

1994
**THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY**

(As presented)

(Attorney-General)

**Commercial and Tenancy Tribunal Bill
1994**

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1994

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Attorney-General)

**Commercial and Tenancy Tribunal Bill
1994**

**A BILL
FOR**

**An Act to establish a Commercial and 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**

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

PART I—PRELIMINARY

Short title

- 5 1. This Act may be cited as the *Commercial and Tenancy Tribunal Act 1994*.

Commencement

2. (1) Section 1 and this section commence on the day on which this Act is notified in the *Gazette*.

5 (2) The remaining provisions commence on a day, or respective days, fixed by the Minister by notice in the *Gazette*.

(3) If a provision referred to in subsection (2) has not commenced before the end of the period of 6 months commencing on the day on which this Act is notified in the *Gazette*, that provision, by force of this subsection, commences on the first day after the end of that period.

10 Interpretation

3. In this Act, unless the contrary intention appears—

“approved mediator” means a mediator approved under section 17;

“Code” means the code of practice approved under section 73, as in force from time to time;

15 “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;

20 “conduct”, in relation to a lease, includes making a request or demand of a person in relation to the lease, or taking other action to enforce the terms of the lease;

“Director” means the Director of Consumer Affairs;

25 “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 V;

(b) a hearing by the Tribunal under section 35; or

30 (c) the hearing of an application for an interim order under section 52;

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

- (a) rent;
- (b) a repayable security bond;
- (c) money payable on account of outgoings;
- 5 (d) money payable to a lawyer or licensed agent for attendances on a tenant, for the preparation of documents that are relevant to a lease;
- (e) any reasonable sum of money payable to a landlord for goods and services provided, or to be provided, to a tenant; or
- 10 (f) any money paid in accordance with the Code;

"landlord" 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;

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

- (a) a licence or other agreement relating to the common area of a shopping centre by reason only that it provides for a person to use a portion of that area; or
- 20 (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 IV or a hearing under Part V;

25 "mediation report" means a report under section 21;

"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;

"party"—

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

(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;

5 “ratchet clause” means a clause 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

10 (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;

“renewal”, in relation to a lease, does not include exercising an option contained in the lease;

15 “Registrar” means the Registrar of the Tribunal appointed under section 65;

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

20 (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 72 about that decision;

“shopping centre” means a group of premises where—

25 (a) at least 5 of the premises are retail, small commercial or premises prescribed by the Code, or a mixture of those premises;

(b) the premises—

30 (i) all have, or would have if leased, the same landlord or same head landlord; or

(ii) all comprise lots within a single unit plan under the *Unit Titles Act 1970*;

(c) the premises are located—

(i) in a single building; or

(ii) in buildings that adjoin, or are separated only by common areas owned by the owner of the premises; and

5 (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 300 metres²;

10 "substantive commencement date" means the date on which the general interpretation or definition clause of the first Code approved commences;

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

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

"Tribunal" means the Commercial and Tenancy Tribunal established by section 58.

PART II—APPLICATION

20 Interpretation

4. In this Part—

"lease" means a lease to which this Act applies by virtue of section 5.

Leases

25 5. (1) Subject to section 8, this Act applies to a lease for premises, situated in the Territory, 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 1000 metres² that are leased to a corporation that is not eligible to be incorporated as a proprietary limited company under the Corporations Law;
- 30 (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 Territory or purports to be governed by the law of a jurisdiction other than the Territory.

(3) This Act does not apply to a lease referred to in subsection (1) if—

- 5
- (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.

Disputes

6. Subject to section 8, this Act applies to the following disputes:

- 10
- (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);
 - 15 (c) a dispute about key money, or a ratchet clause, in relation to a lease;
 - (d) 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 or a ratchet clause;
 - 20 (e) a dispute about a lease, being a dispute prescribed by the Code as suitable for resolution under this Act;
 - (f) any other dispute about a lease.

Jurisdiction of Magistrates Court

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

25 Transitional application of Act

8. (1) This Act applies to a dispute referred to in paragraph 6 (a), (b), (c) or (f) whether the relevant lease is entered into, varied, renewed or extended under an option before, on or after the commencement of section 3.

30 (2) This Act applies to a dispute referred to in paragraph 6 (d) or (e) if the relevant lease is entered into, varied, renewed or extended under an option on or after the substantive commencement date.

35 (3) This Act applies to conduct giving rise to a dispute referred to in paragraph 6 (b) or (c) only if that conduct occurs on or after the substantive commencement date.

