



Australian Capital Territory

Tenancy Tribunal Act 1994 No 64 (repealed)

Republication No 5

Republication date: 2 July 2002

Amendments incorporated to 2 July 2002

As repealed by Act 2001 No 18

Authorised by the ACT Parliamentary Counsel

About this republication

The republished law

This is a republication of the *Tenancy Tribunal Act 1994* (repealed). It includes any commencement, amendment, repeal or expiry affecting the republished law to 2 July 2002 and any amendment made under the *Legislation Act 2001*, part 11.3 (Editorial changes).

The legislation history and amendment history of the republished law are set out in endnotes 3 and 4.

Kinds of republications

The Parliamentary Counsel's Office prepares 2 kinds of republications of ACT laws (see the ACT legislation register at www.legislation.act.gov.au):

- authorised republications to which the *Legislation Act 2001* applies
- unauthorised republications.

The status of this republication appears on the bottom of each page.

Editorial changes

The *Legislation Act 2001*, part 11.3 authorises the Parliamentary Counsel to make editorial amendments and other changes of a formal nature when preparing a law for republication. Editorial changes do not change the effect of the law, but have effect as if they had been made by an Act commencing on the republication date (see *Legislation Act 2001*, s 115 and s 117). The changes are made if the Parliamentary Counsel considers they are desirable to bring the law into line, or more closely into line, with current legislative drafting practice.

This republication does not include amendments made under part 11.3 (see endnote 1).

Uncommenced provisions and amendments

If a provision of the republished law has not commenced or is affected by an uncommenced amendment, the symbol **U** appears immediately before the provision heading. The text of the uncommenced provision or amendment appears only in the last endnote.

Modifications

If a provision of the republished law is affected by a current modification, the symbol **M** appears immediately before the provision heading. The text of the modifying provision appears in the endnotes. For the legal status of modifications, see *Legislation Act 2001*, section 95.

Penalties

The value of a penalty unit for an offence against this republished law at the republication date is—

- (a) if the person charged is an individual—\$100; or
- (b) if the person charged is a corporation—\$500.

Amendments incorporated to
2 July 2002



Australian Capital Territory

Tenancy Tribunal Act 1994 (repealed)

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Australian Capital Territory

Tenancy Tribunal Act 1994 (repealed)

An Act to establish a tenancy tribunal and other special procedures for resolving disputes about certain types of leases, to provide for a code of practice about such leases, and for related purposes

Part 1 Preliminary

1 Name of Act

This Act is the *Tenancy Tribunal Act 1994*.

3 Definitions for Act

In this Act:

Note A definition applies except so far as the contrary intention appears (see *Legislation Act 2001*, s 155).

approved mediator means a mediator approved under section 17.

code means the code of practice approved under section 75, as in force from time to time.

commercial premises means premises used, or intended to be used, wholly or predominantly for carrying on a business other than a business involving—

- (a) the sale or hire of goods by retail; or
- (b) the provision of services by retail.

commissioner means the commissioner for fair trading.

conduct, in relation to a lease, means any act or omission including making a request or demand of a person in relation to the lease, or taking other action to enforce the terms of the lease.

deputy president means a deputy president of the tribunal.

evidence, in relation to a hearing or to mediation, includes a document tendered, or a statement or admission made, by a party or by a witness in the course of that hearing or mediation.

hearing means—

- (a) a hearing by the registrar under part 5; or
- (b) a hearing by the tribunal under section 35; or
- (c) the hearing of an application for an interim order under section 53.

key money means any money paid by or on behalf of a tenant to, or at the discretion of, an owner, or any benefit conferred on, or at the discretion of, an owner, other than—

- (a) rent; or
- (b) a payment for the goodwill of a business sold or to be sold by the owner to a tenant; or
- (c) a repayable security bond or security deposit, or a guarantee by way of security; or
- (d) money payable on account of outgoings; or
- (e) money payable to a person for attendances on a tenant in connection with the preparation of documents that are relevant to a lease; or
- (f) any reasonable sum of money payable to an owner for goods and services provided, or to be provided, to a tenant; or
- (g) any money permitted to be paid under the code.

lease means an agreement, whether in writing or not, that provides for the occupation of premises exclusively or otherwise, whether for a fixed term, periodically or at will, and includes a sublease or a licence but does not include—

- (a) an agreement relating to the common area of a shopping centre only because it provides for a person to use a part of that area; or
- (b) a lease granted under, or to be taken to be granted under, the *Land (Planning and Environment) Act 1991*.

mediated agreement means an agreement, consistent with any applicable provisions of the code, reached as a result of mediation under part 4 or a hearing under part 5.

mediation report means a report under section 21.

member, of the tribunal, means the president, a deputy president or a non-presidential member.

multiple rent review clause means a provision in a lease that—

- (a) has the effect of reserving to a party a discretion as to which of 2 or more methods of calculating a change to rent is to apply; or
- (b) provides for rent to change in accordance with whichever of 2 or more methods of calculating the change would result in the higher or highest rent;

whether generally or on a particular occasion.

non-presidential member means a member of the tribunal who is not a presidential member.

option, in relation to a lease, means a right contained in that lease to choose to extend or renew the lease on the same, or substantially the same, terms and conditions as are contained in the lease.

owner means a person who grants, or proposes to grant, a right to occupy premises under a lease, and includes any heir, executor, administrator or assign of that person.

owner member—see section 64 (2).

party—

- (a) in relation to a lease, means—
 - (i) the owner; or
 - (ii) the tenant; or
- (b) in relation to mediation—means a person referred to in section 16; or

- (c) in relation to a hearing before the registrar—means a person referred to in section 23; or
- (d) in relation to a hearing before the tribunal—means a person referred to in section 33.

president means the president of the tribunal.

presidential member means the president or a deputy president of the tribunal.

ratchet clause, in relation to a provision in a lease for determining rent variations in such a way that rent might decrease, means a provision in that lease that has the effect of preventing, or giving a person the power to prevent, that decrease.

renewal, in relation to a lease, does not include exercising an option contained in the lease.

registrar means the registrar of the tribunal.

retail premises means premises that are used, or are intended to be used, wholly or predominantly for carrying on a business involving—

- (a) the sale or hire of goods by retail; or
- (b) the provision of services by retail.

