



AUSTRALIAN CAPITAL TERRITORY

## Tenancy Tribunal (Amendment) Act 1997

No. 120 of 1997

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### **An Act to amend the *Tenancy Tribunal Act 1994***

*[Notified in ACT Gazette S420: 24 December 1997]*

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

#### **Short title**

1. This Act may be cited as the *Tenancy Tribunal (Amendment) Act 1997*.

#### **Commencement**

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

(2) The remaining provisions commence on a day 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 3 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.

#### **Principal Act**

3. In this Act, “Principal Act” means the *Tenancy Tribunal Act 1994*.<sup>1</sup>

**Interpretation - “lease”**

4. Section 3 of the Principal Act is amended—
- (a) by inserting after “sublease” in the definition of “lease” the words “or a licence”;
  - (b) by omitting “includes” from the definition of “conduct” and substituting “means any act or omission including”; and
  - (c) by omitting from the definition of “substantive commencement date” all the words after “means” and substituting “1 January 1995”.

**Parties**

5. Section 16 of the Principal Act is amended by omitting from paragraph (a) “hearing” and substituting “dispute”.

**Substitution**

6. Section 36 of the Principal Act is repealed and the following section substituted:

**Unconscionable conduct etc.**

“36. (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 paragraph 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);
- (j) the extent to which the owner and the tenant acted in good faith.

“(2) An owner is not to be taken, for the purposes of this section, to have engaged in harsh, oppressive or unconscionable conduct by reason only 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.”.

### **Interim orders**

7. Section 53 of the Principal Act is amended—

- (a) by omitting subsection (1) and substituting the following subsection:

“(1) Where 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 such an order were not made, the person applying for the order would suffer detriment;

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

- (b) by omitting paragraph (2) (a);
- (c) by omitting from subsection (3) “party” and substituting “person who has a direct interest in the relevant dispute”;
- (d) by adding at the end of paragraph (3) (a) “or”;
- (e) by omitting from paragraph (3) (b) “or”; and
- (f) by omitting paragraph (3) (c).

#### **Power to grant relief**

**8.** Section 54 of the Principal Act is amended—

- (a) by omitting paragraph (2) (a);
- (b) by omitting from paragraph (2) (b) “paragraph 6 (b)” and substituting “paragraph 6 (1) (b)”; and
- (c) by adding at the end the following subsection:  
“(3) The Tribunal is not limited in any amount it may order to be paid.”.

#### **NOTE**

#### **Principal Act**

1. Reprinted as at 1 January 1996.

*[Presentation speech made in Assembly on 12 November 1997]*

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