

NORTHERN TERRITORY OF AUSTRALIA

COMMERCIAL TENANCIES ACT

As in force at 1 August 2002

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NORTHERN TERRITORY OF AUSTRALIA

As in force at 1 August 2002

COMMERCIAL TENANCIES ACT

An Act relating to business tenancies

Part I Preliminary

1 Short title

This Act may be cited as the *Commercial Tenancies Act*.

2 Commencement

This Act shall come into operation on a date to be fixed by the Administrator by notice in the *Gazette*.

4 Interpretation

(1) In this Act unless the contrary intention appears:

lease means an agreement or contract under which premises are let or hired to a person, whether that agreement is oral or written or arises by implication out of the acts of parties and includes a tenancy and a sub-lease.

lessee means a tenant or the party to a lease to whom premises are leased and includes a person in possession of premises under an assignment of a lease or a sub-lease, if the assignment or the sub-lease has been made or given without the consent of the lessor and that consent was expressly or impliedly required under the terms of the lease.

lessor means the party to a lease who makes premises available for occupation by a lessee or who, being an owner of premises, permits a person to occupy those premises in exchange for rent.

premises means premises leased primarily for business purposes, whether or not the premises may be used as a residence under the lease.

rent means the amount of money payable under a lease for the right to occupy or use premises or premises and goods for a period of time and includes any rates or taxes payable by the lessee but, where in the lease:

- (a) it is provided that a reduced amount shall be accepted by the lessor as rent upon the performance of a condition by the lessee; or
- (b) provision is made for a rebate, discount, allowance or other reduction of rent,

the amount payable after such reduction is made shall, for the purposes of this Act, be the rent payable under the lease.

sub-lease means a lease which depends for its performance upon possession given to the sub-lessor under a head lease (not being a Crown lease).

to lease means to make premises available under a lease.

- (2) For the purposes of this Act, **lessee** includes a person who remains in possession of premises after determination of a lease of those premises to him and the word **lessor** is used correlatively.

5 Act not to bind the Crown

This Act does not bind the Crown.

Part VII Repossession of premises

41 Interpretation

In this Part unless the contrary intention appears:

lessee includes a person in possession of premises under an assignment of a lease or a sub-lease where the assignment or the grant of a sub-lease has been made or given without the consent of the lessor and that consent was required under the terms of the lease whether expressed or implied.

42 No entry without order

A person shall not, except in accordance with an order of a court, enter premises of which a person has possession as a lessee under a lease, or as a former lessee holding over after termination of a lease, for the purpose of recovering possession of the premises, whether entry is effected peaceably or otherwise.

Penalty: 100 penalty units or imprisonment for 6 months.

42A Notice to quit to be in writing

A notice to quit given by a lessor shall be in writing and signed by the lessor, or his agent authorized in writing.

42AA Lessor may evict tenants if drug premises order made

A lessor of premises that are drug premises within the meaning of the *Misuse of Drugs Act* may issue a notice to quit in accordance with section 42A requiring the lessee to give up vacant possession of the premises within 14 days.

43 Expiration of notices

- (1) A notice to quit given by a lessor under section 42A, and a notice of intention to quit given by a lessee may expire at any time specified in the notice if the period of notice required by this Act is given, notwithstanding that the expiration of the period of the notice does not coincide with a day prior to a rent day or a day prior to the last day of the tenancy.
- (2) A notice of intention to quit given by a lessee shall be for:
 - (a) if the lease is for a fixed term – the unexpired duration of the term; or
 - (b) in any other case – 14 days,or for such longer or shorter period as is agreed upon between the parties to the lease.

44 Certain matters not to affect notice

Where notice to quit premises has been given:

- (a) a demand by the lessor for payment of rent or a sum of money as rent;
- (b) the institution of proceedings by the lessor for recovery of rent or a sum of money as rent; or

- (c) the acceptance by the lessor of rent or a sum of money as rent,

in respect of a period within 6 months after the giving of the notice shall not, of itself, constitute evidence of a tenancy or operate as a waiver of the notice to quit.

45 Defective notice

A notice to quit which does not comply with the provisions of this Part does not operate so as to terminate the tenancy in respect of which the notice was given.

