased for sale under the permit.
- (2) The Territory must pay to the permit-holder the amount by which the fee paid for the issue of the permit exceeded the minimum fee determined under section 179 for an application for a permit.

114 Return of permits to commissioner

A permit-holder must not without reasonable excuse fail to return a permit to the commissioner within 7 days after—

- (a) the end of the period, or the last period, when the sale of liquor is authorised by the permit; or
- (b) the cancellation of the permit.

Maximum penalty: 10 penalty units.

[1.453] Section 116 (1)

substitute

- (1) The commissioner must cancel a permit if it would be in the public interest to do so.

[1.454] Sections 117 and 118

substitute

117 Complaints

- (1) A person may make a complaint about how the premises stated in a permit are being used.
- (2) The complaint must—
 - (a) be in writing; and
 - (b) be signed by the person making the complaint; and
 - (c) be lodged with the commissioner.

118 Decision of commissioner

- (1) In considering a complaint under section 117, the commissioner must—
 - (a) if the commissioner believes on reasonable grounds that it would be in the public interest to cancel the permit—cancel the permit; or
 - (b) in any other case—dismiss the complaint.
- (2) If the commissioner decides to dismiss the complaint, the commissioner must tell the complainant that the complaint has been investigated but no further action is required.

[1.455] Section 119

omit

[1.456] Section 125

substitute

125 Return of licences to commissioner

If a licence is suspended or cancelled under part 5 (Control and conduct of licensees), the licensee must give the licence to the commissioner within 3 days after the day the licensee is told in writing to return the licence.

Maximum penalty: 20 penalty units.

[1.457] Section 132 (except heading)

omit everything before paragraph (a), substitute

A licensee must not, without reasonable excuse, be absent from the licensed premises for a period longer than 28 days unless the licensee has given to the commissioner written notice setting out details of—

[1.458] Section 133

substitute

133 Change in control of licensed premises

If a licensee stops controlling the licensed premises, the licensee must, within 28 days after the day the licensee stops controlling the premises, give the commissioner notice in writing, unless the commissioner approves the transfer or the surrender of the licence before the end of the 28-day period.

Maximum penalty: 10 penalty units.

[1.459] Section 150

substitute

150 Failing to require patrons to leave

A licensee must not, without reasonable excuse, fail to comply with a requirement under section 25 (4) (e) that patrons leave a public area within the licensed premises.

Maximum penalty: 50 penalty units.

[1.460] Section 153 (3) (b) (ii)

substitute

- (ii) a person approved in writing by the commissioner.

[1.461] Section 154 (2) (b) (ii)

substitute

- (ii) a person approved in writing by the commissioner.

[1.462] Section 156 (3) (b) (ii)

substitute

- (ii) a person approved in writing by the commissioner.

[1.463] Section 157 (2) (b) (ii)

substitute

- (ii) a person approved in writing by the commissioner.

163 Reviewable decision notices

If a person makes a reviewable decision, the person must give a reviewable decision notice to each entity mentioned in schedule 1, column 4 in relation to the decision.

Note 1 The person must also take reasonable steps to give a reviewable decision notice to any other person whose interests are affected by the decision (see *ACT Civil and Administrative Tribunal Act 2008*, s 67A).

Note 2 The requirements for reviewable decision notices are prescribed under the *ACT Civil and Administrative Tribunal Act 2008*.

164 Applications for review

The following may apply to the ACAT for a review of a reviewable decision:

- (a) an entity mentioned in schedule 1, column 4 in relation to the decision;
- (b) any other person whose interests are affected by the decision.

Note If a form is approved under the *ACT Civil and Administrative Tribunal Act 2008* for the application, the form must be used.

[1.466] Section 178

substitute

178 Proceedings for offences

A proceeding in relation to an offence against this Act must not be begun except by the commissioner or a police officer.

[1.467] Section 180 (1) and (2)

substitute

- (1) The commissioner may, in writing, approve forms for this Act.

- (2) If the commissioner approves a form for a particular purpose, the approved form must be used.

Note If a form is approved under the *ACT Civil and Administrative Tribunal Act 2008* for the application, the form must be used.

[1.468] New schedule 1

insert

Schedule 1 Reviewable decisions

(see pt 12)

column 1 item	column 2 section	column 3 decision	column 4 entity
1	8	refuse to approve person or body to conduct training program	person or body refused approval
2	40	which parts of licensed premises are indoor public areas or outdoor public areas	licensee or applicant for licence
3	40A	which area of licensed premises is bar-room	licensee or applicant for licence
4	41	occupancy loading for indoor public area on licensed premises	licensee or applicant for licence
5	42	occupancy loading for outdoor public area on licensed premises	licensee or applicant for licence
6	50	refuse to issue licence	applicant for licence

column 1 item	column 2 section	column 3 decision	column 4 entity
7	51	issue licence of different class from that applied for	applicant for licence
8	53 (1)	issue licence subject to condition that licensee undertake training or training of stated kind	applicant for licence
9	53 (1)	issue licence subject to condition that licensee undertake training within stated time	applicant for licence
10	55 (1)	issue special licence subject to conditions	applicant for licence
11	63 (2) (b)	refuse to authorise transfer of licence	applicant for transfer
12	65 (1)	transfer licence subject to condition that transferee undertake training or training of stated kind	applicant for transfer of licence
13	65 (1)	transfer licence subject to condition that transferee undertake training within stated time	applicant for transfer of licence
14	67 (2)	refuse to cancel licence	licensee

Schedule 1
Part 1.35

Legislation amended
Liquor Act 1975

Amendment [1.468]

column 1 item	column 2 section	column 3 decision	column 4 entity
15	70 (2)	require new partner of licensee to undertake training or training of stated kind	new partner of licensee
16	70 (2)	require new partner of licensee to undertake training within stated time	new partner of licensee
17	75 (2)	require person who has become defined influential person to undertake training or training of stated kind	defined influential person
18	75 (2)	require person who has become defined influential person to undertake training within stated time	defined influential person
19	87 (b)	refuse to approve an alteration to licensed premises	licensee
20	89 (2)	refuse to declare alteration of licensed premises complete	licensee
21	91 (b)	refuse to approve closure of licensed premises	licensee
22	108 (b)	refuse to issue permit	applicant for permit

column 1 item	column 2 section	column 3 decision	column 4 entity
23	110 (2)	issue permit subject to conditions	applicant for permit

[1.469] Dictionary, note 2, new dot points

insert

- ACAT
- commissioner for fair trading
- occupational discipline order
- reviewable decision notice

[1.470] Dictionary, definition of *appointed member*

omit

[1.471] Dictionary, definitions of *approved training program* and *bar-room*

substitute

approved training program means a training program conducted by a person or body approved by the commissioner under section 8.

bar-room, for licensed premises, means a part of the premises that the commissioner has decided under section 40A (Bar-rooms) is a bar-room.

[1.472] Dictionary, definition of *board*

omit

[1.473] Dictionary, new definition of *commissioner*

insert

commissioner means the commissioner for fair trading.

[1.474] Dictionary, definitions of *deputy registrar, direction* and *hearing*

omit

[1.475] Dictionary, definitions of *identity card* and *inspector*

substitute

identity card—see the *Fair Trading (Consumer Affairs) Act 1973*, dictionary.

inspector means an investigator under the *Fair Trading (Consumer Affairs) Act 1973*.

[1.476] Dictionary, definitions of *matter, member, registrar* and *relevant decision-maker*

omit

[1.477] Dictionary, new definition of *reviewable decision*

insert

reviewable decision, for part 12 (Notification and review of decisions)—see section 162.

[1.478] Further amendments, mentions of *registrar*

omit

registrar

substitute

commissioner

in

- section 42 (3) and (4)
- section 59
- section 67
- section 69

- section 70
- section 74
- section 75
- section 126
- section 158

[1.479] Further amendments, mentions of *relevant decision-maker*

omit

relevant decision-maker

substitute

commissioner

in

- section 52
- section 54 (1) to (5)
- section 64

Part 1.36 Magistrates Court Act 1930

[1.480] Section 266

substitute

266 Complaints under Utilities Act, pt 12

The Magistrates Court does not have jurisdiction in relation to a matter to the extent to which it is the subject of—

- (a) a complaint under the *Utilities Act 2000*, part 12 (Complaints);
or
- (b) a direction or declaration of the ACAT under that part.

[1.481] Section 267 (3)

omit

[1.482] Section 272

substitute

272 Meaning of *appeal*—pt 4.5

In this part:

appeal means an appeal to the Supreme Court from a judgment or order of the Magistrates Court, whether final or interlocutory, in a proceeding that the Magistrates Court has jurisdiction to hear and decide under this chapter.

[1.483] Section 274 (3)

omit

[1.484] Section 275

omit

[1.485] Part 4.6

omit

[1.486] Section 302

omit

[1.487] Section 310 (5)

omit

[1.488] Dictionary, definitions of *applicant, application, common boundaries determination, contract application, damages application, debt application, debt declaration, goods application, inquiry, judgment, nuisance application, proceeding, referee and respondent*

omit

[1.489] Dictionary, definition of *rules*

substitute

rules means rules under the *Court Procedures Act 2004* applying in relation to the Magistrates Court.

[1.490] Dictionary, definitions of *Small Claims Court and trespass application*

omit

Part 1.37 Medicines, Poisons and Therapeutic Goods Act 2008

[1.491] Chapter 9

substitute

Chapter 9 Notification and review of decisions

154 Meaning of *reviewable decision*—ch 9

In this chapter:

reviewable decision means a decision mentioned in schedule 1, column 3 under a provision of this Act mentioned in column 2 in relation to the decision.

155 Reviewable decision notices

If a person makes a reviewable decision, the person must give a reviewable decision notice to each entity mentioned in schedule 1, column 4 in relation to the decision.

Note 1 The person must also take reasonable steps to give a reviewable decision notice to any other person whose interests are affected by the decision (see *ACT Civil and Administrative Tribunal Act 2008*, s 67A).

Note 2 The requirements for reviewable decision notices are prescribed under the *ACT Civil and Administrative Tribunal Act 2008*.

155A Applications for review

The following may apply to the ACAT for a review of a reviewable decision:

- (a) an entity mentioned in schedule 1, column 4 in relation to the decision;
- (b) any other person whose interests are affected by the decision.

Note If a form is approved under the *ACT Civil and Administrative Tribunal Act 2008* for the application, the form must be used.

[1.492] Section 524

substitute

524 Transitional—uncompleted applications for ACAT review

- (1) This section applies if—
 - (a) before the commencement day, an application for review to the ACAT had been made in relation to a decision under an Act mentioned in section 511 (Legislation repealed); and
 - (b) immediately before the commencement day, the proceeding on the application had not ended; and

- (c) the thing to which the decision relates is taken to be a new licence under section 520 (2) (Transitional—existing licences) or section 522 (2) (Transitional—existing authorisations).
- (2) If this section applies—
- (a) the proceeding may be continued as if the application for review had been made in relation to the new licence; and
- (b) the decision-maker is taken to be the chief health officer.
- (3) For this section, the ACAT may give any direction the ACAT considers necessary or desirable to facilitate a matter in relation to the application for review.