(4) This Act applies to conduct giving rise to a dispute referred to in paragraph 6 (f) whether that conduct occurs before, on or after the date of commencement of section 3.

Transitional application of Code

- 5 9. The Code applies to a dispute referred to in paragraph 6 (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.

Matters before Magistrates Court or Supreme Court

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

PART III—REFERRAL OF DISPUTES TO REGISTRAR

15 Informal mediation

11. 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 such action as he or she thinks appropriate to facilitate the resolution of the dispute.

20 Referral

12. (1) A person may refer a dispute about a lease to which this Act is alleged to apply to the Registrar.

(2) A referral shall be in a form approved by the Registrar which provides for the identification of the parties to the lease.

- 25 (3) On request, the Registrar shall ensure that a person is given such assistance in completing the approved form as the Registrar considers reasonable in the circumstances.

Action by Registrar on referral

- 30 13. (1) Where 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 form of 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.
- 5 (3) The Registrar shall determine whether a relevant dispute exists in such manner as he or she thinks appropriate, in consideration of any submission made pursuant to the invitation in paragraph (2) (b).
- (4) If the Registrar is not satisfied that there is a relevant dispute, he or she shall—
- 10 (a) take no further action with respect 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—
- 15 (a) take no further action with respect 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—
- 20 (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 V; or
- 25 (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.
- 30 (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.

Referral to mediator

14. 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;
- 5 (b) the amount of money (if any) involved in the dispute; and
- (c) any other matter the Registrar considers relevant.

Initial referral to Tribunal

15. (1) The Registrar shall refer a dispute to the Tribunal if—

- 10 (a) he or she is satisfied that there is no reasonable likelihood of a mediated agreement being reached;
- (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) Where—

- 15 (a) a dispute has been referred by the Registrar to an approved mediator;
- (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;

20 the Registrar shall refer the further dispute to the Tribunal.

**PART IV—MEDIATION BEFORE AN APPROVED
MEDIATOR**

Parties

25 16. 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 hearing;
- (b) any person who satisfies the Registrar that he or she has a sufficient interest in the dispute.

Approved mediators

30 17. The Minister may, by instrument, approve persons to be mediators for the purposes of this Act.

List of approved mediators

18. (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.

5 Procedure

19. 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;
- 10 (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.

Admissibility of evidence in subsequent proceedings

15 20. Evidence of proceedings at a mediation conference under section 19 is only admissible—

- (a) in accordance with section 47; or
- (b) in a prosecution for an offence under section 81.

Mediation reports

20 21. (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.

25 (2) Within the time specified in the referral notice under subsection 13 (7), the mediator shall provide—

- (a) a mediation report to the Registrar; and
- (b) a copy of the report to each party.

Referral to Tribunal

30 22. Where the Registrar receives a mediation report stating that a dispute remains unresolved, he or she shall refer the dispute to the Tribunal.

PART V—HEARINGS BEFORE THE REGISTRAR

Parties

23. 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;
- 5 (b) any other person notified by the Registrar under subsection 25 (1).

Representation

24. A party to a hearing may, with the consent of the Registrar, be represented at the hearing by a legal practitioner or an agent.

Notice of hearing

10 **25. (1)** Where the Registrar decides to hear a dispute under subparagraph 13 (6) (a) (ii), he or she shall cause notice of the hearing to be served on any person who the Registrar is satisfied has a sufficient interest in that dispute.

(2) A notice under subsection (1) shall—

- 15 (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.

Closed hearing

26. Proceedings before the Registrar shall take place in a closed hearing.

20 Summons to appear

27. (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—

- 25 (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.

30 **Penalty for contravention of subsection (3): \$5,000 or imprisonment for 6 months, or both.**

Formal record

28. (1) The Registrar shall not make a 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 form of referral of the dispute given under subsection 12 (1);
- (b) a statement by the Registrar setting out the nature of the dispute;
- (c) any relevant mediated agreement; and
- 5 (d) a statement of the grounds for any referral of the dispute to the Tribunal.

(3) The formal record of a hearing—

- 10 (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.

(4) The Registrar may make an informal record of evidence given at a hearing for his or her own use.

Admissibility of evidence in subsequent proceedings

15 **29.** Evidence given at the hearing of a dispute by the Registrar is only admissible—

- (a) at a further hearing of the dispute by the Registrar;
- (b) in accordance with section 47; or
- (c) in a prosecution for an offence under section 80 or 81.

