

2002

LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY

LEASES (COMMERCIAL AND RETAIL) REGULATIONS 2002

SUBORDINATE LAW NO SL2002-19

EXPLANATORY MEMORANDUM

Circulated by authority of the
Attorney General
Mr Jon Stanhope MLA

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Outline

The *Leases (Commercial and Retail) Act 2001* (“the Act”) replaces the *Tenancy Tribunal Act 1994* and the Commercial and Retail Leases Code of Practice in regulating commercial and retail leases in the ACT.

The regulations:

- prescribe types of premises for the purposes of the Act (prescription has the effect of including various premises within the ambit of the Act);
- prescribe specific leases excluded under the Act (these reflect exclusions made under the former Commercial and Retail Leases Code of Practice); and
- establish a number of standard provisions for the purposes of the Act (note that because, in practice, commercial leases exclude implied conditions such as these, the standard provisions will tend only to operate where a formal lease has not been entered into).

Financial Implications

Nil.

Clause Notes

Regulation 1 – Name of regulations – provides that the regulations are the *Leases (Commercial and Retail) Regulations 2002*.

Regulation 2 – Commencement – provides that the regulations commence on 1 July 2002.

Regulation 3 – Leases to which Act applies – Act, s 12 (1) (k) – The Act applies to various premises set out in subsection 12(1). Paragraph 12(1)(k) also includes a power to prescribe leases for the purposes of the Act. The concept of prescribed leases is also used by subparagraph 8(1)(a)(iii) and paragraph 11(1)(a). Two types of premises are prescribed under paragraph 12(1)(k):

- (a) During passage of the Bill, service stations were specifically identified for prescription; and
- (b) During passage of the Bill, a private members bill incorporated a number of premises (intended to be prescribed by regulations) directly into the Bill. In order for subparagraph 8(1)(a)(iii) and paragraph 11(1)(a) of the Act to operate in the intended manner, these premises are re-prescribed.

Regulation 4 - Leases to which Act does not apply – Act, s 12 (2) (b) – Exclusions made under the Commercial and Retail Leases Code of Practice under paragraph 75(1)(b) of the *Tenancy Tribunal Act 1994*, have been re-prescribed for the purposes of the Act. The Act does not apply to these premises.

Regulation 5 – Included provisions – Act, s 20 (3) – Subsection 20(3) provides that a lease entered into or renewed, or to which the Act begins to apply, on or after 1 July 2002 is taken for all purposes to include the prescribed provisions (except to the extent that the parties are bound by contrary provisions in the lease, or a contrary agreement - whether written or unwritten). Regulation 5 prescribes the provisions in Schedule 1 for this purpose. Note that commercial leases exclude implied conditions. Accordingly, in practice, the standard provisions will tend only to operate where a formal lease has not been entered into (and then, only to the extent that it would not be inconsistent with a contrary agreement).