[1.493] Schedule 1

substitute

Schedule 1 Reviewable decisions

(see pt 9)

column 1 item	column 2 section	column 3 decision	column 4 entity
1	85	issue licence for less than maximum period	applicant for licence
2	85 (2)	refuse to issue licence	applicant for licence
3	90 (1)	issue licence subject to condition included by chief health officer	applicant for licence
4	91	amend licence	licence-holder

Schedule 1
Part 1.37

Legislation amended
Medicines, Poisons and Therapeutic Goods Act 2008

Amendment [1.493]

column 1 item	column 2 section	column 3 decision	column 4 entity
5	92	amend licence in terms different from application or refuse to amend licence	licence-holder
6	142 (3)	<ul style="list-style-type: none">• reprimand authorisation holder• require authorisation holder or employee to complete training• impose condition on authorisation holder's authority to deal with regulated substance/regulated therapeutic good• vary authorisation holder's authority to deal with regulated substance/regulated therapeutic good• suspend authorisation holder's authority to deal with regulated substance/regulated therapeutic good or deal with regulated substance/regulated therapeutic good in particular way	authorisation holder

column 1 item	column 2 section	column 3 decision	column 4 entity
		<ul style="list-style-type: none"> • period of suspension/course of training/stated event • cancel authorisation holder's authority to deal with regulated substance/regulated therapeutic good • prohibit interstate wholesaler from supplying regulated substance/regulated therapeutic good by wholesale in ACT 	
7	142 (3)	<ul style="list-style-type: none"> • reprimand former authorisation holder • disqualify former authorisation holder from being authorised to deal with regulated substance/regulated therapeutic good or deal with regulated substance/regulated therapeutic good in particular way • period of disqualification/course of training/stated event 	former authorisation holder

column 1 item	column 2 section	column 3 decision	column 4 entity
		<ul style="list-style-type: none">prohibit former interstate wholesaler from supplying regulated substance/regulated therapeutic good by wholesale in ACT	
8	191	give direction	person to whom direction is given

[1.494] Dictionary, note 2, new dot points

insert

- ACAT
- reviewable decision notice

[1.495] Dictionary, new definition of *reviewable decision*

insert

reviewable decision, for chapter 9 (Notification and review of decisions)—see section 154.

Part 1.38 Mental Health (Treatment and Care) Act 1994

[1.496] Section 9

substitute

9 Maintenance of freedom, dignity and self-respect

A person exercising a function under this Act, or under an ACAT order, in relation to a mentally dysfunctional or mentally ill person must endeavour to ensure that any restrictions on that person's personal freedom and any derogation of that person's dignity and self-respect are kept to the minimum necessary for the proper care and protection of the person and the protection of the public.

Note A provision of a law that gives an entity (including a person) a function also gives the entity powers necessary and convenient to exercise the function (see Legislation Act, s 196 and dict, pt 1, def *entity*).

[1.497] Part 3

omit

[1.498] Divisions 4.1 and 4.2

substitute

Division 4.1 Applications and referrals

10 Application by mentally dysfunctional or mentally ill people

(1) This section applies if a person believes himself or herself to be, because of mental dysfunction or mental illness—

(a) unable—

(i) to make reasonable judgments about matters relating to the person's own health or safety; or

- (ii) to do anything necessary for the person’s own health or safety; or
 - (b) likely to do serious harm to others.
- (2) The person may apply to the ACAT for a mental health order in relation to himself or herself.

Note 1 Requirements for applications to the ACAT are set out in the *ACT Civil and Administrative Tribunal Act 2008*, s 10.

Note 2 If a form is approved under the *ACT Civil and Administrative Tribunal Act 2008* for the application, the form must be used.

11 Applications by other people

- (1) This section applies if a person (the *applicant*) believes on reasonable grounds that—
 - (a) the health and safety of another person (the *subject person*) is, or is likely to be substantially at risk because the subject person is unable, because of mental dysfunction or mental illness—
 - (i) to make reasonable judgments about matters relating to the subject person’s health or safety; or
 - (ii) to do anything necessary for the subject person’s health or safety; or
 - (b) the subject person is likely, because of mental dysfunction or mental illness, to do serious harm to others.
- (2) The applicant may apply to the ACAT for a mental health order in relation to the subject person.

Note 1 Requirements for applications to the ACAT are set out in the *ACT Civil and Administrative Tribunal Act 2008*, s 10.

Note 2 If a form is approved under the *ACT Civil and Administrative Tribunal Act 2008* for the application, the form must be used.

12 Applicant to tell ACAT of risks

- (1) This section applies if—
 - (a) a person (the *applicant*) may apply under section 11 for a mental health order in relation to someone else (the *subject person*); and
 - (b) the applicant believes on reasonable grounds that the appearance of the subject person before the ACAT is likely to substantially increase—
 - (i) the risk to the subject person’s health or safety; or
 - (ii) the risk of serious harm to others.
- (2) If the applicant applies for the mental health order in relation to the subject person, the application must state the applicant’s belief about the matters mentioned in subsection (1).

13 Referrals to ACAT

- (1) This section applies if the referring officer for an alleged offender believes on reasonable grounds that—
 - (a) because of mental impairment—
 - (i) the alleged offender’s health or safety is, or is likely to be, substantially at risk; or
 - (ii) the alleged offender is or is likely to do serious harm to others; and
 - (b) it may not be appropriate to prosecute, or to continue to prosecute, the alleged offender, considering—
 - (i) the nature and circumstances of the offence; and
 - (ii) the alleged offender’s apparent mental condition.
- (2) The referring officer may refer the alleged offender to the ACAT for a mental health order.

(3) In this section:

alleged offender means a person—

- (a) who is arrested in connection with an offence; or
- (b) if a police officer believes on reasonable grounds that there are sufficient grounds on which to charge the person in connection with an offence; or
- (c) who is charged in connection with an offence.

Note Requirements for applications to the ACAT are set out in the *ACT Civil and Administrative Tribunal Act 2008*, s 10.

14 Referring officer to tell ACAT of risks

(1) This section applies if—

- (a) a person (the *applicant*) may refer someone else (the *subject person*) to the ACAT for a mental health order under section 13; and
- (b) the applicant believes on reasonable grounds that the appearance of the subject person before the ACAT is likely to substantially increase—
 - (i) the risk to the subject person’s health or safety; or
 - (ii) the risk of serious harm to others.

(2) If the applicant applies for the mental health order in relation to the subject person, the application must state the applicant’s belief about the matters mentioned in subsection (1).

Division 4.2 Assessments

15 Meaning of *assessment order*—div 4.2

In this division:

assessment order means an order for an assessment under section 16.

16 Assessment orders

- (1) This section applies if—
 - (a) the ACAT is satisfied, on the face of an application or referral under division 4.1 that a person is mentally dysfunctional or mentally ill, and that—
 - (i) the person’s health or safety is, or is likely to be, substantially at risk; or
 - (ii) the person is or is likely to do serious harm to others; or
 - (b) the ACAT reviews a mental health order in force in relation to a person under section 36L; or
 - (c) a person is required to submit to the jurisdiction of the ACAT by—
 - (i) an ACAT mental health provision in a care and protection order or interim care and protection order; or
 - (ii) an interim therapeutic protection order; or
 - (d) a person is required to submit to the jurisdiction of the ACAT by an order under the *Crimes Act 1900*, part 13 (Unfitness to plead and mental impairment); or
 - (e) the ACAT reviews an order for detention in force in relation to a person under section 72 (Periodic review of orders for detention).

- (2) The ACAT may order an assessment in relation to the person.

17 Consent for assessment orders

- (1) This section applies if the ACAT is considering ordering an assessment in relation to a person mentioned in section 16 (1) (a), (b) or (c).
- (2) The ACAT must take reasonable steps to find out the opinion of the person in relation to the assessment and obtain the person's consent to the assessment.
- (3) However, subsection (2) does not prevent the ACAT from ordering an assessment without the person's consent or if the person does not appear before the ACAT.

18 No consent for assessment orders

- (1) This section applies if the ACAT is considering ordering an assessment in relation to a person mentioned in section 16 (1) (d) or (e).
- (2) The ACAT need not take reasonable steps to find out the opinion of the person in relation to the assessment or obtain the person's consent to the assessment.

19 Content and effect of assessment orders

- (1) An assessment order must—
 - (a) state the nature of the assessment to be conducted; and
 - (b) state the mental health facility at which the assessment is to be conducted and, if appropriate, the person who is to conduct the assessment; and
 - (c) direct the person to be assessed to attend the facility and, if necessary, stay at the facility for the assessment; and

- (d) direct the person in charge of the facility—
 - (i) if appropriate, to admit the person to be assessed to the facility to conduct the assessment; and
 - (ii) if necessary, to detain the person at the facility until the assessment has been conducted; and
 - (iii) to provide the assistance that is necessary and reasonable to conduct the assessment.
- (2) An assessment order authorises—
 - (a) the conduct of the assessment stated in the order; and
 - (b) anything necessary to be done to conduct the assessment.

20 Notify public advocate of assessment orders

The ACAT must inform the public advocate of an assessment order made in relation to a person immediately after the order is made.

21 Time for conducting assessments

- (1) The assessment of a person in relation to whom an assessment order is made must be conducted as soon as practicable, and not later than—
 - (a) 7 days after the assessment order is made; or
 - (b) another day stated in the assessment order.
- (2) However, the ACAT may, on application, extend the period for conducting the assessment if satisfied, based on clinical evidence provided to it by the person conducting the assessment, that a satisfactory assessment cannot be completed within the period under subsection (1).
- (3) The extension must be for a period not longer than 7 days.

22 Removal to conduct assessments

- (1) This section applies if the ACAT makes an assessment order in relation to—
 - (a) a person mentioned to in section 16 (1) (a), (b) or (c) who—
 - (i) has not been served with a subpoena under the *ACT Civil and Administrative Tribunal Act 2008*, section 41 for a reason stated in section 82 (3) (Subpoena to appear in person); or
 - (ii) does not appear at a proceeding in relation to the order under a subpoena given under the *ACT Civil and Administrative Tribunal Act 2008*, section 41; or
 - (iii) does not comply with the assessment order; or
 - (b) a person mentioned in section 16 (1) (d) or (e).
- (2) The ACAT may order the removal of the person to a mental health facility to conduct the assessment.
- (3) The order must state—
 - (a) the day (being a day not later than 1 month after the day the order is made) on which the order stops having effect; and
 - (b) the mental health facility to which the person is to be removed; and
 - (c) the nature of the assessment to be conducted in relation to the person.
- (4) An order under this section authorises—
 - (a) the arrest of the person named in the order; and
 - (b) the removal of the person to the mental health facility stated in the order.

22A Executing orders to conduct assessments

- (1) This section applies if the ACAT makes an order under section 22.
- (2) The order may be executed by a police officer.
- (3) The police officer—
 - (a) may, with necessary and reasonable assistance and force, enter any premises to arrest the person; and
 - (b) must use the minimum amount of force necessary to arrest the person and remove the person to the stated facility; and
 - (c) must, before removing the person, explain to the person the purpose of the order.

22B Contact with others

- (1) This section applies if a person is admitted to a mental health facility under an order under section 22.
- (2) The person in charge of the facility must ensure that, while at the facility, the person admitted to the facility—
 - (a) has access to facilities; and
 - (b) adequate opportunity, to contact each of the following:
 - (i) a relative or friend;
 - (ii) the public advocate;
 - (iii) a legal practitioner.

22C Public advocate and lawyer to have access

- (1) This section applies if a person is admitted to a mental health facility under an assessment order.
- (2) The public advocate and the person's lawyer are entitled to have access to the person at any time.