20 Resolution by agreement

30. (1) Where, 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
- 25 (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
- 30 (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.

Referral to Tribunal

31. 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 such an agreement being reached;
- 5 (b) a party who has been notified of the hearing under section 25 fails to attend the hearing;
- (c) a party breaches the terms of a mediated agreement filed under subsection 30 (1);
- (d) 90 days after the dispute is referred to the Registrar—
 - 10 (i) a mediated agreement has not been filed under subsection 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.

15 **Costs**

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

PART VI—TRIBUNAL HEARINGS

Division 1—General

20 **Parties**

33. 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 Director intervenes in accordance with section 34—the Director;
- 25 (c) any person notified by the Registrar under subsection 35 (2).

Intervention by Director

34. (1) The Director may intervene in a Tribunal hearing or related proceedings if—

- (a) the Director considers that it would be in the public interest; and
- 30 (b) the Minister consents.

(2) Where the Director 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.

Hearings

35. (1) The Tribunal shall hear each dispute referred to it by the Registrar.

- 5 (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.

Renewed hearings

- 10 36. (1) If an order made by the Tribunal under section 53 at the conclusion of a hearing is breached, the party in whose favour the order was made may apply to the Tribunal for the renewal of the hearing of the dispute.

(2) An application under subsection (1) shall be by written notice to the Registrar.

- 15 (3) On application under subsection (1), the Tribunal may renew its hearing into the dispute.

(4) This Part applies to a renewed hearing of a dispute in the same way as it applies to an original hearing of a dispute.

Division 2—Procedure**Procedure generally**

- 20 37. If no procedure is prescribed by this Act or the regulations in relation to a particular matter in a hearing, the Tribunal may determine its own procedure.

Public hearings

- 25 38. (1) Subject to this section, a Tribunal hearing shall be in public.

- (2) The Tribunal may—

- 30 (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;
- (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:

- 35 (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.

5 Inquiries

39. For the purposes of a hearing the Tribunal may make such inquiries as it considers appropriate.

Record of proceedings

40. The Tribunal shall keep a record of its proceedings.

10 Appearances

41. 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.

Representation

15 42. A party to a hearing may be represented at the hearing by a legal practitioner or an agent.

Witnesses

43. (1) For the purposes of a Tribunal hearing, the Tribunal may summon a person to appear as a witness before it—

- 20 (a)** to give evidence;
- (b)** to give evidence and produce any document or thing, specified in the summons, in the possession, custody or control of the person; or
- 25 (c)** to produce any document or thing, specified in the summons, in the possession, custody or control of the person.

(2) The President may give a party leave to inspect a document produced under a summons.

30 (3) A person shall be taken to have complied with a summons under paragraph (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.

Penalty for contravention of subsection (5): \$5,000 or imprisonment for 6 months, or both.

5 Taking evidence

44. The Tribunal may take evidence on oath or affirmation and, for that purpose, the President—

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

President's powers

45. (1) For the purposes of a Tribunal hearing, the President may require a person appearing before the Tribunal—

- (a) to answer a question relevant to the hearing; or
- 15 (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.

Penalty for contravention of subsection (2): \$5,000 or imprisonment for 6 months, or both.

20 Self-incrimination

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

Admissibility of evidence given during mediation

25 47. (1) At a Tribunal hearing of a dispute, evidence obtained at a hearing of the dispute by the Registrar or during mediation under Part IV shall only be admitted if—

- (a) the parties agree; or
- (b) subsection (2) applies in relation to the evidence.
- 30 (2) Evidence of the making of a mediated agreement is admissible at a Tribunal hearing if—
 - (a) the agreement has been—
 - (i) included in a mediation report under section 21; or

(ii) filed under subsection 30 (1); and

(b) a party to the agreement alleges, in good faith, that the agreement was induced or affected by fraud, other than fraud of the party.

Admissibility of evidence in subsequent criminal proceedings

5 **48.** The following evidence is not admissible against a person in criminal proceedings other than prosecutions for an offence against sections 80 and 81:

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

Amendments

49. At any stage of a hearing, the Tribunal may—

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

Determination of questions

50. (1) A question of law arising before the Tribunal shall be decided in accordance with the opinion of the President.

20 **(2)** Subject to subsection (1), where there is a division of opinion among the Tribunal members in relation to a question, the question shall be decided according to the opinion of the majority.

