

Commercial and Retail Leases Code of Practice Variation

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Explanatory Statement

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Commercial and Retail Leases Code of Practice Variation

Outline

The Minister may exclude leases from the operation of the *Tenancy Tribunal Act 1994* (“the Act”) and the Commercial and Retail Leases Code of Practice (“Code”) by a variation to the Code.

The ACT Racing Club Incorporated (ACTRC) proposes to issue long term subleases of a number of racecourse stables to trainers. In return (as with the grant of most long-term ACT land interests) trainers would be required to pay a price for the initial grant of the sublease (rather than a significant annual rental).

ACTRC proposes to grant the subleases for the residue of the Crown Lease (less one day) (ie, 90+ years). However, ACTRC legal advisors have pointed out that such subleases would be inappropriately caught by the Code as a result of the interpretation given to the term “retail premises” by the Tenancy Tribunal following the decision of President Somes in *222 Pty Ltd v St George Bank*.

The long term nature of these leases lies outside the policy intention of the Code which was to provide protection to short term retail and commercial tenancies. It was never intended that the Code would apply to leases with a term of 90+ years.

For this reason, the Minister has approved a variation to the Code to exclude the leases specified in paragraph 4 of Schedule 4 from the operation of the Act and the Code.

Revenue/Cost Implications

The Bill has no direct revenue or cost implications.

Detail

Paragraphs 5(3)(b) and 75(2)(d) of the Act provide that the Code may exclude leases from the operation of the Act and the Code. The Minister may, by disallowable instrument, approve variations to the Code under paragraph 75(1)(b) of the Act.

This variation amends Schedule 4 of the Code (which was inserted by Instrument No.5 of 1997 and notified in Gazette S10 of 1997).

The variation introduces new paragraph 8, which specifies 13 units for the purposes of Schedule 4 (being stables at the Canberra Racecourse) for a term of the residue of the term of the Crown Lease (less one day). The effect of including this paragraph in Schedule 4 of the Code (as with other leases specified in Schedule 4) is to exclude the operation of the Act and the Code in relation to such leases.