- (3) The person in charge of the facility must, if asked by the public advocate or the person's lawyer, give the reasonable assistance necessary to allow the public advocate or lawyer to have access to the person.

22D Person to be assessed to be informed

- (1) This section applies if a person is admitted to a mental health facility under an assessment order.
- (2) The person in charge of the facility must, before an assessment is conducted, ensure that the person to be assessed is told about the assessment order.
- (3) This section applies even if the person to be assessed was present when the ACAT made the order.

22E Copies of assessments

- (1) This section applies to an assessment conducted at a mental health facility under an assessment order.
- (2) The person in charge of the mental health facility must, as soon as practicable after completing the assessment, give a copy of the assessment to—
 - (a) the person assessed; and
 - (b) the ACAT; and
 - (c) the public advocate; and
 - (d) if the person assessed was referred to the ACAT under section 13—the referring officer.

[1.499] Section 23

substitute

23 ACAT must consider assessment

Before making a mental health order in relation to a person, the ACAT must consider—

- (a) an assessment of the person conducted under an assessment order under division 4.2; or
- (b) another assessment of the person that the ACAT considers appropriate.

[1.500] Section 26 (n)

substitute

- (n) for a person referred to the tribunal under section 13 or an offender with a mental impairment—the nature and circumstances of the offence in relation to which the person has been arrested, or may be or has been charged;

[1.501] Section 27

substitute

27 ACAT must not order particular drugs etc

The ACAT must not order the administration of a particular drug or make an order about the way a particular clinical procedure is to be carried out.

[1.502] Section 30

substitute

30 Criteria for making restriction order with psychiatric treatment order

In addition to making a psychiatric treatment order in relation to a person, the ACAT may make a restriction order in relation to the person if satisfied that it is in the interests of the person's health or safety or public safety to do so.

[1.503] Section 36B

substitute

36B Criteria for making restriction order with community care order

In addition to making a community care order in relation to a person, the ACAT may make a restriction order in relation to the person if satisfied that it is in the interests of the person's health or safety or public safety to make the order.

[1.504] Section 36H (1) (b)

substitute

(b) the ACAT orders that limits may be imposed on communication between the person and other people; and

[1.505] Section 36L (3)

substitute

(3) Subsection (2) has effect despite section 85 (Notice of hearing).

[1.506] Section 37 (3)

substitute

- (3) The ACAT must, on application, review the decision of a doctor or mental health officer under subsection (2) (a) (ii) within 2 working days after the day the application is made.

[1.507] Section 42 (1)

substitute

- (1) This section applies if a doctor authorises the involuntary detention of a person under section 41 (1).
- (1A) The doctor must, within 12 hours after authorising the involuntary detention, notify the public advocate and the ACAT of—
- (a) the name of the person detained; and
 - (b) the reasons for authorising the involuntary detention and care; and
 - (c) the name and address of the approved mental health facility where the person is being detained.

Maximum penalty: 5 penalty units.

[1.508] Section 48K (4)

substitute

- (4) A regulation may make provision in relation to the following:
- (a) the procedures for authorising and arranging the receipt of an interstate custodial patient under this section;
 - (b) a person (including an interstate person) who may take an interstate custodial patient to a facility in the ACT under this section;
 - (c) receiving custody of an interstate custodial patient by a person in the ACT;

- (d) the period within which an interstate custodial patient must be reviewed by the ACAT after being transferred to a facility in the ACT.

[1.509] Section 51 (d) (i)

substitute

- (i) the ACAT;

[1.510] Section 55H, note

substitute

Note The ACAT must give a copy of the order to certain people (see s 87).

[1.511] Section 55J (1) (c)

substitute

- (c) electroconvulsive therapy has been administered to the person on 10 or more occasions since the ACAT made the electroconvulsive therapy order; and

[1.512] Section 55M (2), notes

substitute

Note 1 The ACAT must give a copy of the application and accompanying documents to the following people as soon as practicable (and not longer than 24 hours) after the application is lodged:

- the public advocate
- if the person is a child—the C&YP chief executive (see s 79).

Note 2 Certain people are entitled to appear and give evidence, and be represented, at the proceeding including the following:

- the person who is the subject of the proceeding
- the public advocate
- the discrimination commissioner.

Other people are also entitled to appear (see s 80).

[1.513] Section 55N (3)

substitute

- (3) To remove any doubt, section 85 (Notice of hearing) does not apply to the making of an emergency electroconvulsive therapy order in relation to a person.

[1.514] Section 55O, note

substitute

Note The ACAT must give a copy of the order to certain people within 24 hours (see s 87).

[1.515] Section 55P

substitute

55P Conflict between orders

If an emergency electroconvulsive therapy order is in force in relation to a person and the ACAT makes another order in relation to the person, the emergency electroconvulsive therapy order ceases to be in force.

[1.516] Section 68 (8), note

substitute

Note A person who is the subject of a proceeding may be subpoenaed to appear at the proceeding (see *ACT Civil and Administrative Tribunal Act 2008*, s 41).

[1.517] Section 71

omit

registrar

substitute

ACAT

[1.518] Part 9

substitute

Part 9 Procedural matters—ACAT

76 Meaning of *subject person*—pt 9

In this part:

subject person—see section 80.

77 When ACAT may be constituted by presidential member

- (1) This section applies to an application for—
 - (a) an order for an assessment under section 16; or
 - (b) an order for a person’s removal under section 22; or
 - (c) an order for a person’s detention under section 41 (2); or
 - (d) an order for a person’s release under section 46.
- (2) The ACAT for a proceeding on an application may be made up by a presidential member alone, but not a non-presidential member alone.

Note The general president of the ACAT is responsible for allocating members to the ACAT for an application (see *ACT Civil and Administrative Tribunal Act 2008*, s 89).

78 When ACAT must be constituted by more members

- (1) This section applies to an application for—
 - (a) a mental health order; or
 - (b) the review of a mental health order under section 36L; or
 - (c) an electroconvulsive therapy order under section 55G; or

- (d) an emergency electroconvulsive therapy order under section 55N; or
- (e) the review of a person's fitness to plead under section 68; or
- (f) a recommendation under section 70 or section 70A about a person who has a mental impairment, mental illness or mental dysfunction; or
- (g) the review of an order for detention under section 72; or
- (h) the review of a condition in force in relation to a person released from detention under section 73.

Note For par (a), a **mental health order** is a psychiatric treatment order, a community care or a restriction order.

- (2) For a proceeding on the application, the ACAT must include—
 - (a) a presidential member; and
 - (b) a non-presidential member with a relevant interest, experience or qualification.

Note The general president of the ACAT is responsible for allocating members to the ACAT for an application (see *ACT Civil and Administrative Tribunal Act 2008*, s 89).

79 Applications

- (1) This section applies to an application to the ACAT under this Act.

Note Making applications to the ACAT is dealt with under the *ACT Civil and Administrative Tribunal Act 2008*, s 10.

- (2) The ACAT must, as soon as practicable and not longer than 24 hours after the application is lodged, give a copy of the application to—
 - (a) the public advocate; and
 - (b) if the subject person is a child—the C&YP chief executive.

80 Appearance

- (1) The following people may appear and give evidence at the hearing of a proceeding:
 - (a) the person (the *subject person*) who is the subject of the proceeding;
 - (b) if the subject person is a child—
 - (i) the person's parents; and
 - (ii) the C&YP chief executive;
 - (c) if the subject person has a guardian—the guardian;
 - (d) the applicant (if any);
 - (e) the public advocate;
 - (f) the chief psychiatrist;
 - (g) the chief executive who has control of the administrative unit to which responsibility for the provision of treatment, care and protection for people with a mental dysfunction (other than people with a mental illness) is allocated;
 - (h) the discrimination commissioner.
- (2) Other people may appear and give evidence at the hearing with the leave of the ACAT.
- (3) This section does not prevent a person from making a written submission to the ACAT in relation to a proceeding.

81 Representation of children

- (1) This section applies in relation to a proceeding if—
 - (a) the subject person is a child; and
 - (b) the child is not separately represented; and

- (c) it appears to the ACAT that the child should be separately represented.
- (2) The ACAT may, on its own initiative or on the application of a person (including the child)—
 - (a) adjourn the proceeding to allow the child to obtain representation; and
 - (b) give reasonably necessary advice and assistance to the child to allow the child to obtain representation.

82 Subpoena to appear in person

- (1) This section applies if the ACAT is satisfied that it is necessary for the subject person to be present at the hearing of the proceeding.
- (2) The ACAT may require the person to appear at the hearing by subpoena given under the *ACT Civil and Administrative Tribunal Act 2008*, section 41.
- (3) However, the ACAT must not require the person to appear at the hearing by subpoena if satisfied that the appearance of the subject person before the ACAT is likely to increase substantially—
 - (a) any risk to the subject person’s health or safety; or
 - (b) the risk of serious harm to others.

Note If a person who is subpoenaed does not appear before the ACAT, the ACAT may issue a warrant to arrest the person (see *ACT Civil and Administrative Tribunal Act 2008*, s 42).

83 Person subpoenaed in custody

- (1) This section applies if the subject person—
 - (a) is given a subpoena under the *ACT Civil and Administrative Tribunal Act 2008*, section 41; and
 - (b) is in the custody of another person.

- (2) The ACAT may order the other person ensure that the subject person appears before the ACAT in accordance with the subpoena.

84 Directions to registrar

- (1) After considering an assessment of the subject person for a proceeding, but before holding an inquiry or review, the general president of the ACAT may give to the registrar the directions the general president considers appropriate to—
- (a) define and limit the relevant matters in the proceeding, including—
 - (i) the alternative treatments, programs and other services that are available and may be appropriate for the subject person; and
 - (ii) the evidence that appears to be relevant to the proper disposition of the matter; and
 - (iii) any unusual or urgent factors requiring special attention; and
 - (b) ensure all necessary measures are taken to allow the inquiry or review to proceed as quickly as possible, including ensuring that—
 - (i) all relevant particulars have been provided; and
 - (ii) people who may be entitled to appear and give evidence in the proceeding have been notified, the people's availability confirmed and any related matters requiring special attention have been dealt with; and
 - (iii) people who may wish to apply for leave to appear and give evidence in the proceeding have been notified; and
 - (iv) people not entitled to appear in the proceeding but who may be interested in making written submissions about the matter have been given an opportunity to do so; and

- (v) issues (if any) that may be decided before the inquiry or review have been identified.
- (2) However, the general president of the ACAT must not give a direction under subsection (1) in a proceeding in relation to—
- (a) the treatment, care, control, rehabilitation and protection of a person found unfit to plead; or
 - (b) the treatment, care, control, rehabilitation and protection of a person found not guilty of a criminal offence because of mental impairment; or
 - (c) a request by a court to provide advice in relation to the sentencing of a person before the court.

85 Notice of hearing

At least 3 days before the ACAT holds a hearing in relation to a matter under this Act, the ACAT must give written notice of the hearing to the following people:

- (a) if the subject person is not required to appear by a subpoena under the *ACT Civil and Administrative Tribunal Act 2008*, section 41 for a reason other than because section 82 (3) (Subpoena to appear in person) applies in relation to the person—the subject person;
- (b) the representative of the subject person (if any);
- (c) if the subject person is a child—
 - (i) the subject person’s parents; and
 - (ii) the C&YP chief executive;
- (d) if the subject person has a guardian—the guardian;
- (e) the applicant (if any);
- (f) the public advocate;

- (g) the chief psychiatrist;
- (h) the care coordinator;
- (i) the chief executive who has control of the administrative unit to which responsibility for providing treatment, care and protection for people with a mental dysfunction (other than people with a mental illness) is allocated;
- (j) the discrimination commissioner;
- (k) anyone else the ACAT considers appropriate.