review statement, in relation to a decision by the registrar, means a statement referred to in section 74 about that decision.

shopping centre means a group of premises where—

- (a) at least 5 of the premises are retail, small commercial or premises prescribed by the code, or a mixture of those premises; and
- (b) the premises—
 - (i) all have, or would have if leased, the same owner or same head owner; or

- (ii) all comprise units in a single units plan under the *Unit Titles Act 2001*; and
- (c) the premises are located—
 - (i) in a single building; or
 - (ii) in buildings that adjoin, or are separated only by areas owned by the owner of the premises; and
- (d) the group of premises is promoted as, or generally regarded as constituting, a shopping centre, shopping mall, shopping court or shopping arcade.

small commercial premises means commercial premises with a lettable area of no more than 300m².

substantive commencement date means 1 January 1995.

tenant means a person who has the right to occupy premises under a lease, and includes—

- (a) a subtenant; and
- (b) any heir, executor, administrator or assign of a tenant; and
- (c) a prospective tenant.

tenant member—see section 64 (2).

tribunal means the Tenancy Tribunal established by section 60.

Part 2 Application

4 Meaning of *lease* in pt 2

In this part:

lease means a lease to which this Act applies under section 5.

5 Leases

- (1) Subject to section 8, this Act applies to a lease for premises, situated in the ACT, of any of the following kinds:
 - (a) retail premises, or premises located in a shopping centre, other than premises with a lettable area greater than 1000m² that are leased to a corporation that is not eligible to be incorporated as a proprietary limited company under the Corporations Act;
 - (b) small commercial premises that are not located in a shopping centre;
 - (c) premises, or a class of premises, prescribed by the code.
- (2) Subject to subsection (3), this Act applies to a lease referred to in subsection (1) notwithstanding that the lease was entered into other than in the ACT or purports to be governed by the law of a jurisdiction other than the ACT.
- (3) This Act does not apply to a lease referred to in subsection (1) if—
 - (a) the lease is for premises, or premises included in a class of premises, excluded by the code from its operation; or
 - (b) the lease is excluded by the code from its operation, or is included in a class of leases that is excluded.

6 Disputes

- (1) Subject to section 8, this Act applies to the following disputes:
 - (a) a dispute caused by an alleged breach of a mediated agreement;
 - (b) a claim by a party to a lease that another party to the lease has engaged in harsh and oppressive conduct towards the first mentioned party (whether that conduct is unconscionable or not);
 - (c) a dispute about key money in relation to a lease or to negotiations for the entering into of a lease;
 - (d) a dispute about a multiple rent review clause or a ratchet clause in relation to a lease;
 - (e) a claim by a party to a lease that another party to the lease has breached or is breaching the code, other than a claim that relates to key money, a multiple rent review clause or a ratchet clause;
 - (f) a dispute about a lease, being a dispute prescribed by the code as suitable for resolution under this Act;
 - (g) any other dispute about a lease or negotiations for the entering into of a lease.
- (2) Nothing in this Act is to be taken to prevent a dispute from being dealt with under this Act only because the lease to which the dispute relates has ceased to be in force if the registrar takes action in relation to the dispute, or a person refers the dispute to the registrar, within 3 months after the lease has so ceased to be in force.

7 Jurisdiction of Magistrates Court

The Magistrates Court has no jurisdiction in relation to a dispute to which this Act applies.

8 Transitional application of Act

- (1) This Act applies to a dispute referred to in section 6 (1) (a), (b), (c) or (g) whether the relevant lease is entered into, varied, renewed or extended under an option, before, on or after the commencement of section 3.
- (2) This Act applies to a dispute referred to in section 6 (1) (d) if—
 - (a) the relevant lease is entered into, renewed or extended under an option on or after 1 January 1994; or
 - (b) the dispute relates to a provision of a lease, being a provision varied on or after that date.
- (3) This Act applies to a dispute referred to in section 6 (1) (e) or (f) if—
 - (a) the relevant lease is entered into, renewed or extended under an option on or after the substantive commencement date; or
 - (b) the dispute relates to a provision of a lease, being a provision varied on or after the substantive commencement date.
- (4) This Act applies to conduct giving rise to a dispute referred to in section 6 (1) (b), (c) or (d) only if that conduct occurs on or after the substantive commencement date.
- (5) This Act applies to conduct giving rise to a dispute referred to in section 6 (1) (g) whether that conduct occurs before, on or after the date of commencement of section 3.

9 Transitional application of code

- (1) The code applies to a dispute referred to in section 6 (1) (b) or (c) whether the relevant lease is proposed to be entered into, or is entered into, varied, renewed or extended under an option, before, on or after the substantive commencement date.

- (2) The code applies to a dispute referred to in section 6 (1) (d) if—
- (a) the relevant lease is entered into, renewed or extended under an option on or after 1 January 1994; or
 - (b) the dispute relates to a provision of a lease, being a provision varied on or after that date.

10 Matters before Magistrates Court or Supreme Court

This Act does not apply in relation to a dispute the substance of which is the subject matter of a proceeding that, as at the date of commencement of this section, had been begun in the Magistrates Court or the Supreme Court.

Part 3 Referral of disputes to registrar

11 Informal mediation

After receiving notice (by whatever means) of a dispute to which this Act appears to apply, and before any referral of the dispute under section 12, the registrar may take the action the registrar considers appropriate to facilitate the resolution of the dispute.

12 Referral

- (1) A person may refer a dispute about a lease to which this Act is alleged to apply to the registrar.
- (2) A referral must identify the parties to the lease.

Note If a form is approved under s 82A (Approved forms) for a referral, the form must be used.

- (3) On request, the registrar shall ensure that a person is given the assistance in completing the referral that the registrar considers reasonable in the circumstances.

13 Action by registrar on referral

- (1) If a dispute is referred to the registrar in accordance with section 12, the registrar shall consider whether it is a relevant dispute.
- (2) Before making a decision as to whether there is a relevant dispute, the registrar shall give each party identified in the referral a notice about the reference under section 12, including—
 - (a) details of the dispute; and
 - (b) an invitation to the party to make a written submission about whether the dispute is a relevant dispute to the registrar within 7 days of receiving the notice.

