

1994

AUSTRALIAN CAPITAL TERRITORY LEGISLATIVE ASSEMBLY

TENANCY TRIBUNAL (AMENDMENT) BILL 1994

EXPLANATORY MEMORANDUM

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OUTLINE

This Bill amends the *Tenancy Tribunal Act 1994*. That Act establishes the Tenancy Tribunal and provides the framework for the regulation of retail and commercial tenancies in the ACT. When the *Tenancy Tribunal Bill* was debated on 21 September 1994, various Government amendments were moved in two separate stages.

The first group of amendments were taken together and accepted by all Members of the Assembly. The second group of amendments addressed the prohibition of certain rent review clauses in leases entered into on or after 1 January 1994. These amendments were taken together and passed by the Assembly after a division.

Both sets of amendments purported to insert a new paragraph (1)(c) into clause 6 of the *Tenancy Tribunal Bill*. The later amendments were meant to replace the earlier amendment. The second set of amendments sought to divide the former paragraph (1)(c) into two new paragraphs, paragraphs (1)(c) and (1)(d), to separate key-money from rent review clauses.

However, both paragraphs 6(1)(c) were included in the printed Act even though this was not the intention of the Assembly. The power given under Standing Order 191 to allow formal or technical amendments to a Bill before printing was not invoked. In the printed Act, the first amendment remained numbered paragraph 6(1)(c) and the second amendment, which split paragraph 6(1)(c) into two separate paragraphs was renumbered paragraphs 6(1)(d) and 6(1)(e).

The Act, as printed, does not give effect to the original intention of the Assembly and the sections of the Act that refer to paragraph 6(1)(c) and 6(1)(d) are inconsistent. This Bill removes paragraph 6(1)(c) and references to that paragraph in sections 8 and 9 of the *Tenancy Tribunal Act 1994* and ensures that the Assembly's intention is given effect in the Act.

FINANCIAL IMPLICATIONS

Nil

EXPLANATION OF CLAUSES

Clause 1 Provides for this law to be known as the Tenancy Tribunal (Amendment) Act 1994

- Clause 2** Provides for commencement at the same time as the Act.
- Clause 3** Defines the *Tenancy Tribunal Act 1994* as the "Principal Act"
- Clause 4** Deletes paragraph 6(1)(c)
- Clause 5** Deletes references to paragraph 6(1)(c) in section 8 of the *Tenancy Tribunal Act 1994*
- Clause 6** Deletes the reference to paragraph 6(1)(c) in section 9 of the *Tenancy Tribunal Act 1994* and replaces it with paragraph 6(1)(b). This amendment also adds a reference to paragraph 6(1)(e) to section 9. The effect of this amendment is to allow the Code to prohibit the payment of key-money and harsh and oppressive conduct in relation to all leases, whenever entered into, and to prohibit ratchet clauses and multiple rent review clauses in leases entered into after 1 January 1994. These prohibitions would only apply from the commencement of the Code on 1 January 1995. This was the clear intention of the Assembly during debate on the *Tenancy Tribunal Act 1994*..