86 Hearings to be in private

- (1) A hearing of a proceeding in relation to a subject person must be held in private.
- (2) However, if the subject person is not a child, the hearing may be held in public if—
 - (a) the subject person asks for the hearing be held in public; or
 - (b) the ACAT otherwise orders.
- (3) If a hearing is to be held in private, the hearing is taken to be a hearing to which the *ACT Civil and Administrative Tribunal Act 2008*, section 39 (Hearings in private or partly in private) applies.

Note Requirements for keeping private hearings secret are set out in the *ACT Civil and Administrative Tribunal Act 2008*, s 40.

87 Who is given a copy of the order?

- (1) The ACAT must give a copy of an ACAT order to the following people:
 - (a) the subject person;
 - (b) if the subject person has a representative—the representative;

- (c) if the subject person is a child—the child’s parents;
 - (d) if the subject person has a guardian—the guardian;
 - (e) if the subject person has made a power of attorney under the *Powers of Attorney Act 2006*—the attorney under the power of attorney;
 - (f) the public advocate;
 - (g) if the person was referred to the ACAT under section 13—the referring officer;
 - (h) if the person was ordered to submit to the jurisdiction of the ACAT by a court—the court;
 - (i) if the order requires the person to be admitted to a facility or institution—the person in charge of the facility or institution;
 - (j) anyone else ordered by the ACAT.
- (2) The ACAT must also give a copy of the following orders of the ACAT to the chief psychiatrist:
- (a) a psychiatric treatment order;
 - (b) a restriction order in relation to a person subject to a psychiatric treatment order;
 - (c) an electroconvulsive therapy order;
 - (d) an emergency electroconvulsive therapy order.
- (3) The ACAT must also give a copy of the following orders of the ACAT to the care coordinator:
- (a) a community care order;
 - (b) a restriction order in relation to a person subject to a community care order.

- (4) The ACAT must give a copy of an emergency electroconvulsive therapy order to the people mentioned in subsection (1) and (2) in relation to the order within 24 hours after the order is made.

Note For how documents may be served, see the Legislation Act, pt 19.5.

[1.519] Division 12.4

substitute

Division 12.4 Notification and review of decisions

136 Meaning of *reviewable decision*—div 12.4

In this division:

reviewable decision means a decision mentioned in schedule 1, column 3 under a provision of this Act mentioned in column 2 in relation to the decision.

137 Reviewable decision notices

If a person makes a reviewable decision, the person must give a reviewable decision notice to each entity mentioned in schedule 1, column 4 in relation to the decision.

Note 1 The person must also take reasonable steps to give a reviewable decision notice to any other person whose interests are affected by the decision (see *ACT Civil and Administrative Tribunal Act 2008*, s 67A).

Note 2 The requirements for reviewable decision notices are prescribed under the *ACT Civil and Administrative Tribunal Act 2008*.

137A Applications for review

The following may apply to the ACAT for a review of a reviewable decision:

- (a) an entity mentioned in schedule 1, column 4 in relation to the decision;

(b) any other person whose interests are affected by the decision.

Note If a form is approved under the *ACT Civil and Administrative Tribunal Act 2008* for the application, the form must be used.

[1.520] Section 141

substitute

141 Appeals from ACAT to Supreme Court

- (1) An appeal to the Supreme Court from a decision of the ACAT in a proceeding may be brought by—
 - (a) someone in relation to whom the decision was made; or
 - (b) someone who appeared, or was entitled to appear under section 80 (1) (Appearance), before the ACAT in the proceeding; or
 - (c) the discrimination commissioner; or
 - (d) anyone else with the court's leave.

Note See the *ACT Civil and Administrative Tribunal Act 2008*, pt 8.
- (2) The *Magistrates Court Act 1930*, section 214 (3) and (4) (Appeals in cases other than civil cases) applies in relation to an appeal under this section as if it were an appeal mentioned in that Act, section 214 (1).
- (3) The *ACT Civil and Administrative Tribunal Act 2008*, section 86 (Appeal to Supreme Court) and section 87 (Sending documents and things to Supreme Court) do not apply to a decision or appeal to which this section applies.

[1.521] Section 142 (2)

substitute

- (2) Despite anything in the *Guardianship and Management of Property Act 1991*, section 70 (ACAT may consent to prescribed medical procedures), the ACAT must not, while exercising its jurisdiction under the Act—
- (a) make an order in relation to any consent to treatment for mental illness, electroconvulsive therapy or psychiatric surgery; and
 - (b) make an order in relation to a person contrary to any community care order (or restriction order) made in relation to the person.

[1.522] Section 145

substitute

145 Certain rights unaffected

Nothing in this Act prevents a person in relation to whom no ACAT order is in force—

- (a) refusing to receive particular treatment or care at a mental health facility; or
- (b) discharging himself or herself from the facility.

[1.523] New schedule 1

insert

Schedule 1 Reviewable decisions

(see div 12.4)

column 1 item	column 2 section	column 3 decision	column 4 entity
1	125 (1)	refuse to issue licence	applicant for licence
2	126 (4)	refuse to renew licence	applicant for renewal of licence
3	127 (1) (a)	refuse to vary condition on licence	licensee
4	127 (1) (b)	refuse to revoke condition on licence	licensee
5	127 (1) (c)	refuse to impose condition on licence	licensee
6	127 (3)	vary condition on licence	licensee
7	127 (3)	revoke condition on licence	licensee

column 1 item	column 2 section	column 3 decision	column 4 entity
8	127 (3)	impose condition on licence	licensee
9	129 (2)	cancel licence	licensee
10	130 (5)	refuse to restore licence	former licensee

[1.524] Dictionary, note 2, new dot point

insert

- ACAT

[1.525] Dictionary, note 2, dot points

omit

- guardianship tribunal

[1.526] Dictionary, note 2, new dot point

insert

- reviewable decision notice

[1.527] Dictionary, new definition of *ACAT mental health provision*

insert

ACAT mental health provision—see the *Children and Young People Act 2008*, section 420.

[1.528] Dictionary, definitions of *applicant* and *application*

substitute

applicant means a person who applies to the ACAT, and includes a referring officer who refers an alleged offender to the ACAT under section 13.

application means an application to the ACAT, and includes a referral under section 13.

[1.529] Dictionary, new definition of *assessment order*

insert

assessment order, for division 4.2—see section 15.

[1.530] Dictionary, definitions of *community member* and *deputy president*

omit

[1.531] Dictionary, new definition of *general president*

insert

general president, of the ACAT—see the *ACT Civil and Administrative Tribunal Act 2008*, dictionary.

[1.532] Dictionary, definitions of *member*, *mental health services member* and *mental health tribunal provision*

omit

[1.533] Dictionary, definition of *non-presidential member*

substitute

non-presidential member, of the ACAT—see the *ACT Civil and Administrative Tribunal Act 2008*, dictionary.

[1.534] Dictionary, definition of *offender with a mental impairment*

omit

tribunal

substitute

ACAT

[1.535] Dictionary, definition of *president*

omit

[1.536] Dictionary, definitions of *presidential member* and *proceeding*

substitute

presidential member, of the ACAT—see the *ACT Civil and Administrative Tribunal Act 2008*, dictionary.

proceeding means an application to, or other proceeding in, the ACAT.

[1.537] Dictionary, definitions of *psychiatrist member*, *psychologist member* and *registrar*

omit

[1.538] Dictionary, new definitions

insert

reviewable decision, for division 12.4 (Notification and review of decisions)—see section 136.

subject person, for part 9 (Procedural matters—ACAT)—see section 76.

[1.539] Dictionary, definition of *tribunal*

omit

[1.540] Further amendments, mentions of *tribunal*

omit

tribunal

substitute

ACAT

in

- section 25
- section 26, except paragraph (n)
- section 28
- section 32
- section 34
- section 36
- section 36D
- section 36F
- section 36G
- section 36K
- section 36L
- section 41
- section 46
- section 47
- section 55G
- section 55N
- section 57
- section 59
- section 68
- section 70
- section 70A
- sections 72 to 75
- section 120B
- section 138

Part 1.39 Planning and Development Act 2007

[1.541] Section 163 (3) and note

substitute

- (3) To remove any doubt, if neither the planning and land authority nor the Minister has decided an application under section 162, the authority is taken to have decided to refuse the application under the *ACT Civil and Administrative Tribunal Act 2008*, section 12 (When no action taken to be decision).

Note Because a decision of the ACAT on review is taken to have been a decision of the original decision-maker, the planning and land authority or Minister will not be able to approve an application if the ACAT has decided an application for review of the deemed refusal (see *ACT Civil and Administrative Tribunal Act 2008*, s 69).

[1.542] Section 170 (3), note

substitute

Note If the notice is given to a person who may apply to the ACAT for review of the decision to which it relates, the notice must be a reviewable decision notice (see s 408 (2)).

[1.543] Section 171 (2)

substitute

- (2) However, to remove any doubt, the planning and land authority need not give notice of a decision deemed under the *ACT Civil and Administrative Tribunal Act 2008*, section 12 (When no action taken to be decision) to have been made to refuse a development application.

[1.544] Section 171 (3), note

substitute

Note If the notice is given to a person who may apply to the ACAT for review of the decision to which it relates, the notice must be a reviewable decision notice (see s 408 (2)).

[1.545] Section 178 heading

substitute

178 When development approvals take effect—ACAT review

[1.546] Section 178 (1) (b)

substitute

(b) application is made to the ACAT for review of the decision to approve the application and the ACAT confirms the decision (whether completely or partly); and

[1.547] Section 195, note

substitute

Note If the notice is given to a person who may apply to the ACAT for review of the decision to which it relates, the notice must be a reviewable decision notice (see s 408 (2)).

[1.548] Section 257 (4), note

substitute

Note Because a decision of the ACAT on review is taken to have been a decision of the original decision-maker, the planning and land authority will not be able to decide that the lease is not concessional if the ACAT has decided an application for review of the deemed decision (see *ACT Civil and Administrative Tribunal Act 2008*, s 69).

[1.549] Section 257 (5), note

substitute

Note If the notice is given to a person who may apply to the ACAT for review of the decision to which it relates, the notice must be a reviewable decision notice (see s 408 (2)).

[1.550] Section 258 (4), note 1

substitute

Note 1 If the notice is given to a person who may apply to the ACAT for review of the decision to which it relates, the notice must be a reviewable decision notice (see s 408 (2)).

[1.551] Section 259 (1) (b) (except note)

substitute

(b) either—

- (i) no application is made to the ACAT for review of the decision that the lease is concessional within the time allowed for applications; or
- (ii) an application for review of the decision is made and the ACAT decides to confirm the decision.

[1.552] Section 272B (3), note

substitute

Note If the notice is given to a person who may apply to the ACAT for review of the decision to which it relates, the notice must be a reviewable decision notice (see s 408 (2)).

[1.553] Section 272D (3)

substitute

- (3) To remove any doubt, if the planning and land authority has not decided the application under section 272B, the authority is taken to have decided to refuse the application under the *ACT Civil and Administrative Tribunal Act 2008*, section 12 (When no action taken to be decision).

