

2009

THE LEGISLATIVE ASSEMBLY FOR THE
AUSTRALIAN CAPITAL TERRITORY

ACT CIVIL AND ADMINISTRATIVE TRIBUNAL (TRANSITIONAL
PROVISIONS) REGULATION 2009

SL2009-2

EXPLANATORY STATEMENT

Circulated by the authority of
Simon Corbell MLA
Attorney General

ACT Civil and Administrative Tribunal (Transitional Provisions) Regulation 2009

Outline

The intention of this regulation is to provide for the transfer of matters in replaced jurisdictions to the ACT Civil and Administrative Tribunal (ACAT).

In general, any matter which has not commenced hearing will transfer to the ACAT. Matters before a replaced jurisdiction that have commenced a hearing, can continue to be heard in the replaced jurisdiction for a period of 6 months, and provisions in the regulation preserve the law to that effect. After that time, any incomplete matters are referred to the ACAT for future action. Provisions are included to allow the ACAT to make orders or rules in cases of uncertainty to allow proceedings to continue.

The proposed regulation also modifies the operation of the law to permit the appointment of more than one registrar, in accordance with the wishes of the ACAT, to remove unnecessary provisions and to clarify the role of the Registrar under the *Construction Occupations (Licensing) Act 2004* and the ACAT. These provisions will be re-enacted as substantive amendments in a future portfolio bill.

Regulation Notes

In these regulation notes “the commencement date” means the day section 6 of the *ACT Civil and Administrative Tribunal Act 2008* commences and “ACAT” means the *ACT Civil and Administrative Tribunal*.

Part 1 Preliminary

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

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

Regulation 3 – Dictionary – provides for a dictionary for the regulation.

Regulation 4 – Notes – provides that notes in the regulation have explanatory effect only.

Regulation 5 – Expiry – provides that this regulation expires on the same date that the power to make the regulation expires (s 301 of the *ACT Civil and Administrative Tribunal Act 2008*).

Part 2 Administrative Appeals Tribunal (AAT)

Regulation 6 – Application to AAT for review of decision—no hearing

This regulation provides that where an application had been made to the AAT, but it had not commenced hearing the matter before the specified date (being the date of the retirement of the AAT President), the application is taken to have been an application to the ACAT. If the AAT had made an order about the proceedings (for example, requiring the parties to produce certain evidence) the order is taken to have been an order by the ACAT. Between the commencement date and the specified date, the old law continues to apply (that is, the AAT will continue to hear the matter).

Regulation 7 – Application to AAT for review of decision—hearing

This regulation provides that if the AAT had commenced to hear a matter, but the hearing was incomplete prior to the commencement date, the old law continues to apply (that is, the AAT will continue to hear the matter).

Regulation 8 – Referral to AAT under Ombudsman Act

This regulation provides that if a request for an advisory opinion was made by the Ombudsman and an opinion had not been given prior to the specified date (being the date of the retirement of the AAT President), the request will be taken to be a request to the ACAT.

Part 3 Consumer and Trader Tribunal

Regulation 9 – Application to tribunal for review of decision—no hearing

This regulation provides that where an application had been made to the Consumer and Trader Tribunal for review of a decision, but it had not commenced hearing the matter before the commencement day, the application

is taken to have been an application to the ACAT. If the Consumer and Trader Tribunal had made an order about the proceedings (for example, requiring the parties to produce certain evidence) the order is taken to have been an order by the ACAT.

Regulation 10 – Application to tribunal for review of decision—hearing

This regulation provides that if the Consumer and Trader Tribunal had commenced to hear a matter concerning the review of a decision, but the hearing was incomplete, the old law continues to apply (that is, the Consumer and Trader Tribunal will continue to hear the matter).

Regulation 11 – Application to tribunal for disciplinary action—no hearing

This regulation provides that where an application had been made to the Consumer and Trader Tribunal for disciplinary action, but it had not commenced hearing the matter before the commencement day, the application is taken to have been an application to the ACAT. If the Consumer and Trader Tribunal had made an order about the proceedings (for example, requiring the parties to produce certain evidence) the order is taken to have been an order by the ACAT.

Regulation 12 – Application to tribunal for disciplinary action—hearing

This regulation provides that if the Consumer and Trader Tribunal had commenced to hear a disciplinary action, but the hearing was incomplete, the old law continues to apply (that is, the Consumer and Trader Tribunal will continue to hear the matter).

Part 4 Credit Tribunal

Regulation 13 – Application to credit tribunal—no hearing

This regulation provides that where an application had been made to the Credit Tribunal for review of a decision, but it had not commenced hearing the matter before the commencement day, the application is taken to have been an application to the ACAT. If the Credit Tribunal had made an order about the proceedings (for example, requiring the parties to produce certain evidence) the order is taken to have been an order by the ACAT.