- (3) The registrar shall determine whether a relevant dispute exists in the way the registrar considers appropriate, in consideration of any submission made under the invitation mentioned in subsection (2) (b).
- (4) If the registrar is not satisfied that there is a relevant dispute, he or she shall—
- (a) take no further action in relation to the dispute; and
 - (b) give the parties to the dispute a review statement about the decision to take no further action.
- (5) If the registrar is satisfied that a relevant dispute is frivolous or vexatious, or has not been referred in good faith, he or she shall—
- (a) take no further action in relation to the dispute; and
 - (b) give the person who referred the dispute a review statement about the decision to take no further action.
- (6) If the registrar is satisfied that there is a relevant dispute other than a dispute referred to in subsection (5), he or she shall—
- (a) unless the code requires the dispute to be referred to the tribunal, or the registrar is satisfied that there is no reasonable likelihood of the dispute being resolved by mediation—
 - (i) refer the dispute to an approved mediator under section 14; or
 - (ii) hear the dispute under part 5; or
 - (b) refer the dispute to the tribunal under section 15.
- (7) If the registrar refers a dispute to an approved mediator, he or she shall give written notice of the referral to the mediator specifying the time within which the mediator is to provide the registrar with a mediation report.

(8) In this section:

relevant dispute means a dispute to which this Act applies, arising out of conduct occurring, or the entry into, variation, renewal or extension under an option of a lease, within 6 years before the date of referral of the dispute to the registrar.

14 Referral to mediator

The registrar may refer a dispute to an approved mediator if he or she considers it appropriate having regard to—

- (a) the nature and complexity of the dispute; and
- (b) the amount of money (if any) involved in the dispute; and
- (c) any other matter the registrar considers relevant.

15 Initial referral to tribunal

(1) The registrar shall refer a dispute to the tribunal if—

- (a) he or she is satisfied that there is no reasonable likelihood of a mediated agreement being reached; or
- (b) the code requires the dispute to be heard by the tribunal; or
- (c) he or she is otherwise satisfied that the dispute should be heard by the tribunal.

(2) If—

- (a) a dispute has been referred by the registrar to an approved mediator; and
- (b) the mediation resulted in a mediated agreement; and
- (c) a party to the agreement refers a further dispute in relation to an alleged breach of the agreement to the registrar under section 12;

the registrar shall refer the further dispute to the tribunal.

Part 4 **Mediation before an approved mediator**

16 **Parties**

Each of the following is a party to a mediation before an approved mediator:

- (a) each party to the lease that is the subject of the dispute;
- (b) any person who satisfies the registrar that he or she has a direct interest in the dispute.

17 **Approved mediators**

The Minister may, in writing, approve persons to be mediators for this Act.

18 **List of approved mediators**

- (1) The registrar shall maintain a list of approved mediators.
- (2) The list shall be available for inspection by the public at all reasonable times.

19 **Procedure**

An approved mediator to whom a dispute is referred under section 14 shall, as soon as practicable—

- (a) give written notice to the parties to the mediation inviting them to confer with him or her; and
- (b) endeavour to make arrangements with the parties regarding a time and place for a conference; and
- (c) if all parties attend—conduct the conference.

20 Admissibility of evidence in subsequent proceedings

Evidence of proceedings at a mediation conference under section 19 is inadmissible in any other proceedings except in accordance with section 47 or 59.

21 Mediation reports

- (1) A mediation report shall be in writing and shall specify the following:
 - (a) whether mediation occurred and, if it did not, why it did not;
 - (b) whether mediation resolved the dispute;
 - (c) the terms of any mediated agreement.
- (2) Within the time specified in the referral notice under section 13 (7), the mediator shall provide—
 - (a) a mediation report to the registrar; and
 - (b) a copy of the report to each party.

22 Referral to tribunal

If the registrar receives a mediation report stating that a dispute remains unresolved, he or she shall refer the dispute to the tribunal.

Part 5 Hearings before registrar

23 Parties

Each of the following is a party to a hearing before the registrar:

- (a) each party to the lease that is the subject of the hearing;
- (b) any other person notified by the registrar under subsection 25 (1).

24 Representation

A party to a hearing may, with the consent of the registrar, be represented at the hearing by a lawyer or an agent.

25 Notice of hearing

- (1) If the registrar decides to hear a dispute under section 13 (6) (a) (ii), he or she shall serve notice of the hearing on any person who the registrar is satisfied has a direct interest in that dispute.
- (2) A notice under subsection (1) shall—
 - (a) specify the location, date and time set for hearing the dispute; and
 - (b) be served a reasonable time before the date of the hearing.

26 Closed hearing

Proceedings before the registrar shall take place in a closed hearing.

27 Summons to appear

- (1) For the purposes of a hearing, the registrar may summon a party, or the representative of a party, to appear as a witness before him or her on a date, and at the place, specified in the summons.

- (2) A summons shall be—
- (a) in writing; and
 - (b) served on the person named in the summons.
- (3) A person served with a summons under subsection (1) shall not, without reasonable excuse, fail to comply with the summons.
- Maximum penalty (subsection (3)): 50 penalty units, imprisonment for 6 months or both.

27A Appearance by audiovisual or audio links

- (1) This section applies if, in relation to a hearing or a part of a hearing (the *relevant hearing*), the registrar has given a direction under the *Evidence (Miscellaneous Provisions) Act 1991*, section 18 (1) or 30 (1).
- (2) If this section applies a person who, in a relevant hearing—
- (a) is required or entitled to appear personally, whether as a party or as a witness; or
 - (b) is entitled to appear for another person;
- may appear in that hearing and participate or give evidence, as the case requires, in accordance with the direction.
- (3) A person who appears in a relevant hearing in accordance with this section shall be taken to be before the registrar.

28 Formal record

- (1) The registrar shall not make a formal record of the evidence given at a hearing except as provided by this section.
- (2) The formal record of a hearing shall only contain—
- (a) the referral of the dispute given under section 12 (1); and
 - (b) a statement by the registrar setting out the nature of the dispute; and

- (c) any relevant mediated agreement; and
 - (d) a statement of the grounds for any referral of the dispute to the tribunal.
- (3) The formal record of a hearing—
- (a) shall be made available for inspection at all reasonable times, free of charge, by each party to the hearing or any representative of a party; and
 - (b) is admissible in evidence before the tribunal or a court.