[1.554] Sections 408 and 409

substitute

408 ACAT review—general

- (1) An eligible entity for a reviewable decision may apply to the ACAT for review of the decision.
- (2) If a decision-maker makes a reviewable decision, the decision-maker must give a reviewable decision notice only to—
 - (a) each eligible entity for the decision; and
 - (b) each interested entity for the decision.

Note The requirements for reviewable decision notices are prescribed under the *ACT Civil and Administrative Tribunal Act 2008*.

409 ACAT review—people who made representations etc

- (1) This section applies to a reviewable decision in relation to a development application if the person applying to the ACAT for review is not the applicant for the development application.

- (2) The application for review must be made not later than 4 weeks after—
- (a) for a decision to which section 176 (When development approvals take effect—single representation with ACAT review right) applies—the day the person was told about the decision; or
 - (b) for a decision to which section 177 (When development approvals take effect—multiple representations with ACAT review right) applies—the day final notice of the decision was given.
- (3) The period for making the application for review may not be extended under the *ACT Civil and Administrative Tribunal Act 2008*.

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

- (4) In this section:
final notice—see section 177 (3).

[1.555] Dictionary, note 2, dot points

omit

- AAT

substitute

- ACAT

[1.556] Dictionary, note 2, new dot point

insert

- reviewable decision notice

[1.557] Further amendments, mentions of AAT

omit

AAT

substitute

ACAT

in

- section 175 (1) (b) (ii)
- sections 176 and 177
- section 178 (2)
- section 179 (2) (c) (i)
- section 180 (2) (c) (i)
- section 182
- section 191 (1) (c)
- section 192
- section 193 (2)
- section 362 (1) (c)
- section 368 (2).

Part 1.40 Powers of Attorney Act 2006

[1.558] Section 14 (4)

substitute

- (4) A person for whom a guardian or manager is appointed under the *Guardianship and Management of Property Act 1991* cannot make an enduring power of attorney unless the ACAT approves the provisions of the power.

[1.559] Section 27 (2)

substitute

- (2) One or more of the attorneys, or another interested person in relation to the power of attorney, may apply to the ACAT for directions or an order.

[1.560] Section 43

omit

guardianship tribunal

substitute

ACAT

[1.561] Chapter 5 heading, note

substitute

Note An enduring power of attorney, or part of the power, may also be revoked by the ACAT.

[1.562] Section 53 (2) and note

substitute

- (2) However, if a principal has impaired decision-making capacity for a matter, an attorney under an enduring power of attorney may only resign as attorney for the matter with the leave of the ACAT.

Note The ACAT may appoint a guardian for the principal (see *Guardianship and Management of Property Act 1991*, s 7).

[1.563] Section 70, definition of *invalidity*, example

substitute

Example—par (a) (ii)

A person purports to make a power of attorney but a guardian has been appointed for the person and the ACAT has not approved the provisions of the power (see s 14 (4)).

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).

[1.564] Section 71

substitute

71 Protection if court or ACAT orders etc

- (1) This section applies if a court or the ACAT gives an order or direction in relation to the exercise of power under a power of attorney.
- (2) An attorney who acts in accordance with the order or direction is taken to have complied with this Act.
- (3) However, subsection (2) does not apply in relation to the order or direction if the attorney knowingly gave the court or ACAT false or misleading information relevant to the order or direction.

[1.565] Chapter 7 heading

substitute

Chapter 7 Proceedings and rights

Note The *Guardianship and Management of Property Act 1991*, pt 3 deals with proceedings in relation to enduring powers of attorney by the ACAT.

[1.566] Part 7.2

omit

[1.567] Section 83 (2)

substitute

- (2) The public trustee must, if asked by the ACAT, assist the ACAT by examining and reporting on the books, accounts or other records of transactions carried out by an attorney for the principal under the enduring power of attorney.

[1.568] Section 84

omit

guardianship tribunal

substitute

ACAT

[1.569] Dictionary, note 2, dot points

omit

- guardianship tribunal

[1.570] Dictionary, definition of *interested person*

substitute

interested person, for chapter 7 (Proceedings and rights)—see section 74.

Part 1.41 **Prohibited Weapons Act 1996**

[1.571] Section 14

substitute

Part 3A **Notification and review of decisions**

14 **Meaning of *reviewable decision*—pt 3A**

In this part:

reviewable decision means a decision mentioned in schedule 2, column 3 under a provision of this Act mentioned in column 2 in relation to the decision.

14A **Reviewable decision notices**

If a person makes a reviewable decision, the person must give a reviewable decision notice to each entity mentioned in schedule 2, column 4 in relation to the decision.

Note 1 The person must also take reasonable steps to give a reviewable decision notice to any other person whose interests are affected by the decision (see *ACT Civil and Administrative Tribunal Act 2008*, s 67A).

Note 2 The requirements for reviewable decision notices are prescribed under the *ACT Civil and Administrative Tribunal Act 2008*.

14B **Applications for review**

The following may apply to the ACAT for a review of a reviewable decision:

- (a) an entity mentioned in schedule 2, column 4 in relation to the decision;

(b) any other person whose interests are affected by the decision.

Note If a form is approved under the *ACT Civil and Administrative Tribunal Act 2008* for the application, the form must be used.

[1.572] New schedule 2

insert

Schedule 2 Reviewable decisions

(see pt 3A)

column 1 item	column 2 section	column 3 decision	column 4 entity
1	9 (1)	refuse to issue permit	applicant for permit
2	9 (5)	cancel permit	person who held permit

[1.573] Dictionary, note 2, dot points

omit

- AAT

[1.574] Dictionary, note 2, new dot points

insert

- ACAT
- reviewable decision notice

[1.575] Dictionary, new definition of *reviewable decision*

insert

reviewable decision, for part 3A (Notification and review of decisions)—see section 14.

Part 1.42 Public Health Act 1997

[1.576] Section 66W

substitute

66W Transitional—uncompleted applications for ACAT review

- (1) This section applies if—
 - (a) before the commencement day, an application for review to the ACAT had been made in relation to an old approval; and
 - (b) immediately before the commencement day, the proceeding on the application had not ended.
- (2) If this section applies—
 - (a) the proceeding may be continued as if the application for review had been made in relation to the new approval; and
 - (b) the decision-maker is taken to be the chief health officer.
- (3) For this section, the ACAT may give any direction the ACAT considers necessary or desirable to facilitate a matter in relation to the application for review.
- (4) This section is a law to which the Legislation Act, section 88 (Repeal does not end effect of transitional laws etc) applies.
- (5) In this section:

new approval—see section 66V.

old approval—see section 66V.

[1.577] Sections 130 and 131

substitute

130 Meaning of *reviewable decision*—pt 9

In this part:

reviewable decision means a decision mentioned in table 130.1 or table 130.2 in this section, column 3 under a provision of this Act mentioned in column 2 in relation to the decision.

Table 130.1 Reviewable decisions—chief health officer

column 1 item	column 2 section	column 3 decision	column 4 entity
1	15B (1) (a)	impose conditions on appointment	analyst
2	15B (1) (b)	amend appointment to impose, amend or revoke condition	analyst
3	15D	suspend or cancel appointment	analyst
4	66C	refuse to grant approval to supply syringes	applicant for approval
5	66C	grant approval to supply syringes subject to condition	applicant for approval

column 1 item	column 2 section	column 3 decision	column 4 entity
6	66E	cancelling approval to supply syringes	holder of the approval
7	66O	refuse to give vending machine approval	applicant for approval
8	66R	cancel vending machine approval	holder of the approval

Table 130.2 Reviewable decisions—Minister

column 1 item	column 2 section	column 3 decision	column 3 entity
1	30 (1)	refuse to grant activity licence	applicant for licence
2	34 (1)	refuse to vary activity licence	licensee
3	37 (1)	refuse to approve transfer of activity licence	licensee and proposed transferee
4	45 (1)	refuse to grant procedure licence	applicant for licence
5	49 (1)	refuse to vary procedure licence	licensee
6	56G	refuse to register applicant for registration	applicant for registration

column 1 item	column 2 section	column 3 decision	column 3 entity
7	56N	refuse to approve transfer of registration	registered person and proposed transferee
8	56N	refuse to vary registration period in association with transfer of registration	transferee
9	56P (4)	suspend registration of registered person	registered person
10	56P (4)	cancel registration of registered person	registered person

131 Reviewable decision notices

If a person makes a reviewable decision, the person must give a reviewable decision notice to each entity mentioned in table 130.1 or table 130.2, column 4 in relation to the decision.

Note 1 The person must also take reasonable steps to give a reviewable decision notice to any other person whose interests are affected by the decision (see *ACT Civil and Administrative Tribunal Act 2008*, s 67A).

Note 2 The requirements for reviewable decision notices are prescribed under the *ACT Civil and Administrative Tribunal Act 2008*.

131A Applications for review

The following may apply to the ACAT for a review of a reviewable decision:

- (a) an entity mentioned in table 130.1 or table 130.2, column 4 in relation to the decision;
- (b) any other person whose interests are affected by the decision.

Note If a form is approved under the *ACT Civil and Administrative Tribunal Act 2008* for the application, the form must be used.

[1.578] Dictionary, note 2, new dot points

insert

- ACAT
- reviewable decision notice

[1.579] Dictionary, new definition of *reviewable decision*

insert

reviewable decision, for part 9 (Review and appeals)—see section 130.

Part 1.43 Remuneration Tribunal Act 1995

[1.580] Schedule 1, part 1.2, new dot points

after 2nd dot point, insert

- a presidential member of the ACAT
- a non-presidential member of the ACAT, other than an assessor

[1.581] Dictionary, note 2, new dot point

insert

- ACAT

[1.582] Dictionary, new definitions

insert

assessor, of the ACAT—see the *ACT Civil and Administrative Tribunal Act 2008*, dictionary.

non-presidential member, of the ACAT—see the *ACT Civil and Administrative Tribunal Act 2008*, dictionary.

presidential member, of the ACAT—see the *ACT Civil and Administrative Tribunal Act 2008*, dictionary.

Part 1.44 Residential Tenancies Act 1997

[1.583] Section 32 (2)

omit

registrar's

substitute

chief executive's

[1.584] Section 35

substitute

35 Disputes about all or part of bond

- (1) This section applies if—
 - (a) a tenant or lessor is given a notice (a *notice of application*) about an application under section 33; and
 - (b) the tenant or lessor gives the Territory a written notice (a *notice of dispute*) disputing the application within 2 weeks after the day the notice of application is given to the tenant or lessor.

- (2) The Territory must refer the application and notice of dispute to the ACAT as a tenancy dispute.
- (3) However, the Territory need not refer the application and notice of dispute to the ACAT if the application is in accordance with an order of the ACAT stating that an amount is to be paid from an amount of bond.
- (4) If a notice of dispute relates to only part of an amount of bond claimed, the Territory must, before referring the application and notice of dispute to the ACAT, release the amount of the bond that is not in dispute to the appropriate person.

[1.585] Section 61, note

substitute

Note If there is a dispute about the date of abandonment, the parties may apply to the ACAT for an interim order declaring when the premises were abandoned (see *ACT Civil and Administrative Tribunal Act 2008*, s 53).

[1.586] Part 6

substitute

Part 6 Resolution of residential tenancy and occupancy disputes

Division 6.1 Important concepts

72 Meaning of *tenancy dispute*

- (1) For this Act, a dispute is a *tenancy dispute* if it—
 - (a) is between the parties to a residential tenancy agreement; and
 - (b) is about, arises from, or relates to, the agreement.

