

AUSTRALIAN CAPITAL TERRITORY
RESIDENTIAL TENANCIES ACT 1997

DETERMINATION

INSTRUMENT NO. 82 OF 1998

EXPLANATORY STATEMENT

Under the *Residential Tenancies Act 1997*, provisions in a tenancy agreement that are inconsistent with the prescribed terms are void unless they are endorsed by the Residential Tenancies Tribunal. Parties to a tenancy agreement containing an inconsistent term may seek endorsement of that term by the Tribunal under sections 9 and 10 of the *Residential Tenancies Act 1997*.

Section 134 of the Act empowers the Minister to determine criteria for the Tribunal in applications for the endorsement of inconsistent terms

Part A of the determination sets out four criteria that the Tribunal must have regard to when examining an application for endorsement (except in relation to a community housing organisation or a supported, crisis or transitional accommodation provider or joint venture - definitions of these are provided in Part C of the determination). The criteria are:

- the consent of the parties;
- the circumstances surrounding the giving of consent;
- whether the inclusion of the inconsistent term will result in any material detriment to either the lessor or tenant, and
- whether the Tribunal has endorsed a similar term.

These criteria deal with the possible abuse of the unequal power relationship between lessors and tenants. Under these criteria a Tribunal will be able to consider:

- all the circumstances surrounding the consent of a party to an inconsistent term, in particular whether there have been any element of fraud or undue influence; and
- whether there would be any material detriment to a party under the inconsistent term.

Where these elements are present the Tribunal will be able to exercise a discretion not to endorse an inconsistent term.

Part B of the Determination relates to an application for endorsement of terms in relation to a community housing organisation or a supported, crisis or transitional accommodation provider or joint venture. These criteria will allow

through the endorsement process, to accommodate group living issues in the community housing sector within the Residential Tenancies scheme.

Part C is a formal provision containing definitions.