29 Admissibility of evidence in subsequent proceedings

Evidence given at the hearing of a dispute by the registrar is inadmissible in any proceedings other than in a further hearing by the registrar or in accordance with sections 47 or 59.

30 Resolution by agreement

- (1) If, after the hearing of a dispute, the parties reach a mediated agreement, the registrar shall—
- (a) arrange for the agreement to be put in writing and signed by or on behalf of the parties; and
 - (b) file the agreement with the record of the hearing.
- (2) A party is to be taken to have breached a mediated agreement if—
- (a) the agreement is signed in accordance with subsection (1); and
 - (b) the party has not complied with the agreement within the time specified in the agreement for compliance or, if there is no such time, within 2 months after the date of filing the agreement.

31 Referral to tribunal

After hearing a dispute, the registrar shall refer it to the tribunal if—

- (a) the parties have failed to reach a mediated agreement and the registrar is satisfied that there is no reasonable likelihood of a mediated agreement being reached; or
- (b) a party who has been notified of the hearing under section 25 fails to attend the hearing; or
- (c) a party breaches the terms of a mediated agreement filed under section 30 (1); or
- (d) 90 days after the dispute is referred to the registrar—
 - (i) a mediated agreement has not been filed under section 30 (1); and
 - (ii) the dispute has not been referred to the tribunal under paragraph (a); or
- (e) the registrar is otherwise satisfied that the dispute should be heard by the tribunal.

32 Costs

The parties to a hearing shall bear their own costs unless the registrar orders otherwise.

Part 6 Tribunal hearings

Division 6.1 General

33 Parties

Each of the following is a party to a tribunal hearing:

- (a) each party to the lease that is the subject of the hearing;
- (b) if the commissioner intervenes in accordance with section 34—the commissioner;
- (c) any person notified by the registrar under section 35 (2).

34 Intervention by commissioner

- (1) The commissioner may intervene in a tribunal hearing or related proceedings if—
 - (a) the commissioner considers that it would be in the public interest; and
 - (b) the Minister consents.
- (2) If the commissioner intervenes in any proceedings under subsection (1), it shall be presumed, in the absence of evidence to the contrary, that the Minister has consented to the intervention.

35 Hearings

- (1) The tribunal shall hear each dispute referred to it by the registrar.
- (2) The registrar shall, at least 14 days before a hearing, give written notice to each person who he or she is satisfied has a sufficient interest in the dispute of the time, date and place of the hearing.

36 Unconscionable conduct etc

- (1) Without limiting the matters to which the tribunal may have regard for the purposes of making an order in relation to a dispute referred to in section 6 (1) (b), the tribunal may have regard to any of the following matters:
- (a) the relative strengths of the bargaining positions of the owner and the tenant;
 - (b) whether, as a result of conduct engaged in by the owner, the tenant was required to comply with conditions that were not reasonably necessary for the protection of the legitimate interests of the owner;
 - (c) whether the tenant was able to understand any document relating to the lease;
 - (d) whether any undue influence or pressure was exerted on, or any unfair tactics were used against, the tenant or a person acting on behalf of the tenant by the owner or a person acting on behalf of the owner in relation to the lease;
 - (e) the circumstances under which the tenant could have acquired a lease on identical terms over similar premises from a person other than the owner;
 - (f) the extent to which the owner's conduct towards the tenant was consistent with the owner's conduct in similar lease transactions between the owner and other like tenants;
 - (g) the requirements of the code;
 - (h) the extent to which the owner unreasonably failed to disclose to the tenant—
 - (i) any intended conduct of the owner that might affect the interests of the tenant; and
 - (ii) any risks to the tenant arising from the owner's intended conduct (being risks that the owner should have foreseen would not be apparent to the tenant);

- (i) the extent to which the owner and the tenant acted in good faith.
- (2) An owner is not to be taken, for this section, to have engaged in harsh, oppressive or unconscionable conduct only because of the referral of a dispute to the tribunal.
- (3) In the application of subsection (1)—
 - (a) the tribunal shall not have regard to any circumstances that were not reasonably foreseeable at the time of the alleged contravention; and
 - (b) the tribunal may have regard to circumstances existing before the commencement of this section but not to conduct engaged in before that commencement.

Division 6.2 Procedure

37 Procedure generally

If no procedure is prescribed by this Act in relation to a particular matter in a hearing, the tribunal may determine its own procedure.

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 2001*, s 104).

38 Public hearings

- (1) Subject to this section, a tribunal hearing shall be in public.
- (2) The tribunal may—
 - (a) direct that a hearing or part of a hearing is to be closed and give directions as to the persons who may be present; or
 - (b) give directions prohibiting or restricting the publication of evidence given before the tribunal, whether in public or in a closed hearing; or

- (c) give directions prohibiting or restricting the disclosure to any of the parties of evidence given before the tribunal.
- (3) In considering whether to make an order under subsection (2), the tribunal shall have regard to the following matters:
 - (a) the principle that the tribunal hearings should be held in public;
 - (b) the principle that all evidence given before the tribunal should be made public;
 - (c) the confidentiality of any evidence to be given before the tribunal;
 - (d) any other relevant consideration raised in argument by any party.

39 Inquiries

For the purposes of a hearing the tribunal may make the inquiries it considers appropriate.

40 Record of proceedings

The tribunal shall keep a record of its proceedings.

41 Appearances

The following persons may appear at a tribunal hearing:

- (a) a party to the hearing;
- (b) a person to whom the tribunal has granted leave to appear.

42 Representation

A person who may appear at a hearing may be represented at the hearing by a lawyer or an agent.

43 Witnesses

- (1) For the purposes of a tribunal hearing, the tribunal may summon a person to appear as a witness before it—
 - (a) to give evidence; or
 - (b) to give evidence and produce any document or thing, specified in the summons, in the possession, custody or control of the person; or
 - (c) to produce any document or thing, specified in the summons, in the possession, custody or control of the person.
- (2) The presidential member may give a party leave to inspect a document produced under a summons.
- (3) A person shall be taken to have complied with a summons under subsection (1) (c) if the person delivers the documents to the registrar before the date specified in the summons.
- (4) A summons shall be—
 - (a) in writing; and
 - (b) served on the person named in the summons.
- (5) A person served with a summons under subsection (1) shall not, without reasonable excuse, fail to comply with the summons.