- (2) A *tenancy dispute* includes—
- (a) a dispute if an application relating to the dispute may be made under part 4 (Termination of residential tenancy agreements) or part 5 (Rental rate increases); and
 - (b) an application for compensation under this Act.

73 Meaning of *occupancy dispute*

For this Act, a dispute is an *occupancy dispute* if it—

- (a) is between the parties to an occupancy agreement; and
- (b) is about, or relates to, the agreement.

74 ACAT to have regard to occupancy principles

In considering a matter, or making a decision, under this part in relation to an occupancy dispute, the ACAT must have regard to the occupancy principles.

Division 6.2 Action by registrar

75 Assistance with inquiries about residential tenancy and occupancy agreements

The registrar may give the assistance the registrar considers appropriate in relation to an inquiry about a residential tenancy agreement or occupancy agreement, including—

- (a) referring the person making the inquiry to services provided by the public or private sector that give advice about residential tenancy or occupancy matters generally; and

- (b) referring the person to services provided by the public or private sector for the resolution of tenancy disputes or occupancy disputes.

Note The registrar may also help a person make an application to the ACAT (see *ACT Civil and Administrative Tribunal Act 2008*, s 13).

Division 6.3 Jurisdiction of ACAT—this Act, standard residential tenancy terms and standard occupancy terms

76 Jurisdiction of ACAT under this Act etc

- (1) The ACAT has exclusive jurisdiction to hear and decide any matter that may be the subject of an application to the ACAT under—
 - (a) this Act; or
 - (b) the standard residential tenancy terms; or
 - (c) the standard occupancy terms.

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

- (2) However, the ACAT does not have jurisdiction to make an order for—
 - (a) the payment of an amount that is more than \$25 000; or
 - (b) work of a value that is more than \$25 000.
- (3) This section is subject to—
 - (a) section 78 (Extended jurisdiction of ACAT with agreement of parties); and

- (b) the Self-Government Act, section 48A (Jurisdiction and powers of the Supreme Court).

Note The Self-Government Act, s 48A provides as follows:

- (1) The Supreme Court is to have all original and appellate jurisdiction that is necessary for the administration of justice in the Territory.
- (2) In addition, the Supreme Court may have such further jurisdiction as is conferred on it by any Act, enactment or Ordinance, or any law made under any Act, enactment or Ordinance.
- (3) The Supreme Court is not bound to exercise any powers where it has concurrent jurisdiction with another court or tribunal.

77 Saving of court jurisdiction

- (1) A claim for payment of an amount, or for work of a value, that is more than \$10 000 may be made in a court competent to hear and decide claims based on contract for the amount claimed.
- (2) If a claim mentioned in subsection (1) may be made—
 - (a) the claimant may also make any other claim related to the relevant tenancy dispute or occupancy dispute; and
 - (b) the court in which the proceeding is brought may exercise the powers of the ACAT under this Act.
- (3) This section has effect despite section 76.

78 Extended jurisdiction of ACAT with agreement of parties

- (1) This section applies if—
 - (a) an application (the *original application*) is made to the ACAT under—
 - (i) this Act; or
 - (ii) the standard residential tenancy terms; or

(iii) the standard occupancy terms; and

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

(b) the parties to the proceeding agree to the ACAT exercising extended jurisdiction under this section.

(2) The ACAT has jurisdiction (*extended jurisdiction*) to hear and decide any matter that—

(a) arises out of, or is ancillary to, the dispute that gave rise to the original application; and

(b) the Magistrates Court has jurisdiction to hear and decide under the *Magistrates Court Act 1930*, part 4.2 (Civil jurisdiction).

(3) If the ACAT is exercising extended jurisdiction, the ACAT has the same jurisdiction and powers as the Magistrates Court has under the *Magistrates Court Act 1930*, part 4.2 (Civil jurisdiction).

Note The Magistrates Court has jurisdiction to hear and decide any personal action at law if the amount claimed is not more than \$50 000 (see *Magistrates Court Act 1930*, s 257).

(4) However, a provision of the *Magistrates Court Act 1930*, part 4.2 prescribed by a rule under the *ACT Civil and Administrative Tribunal Act 2008*, section 22 (2) does not apply in relation to the ACAT when exercising extended jurisdiction.

Division 6.4 Applications to ACAT

79 Who may apply to ACAT?

(1) A party to a residential tenancy agreement (including a child) may apply to the ACAT for resolution of a tenancy dispute.

(2) A party to an occupancy agreement (including a child) may apply to the ACAT for resolution of an occupancy dispute.

80 Applications to ACAT by children—application of this Act etc

This Act and the *ACT Civil and Administrative Tribunal Act 2008* apply in relation to an application made by a child to the ACAT as if the child were an adult.

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

Division 6.5 Powers and decisions of ACAT

81 ACAT to assist parties to tenancy and occupancy disputes

The ACAT must actively assist the parties to a tenancy or occupancy dispute to understand the hearing process and present their case.

82 Disputes about agreements no longer in force

If a residential tenancy agreement or occupancy agreement is no longer in force, the ACAT may decide a tenancy dispute or occupancy dispute arising from the agreement while it was in force only if—

- (a) this Act applied to the agreement while the agreement was in force; and
- (b) a party applies to the ACAT about the dispute within 6 years after the day, or the last day, the conduct giving rise to the dispute happened.

83 Orders by ACAT

Without limiting the orders the ACAT may make, the ACAT may make the following orders in relation to an application about a tenancy dispute or occupancy dispute:

- (a) an order restraining any action in breach of a residential tenancy agreement or occupancy agreement;
- (b) an order requiring performance of a residential tenancy agreement or occupancy agreement;
- (c) an order requiring the payment of an amount to the Territory or a person;
- (d) an order requiring the payment of compensation for loss of rent or any other loss caused by the breach of a residential tenancy agreement or occupancy agreement;
- (e) an order stating that an amount (not more than the amount of bond paid into the trust account in relation to the relevant residential tenancy agreement) be paid to the lessor from the trust account;
- (f) an order restoring a residential tenancy agreement or occupancy agreement and granting the former tenant or occupant possession of premises—
 - (i) from which the person was evicted in contravention of this Act; or
 - (ii) that the person vacated in accordance with a termination notice that was not in the form (if any) approved under section 133 (Approved forms—Minister) for the notice;
- (g) an order requiring payment of all or part of the rent payable under the standard residential tenancy terms or standard occupancy terms into the ACAT until the ACAT orders otherwise;

- (h) an order directing payment out of any amount paid into the ACAT as appropriate;
- (i) an order terminating a residential tenancy agreement or occupancy agreement and granting vacant possession of the relevant premises to the applicant for the order;
- (j) an order declaring the premises were abandoned on a particular day;
- (k) an order correcting a defect in a notice or in the service of a notice.

Note 1 The *ACT Civil and Administrative Tribunal Act 2008*, s 56 sets out other orders that the ACAT may make.

Note 2 The ACAT may make interim orders (see *ACT Civil and Administrative Tribunal Act 2008*, s 53).

84 Notice of intention to vacate—award of compensation

- (1) If a lessor received a notice of intention to vacate before the end of a fixed term agreement, and the date nominated in the notice as the date when the tenant intends to vacate is a date before the end of the agreement, the lessor may—
 - (a) accept the notice; or
 - (b) apply to the ACAT for compensation for—
 - (i) the loss of the rent that the lessor would have received had the agreement continued to the end of its term; and
 - (ii) the reasonable costs of advertising the premises for lease and of giving a right to occupy the premises to another person.
- (2) On application, the ACAT may award compensation of the kind mentioned in subsection (1) (b).

- (3) The amount of compensation the ACAT may award—
- (a) under subsection (1) (b) (i) must not be more than the lesser of the following:
 - (i) 25 weeks rent;
 - (ii) rent in relation to the unexpired part of the agreement;and
 - (b) under subsection (1) (b) (ii) must not be more than 1 week's rent.
- (4) In deciding the amount of compensation that may be awarded in relation to the reasonable costs of advertising, the ACAT must have regard to when, apart from the vacation of the premises—
- (a) the agreement would have ended; and
 - (b) the lessor would have incurred the costs.

85 Substitution of tenant

- (1) This section applies if—
- (a) the tenant, or a co-tenant, (the *removed person*) has given an undertaking to a court to leave the premises; or
 - (b) a court has made an order, other than an interim order, to remove the removed person from the premises.
- (2) An occupant (the *occupant*) of the premises, other than the removed person, may apply to the ACAT to be the tenant or co-tenant under the residential tenancy agreement for the premises instead of the removed person.
- (3) To remove any doubt, the application may be made by the occupant even though the occupant is not a tenant or co-tenant under the residential tenancy agreement.

- (4) The ACAT may make an order substituting the occupant as the tenant, or co-tenant, if—
 - (a) the grounds of the application are proved; and
 - (b) the lessor has been given an opportunity to be heard on the application.
- (5) If the application is in relation to premises leased under an approved housing assistance program under the *Housing Assistance Act 2007*, the ACAT must not make an order under subsection (5) that is inconsistent with the eligibility criteria under the program.
- (6) The order is subject to any condition stated in it by the ACAT.

Division 6.6 Enforcement of ACAT orders

86 Failure to comply with ACAT orders

- (1) A party to a hearing must not fail to comply with an order of the ACAT.
- (2) If a person contravenes subsection (1), the ACAT may order the person to pay a stated amount (not more than \$5 000) to the Territory.
- (3) A person commits an offence if—
 - (a) the person contravenes subsection (1) (the *first contravention*); and
 - (b) the ACAT makes an order under subsection (2) in relation to the first contravention; and
 - (c) within 1 year immediately after the day the first contravention happens, the person again contravenes subsection (1) (the *subsequent contravention*); and

(d) the first and subsequent contraventions are not against orders arising from the same proceeding.

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

(4) Subsection (3) does not apply if the person has a reasonable excuse for the first or subsequent contravention.

[1.587] Parts 6B to 8

omit

[1.588] Section 129

omit

[1.589] Section 136 (2)

substitute

- (2) A regulation may make provision in relation to the following:
- (a) the keeping of records;
 - (b) tenancy databases.

[1.590] Dictionary, note 2, new dot point

insert

- ACAT

[1.591] Dictionary, definitions of *approved mediator* and *member of the tribunal*

omit

[1.592] Dictionary, definition of *occupancy dispute*

substitute

occupancy dispute, for part 6 (Resolution of residential tenancy and occupancy disputes)—see section 73.

**[1.593] Dictionary, definitions of *party*, *preliminary conference*,
president and *referee***

omit

**[1.594] Dictionary, definitions of *registrar*, *tenancy dispute* and
*tribunal***

substitute

registrar means the registrar of the ACAT.

tenancy dispute—see section 72.

tribunal, for schedule 1, means the ACAT.

[1.595] Further amendments, mentions of *tribunal*

omit

tribunal

substitute

ACAT

in

- section 8 (1) (c) (ii)
- section 9 (1) (b)
- section 10
- section 15 (5)
- section 27 (2)
- section 31 (e)
- section 32 (3) (c)
- section 34 (1) (c)
- sections 36 to 39
- section 41 (a)
- sections 42 to 42B
- sections 43 to 46

- sections 47 to 57
- sections 58 to 60
- section 62
- sections 65 to 71
- sections 107E to 107H
- section 127A
- section 128 (2)
- section 133 (1).