Adjournment

25 **51.** On application by a party, or of its own motion, the Tribunal may adjourn a hearing.

Division 3—Relief

Interim orders

52. (1) Where, before a hearing—

- 30 (a) a party to the hearing applies to the Tribunal for an interim order under this section; and
- (b) the Tribunal is satisfied that, if an order under this section were not made before the commencement of the hearing, the party applying for the order would suffer detriment;

the Tribunal may make such interim order as it considers appropriate to safeguard the position of that party.

(2) An interim order remains in force until—

- (a) the expiration of 14 days after it is made;
- 5 (b) the Tribunal otherwise orders; or
- (c) the Tribunal makes an order under section 53 at the conclusion of a hearing;

whichever is earlier.

10 (3) The Tribunal may, on application by a party, while an interim order is in force—

- (a) vary the order;
- (b) rescind the order; or
- (c) extend the order for a further 14 days.

15 (4) An application under paragraph (1) (a) shall be in accordance with the form approved by the Registrar.

(5) Where a person against whom an interim order is made is not present at the making of the order, the Registrar shall cause a copy of the order to be served on the person as soon as practicable after the order is made.

20 Power to grant relief

53. (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.

25 (2) Subject to the Code, in addition to any other order the Tribunal may make under subsection (1)—

- (a) the Tribunal may make an order for the payment of an amount exceeding \$50,000;
- 30 (b) the Tribunal may, in relation to a dispute referred to in paragraph 6 (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
- 35 (c) the Tribunal may make any order required to enforce the Code.

Notice of orders

54. The Tribunal shall give each party to a hearing written notice setting out the terms of any order made under section 53 at the conclusion of a hearing within 14 days of making such an order.

5

Division 4—Enforcement

Failure to comply

55. A party to a hearing shall not, without reasonable excuse, fail to comply with an order of the Tribunal or of the President.

Penalty: \$5,000 or imprisonment for 6 months, or both.

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Powers of enforcement

56. 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 VII—APPEALS TO THE SUPREME COURT

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Appeal from decisions of the Tribunal

57. (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.

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(2) An appeal by a person under subsection (1) shall be instituted no later than 28 days after the day on which a notice under section 54 is given to the person or within such further time as 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:

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- (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) such other order as the Court considers appropriate.

PART VIII—COMMERCIAL AND TENANCY TRIBUNAL

30

Establishment

58. The Commercial and Tenancy Tribunal is established by this section.

Constitution

59. The Tribunal shall consist of—

- (a) a President appointed under subsection 60 (1); or
- (b) the President and 2 persons appointed by the President under subsection 60 (3).

Membership

60. (1) The President shall be a Magistrate appointed by the Minister by instrument.

(2) The President holds office for the period (not exceeding 5 years) specified in the instrument of appointment but is eligible for reappointment.

(3) If the President considers it desirable, having regard to the nature and complexity of a particular dispute, he or she shall appoint 2 further members by instrument for the hearing, of whom—

- (a) the first shall be a member of a group selected under subsection (4); and
- (b) the second shall be a member of a group selected under subsection (5).

(4) The Minister shall, by instrument, select persons who, in his or her opinion, are qualified by reason of experience and expertise to represent the interests of tenants to form a group for the purposes of paragraph (3) (a).

(5) The Minister shall, by instrument, select persons who, in his or her opinion, are qualified by reason of experience and expertise to represent the interests of landlords to form a group for the purposes of paragraph (3) (b).

Acting President

61. (1) The Minister may appoint a Magistrate to be the Acting President.

(2) The Acting President shall act as President—

- (a) during a vacancy in the office of President, whether or not an appointment has previously been made to the office; or
- (b) during any period or during all periods when the President is, for any reason, unable to perform the functions of the office.

(3) An Acting President shall not act continuously as President for more than 12 months.

(4) Anything done in good faith by or in relation to a person purporting to act under subsection (2) is not invalid on the ground that—

- (a) the person's appointment was ineffective or had ceased to have effect; or
- (b) the occasion for the person to act had not arisen or had ceased.

Powers of Tribunal

- 5 **62.** Subject to this Act, the Tribunal has power to do all things necessary or convenient to be done for or in connection with the performance of its functions.

Annual report

- 10 **63. (1)** The Tribunal shall furnish to the Minister for presentation to the Legislative Assembly a report relating to the activities of the Tribunal during each financial year.