Regulation 14 – Application to credit tribunal—hearing

This regulation provides that if the Credit Tribunal had commenced to hear a matter concerning the review of a decision, but the hearing was incomplete, the old law continues to apply (that is, the Credit Tribunal will continue to hear the matter).

Regulation 15 – Application to credit tribunal for disciplinary action—no hearing

This regulation provides that where an application had been made to the Credit Tribunal for disciplinary action, but it had not commenced hearing the matter

before the commencement day, the application is taken to have been an application to the ACAT. If the Credit Tribunal had made an order about the proceedings (for example, requiring the parties to produce certain evidence) the order is taken to have been an order by the ACAT.

**Regulation 16 – Application to credit tribunal for disciplinary action—
hearing**

This regulation provides that if the Credit Tribunal had commenced to hear a disciplinary action, but the hearing was incomplete, the old law continues to apply (that is, the Credit Tribunal will continue to hear the matter).

Part 5 Discrimination Tribunal

Regulation 17 – Application to discrimination tribunal—no hearing

This regulation provides that where an application had been made to the Discrimination Tribunal, but it had not commenced hearing the matter before the commencement day, the application is taken to have been an application to the ACAT. If the Discrimination Tribunal had made an order about the proceedings (for example, requiring the parties to produce certain evidence) the order is taken to have been an order by the ACAT.

Regulation 18 – Application to discrimination tribunal—hearing

This regulation provides that if the Discrimination Tribunal had commenced to hear a matter, but the hearing was incomplete, the old law continues to apply (that is, the Discrimination Tribunal will continue to hear the matter).

Part 6 Energy and Water Consumer Council

Regulation 19 – Complaint to council—no consideration

This regulation provides that where a complaint had been made to the Energy and Water Consumer Council, but it had not commenced considering the matter before the commencement day, the complaint is taken to have been an application to the ACAT. If the Energy and Water Consumer Council had made an interim direction about the proceedings (for example, requiring a utility to take no further action to disconnect a service) the order is taken to have been an order by the ACAT.

Regulation 20 – Complaint to council—consideration

This regulation provides that if the Energy and Water Consumer Council had commenced to consider a matter, but the consideration was incomplete, the old law continues to apply (that is, the Energy and Water Consumer Council will continue to consider the matter).

Part 7 Guardianship Tribunal

Regulation 21 – Appointment of guardian—no appointment

If the court gives a direction under the *Crimes Act 1900*, section 316 (Special hearing) to the Guardianship Tribunal to appoint a guardian but the tribunal had not made the appointment before the commencement day, the direction is taken on and after the commencement day to be a direction to the ACAT.

Regulation 22 – Decision to review appointment of guardian—no inquiry

If before the commencement day, the Guardianship Tribunal decided on its own initiative to hold an inquiry under the *Guardianship and Management of Property Act 1991*, section 19 but had not begun the inquiry, the decision is taken on and after the commencement day to be a decision by the ACAT to hold a hearing under the *Guardianship and Management of Property Act 1991*, section 19.

Regulation 23 – Decision to review appointment of guardian—inquiry

If before the commencement day, the Guardianship Tribunal decided on its own initiative to hold an inquiry under the *Guardianship and Management of Property Act 1991*, section 19 and had begun the inquiry, the old law continues to apply (that is, the Guardianship Tribunal will continue to hear the matter).

Regulation 24 – Application to guardianship tribunal—no inquiry

This regulation provides that where an application had been made to the Guardianship Tribunal, but it had not commenced an inquiry before the commencement day, the application is taken to have been an application to the ACAT. If the Guardianship Tribunal had made an order about the proceedings (for example, requiring the parties to produce certain evidence) the order is taken to have been an order by the ACAT.

Regulation 25 – Application to guardianship tribunal—inquiry

This regulation provides that if the Guardianship Tribunal had commenced to hear a matter, but the hearing was incomplete, the old law continues to apply (that is, the Guardianship Tribunal will continue to hear the matter).

Regulation 26 – Guardianship tribunal orders

This regulation applies if the Guardianship Tribunal makes an order determining an application or inquiry in a matter and makes a further order (adjourning the matter or that the matter be reviewed at a later time). An order adjourning the matter is taken on and after the commencement day to be an order of the ACAT adjourning the matter to the ACAT. An order that a matter be reviewed at a later time is taken on and after the commencement day to be an order of the ACAT that the matter be reviewed by the ACAT at a later time.