Part 1.45 Residential Tenancies Regulation 1998

[1.596] Sections 6 and 7

omit

Part 1.46 Sale of Motor Vehicles Act 1977

[1.597] Section 13

substitute

13 Grant or refusal of licence

- (1) The registrar must grant a licence on application unless—
 - (a) the applicant for the grant of a licence fails to establish that the applicant is eligible for the grant of the licence; or
 - (b) the applicant does not comply with the requirements of—
 - (i) for an individual—section 10 (Applications for licences by individuals); or

- (ii) for a corporation—section 11 (Applications for licences by corporations).

Note Failure to grant a licence within a reasonable period is taken to be a decision not to grant the licence (see *ACT Civil and Administrative Tribunal Act 2008*, s 12).

- (2) However, the registrar must refuse to grant a licence to an applicant—
 - (a) if—
 - (i) an objection is lodged in response to a notice mentioned in section 11B (Notification of application); and
 - (ii) the registrar is satisfied on reasonable grounds that the objection is not frivolous or vexatious; or
 - (b) if the applicant is an individual—if—
 - (i) a police certificate indicates that the individual has been charged with, or convicted of, an offence; and
 - (ii) the registrar is satisfied, because of the charge or conviction, that the individual is an unsuitable person; or
 - (c) if the applicant is a corporation—if—
 - (i) a police certificate indicates that the corporation, or an executive officer of the corporation, has been charged with, or convicted of, an offence; and
 - (ii) the registrar is satisfied, because of the charge or conviction, that the corporation or executive officer is an unsuitable person.

13A Decision about licence application—requirement for further information etc

(1) The registrar may give a relevant person for an application written notice requiring the person to give the registrar stated further information or documents that the registrar reasonably needs to decide the application.

(2) If the relevant person does not comply with subsection (1), the registrar may refuse to consider the application further.

(3) In this section:

application means an application for the grant of a licence.

relevant person, for an application, means—

(a) if the applicant is an individual—the individual; or

(b) if the applicant is an corporation—the corporation or an executive officer of the corporation.

[1.598] Section 14C

substitute

14C Grant or refusal of renewal of licences

(1) The registrar must grant a licence renewal on application unless—

(a) the applicant for the renewal of a licence fails to establish that the applicant is eligible for the renewal of the licence; or

(b) the applicant does not comply with the requirements of section 14B that apply to the applicant.

Note Failure to renew a licence within a reasonable period is taken to be a decision not to renew the licence (see *ACT Civil and Administrative Tribunal Act 2008*, s 12).

- (2) However, the registrar must refuse to renew a licence—
- (a) if—
 - (i) an objection is lodged in response to a notice mentioned in section 11B (Notification of application); and
 - (ii) the registrar is satisfied on reasonable grounds that the objection is not frivolous or vexatious; or
 - (b) if an individual holds the licence—if—
 - (i) a police certificate indicates that the individual has been charged with, or convicted of, an offence; and
 - (ii) the registrar is satisfied, because of the charge or conviction, that the individual is an unsuitable person; or
 - (c) if a corporation holds the licence—if—
 - (i) a police certificate indicates that the corporation, or an executive officer of the corporation, has been charged with, or convicted of, an offence; and
 - (ii) the registrar is satisfied, because of the charge or conviction, that the corporation or executive officer is an unsuitable person.

14CA Decision about renewal application—requirement for further information etc

- (1) The registrar may give a relevant person for an application written notice requiring the person to give the registrar stated further information or documents that the registrar reasonably needs to decide the application.
- (2) If the relevant person does not comply with subsection (1), the registrar may refuse to consider the application further.

(3) In this section:

application means an application for the renewal of a licence.

relevant person, for an application, means—

- (a) if the applicant is an individual—the individual; or
- (b) if the applicant is an corporation—the corporation or an executive officer of the corporation.

[1.599] Section 14E (6) and (7)

omit

[1.600] Section 27

omit

[1.601] Section 45 (4)

omit

[1.602] Section 47

omit

- 2 if the licensee holds a vehicle sale licence, the licensee does not have sufficient material and financial resources to carry on the business in accordance with this Act

Note 1 See s 8 and s 9 for eligibility for the grant of a licence.

Note 2 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).

- (2) A ground for occupational discipline applies to a person who is no longer licensed if the ground applied to the person while licensed.

49 Registrar may apply to ACAT for occupational discipline

If the registrar believes on reasonable grounds that a ground for occupational discipline exists in relation to a licensee, the registrar may apply to the ACAT for an occupational discipline order in relation to the licensee.

Note The *ACT Civil and Administrative Tribunal Act 2008*, s 66 sets out occupational discipline orders the ACAT may make.

Part 8 Notification and review of decisions

50 Meaning of *reviewable decision*—pt 8

In this part:

reviewable decision means a decision mentioned in schedule 2, column 3 under a provision of this Act mentioned in column 2 in relation to the decision.

51 Reviewable decision notices

If a person makes a reviewable decision, the person must give a reviewable decision notice to each entity mentioned in schedule 2, column 4 in relation to the decision.

Note 1 The person must also take reasonable steps to give a reviewable decision notice to any other person whose interests are affected by the decision (see *ACT Civil and Administrative Tribunal Act 2008*, s 67A).

Note 2 The requirements for reviewable decision notices are prescribed under the *ACT Civil and Administrative Tribunal Act 2008*.

52 Applications for review

The following may apply to the ACAT for a review of a reviewable decision:

- (a) an entity mentioned in schedule 2, column 4 in relation to the decision;
- (b) any other person whose interests are affected by the decision.

Note If a form is approved under the *ACT Civil and Administrative Tribunal Act 2008* for the application, the form must be used.

[1.604] Section 89A (6) and (7)

omit

[1.605] New schedule 2

insert

Schedule 2 Reviewable decisions

(see pt 8)

column 1 item	column 2 section	column 3 decision	column 4 entity
1	6A (2)	refuse to give exemption	person who applied for exemption
2	10 (1) (g)	refuse to issue ACTPLA certificate	applicant for certificate
3	11 (1) (h)	refuse to issue ACTPLA certificate	applicant for certificate
4	13	refuse to grant licence	applicant for licence
5	14 (2)	state address of premises that is not address stated in application	applicant for licence
6	14B (e)	refuse to issue ACTPLA certificate	applicant for certificate
7	14C	refuse to renew licence	applicant for renewal

Schedule 1
Part 1.46

Legislation amended
Sale of Motor Vehicles Act 1977

Amendment [1.606]

column 1 item	column 2 section	column 3 decision	column 4 entity
8	14D (1)	issue renewed licence subject to condition	applicant for renewal
9	14D (2)	renew licence for shorter period than applied for or allowed by registrar	applicant for renewal
10	14E	refuse to vary licence	licensee
11	15 (4)	refuse to approve computer system for maintaining dealings register	licensee proposing to use computer system
12	89A (3)	refuse to grant authorisation	applicant for authorisation
13	89A (5)	grant authorisation for shorter period than applied for or allowed by registrar	applicant for authorisation

[1.606] Dictionary, note 2, new dot point

insert

- ACAT

[1.607] Dictionary, note 2, dot points

omit

- administrative appeals tribunal

[1.608] Dictionary, note 2, new dot points

insert

- occupational discipline order
- reviewable decision notice

[1.609] Dictionary, new definitions

insert

ground for occupational discipline—see section 48.

reviewable decision, for part 8 (Notification and review of decisions)—see section 50.

Part 1.47 Security Industry Act 2003

[1.610] Section 25 (2), new note

insert

Note The ACAT may also direct the commissioner for fair trading to place a condition on a person's licence (see *ACT Civil and Administrative Tribunal Act 2008*, s 66 (2) (g) (i)).

[1.611] Division 3.8

substitute

Division 3.8 Occupational discipline—licensees

30 Grounds for occupational discipline

- (1) Each of the following is a *ground for occupational discipline* in relation to a licensee:
 - (a) the licensee gave information in relation to the application for the licence that was false or misleading in a material particular;
 - (b) the licensee is not eligible to apply for, or be issued with, a licence of the class the licensee holds;

- (c) the licensee has contravened, or is contravening, this Act, whether or not the licensee has been convicted of an offence for the contravention;

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).

- (d) the licensee has contravened, or is contravening, a condition of the licence;

- (e) the licensee has committed a relevant offence, whether or not the licensee has been convicted of the offence;

Note **Relevant offence**—see the dictionary.

- (f) it is not otherwise in the public interest for the licensee to be licensed;

- (g) another ground prescribed by regulation.

Example—when licensee no longer eligible—par (b)

if the licensee were to apply for the licence the licensee holds, the licensee would not satisfy the competency standards prescribed by regulation for the licence

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).

- (2) A ground for occupational discipline applies to a licensee who is no longer licensed if the ground applied to the licensee while licensed.

31 **Commissioner may apply to ACAT for occupational discipline**

If the commissioner for fair trading believes on reasonable grounds that a ground for occupational discipline exists in relation to a licensee, the commissioner may apply to the ACAT for an occupational discipline order in relation to the licensee.

Note The *ACT Civil and Administrative Tribunal Act 2008*, s 66 sets out occupational discipline orders the ACAT may make.

[1.612] Division 3.10

substitute

Division 3.10 Notification and review of decisions

36 Meaning of *reviewable decision*—div 3.10

In this division:

reviewable decision means a decision mentioned in schedule 1, column 3 under a provision of this Act mentioned in column 2 in relation to the decision.

36A Reviewable decision notices

If a person makes a reviewable decision, the person must give a reviewable decision notice to each entity mentioned in schedule 1, column 4 in relation to the decision.

Note 1 The person must also take reasonable steps to give a reviewable decision notice to any other person whose interests are affected by the decision (see *ACT Civil and Administrative Tribunal Act 2008*, s 67A).

Note 2 The requirements for reviewable decision notices are prescribed under the *ACT Civil and Administrative Tribunal Act 2008*.

37 Applications for review

The following may apply to the ACAT for a review of a reviewable decision:

- (a) an entity mentioned in schedule 1, column 4 in relation to the decision;
- (b) any other person whose interests are affected by the decision.

Note If a form is approved under the *ACT Civil and Administrative Tribunal Act 2008* for the application, the form must be used.

[1.613] New schedule 1

insert

Schedule 1 Reviewable decisions

(see div 3.10)

column 1 item	column 2 section	column 3 decision	column 4 entity
1	25	issue licence other than temporary licence subject to condition	applicant for licence
2	25	refuse to issue licence other than temporary licence	applicant for licence
3	26	issue temporary licence subject to condition	applicant for licence
4	26	refuse to issue temporary licence	applicant for licence
5	27	refuse to vary licence	licensee

column 1 item	column 2 section	column 3 decision	column 4 entity
6	42A	refuse to exempt licensee from a provision of s 42	licensee
7	42A	exempt licensee from a provision of s 42 subject to condition	licensee

[1.614] Dictionary, note 2, new dot points

insert

- ACAT
- occupational discipline order
- reviewable decision notice

[1.615] Dictionary, definitions of *grounds for disciplinary action* and *reviewable decision*

substitute

ground for occupational discipline—see section 30.

reviewable decision, for division 3.10 (Notification and review of decisions)—see section 36.

Part 1.48 Surveyors Act 2007

[1.616] Section 3, note 1

substitute

Note 1 The dictionary at the end of this Act defines certain terms used in this Act, and includes references (*signpost definitions*) to other terms defined elsewhere in this Act.

For example, the signpost definition ‘*advisory committee member*—see section 64.’ means that the term ‘advisory committee member’ is defined in that section.

