

## AUSTRALIAN CAPITAL TERRITORY

### TENANCY TRIBUNAL ACT 1994

## VARIATION

NO. 94 OF 1997

### Explanatory Statement

The *Tenancy Tribunal Act 1994* ("the Act") provides mechanisms for the resolution of disputes arising under the Commercial and Retail Leases Code of Practice ("the Code"). The Code, approved by the Minister under paragraph 75 (1) (a) of the Act, sets minimum standards of conduct for parties to a lease which fall under its scope of operation.

Paragraph 75(1)(b) of the Act provides the Minister with the power to vary the Code and, in particular, paragraph 7(2)(d), enables the Code to prescribe leases, or a class of leases, for the purposes of paragraph 5(3)(b) of the Act. Paragraph 5(3)(b) provides that the Act does not otherwise apply to a lease if the lease is excluded by the Code from its operation, or is included in a class of leases that is excluded.

This Variation amends Schedule 4 of the Code which was inserted by Variation Instrument No. 5 of 1997 as notified in Special Gazette No. S10 of 1997. Leases specified in Schedule 4 of the Code are excluded from its operation by virtue of clause 7(b) of the Code which was also inserted by Variation Instrument No. 5 of 1997.

Clause 1 of the Variation amends paragraph 1 of Schedule 4 in consequence of Clause 2 which inserts a new paragraph 3. New paragraph 3 specifies a

lease for a term exceeding 50 years as a lease to be excluded from the operation of the Code provided that the parties to such a lease are the Calvary Hospital ACT Incorporated Pty Limited (a non profit charitable organisation) and the Calvary Clinic Pty Limited and their assignees or transferees (who will be medical professionals).

The Calvary Hospital is developing a complex of ten medical suites on hospital land to be known as the Calvary Clinic. The Hospital intends to sublease several medical suites to medical professionals for the balance of the term of the Crown lease; that is, until the year 2078.

The Calvary Clinic will assist the hospital to attract and retain key medical professionals by offering accommodation in close proximity to the Calvary Hospital where large numbers of their patients are treated.

It is anticipated that the sale of these long term units will realise sufficient funds to cover the capital expenditure outlaid for the construction of the medical suites at the Hospital.

Exclusion from the Code will allow the Hospital to retain some control over the future sale and development of these medical units and negotiate provisions which might otherwise infringe the provisions of the Code.

The long term nature of these leases is outside the original policy intention of the Code which was to provide protection for short term retail and commercial tenancies. It was never intended that the Code would apply to long term leases with a term exceeding 50 years. The tenants of these long term leases will be experienced medical professionals who would be expected to have access to expert legal advice.

For these reasons, the Minister has approved a variation to the Code to allow the leases specified in paragraph 3 of Schedule 4 to operate without the undue regulation of the Code.

Circulated by the authority of Gary Humphnes MLA, Minister for Fair Trading