Part 8 Health Professions Tribunal

Regulation 27 – Application to health professions tribunal—no hearing

This regulation provides that where an application had been made to the Health Professions Tribunal, but it had not commenced a hearing before the commencement day, the application is taken to have been an application to the ACAT. If the Health Professions Tribunal had made an order about the proceedings (for example, requiring the parties to produce certain evidence) the order is taken to have been an order by the ACAT.

Regulation 28 – Application to health professions tribunal—hearing

This regulation provides that if the Health Professions Tribunal had commenced to hear a matter, but the hearing was incomplete, the old law continues to apply (that is, the Health Professions Tribunal will continue to hear the matter).

Regulation 29 – Referral of application to health professions board

Referrals by the Health Professions Tribunal to a Health Professions Board which are incomplete are taken to be referrals by the ACAT.

Part 9 Legal Practitioners Disciplinary Tribunal

Regulation 30 – Application to legal practitioners disciplinary tribunal—no hearing

This regulation provides that where an application had been made to the Legal Practitioners Disciplinary Tribunal, but it had not commenced a hearing before the commencement day, the application is taken to have been an application to the ACAT. If the Legal Practitioners Disciplinary Tribunal had made an order about the proceedings (for example, requiring the parties to produce certain evidence) the order is taken to have been an order by the ACAT.

Regulation 31 – Application to legal practitioners disciplinary tribunal—hearing

This regulation provides that if the Legal Practitioners Disciplinary Tribunal had commenced to hear a matter, but the hearing was incomplete, the old law continues to apply (that is, the Legal Practitioners Disciplinary Tribunal will continue to hear the matter).

Regulation 32 – Appeal to legal practitioners disciplinary tribunal—no hearing

This regulation provides that where an appeal had been made to the Legal Practitioners Disciplinary Tribunal, but it had not commenced an inquiry before the commencement day, the application is taken to have been an application to the ACAT. If the Legal Practitioners Disciplinary Tribunal had made an order about the proceedings (for example, requiring the parties to produce certain evidence) the order is taken to have been an order by the ACAT.

**Regulation 33 – Appeal to legal practitioners disciplinary tribunal—
hearing**

This regulation provides that if the Legal Practitioners Disciplinary Tribunal had commenced to hear an appeal, but the hearing was incomplete, the old law continues to apply (that is, the Legal Practitioners Disciplinary Tribunal will continue to hear the matter).

Regulation 34 – Legal practitioners disciplinary tribunal decision

This regulation applies if, before the commencement day, the Legal Practitioners Disciplinary Tribunal made an order amending, suspending or cancelling a local practicing certificate but, on commencement, the relevant council had not given the practitioner a written notice under the *Legal Profession Act 2006*, section 71 (2). After commencement, the order is taken to be an order of the ACAT.

Regulation 35 – Application for registration as foreign lawyer

This regulation applies if, at commencement, an application from a person for registration as a foreign lawyer is being considered but the applicant contravenes an order of the Legal Practitioners Disciplinary Tribunal. After commencement, the contravention is taken to be a contravention of an ACAT order.

Regulation 36 – Failure to comply with disciplinary order

This regulation applies if, before commencement, a person had contravened an order of the Legal Practitioners Disciplinary Tribunal. After commencement, the contravention is taken to be a contravention of an ACAT order.

Part 10 Liquor Licensing Board

Regulation 37 – Application in relation to licence

This regulation provides that where an application for the grant of a licence had been made to the Registrar of the Liquor Licensing Board, but the Registrar had not decided the application before the commencement day, the application is taken to have been an application to the Commissioner for Fair Trading.

Regulation 38 – Complaint to registrar—no decision about action

This regulation provides that where the Registrar of the Liquor Licensing Board had not decided what action to take on a complaint prior to commencement, the complaint is taken on commencement to be a complaint to the Commissioner for Fair Trading.

Regulation 39 – Application in relation to licensed premises

This regulation provides that where an application for alteration or closure of licensed premises had been made to the Registrar of the Liquor Licensing Board, but the Registrar had not decided the application before the commencement day, the application is taken to have been an application to the Commissioner for Fair Trading.

Regulation 40 – Application for permit

This regulation provides that where an application for a permit had been made to the Registrar of the Liquor Licensing Board, but the Registrar had not decided the application before the commencement day, the application is taken to have been an application to the Commissioner for Fair Trading.

Regulation 41 – Referral to liquor licensing board—no consideration

This regulation provides that where the Registrar of the Liquor Licensing Board had referred a matter to the Liquor Licensing Board (other than an application), but the Board had not begun considering the matter, the referral is taken to be a referral to the ACAT.