46 Notice to quit premises

- (1) Subject to a term of the lease, a lessor is not required to specify in the notice to quit a ground for the giving of notice in respect of a periodical tenancy.
- (2) Subject to the terms of a lease, where a lease was granted for a fixed term the lessor shall specify as a ground for the giving of a notice to quit:
 - (a) that the lessee has breached or failed to comply with a covenant, condition or provision of the lease and that the breach or failure to comply was such that the lessor was justified as treating the lease as at an end; or
 - (b) that the term of the lease has expired.
- (3) The period of a notice to quit premises is such period as is fixed by the lease or, where the rent is payable at regular intervals, the period of one such interval.

48 Application for a warrant of ejectment

- (1) Where a lessor has given to a lessee a notice to quit which complies with this Part, the lessor or an agent authorized in writing may, at any time within 60 days after the expiration of the term of the notice, apply to the Local Court for a warrant of possession.
- (2) The Court shall specify the day on which an order for the issue of a warrant of possession takes effect.

50 Court may make orders for outstanding rent, &c.

The Court may in giving an order under this Part make such further orders as to payment of any outstanding rent or damage to premises or goods leased with premises that may be established by the lessor.

Part VIII Miscellaneous**55B Lessee's right of association**

- (1) A lessor must not:
- (a) refuse to renew a lease of premises (whether or not the right to renew was a condition of the lease) for the reason that the lessee has joined or is or was a member of a body or association of persons the objects of which include the mutual advancement of their business interests, whether in relation to that business carried on those premises or elsewhere;
 - (b) purport to exercise a power or right to terminate a lease of premises for the reason that the lessee has joined or is or was a member of a body or an association referred to in paragraph (a); or
 - (c) threaten or otherwise indicate that he or she will refuse to renew a lease of those premises if the lessee joins or becomes a member of such a body or association.

Penalty: 1000 penalty units.

- (2) A condition of a lease of premises which provides that the lease is or may be terminated, or that the lessee will suffer any other detriment under the lease, if he joins or becomes a member of a body or association of a kind referred to in subsection (1), whether that lease was entered into before or after the date on which this section came into operation, is void and of no effect.

56 Mitigation of damages for breach of lease

The rules under the law of contract relating to mitigation of loss or damage upon breach of a contract apply to and in relation to a breach of a lease of premises.

67A Service of notice

Subject to this Act, where a notice or document is required or authorized to be served on or given to a person, it may be served or given:

- (a) by handing or tendering it to the person or by posting it by pre-paid mail to the person at his last-known address; or
- (b) if the person is a company – by leaving it at or posting it by pre-paid mail to the registered office of the company.

68 Regulations

The Administrator may make regulations not inconsistent with this Act prescribing all matters which are required or permitted to be prescribed or which are necessary or convenient to be prescribed for carrying out or giving effect to this Act.

ENDNOTES

1**KEY**

Key to abbreviations

amd = amended
 app = appendix
 bl = by-law
 ch = Chapter
 cl = clause
 div = Division
 exp = expires/expired
 f = forms
 Gaz = Gazette
 hdg = heading
 ins = inserted
 lt = long title
 nc = not commenced

od = order
 om = omitted
 pt = Part
 r = regulation/rule
 rem = remainder
 renum = renumbered
 rep = repealed
 s = section
 sch = Schedule
 sdiv = Subdivision
 SL = Subordinate Legislation
 sub = substituted

2**LIST OF LEGISLATION*****Tenancy Act 1979 (Act No. 43, 1979)***

Assent date 27 April 1979
 Commenced 7 September 1979 (*Gaz* G36, 7 September 1979, p 5)

Tenancy Act (No. 2) 1979 (Act No. 131, 1979)

Assent date 15 October 1979
 Commenced 15 October 1979

Tenancy Amendment Act 1982 (Act No. 19, 1982)

Assent date 27 April 1982
 Commenced 27 April 1982

Tenancy Amendment Act (No. 2) 1982 (Act No. 37, 1982)

Assent date 28 June 1982
 Commenced 28 June 1982

Tenancy Amendment Act 1983 (Act No. 37, 1983)

Assent date 3 October 1983
 Commenced 3 October 1983

Local Court (Consequential Amendments) Act 1989 (Act No. 14, 1989)