[1.617] Section 10 (c)

substitute

- (c) if the registration is cancelled by the ACAT—when the cancellation takes effect; or

[1.618] Division 3.3

substitute

Division 3.3 Occupational discipline—surveyors

25 Meaning of *surveyor*—div 3.3

In this division:

surveyor—

- (a) in relation to an act or omission, means—
- (i) a registered person; or
 - (ii) a person who was registered at the time of the act or omission; and
- (b) in any other case—includes a person whose registration has been cancelled.

26 **Grounds for occupational discipline**

- (1) Each of the following is a *ground for occupational discipline* in relation to a surveyor:
- (a) the surveyor gave information in relation to the application for registration that was false or misleading in a material particular;
 - (b) the surveyor has certified to the accuracy of a survey knowing it to be inaccurate;
 - (c) the surveyor has, deliberately or through carelessness or incompetence, carried out a survey that is so inaccurate or defective as to be unreliable;
 - (d) a survey has been carried out, or a plan prepared, by or under the supervision of the surveyor, that contravenes section 58 (Surveys and plans to comply with practice directions);
 - (e) the surveyor has contravened, or is contravening, this Act, whether or not the surveyor has been convicted of an offence for the contravention;

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).

- (f) both of the following apply:
- (i) the surveyor has been convicted or found guilty in Australia of an offence involving fraud, dishonesty or violence that is punishable by imprisonment for 1 year or longer;
 - (ii) the chief surveyor is satisfied that committing the offence affects the surveyor's suitability to practise surveying;

- (g) both of the following apply:
 - (i) the surveyor has been convicted or found guilty outside Australia of an offence involving fraud, dishonesty or violence that, if it had been committed in the ACT, would be punishable by imprisonment for 1 year or longer;
 - (ii) the chief surveyor is satisfied that committing the offence affects the surveyor's suitability to practise surveying.
- (2) A ground for occupational discipline applies to a surveyor who is no longer registered if the ground applied to the surveyor while registered.

27 Chief surveyor may apply to ACAT for occupational discipline

If the chief surveyor believes on reasonable grounds that a ground for occupational discipline exists in relation to a surveyor, the chief surveyor may apply to the ACAT for an occupational discipline order in relation to the surveyor.

Note The *ACT Civil and Administrative Tribunal Act 2008*, s 66 sets out occupational discipline orders the ACAT may make.

28 Giving local registering authorities information about cancelling or suspending registration

- (1) This section applies if the ACAT cancels or suspends a surveyor's registration or disqualifies a surveyor from applying for registration.
- (2) The chief surveyor must give each local registering authority the following information about the surveyor:
 - (a) the name and any other identifying details of the surveyor;
 - (b) a short description of the ground for occupational discipline on which the occupational discipline order was based;

- (c) whether the registration has been cancelled or suspended or the surveyor disqualified;
 - (d) if the registration has been suspended—the period of suspension;
 - (e) if the surveyor has been disqualified—the period of disqualification.
- (3) This section does not limit any other requirement or power, under this Act or another law in force in the ACT, to give information to a local registering authority.

[1.619] Part 7

substitute

Part 7 Notification and review of decisions

75 Meaning of *reviewable decision*—pt 7

In this part:

reviewable decision means a decision mentioned in schedule 1, column 3 under a provision of this Act mentioned in column 2 in relation to the decision.

76 Reviewable decision notices

If a person makes a reviewable decision, the person must give a reviewable decision notice to each entity mentioned in schedule 1, column 4 in relation to the decision.

Note 1 The person must also take reasonable steps to give a reviewable decision notice to any other person whose interests are affected by the decision (see *ACT Civil and Administrative Tribunal Act 2008*, s 67A).

Note 2 The requirements for reviewable decision notices are prescribed under the *ACT Civil and Administrative Tribunal Act 2008*.

77 Applications for review

The following may apply to the ACAT for a review of a reviewable decision:

- (a) an entity mentioned in schedule 1, column 4 in relation to the decision;
- (b) any other person whose interests are affected by the decision.

Note If a form is approved under the *ACT Civil and Administrative Tribunal Act 2008* for the application, the form must be used.

[1.620] Section 87 (4), note

substitute

Note A failure to comply with this section is a ground for occupational discipline.

[1.621] Section 91

substitute

91 Grounds for occupational discipline—s 26

In section 26:

this Act, in relation to a contravention, includes the repealed Act.

[1.622] New schedule 1

insert

Schedule 1 Reviewable decisions

(see pt 7)

column 1 item	column 2 section	column 3 decision	column 4 entity
1	8	refuse to register person	applicant for registration
2	23	cancel person's registration	person whose registration is cancelled
3	41	refuse to cancel surveyor's registration	surveyor
4	42 (3)	cancel person's registration	person whose registration is cancelled
5	56	refuse to give surveyor exemption	surveyor
6	56	give surveyor an exemption subject to condition	surveyor

[1.623] Dictionary, note 2, dot points

omit

- AAT

substitute

- ACAT

[1.624] Dictionary, note 2, new dot points

insert

- occupational discipline order
- reviewable decision notice

[1.625] Dictionary, definitions of *disciplinary action* and *disciplinary notice*

omit

[1.626] Dictionary, definition of *ground for disciplinary action*

substitute

ground for occupational discipline—see section 26.

[1.627] Dictionary, definition of *inquiry*

omit

[1.628] Dictionary, definition of *reviewable decision*

substitute

reviewable decision, for part 7 (Notification and review of decisions)—see section 75.

[1.629] Dictionary, definition of *surveyor*, paragraph (b)

substitute

(b) for division 3.3 (Occupational discipline—surveyors)—see section 25.

Part 1.49 Territory Records Act 2002

[1.630] New section 7 (ca)

insert

(ca) the ACAT; or

[1.631] New section 8 (ca)

insert

(ca) for the ACAT—the registrar of the ACAT; or

[1.632] Dictionary, note 2, new dot point

insert

- ACAT

Part 1.50 Tobacco Act 1927

[1.633] Section 50 (1)

omit

56

substitute

58

[1.634] Section 50 (2) (c)

substitute

(c) the ACAT would have grounds, if the applicant already held a licence, for cancelling the licence.

[1.635] Division 7.3

substitute

Division 7.3 Occupational discipline—licensees

55 Meaning of *licensee*—div 7.3

In this division:

licensee means—

- (a) a licensee; or
- (b) a person who was, but is no longer, a licensee.

56 Grounds for occupational discipline

Each of the following is a *ground for occupational discipline* in relation to a licensee:

- (a) the licensee has contravened or is contravening this Act;
- (b) the licensee has contravened or is contravening a condition of a tobacco licence held by the licensee;
- (c) a tobacco licence was granted to the person in error;
- (d) a tobacco licence was granted to the person in consequence of a false statement made, or misleading information given, by or on behalf of the person;
- (e) the person who holds a tobacco licence has been convicted of an offence under this part;
- (f) if the licensee is an individual—
 - (i) the licensee is convicted, or found guilty, in Australia of an offence punishable by imprisonment for at least 1 year; or

- (ii) the licensee is convicted, or found guilty, outside Australia of an offence that, if it had been committed in the ACT, would be punishable by imprisonment for at least 1 year; or
- (iii) the licensee becomes bankrupt or executes a personal insolvency agreement;
- (g) if the licensee is a corporation—the licensee is being wound up.

57 Application to ACAT for occupational discipline

If the registrar believes on reasonable grounds that a ground for occupational discipline exists in relation to a licensee, the registrar may apply to the ACAT for an occupational discipline order in relation to the licensee.

58 Orders for occupational discipline

- (1) This section applies if the ACAT may make an occupational discipline order in relation to a licensee.

Note The *ACT Civil and Administrative Tribunal Act 2008*, s 65 sets out when the ACAT may make an order.

- (2) In addition to any other occupational discipline order the ACAT may make, the ACAT may make 1 or more of the following orders for occupational discipline in relation to the licensee:
 - (a) direct the registrar to vary a tobacco licence held by the person with effect for a stated period of not longer than 5 years—
 - (i) to impose more stringent requirements than otherwise apply under this Act in relation to point of sale, a price ticket or smoking advertising on or adjacent to all or any of the premises stated in the licence; or

- (ii) to impose a condition prohibiting smoking advertising on or adjacent to all or any of the premises stated in the licence; or
 - (iii) to impose conditions relating to the sale of smoking products to people under 18 years old; or
 - (iv) to impose a condition prohibiting the sale of smoking products at all or any of the premises stated in the licence;
- (b) if the ACAT suspends a licensee's licence—suspend any other tobacco licence held by the licensee for a stated period of not longer than 3 months;
- (c) if the ACAT cancels a licensee's licence—disqualify the person from holding a tobacco licence, or from holding a tobacco licence for stated premises, for a stated period of not longer than 5 years.

Note The *ACT Civil and Administrative Tribunal Act 2008*, s 66 sets out other occupational discipline orders the ACAT may make.

- (3) If the only ground for occupational discipline in relation to a licensee is the ground under section 56 (c) (which is about a licence granted to a person in error), the ACAT must only cancel the licence to which the section relates.
- (4) If a person is convicted of an offence against this Act for the 2nd time within 2 years (whether or not the convictions are for offences against the same provision of this Act), the ACAT must—
- (a) cancel each tobacco licence held by the person; and
 - (b) disqualify the person from holding a tobacco licence for 5 years after notice of the cancellation is given to the person.

[1.636] Division 7.5

substitute

Division 7.5 Notification and review of decisions

68 Meaning of *reviewable decision*—div 7.5

In this division:

reviewable decision means a decision mentioned in schedule 1, column 3 under a provision of this Act mentioned in column 2 in relation to the decision.

69 Reviewable decision notices

If a person makes a reviewable decision, the person must give a reviewable decision notice to each entity mentioned in schedule 1, column 4 in relation to the decision.

Note 1 The person must also take reasonable steps to give a reviewable decision notice to any other person whose interests are affected by the decision (see *ACT Civil and Administrative Tribunal Act 2008*, s 67A).

Note 2 The requirements for reviewable decision notices are prescribed under the *ACT Civil and Administrative Tribunal Act 2008*.

69A Applications for review

The following may apply to the ACAT for review of a reviewable decision:

- (a) an entity mentioned in schedule 1, column 4 in relation to the decision;
- (b) any other person whose interests are affected by the decision.

Note If a form is approved under the *ACT Civil and Administrative Tribunal Act 2008* for the application, the form must be used.

[1.637] New schedule 1

insert

Schedule 1 Reviewable decisions

(see div 7.5)

column 1 item	column 2 section	column 3 decision	column 4 entity
1	48 (1)	state conditions to which licence is subject	licensee
2	50	refuse to grant or renew licence	applicant for licence or renewal
3	51	refuse to renew licence	applicant for renewal

[1.638] Dictionary, note 2, new dot points

insert

- ACAT
- occupational discipline order
- reviewable decision notice

[1.639] Dictionary, new definition of *ground for occupational discipline*

insert

ground for occupational discipline, for division 7.3—see section 56.

Endnotes

1 Presentation speech

Presentation speech made in the Legislative Assembly on 3 July 2008.

2 Notification

Notified under the Legislation Act on 4 September 2008.

3 Republications of amended laws

For the latest republication of amended laws, see www.legislation.act.gov.au.

I certify that the above is a true copy of the ACT Civil and Administrative Tribunal Legislation Amendment Bill 2008, which was passed by the Legislative Assembly on 20 August 2008.

Clerk of the Legislative Assembly

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