Regulation 42 – Referral to liquor licensing board—consideration

This regulation provides that where the Registrar of the Liquor Licensing Board had referred a matter to the Liquor Licensing Board (other than an application), and the Board had begun considering the matter, the old law will continue to apply (that is, the Board will continue considering the matter).

Part 11 Mental Health Tribunal**Regulation 43 – Application or referral to mental health tribunal—no inquiry**

This regulation provides that where an application or referral had been made to the Mental Health Tribunal, but it had not started an inquiry before the commencement day, the application is taken to have been an application to the ACAT. If the Mental Health Tribunal had made an order about the proceedings (for example, requiring an assessment) the order is taken to have been an order by the ACAT.

**Regulation 44 – Application or referral to mental health tribunal—
inquiry**

This regulation provides that if the Mental Health Tribunal had begun an inquiry into an application or referral, but this was incomplete, the old law continues to apply (that is, the Mental Health Tribunal will continue the inquiry).

**Regulation 45 – Application to mental health tribunal for review—
hearing**

This regulation provides that where an application to review a decision of a doctor or mental health officer had been made to the Mental Health Tribunal, but it had not commencing a hearing before the commencement day, the application is taken to have been an application to the ACAT. If the Mental Health Tribunal had made an order about the proceedings the order is taken to have been an order by the ACAT.

**Regulation 46 – Application to mental health tribunal for review—
hearing**

This regulation provides that if the Mental Health Tribunal had begun a hearing into an application to review a decision of a doctor or mental health officer, but this was incomplete, the old law continues to apply (that is, the Mental Health Tribunal will continue the hearing).

Part 12 Residential Tenancies Tribunal

Regulation 47 – Application to residential tenancies tribunal—no hearing

This regulation provides that where an application had been made to the Residential Tenancies Tribunal, but it had not commenced a hearing before the commencement day, the application is taken to have been an application to the ACAT. If the Residential Tenancies Tribunal had made an order about the proceedings (for example, requiring the parties to produce certain evidence) the order is taken to have been an order by the ACAT.

Regulation 48 – Application to residential tenancies tribunal—hearing

This regulation provides that if the Residential Tenancies Tribunal had commenced to hear a matter, but the hearing was incomplete, the old law continues to apply (that is, the Residential Tenancies Tribunal will continue to hear the matter).

Regulation 49 – Residential tenancy tribunal orders

This regulation applies if the Residential Tenancies Tribunal had made a termination and possession order or an order stating an amount of money is to be paid from an amount of bond, but the order is contravened. After commencement, the order is taken to have been an order by the ACAT

Part 13 Small Claims Court

Regulation 50 – Application to court—no hearing

This regulation provides that where an application had been made to the Small Claims Court, but it had not commenced a hearing before the commencement day, the application is taken to have been an application to the ACAT. If the Small Claims Court had made an order about the proceedings (for example, requiring the parties to produce certain evidence) the order is taken to have been an order by the ACAT.

Regulation 51 – Application to court—hearing

This regulation provides that if the Small Claims Court had commenced to hear a matter, but the hearing was incomplete, the old law continues to apply (that is, the Small Claims Court will continue to hear the matter).

Regulation 52 – Appeals from Small Claims Court—no hearing

This regulation provides that where an appeal had been made from the Small Claims Court to the Supreme Court, but the appeal had not been decided before the commencement day, the old law applies.

Part 14 Disciplinary matters—other tribunals

Regulation 53 – Definitions—pt 14 – makes formal provisions for this Part.

In particular, “previous tribunal” means various bodies responsible for disciplining members of professions prior to commencement:

- (a) the Architects Board established under the *Architects Act 2004*;
- (b) the Chief Surveyor established under the *Surveyors Act 2007*;
- (c) the Commissioner for Fair Trading;
- (d) the Construction Occupations Registrar;
- (e) the Registrar of Motor Vehicle Dealers established under the *Sale of Motor Vehicles Act 1977*;
- (f) the Registrar of Tobacco established under the *Tobacco Act 1927*.

Regulation 54 – Disciplinary notice—no action

This regulation applies where a previous tribunal had given a person a disciplinary notice but had not commenced considering or inquiring into the matter before the commencement day. On commencement, the notice is taken to have been an application to the ACAT for an occupational discipline order.

Regulation 55 – Disciplinary notice—consideration or inquiry started

This regulation provides that where a previous tribunal had given a person a disciplinary notice and had commenced considering or inquiring into the matter before the commencement day, the old law applies (that is, the previous tribunal will continue to hear the matter).