Maximum penalty (subsection (5)): 50 penalty units, imprisonment for 6 months or both.

43A Appearance by audiovisual or audio links

- (1) This section applies if, in relation to a hearing or a part of a hearing (the *relevant hearing*), the tribunal has given a direction under the *Evidence (Miscellaneous Provisions) Act 1991*, section 18 (1) or 30 (1).

- (2) If this section applies a person who, in a relevant hearing—
- (a) is required or entitled to appear personally, whether as a party or as a witness; or
 - (b) is entitled to appear for another person;
- may appear in that hearing and participate or give evidence, as the case requires, in accordance with the direction.
- (3) A person who appears in a relevant hearing in accordance with this section shall be taken to be before the tribunal.

44 Taking evidence

The tribunal may take evidence on oath or affirmation and, for that purpose, the presidential member—

- (a) may require a person attending before the tribunal to take an oath or make an affirmation; and
- (b) may administer an oath or affirmation to such a person.

45 Presidential member's powers

- (1) For the purposes of a tribunal hearing, the presidential member may require a person appearing before the tribunal—
- (a) to answer a question relevant to the hearing; or
 - (b) to produce a document or other record relevant to the hearing.
- (2) A person required to give evidence under subsection (1) shall not, without reasonable excuse, fail to give such evidence.

Maximum penalty (subsection (2)): 50 penalty units, imprisonment for 6 months or both.

46 Selfincrimination

A person is not excused from giving evidence before a tribunal hearing on the ground that such evidence would tend to incriminate the person.

47 Admissibility of evidence given during mediation

Evidence of any words spoken or act done during mediation under part 4 or at a hearing of the dispute by the registrar shall only be admitted if—

- (a) it relates to the making of a mediated agreement; and
- (b) a party to the agreement alleges, in good faith, that the agreement was induced or affected by fraud or duress, other than fraud of the party or duress applied by the party.

48 Admissibility of evidence in subsequent criminal proceedings

The following evidence is not admissible against a person in criminal proceedings other than prosecutions for an offence against section 82:

- (a) evidence given before the tribunal;
- (b) evidence of any information or thing obtained directly or indirectly as a consequence of evidence given before the tribunal.

49 Amendments

At any stage of a hearing, the tribunal may—

- (a) on application by a party or of its own initiative, order that any document in the hearing be amended; or
- (b) with the consent of the parties, give leave to any party to amend any document of that party in the hearing.

50 Deciding questions

- (1) The presidential member is to decide a question of law arising in a hearing.

- (2) If there is a division of opinion about another question arising in a hearing, the question is to be decided—
- (a) according to the opinion of the majority of members constituting the tribunal; or
 - (b) if there is no majority on the question—according to the opinion of the presidential member.

51 Adjournment

On application by a party, or of its own initiative, the tribunal may adjourn a hearing.

52 Costs

The parties to a hearing shall bear their own costs unless the tribunal orders otherwise.

Division 6.3 Relief

53 Interim orders

- (1) If at any time after the referral of a dispute to which this Act applies to the registrar under section 12—
- (a) a person who has a direct interest in the dispute applies to the tribunal for an interim order under this section; and
 - (b) the tribunal is satisfied that, if an interim order were not made, the person applying for the order would suffer detriment;

the tribunal may make any interim order it considers appropriate to safeguard the position of that person.

Note If a form is approved under s 82A (Approved forms) for an application, the form must be used.

- (2) An interim order remains in force until—
- (b) the tribunal otherwise orders; or

- (c) the tribunal makes an order under section 54 at the conclusion of a hearing;
- whichever is earlier.
- (3) The tribunal may, on application by a person who has a direct interest in the relevant dispute, while an interim order is in force—
 - (a) vary the order; or
 - (b) rescind the order.
 - (4) If a person against whom an interim order is made is not present at the making of the order, the registrar shall serve a copy of the order on the person as soon as practicable after the order is made.

54 Power to grant relief

- (1) Subject to this Act and the code, the tribunal may exercise any power to grant relief in relation to a dispute heard before it that would be exercisable by the Magistrates Court under the *Magistrates Court (Civil Jurisdiction) Act 1982* if that court had jurisdiction to hear the dispute.
- (2) Subject to the code, in addition to any other order the tribunal may make under subsection (1)—
 - (b) the tribunal may, in relation to a dispute referred to in section 6 (1) (b), reopen the lease and may take whatever action it considers appropriate in the circumstances, including—
 - (i) varying the lease, whether by inserting new terms or otherwise; and
 - (ii) setting the lease aside, in part or in whole; and
 - (c) the tribunal may make any order required to enforce the code.
- (3) The tribunal is not limited in any amount it may order to be paid.

55 Notice of orders

The tribunal shall give each party to a hearing written notice setting out the terms of any order made under section 54 at the conclusion of a hearing within 14 days of making such an order.

Division 6.4 Enforcement

56 Failure to comply

A party to a hearing shall not, without reasonable excuse, fail to comply with an order of the tribunal or the presidential member.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

57 Powers of enforcement

The tribunal has the same powers to enforce its decisions as the Magistrates Court has when exercising its jurisdiction under the *Magistrates Court (Civil Jurisdiction) Act 1982*.

Part 7 Appeals to Supreme Court

58 Appeal from decisions of the tribunal

- (1) A party to a tribunal hearing may appeal to the Supreme Court on a question of law from a decision of the tribunal in that hearing.
- (2) An appeal by a person under subsection (1) shall be instituted no later than 28 days after the day when a notice under section 55 is given to the person or within any further time that the Supreme Court (whether on, before or after that day) allows.
- (3) The Supreme Court shall hear and determine the appeal and may make any of the following orders:
 - (a) an order affirming or setting aside the decision of the tribunal;
 - (b) an order remitting the case to be heard and decided again, either with or without the hearing of further evidence, by the tribunal in accordance with the directions of the court;
 - (c) any other order the court considers appropriate.

59 Admissibility of evidence given during mediation

On an appeal under section 58 (1), evidence of any words spoken or act done during mediation under part 4 or at a hearing of the dispute by the registrar shall only be admitted if—

- (a) it relates to the making of a mediated agreement; and
- (b) the appeal relates to an allegation, in good faith, by a party to the agreement, that the agreement was induced or affected by fraud or duress, other than fraud of the party or duress applied by the party.