(2) A report under this section is a periodic report for the purposes of section 30A of the *Interpretation Act 1967*.

Expenses

- 15 **64.** The Territory shall reimburse a member referred to in subsection 60 (3) for expenses reasonably incurred in the performance of the member's functions.

Registrar

- 20 **65. (1)** The Minister may, by instrument, appoint a public servant to be the Registrar of the Tribunal.

(2) The functions of the Registrar are as follows:

- (a) those conferred on the Registrar by this Act, the Code or any other law of the Territory;
- 25 (b) to provide public information and education concerning the rights and obligations of persons in relation to leases.

Delegation

66. The Registrar may, by instrument, delegate to a public servant any or all of his or her powers under this Act.

Acting Registrar

- 30 **67. (1)** The Minister may appoint a public servant to act as Registrar—

- (a) during a vacancy in the office of Registrar, whether or not an appointment has previously been made to the office; or
- 35 (b) during any period or during all periods when the Registrar is, for any reason, unable to perform the duties of the office.

(2) A person appointed to act during a vacancy shall not act continuously for more than 12 months.

(3) Anything done in good faith by or in relation to a person purporting to act under subsection (1) is not invalid on the ground that—

- 5 (a) the person's appointment was ineffective or had ceased to have effect; or
 (b) the occasion for the person to act had not arisen or had ceased.

Protection of members etc.

10 68. No action, suit or proceeding lies against a person who is or has been—

- (a) a member of the Tribunal;
 (b) a member of the staff of the Tribunal;
 (c) the Acting President of the Tribunal;
 (d) the Registrar;
15 (e) acting under the direction or authority of the Tribunal; or
 (f) participating in proceedings;

in relation to an act done or omitted to be done in good faith in the performance or purported performance of a function under this Act.

Resignation

20 69. A member of the Tribunal, the Acting President or the Registrar may resign by writing given to the Minister.

Termination of appointment

25 70. (1) The Minister may remove the President, Acting President or Registrar from office by reason of misbehaviour or physical or mental incapacity.

 (2) If a person referred to in subsection (1)—

- 30 (a) 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 the person's remuneration for their benefit;
 (b) is convicted in Australia of an offence punishable by imprisonment for 1 year or longer;
 (c) is unreasonably absent from proceedings of the Tribunal; or
35 (d) ceases to have the qualifications by virtue of which he or she was appointed;

the Minister shall remove the person from office.

PART IX—APPEALS TO TRIBUNAL

Appeals

5 71. A person who referred a dispute to the Registrar under section 12 may appeal to the Tribunal where the Registrar has made a decision to take no further action with respect to the dispute—

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

Review statements

10 72. (1) For the purposes of this Act, a review statement about a decision shall be in writing containing—

- (a) a statement of the decision;
- (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
- 15 (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.

20 (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.

25 PART X—CODE OF PRACTICE

Approval

73. (1) The Minister may, by instrument, approve—

- (a) a code of practice relating to leases; or
- (b) a variation of an approved code of practice.

30 (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 or premises, for the purposes of paragraph 5 (1) (c);
- (c) premises, or a class of premises, for the purposes of paragraph 5 (3) (a);
- 5 (d) leases, or a class of leases, for the purposes of paragraph 5 (3) (b);
- (e) disputes, or a class of disputes, for the purposes of paragraph 6 (e);
- (f) grounds on which specified provisions in a lease are to be invalid or void.

10 Disallowance

74. A code or variation approved under section 73 is a disallowable instrument for the purposes of section 10 of the *Subordinate Laws Act 1989*.

Publication

- 15 75. (1) The Director shall cause to be published in a newspaper published and circulating in the Territory, on or before the date of effect of an approval under section 73, notice of that approval—

- (a) specifying the date on which the approval takes effect;
- 20 (b) specifying a place or places at which copies of the code of practice to which the approval relates may be purchased;
- (c) containing a statement to the effect that a copy of that code of practice may be inspected by members of the public at the office of the Director during office hours; and
- 25 (d) containing a statement to the effect that the approval is subject to disallowance by the Legislative Assembly under the *Subordinate Laws Act 1989*.

(2) The Director shall ensure that—

- 30 (a) a copy of the code of practice to which an approval under section 73 relates is made available for public inspection at the office of the Director during office hours; and
- (b) copies of that code of practice are made available for purchase at each place specified for that purpose in the relevant notice under subsection (1).