Regulation 56 – Disciplinary notice—decision to take disciplinary action

This regulation provides that where a disciplinary notice had been given to a person by a previous tribunal and it had decided to take disciplinary action. On commencement, the decision to take disciplinary action is taken to have been an occupational discipline order by the ACAT.

Part 15 Miscellaneous

Regulation 57 – Meaning of replaced entity—pt 15 – makes formal provisions for this Part. “*Replaced entity*” means an entity:

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

Regulation 58 – Continued application of old law

This provision applies to a regulation providing for the continued application of an old law. Where this is the case, this provision is in addition to and does not limit the effect of section 84 of the Legislation Act.

Regulation 59 – Continued existence of replaced entity

If a regulation provides for the continued application of an old law, the replaced entity continues to exist for this purpose for a period of six months from commencement. After this time, the replaced entity ceases to exist and the matter is transferred to the ACAT. The regulation makes specific provision in relation to the President of the Administrative Appeals Tribunal, who has resigned from that Tribunal as of the specified date.

Regulation 60 – Replaced entity - orders about conduct of matter

This provision applies to a regulation providing for the continued application of an old law. Where, under the old law, a member may make an order about the conduct of a matter (which should be distinguished from an order on the application being considered by the member), but the member is not available (for example, the member may be out of the jurisdiction), the General President of the ACAT may make the order about the conduct of a matter. This situation might arise where, for example, the member hearing a matter under the old law dies (in this case, it is also assumed that only that member may have been able to make an order in relation to the conduct of the case). In such a case, the General President may make an order about the future conduct of the matter.

Regulation 61 – Orders to resolve difficulties

If a difficulty arises in the application of this regulation to a particular matter, the ACAT may make any order it considers appropriate to resolve the difficulty.

Regulation 62 – Rules to resolve difficulties

If a difficulty arises in the application of this regulation to a particular matter, the ACAT may make a rule it considers appropriate to resolve the difficulty.

Regulation 63 – Order made by replaced entity

On commencement, (subject to the operation of regulation 59), orders made by a replaced entity are taken to be ACAT orders and may be reviewed or enforced as such.

Regulation 64 – Construction of outdated references to replaced entities

After commencement, references to a replaced entity in an Act, instrument or document are taken to be a reference to the ACAT.

Regulation 65 – Members of ACAT—remuneration

Pending a decision of the Remuneration Tribunal about the remuneration of non-presidential members, provision is made preserving the daily remuneration rate entitlement of non-presidential members of the ACAT who were formally members of a replaced entity. New non-presidential members will be also

entitled to payment at the daily rate of a member of the Energy and Water Consumer Council. It is assumed that the Remuneration Tribunal will make a determination about this matter that takes effect on commencement – accordingly this provision simply permits continued daily rates of pay at the previous rate applicable to a member prior to the formal effect of the new remuneration determination.

Regulation 66 – Agents Act – trust money

This provision has been relocated to these transitional regulations as a result of the omission of the transitional provisions in regulation 67(a).

Regulation 67 – Modification of Act, pt 30—Act, s 301 (2)

Section 301(2) of the *ACT Civil and Administrative Tribunal Act 2008* permits a regulation to be made modifying the operation of the ACAT legislation. This power is exercised in relation to four matters.

Firstly, (in regulation 67(a)), transitional provisions originally included in the Divisions 30.2 to 30.7 of the *ACT Civil and Administrative Tribunal Act 2008* are omitted as these matters are now dealt with by these regulations. Note also regulation 65 above which preserves the effect of proposed section 308 (Agents Act – trust money) which was to be included in omitted Division 30.3.

Secondly, (by new section 301A), the power is exercised to permit the ACAT to appoint more than one registrar, rather than the one contemplated by the legislation. The General President has made this request to enable the registry to be organised along two streams – one dealing with the administration (including the dispute handling functions) of the registry, and one to deal with the dispute resolution functions of the registry. This change is made now to allow for efficient startup of the tribunal, but will be formally incorporated into the legislation through a portfolio bill.

Thirdly, (in the remaining sections and Schedules 1 and 2), the power is exercised to clarify the relationship between the powers of the Registrar (under the *Construction Occupations (Licensing) Act 2004*) and the ACAT. Under that Act, the Registrar has significant regulatory powers, which sometimes need to be exercised immediately. The amendments clarify that the Registrar may continue to exercise these statutory powers as an alternative to commencing proceedings in the ACAT when the Registrar becomes aware that a ground of occupational discipline exists. In addition, the desirability of an administrative review under section 56(1) of the *Construction Occupations (Licensing) Act 2004* has been identified and has been included. This change is made now to allow for efficient startup of the tribunal, but will be formally incorporated into the legislation through a portfolio bill.