Part 8 **Tenancy Tribunal**

Division 8.1 **Establishment, functions and powers**

60 **Establishment**

The Tenancy Tribunal is established by this section.

61 **Functions and powers**

- (1) The tribunal has the functions and powers given to it under this Act.
- (2) Without limiting subsection (1), the tribunal has power to do everything necessary or convenient to be done in relation to the carrying out of its functions.

Division 8.2 **Tribunal members**

62 **Membership of tribunal**

- (1) The tribunal consists of—
 - (a) the president; and
 - (b) the deputy presidents; and
 - (b) the non-presidential members.
- (2) The members of the tribunal are to be appointed by the Executive.

63 **Presidential members**

- (1) A person is eligible to be appointed president only if the person is a magistrate.
- (2) A person is eligible to be appointed deputy president only if the person is a magistrate or a lawyer of at least 5 years standing.

64 Non-presidential members

- (1) The Executive must appoint as non-presidential members—
 - (a) persons who, in its opinion, represent the interests of tenants;
and
 - (b) persons who, in its opinion, represent the interests of owners.
- (2) A member appointed under subsection (1) (a) is a tenant member, and a member appointed under subsection (1) (b) is an owner member.

65 Terms of appointment generally

- (1) A member may be appointed as a full-time or part-time member.
- (2) A member holds office on the terms not provided by this Act that are decided by the Executive.
- (3) This section does not apply to a member who is a magistrate.

66 Matters to be included in instrument of appointment etc

The instrument appointing, or evidencing the appointment of, a member must state—

- (a) whether the member is the president, a deputy president, owner member or tenant member; and
- (b) the period for which the member is appointed; and
- (c) if the member is not a magistrate—whether the member is appointed as a full-time or part-time member.

67 Duration of appointment

- (1) A member is to be appointed for a term of not longer than 5 years.
- (2) The Executive may end the appointment of a member who is not a magistrate—
 - (a) for misbehaviour or physical or mental incapacity; or

- (b) if the member becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with creditors or makes an assignment of remuneration for the benefit of creditors.
- (3) The Executive must end the appointment of—
 - (a) a presidential member who is a magistrate if the member ceases to be a magistrate; or
 - (b) a deputy president who is not a magistrate if the member ceases to be eligible for appointment; or
 - (c) a non-presidential member if the Executive is satisfied that the member no longer represents the interests of the people the member was appointed to represent; or
 - (d) a member who is not a magistrate if the member is convicted in Australia or elsewhere of an offence punishable by imprisonment for 1 year or longer.

Division 8.3 Registrar and deputy registrars

68 Registrar and deputy registrars of tribunal

- (1) The registrar of the Magistrates Court is the registrar of the tribunal.
- (2) Each deputy registrar of the Magistrates Court is a deputy registrar of the tribunal.
- (3) Subject to any direction of the registrar, a deputy registrar of the tribunal may exercise the powers of the registrar of the tribunal.
- (4) The registrar may, in writing, delegate to a public servant all or any of his or her powers under this Act.

Division 8.4 Other provisions about tribunal

69 Constitution of tribunal

- (1) The tribunal is to be constituted by—
 - (a) a single presidential member; or
 - (b) a presidential member, a tenant member and an owner member.
- (2) However, if —
 - (a) the tribunal is constituted for a hearing by a presidential member and 2 non-presidential members (as mentioned in subsection (1) (b)); and
 - (b) a non-presidential member ceases to be a member, or to be available for the hearing, before the completion of the hearing;
the presidential member and any remaining non-presidential member may finish the hearing if the presidential member considers it desirable to do so.

70 Role of president

- (1) The president is responsible for ensuring the orderly and prompt discharge of the tribunal's business.
- (2) Without limiting subsection (1), the president may give directions about—
 - (a) how the tribunal is to be constituted for a particular matter; and
 - (b) the members who are to constitute the tribunal for a particular matter.

71 Protection of members

- (1) This section applies to a person who is or has been—
 - (a) a member of the tribunal; or
 - (b) the registrar or a deputy registrar of the tribunal; or
 - (c) a person acting under the tribunal's direction or authority; or
 - (d) a participant in a proceeding before the tribunal.
- (2) An action or proceeding does not lie against a person to whom this section applies in relation to an act done, or omitted to be done, in good faith in that capacity.

Part 9 Appeals to tribunal

73 Appeals

A person who referred a dispute to the registrar under section 12 may appeal to the tribunal if the registrar has made a decision to take no further action in relation to the dispute—

- (a) under section 13 (4) (a); or
- (b) under section 13 (5) (a).

74 Review statements

- (1) For this Act, a review statement about a decision shall be in writing containing—
 - (a) a statement of the decision; and
 - (b) a statement to the effect that the person to whom the statement is addressed may make an application to the tribunal for a review of the decision to which the notice relates; and
 - (c) a statement to the effect that the person to whom the statement is addressed may request a statement of the registrar's reasons for the decision.
- (2) The registrar shall provide a review statement to the relevant person within 28 days of making the decision to which the statement relates.
- (3) The validity of a reviewable decision is not to be taken to be affected by a failure—
 - (a) to give a review statement to a person affected by the decision; or
 - (b) to comply with this section.

Part 10 Code of practice

75 Approval

- (1) The Minister may, in writing, approve a code of practice relating to leases.

Note Power given under an Act to make a statutory instrument (including a code of practice) includes power to amend or repeal the instrument (see *Legislation Act 2001*, s 46 (1)).

- (2) The code may prescribe matters including the following:
- (a) the time from which its provisions, or any of them, are to take effect;
 - (b) premises, or a class of premises, for section 5 (1) (c);
 - (c) premises, or a class of premises, for section 5 (3) (a);
 - (d) leases, or a class of leases, for section 5 (3) (b);
 - (e) disputes, or a class of disputes, for section 6 (1) (g);
 - (f) grounds on which specified provisions in a lease are to be invalid or void.

76 Disallowable instruments

A code approved under section 75 is a disallowable instrument.

Note 1 A disallowable instrument must be notified, and presented to the Legislative Assembly, under the *Legislation Act 2001*.