(3) In this section—

- 35 “code of practice” includes any document (or part of a document) the provisions of which are applied by the code.

PART XI—FEES AND CHARGES

Determination

76. (1) The Minister may, by notice in writing published in the *Gazette*, determine fees and charges for any of the following purposes:

- 5 (a) referral of disputes to the Registrar;
 - (b) proceedings in the Tribunal and matters incidental to such proceedings, including the service of the process of the Tribunal;
 - (c) facilities and services provided by the Registrar or the Tribunal;
 - (d) the general purposes of this Act and the Code.
- 10 (2) A determination under subsection (1) may provide for any of the following matters:
- (a) the exemption of persons from liability to pay fees or charges, in whole or in part;
 - 15 (b) exemptions from liability for the payment of fees or charges, in whole or in part, in particular circumstances;
 - (c) the remission or refund of fees or charges by the Registrar, in whole or in part, in particular circumstances;
 - (d) the deferral of liability by the Registrar for the payment of fees or charges, in whole or in part, in particular circumstances.
- 20 (3) A determination under subsection (1) is a disallowable instrument for the purposes of section 10 of the *Subordinate Laws Act 1989*.

Payment

25 77. (1) A fee or charge determined under subsection 76 (1) is payable, in advance, in accordance with the determination, subject to this section.

(2) A fee or charge determined under subsection 76 (1) is payable on notification from the Registrar if it is calculated by reference to expenses actually incurred in performing the function, or in providing the facility or service, for which the fee or charge is payable.

30 (3) If a fee or charge determined under subsection 76 (1) and payable in advance is not paid when due, there is no obligation on the Registrar or the Tribunal to perform the function, or provide the facility or service, for which the fee or charge is payable.

Remission, refund, deferral, waiver, exemption

78. (1) A fee or charge determined under subsection 76 (1) may be remitted or refunded, or liability for its payment deferred, in accordance with the determination.

5 (2) A fee or charge determined under subsection 76 (1) is not payable—

 (a) if the person otherwise liable to pay the fee or charge is—

 (i) exempt from paying the fee or charge under subsection 93 (1) of the *Legal Aid Act 1977*; or

10 (ii) legally assisted under a scheme or service provided or approved by the Attorney-General; or

 (b) if the Registrar waives payment of the fee or charge in whole or in part because he or she considers that it would impose hardship on the person liable to pay the fee or charge—to the extent of the waiver.

15

Review of decisions

79. (1) The following decisions of the Registrar are reviewable under this section:

20 (a) a decision referred to in paragraph 76 (2) (c) in relation to the remission or refund of a fee or charge (in whole or in part);

 (b) a decision referred to in paragraph 76 (2) (d) in relation to the deferral of liability for the payment of a fee or charge (in whole or in part);

25 (c) a decision under paragraph 78 (2) (b) in relation to the waiver of payment of a fee or charge (in whole or in part).

 (2) After making a reviewable decision, the Registrar shall give a written notice of the decision to the eligible person including a statement to the effect that—

30 (a) the person may apply to the Registrar for a statement of reasons for the decision; and

 (b) the person may apply to the Tribunal for review of the decision within the review period.

35 (3) On written application by the eligible person within 28 days after the person's receipt of a notice under subsection (2), the Registrar shall give the person a written statement of reasons for the relevant decision.

 (4) On written application by the eligible person within the review period, the Tribunal may review a reviewable decision.

(5) On a review under subsection (4), the Tribunal may make such order as it considers appropriate.

(6) No fee or charge is payable in relation to an application for review under subsection (4).

5 (7) In this section—

“eligible person”, in relation to a reviewable decision, means the person who claims to be entitled to the relevant remission, refund, deferral or waiver;

“review period”, in relation to a reviewable decision, means—

- 10 (a) the period of 28 days after receipt by the eligible person of notice of the decision under subsection (2); or
- (b) if the eligible person applies under subsection (3) for a statement of reasons for the decision—the period of 28 days after he or she receives the statement of reasons.

15 **PART XII—MISCELLANEOUS**

Obstruction of Registrar and Tribunal

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

Penalty: \$5,000 or imprisonment for 6 months, or both.

20 **False or misleading information**

81. A person shall not provide information, or make a statement, in a mediation conference under section 19 or a hearing under this Act knowing that it is false or misleading in a material particular.

Penalty: \$5,000 or imprisonment for 6 months, or both.

25 **Regulations**

82. The Executive may make regulations for the purposes of this Act.