Note 2 An amendment or repeal of a code is also a disallowable instrument (see *Legislation Act 2001*, s 46 (2)).

77 Newspaper notice

- (1) If a code is approved under section 75 (Approval), the commissioner must publish in a newspaper published and circulating in the ACT notice of the approval on or before the day the approval commences.

- (2) The notice must—
- (a) state when the code commences; and
 - (b) contain a statement to the effect that the code is subject to disallowance by the Legislative Assembly under the *Legislation Act 2001*.

Part 12 Miscellaneous

82 **Obstruction of registrar and tribunal**

A person shall not, without reasonable excuse, obstruct, hinder or resist the registrar or tribunal in the exercise of a function under this Act.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

82A **Approved forms**

- (1) The registrar may, in writing, approve forms for this Act.
- (2) If the registrar approves a form for a particular purpose, the approved form must be used for that purpose.

Note For other provisions about forms, see *Legislation Act 2001*, s 255.

- (3) An approved form is a notifiable instrument.

Note A notifiable instrument must be notified under the *Legislation Act 2001*.

83 **Regulation-making power**

The Executive may make regulations for this Act.

Note Regulations must be notified, and presented to the Legislative Assembly, under the *Legislation Act 2001*.

Endnotes

1 About the endnotes

Endnotes

1 About the endnotes

Amending and modifying laws are annotated in the legislation history and the amendment history. Current modifications are not included in the republished law but are set out in the endnotes.

Not all editorial amendments made under the *Legislation Act 2001*, part 11.3 are annotated in the amendment history. Full details of any amendments can be obtained from the Parliamentary Counsel's Office.

Uncommenced amending laws and expiries are listed in the legislation history and the amendment history. These details are underlined. Uncommenced provisions and amendments are not included in the republished law but are set out in the last endnote.

If all the provisions of the law have been renumbered, a table of renumbered provisions gives details of previous and current numbering.

The endnotes also include a table of earlier republications.

If the republished law includes penalties, current information about penalty unit values appears on the republication inside front cover.

2 Abbreviation key

am = amended	ord = ordinance
amdt = amendment	orig = original
ch = chapter	p = page
cl = clause	par = paragraph
def = definition	pres = present
dict = dictionary	prev = previous
disallowed = disallowed by the Legislative Assembly	(prev...) = previously
div = division	prov = provision
exp = expires/expired	pt = part
Gaz = Gazette	r = rule/subrule
hdg = heading	reg = regulation/subregulation
IA = Interpretation Act 1967	renum = renumbered
ins = inserted/added	reloc = relocated
LA = Legislation Act 2001	R[X] = Republication No
LR = legislation register	s = section/subsection
LRA = Legislation (Republication) Act 1996	sch = schedule
mod = modified / modification	sdiv = subdivision
No = number	sub = substituted
num = numbered	SL = Subordinate Law
o = order	<u>underlining</u> = whole or part not commenced or to be expired
om = omitted/repealed	

3 Legislation history

Tenancy Tribunal Act 1994 No 64

notified 11 October 1994 (Gaz 1994 No S197)
s 1, s 2 commenced 11 October 1994 (s 2 (1))
remainder commenced 1 January 1995 (s 2 (2) and Gaz 1994
No S308)

as amended by

Tenancy Tribunal (Amendment) Act 1994 No 100

notified 15 December 1994 (Gaz 1994 No S280)
ss 1-3 commenced 15 December 1994 (s 2 (1))
remainder commenced 1 January 1995 (s 2 (2) and see Gaz 1994
No S308)

Statute Law Revision Act 1995 No 46 sch

notified 18 December 1995 (Gaz 1995 No S306)
s 1, s 2 commenced 18 December 1995 (s 2)
amdt taken to have commenced 1 January 1995 (s 4 (2))

Tenancy Tribunal (Amendment) Act 1997 No 120

notified 24 December 1997 (Gaz 1997 No S420)
s 1, s 2 commenced 24 December 1997 (s 2 (1))
remainder commenced 4 February 1998 (s 2 (2) and Gaz 1998 No S43)

Statute Law Revision (Penalties) Act 1998 No 54 sch

notified 27 November 1998 (Gaz 1998 No S207)
s 1, s 2 commenced 27 November 1998 (s 2 (1))
sch commenced 9 December 1998 (s 2 (2) and Gaz 1998 No 49)

**Courts and Tribunals (Audio Visual and Audio Linking) Act 1999
No 22 pt 15**

notified 14 April 1999 (Gaz 1999 No S16)
s 1, s 2 commenced 14 April 1999 (s 2 (1))
pt 15 commenced 1 September 1999 (s 2 (2) and Gaz 1999 No 35)

Law Reform (Miscellaneous Provisions) Act 1999 No 66 sch 3

notified 10 November 1999 (Gaz 1999 No 45)
commenced 10 November 1999 (s 2)

Endnotes

4 Amendment history

Justice and Community Safety Legislation Amendment 2000 No 1 sch

notified 9 March 2000 (Gaz 2000 No 10)
ss 1-3 commenced 9 March 2000 (s 2 (1))
amdt commenced 9 September 2000 (s 2 (3))

Justice and Community Safety Legislation Amendment Act 2000 (No 2) No 2 sch

notified 9 March 2000 (Gaz 2000 No 10)
commenced 9 March 2000 (s 2)

Justice and Community Safety Legislation Amendment Act 2000 (No 3) No 17 sch 1

notified 1 June 2000 (Gaz 2000 No 22)
commenced 1 June 2000 (s 2)

Unit Titles Consequential Amendments Act 2001 No 17 sch 2

notified 5 April 2001 (Gaz 2001 No 14)
s 1, s 2 commenced 5 April 2001 (IA s 10B)
sch 2 commenced 5 October 2001 (s 2 and LA s 79)

Legislation (Consequential Amendments) Act 2001 No 44 pt 379

notified 26 July 2001 (Gaz 2001 No 30)
s1, s 2 commenced 26 July 2001 (IA s 10B)
pt 379 commenced 12 September 2001 (s 2 and see Gaz 2001 No S65)

as repealed by

Leases (Commercial and Retail) Act 2001 No 18 s 172

notified 19 April 2001 (Gaz 2001 No 16)
s 1, s 2 commenced 19 April 2001 (IA s 10B)
s 172 commenced 1 July 2002 (s 2)

4 Amendment history

Commencement

s 2 om R3 LRA

Definitions for Act

s 3 def **commissioner** ins 2000 No 17 sch 1
def **conduct** am 1997 No 120 s 4
def **deputy president** ins 2000 No 2 sch
def **director** sub 1999 No 66 sch 3

om 2000 No 17 sch 1
def **lease** am 1997 No 120 s 4
def **member** ins 2000 No 2 sch
def **non-presidential member** ins 2000 No 2 sch
def **owner member** ins 2000 No 2 sch
def **president** ins 2000 No 2 sch
def **presidential member** ins 2000 No 2 sch
def **registrar** sub 1999 No 66 sch 3
def **shopping centre** am 2001 No 17 amdt 2.25
def **substantive commencement date** am 1997 No 120 s 4
def **tenant member** ins 2000 No 2 sch

Disputes

s 6 am 1994 No 100 s 4; pars renum R4 LA

Transitional application of Act

s 8 am 1994 No 100 s 5; 1995 No 46 sch

Transitional application of code

s 9 am 1994 No 100 s 6

Referral

s 12 am 2001 No 44 amdt 1.4003, 1.4004

Action by registrar on referral

s 13 am 2001 No 44 amdt 1.4005

Parties

s 16 am 1997 No 120 s 5

Summons to appear

s 27 am 1998 No 54 sch

Appearance by audiovisual or audio links

s 27A ins 1999 No 22 s 40
am 2000 No 17 sch 1

Formal record

s 28 am 2001 No 44 amdt 1.4005

General

div 6.1 hdg (prev pt 6 div 1 hdg) renum R4 LA

Parties

s 33 am 2000 No 17 sch 1

Intervention by commissioner

s 34 hdg am 2000 No 17 sch 1

s 34 am 2000 No 17 sch 1

Procedure

div 6.2 hdg (prev pt 6 div 2 hdg) renum R4 LA

Endnotes

4 Amendment history

Unconscionable conduct etc

s 36 sub 1997 No 120 s 6; pars renum R4 LA

Procedure generally

s 37 am 2001 No 44 amdt 1.4006, 1.4007

Witnesses

s 43 am 1998 No 54 sch; 2000 No 2 sch

Appearance by audiovisual or audio links

s 43A ins 1999 No 22 s 41
am 2000 No 17 sch 1

Taking evidence

s 44 am 2000 No 2 sch

Presidential member's powers

s 45 hdg am 2000 No 2 sch
s 45 am 1998 No 54 sch; 2000 No 2 sch

Deciding questions

s 50 sub 2000 No 2 sch

Relief

div 6.3 hdg (prev pt 6 div 3 hdg) renum R4 LA

Interim orders

s 53 am 1997 No 120 s 7; 2001 No 44 amdt 1.4008, amdt 1.4009;
ss renum 2001 No 44 amdt 1.4010

Power to grant relief

s 54 am 1997 No 120 s 8

Enforcement

div 6.4 hdg (prev pt 6 div 4 hdg) renum R4 LA

Failure to comply

s 56 am 1998 No 54 sch; 2000 No 2 sch

Establishment, functions and powers

div 8.1 hdg (prev pt 8 div 1 hdg) ins 2000 No 2 sch
renum R4 LA

Functions and powers

s 61 sub 2000 No 2 sch

Tribunal members

div 8.2 hdg (prev pt 8 div 2 hdg) ins 2000 No 2 sch
renum R4 LA

Membership of tribunal

s 62 sub 2000 No 2 sch

Presidential members

s 63 sub 2000 No 2 sch

Non-presidential members

s 64 sub 2000 No 2 sch

Terms of appointment generally

s 65 sub 2000 No 2 sch

Matters to be included in instrument of appointment etc

s 66 sub 2000 No 2 sch

Duration of appointment

s 67 sub 1999 No 66 sch 3; 2000 No 2 sch

Registrar and deputy registrars

div 8.3 hdg (prev pt 8 div 3 hdg) ins 2000 No 2 sch
renum R4 LA

Registrar and deputy registrars of tribunal

s 68 om 1999 No 66 sch 3
ins 2000 No 2 sch

Other provisions about tribunal

div 8.4 hdg (prev pt 8 div 4 hdg) ins 2000 No 2 sch
renum R4 LA

Constitution of tribunal

s 69 om 1999 No 66 sch 3
ins 2000 No 2 sch

Role of president

s 70 sub 2000 No 2 sch

Protection of members

s 71 am 1999 No 66 sch 3
sub 2000 No 2 sch

Termination of appointment

s 72 om 2000 No 2 sch

Approval

s 75 am 2001 No 44 amdt 1.4011

Disallowable instruments

s 76 sub 2001 No 44 amdt 1.4012

Newspaper notice

s 77 am 2000 No 17 sch 1
sub 2001 No 44 amdt 1.4013

Fees and charges

pt 11 hdg om 2000 No 1 sch

Obstruction of registrar and tribunal

s 78 om 2000 No 1 sch

Endnotes

5 Earlier republications

Payment

s 79 om 2000 No 1 sch

Remission, refund, deferral, waiver, exemption

s 80 om 2000 No 1 sch

Review of decisions

s 81 om 2000 No 1 sch

Obstruction of registrar and tribunal

s 82 am 1998 No 54 sch

Approved forms

s 82A ins 2001 No 44 amdt 1.4014

Regulation-making power

s 83 am 2001 No 44 amdt 1.4015

Role of president

s 84 ins 2000 No 2 sch
om R3 LRA

5 Earlier republications

Some earlier republications were not numbered. The number in column 1 refers to the publication order.

Since 12 September 2001 every authorised republication has been published in electronic pdf format on the ACT legislation register. A selection of authorised republications have also been published in printed format. These republications are marked with an asterisk (*) in column 1. Except for the footer, electronic and printed versions of an authorised republication are identical.

Republication No	Amendments to	Republication date
1	Act 1995 No 46	1 January 1996
2	Act 1997 No 120	4 February 1998
3	Act 2000 No 17	31 October 2000
4	Act 2001 No 44	29 May 2002

Authorised when accessed at www.legislation.act.gov.au or in authorised printed form

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