Assent date 5 June 1989
 Commenced s 6: 5 June 1989; rem: 1 Jan 1991 (s 2, s 2 *Small Claims Amendment Act 1988* (Act No. 43, 1988), *Gaz* G17, 3 May 1989, p 2, s 2 *Local Court Act 1989* (Act No. 31, 1989) and *Gaz* G49, 12 December 1990, p 2)

Local Court (Consequential Amendments) Act 1990 (Act No. 31, 1990)

Assent date 11 June 1990
 Commenced s 5: 11 June 1990; rem: 1 January 1991 (s 2, s 2 *Local Court Act 1989* (Act No. 31, 1990) and *Gaz* G49, 12 December 1990, p 2)

Statute Law Revision Act 1991 (Act No. 31, 1991)

Assent date	25 June 1991
Commenced	25 June 1991

Statute Law (Miscellaneous Amendments) Act 1991 (Act No. 77, 1991)

Assent date	16 December 1991
Commenced	16 December 1991

Public Sector Employment and Management (Consequential Amendments) Act 1993 (Act No. 28, 1993)

Assent date	30 June 1993
Commenced	1 July 1993 (s 2, s 2 <i>Public Sector Employment and Management Act 1993</i> (Act No. 11, 1993) and Gaz S53, 29 June 1993)

Sentencing (Consequential Amendments) Act 1996 (Act No. 17, 1996)

Assent date	19 April 1996
Commenced	s 7: 19 April 1996; rem: 1 July 1996 (s 2, s 2 <i>Sentencing Act 1995</i> (Act No. 39, 1995) and Gaz S15, 13 June 1996)

Financial Institutions (Consequential Amendments) Act 1997 (Act No. 23, 1997)

Assent date	2 June 1997
Commenced	2 June 1997

Territory Insurance Office (Consequential Amendments) Act 1998 (Act No. 37, 1998)

Assent date	27 May 1998
Commenced	27 May 1998

Statute Law Revision Act (No. 2) 1998 (Act No. 92, 1998)

Assent date	11 December 1998
Commenced	11 December 1998

Residential Tenancies (Consequential Amendments) Act 1999 (Act No. 46, 1999)

Assent date	11 November 1999
Commenced	1 March 2000 (s 2, s 2 <i>Residential Tenancies Act 1999</i> (Act No. 45, 1999) and Gaz G8, 1 March 2000, p 2)

Misuse of Drugs (Consequential Amendments) Act 2002 (Act No. 33, 2002)

Assent date	16 July 2002
Commenced	1 August 2002 (s 2, s 6 <i>Misuse of Drugs Amendment Act 2002</i> (Act No. 32, 2002), Gaz G30, 31 July 2002)

3 LIST OF AMENDMENTS

It	amd No. 46, 1999, s 6
s 1	amd No. 92, 1998, s 22; No. 46, 1999, s 6
s 3	rep No. 31, 1990, s 7
s 4	amd No. 131, 1979, s 2; No. 19, 1982, s 3; No. 37, 1982, s 3; No. 14, 1989, s 7; No. 31, 1990, s 7; No. 46, 1999, s 6
s 5	amd No. 46, 1999, s 6
s 6	sub No. 131, 1979, s 3
	amd No. 28, 1993, s 3
	rep No. 46, 1999, s 6
s 6A	ins No. 19, 1982, s 4
	rep No. 46, 1999, s 6
pt II hdg	rep No. 46, 1999, s 6

s 7	amd No. 19, 1982, s 5 rep No. 46, 1999, s 6
s 8	amd No. 19, 1982, s 6 rep No. 46, 1999, s 6
s 9	amd No. 19, 1982, s 7 rep No. 46, 1999, s 6
s 10	amd No. 19, 1982, s 8 rep No. 46, 1999, s 6
s 11	rep No. 46, 1999, s 6
s 12	amd No. 19, 1982, s 9 rep No. 46, 1999, s 6
s 13	amd No. 19, 1982, s 33 rep No. 46, 1999, s 6
ss 14 – 16	rep No. 46, 1999, s 6
s 17	amd No. 31, 1990, s 7 rep No. 46, 1999, s 6
s 18	rep No. 19, 1982, s 10; No. 46, 1999, s 6
pt III hdg	sub No. 31, 1990, s 6 rep No. 46, 1999, s 6
ss 19 – 20	sub No. 31, 1990, s 6 amd No. 92, 1998, s 22 rep No. 46, 1999, s 6
s 21	sub No. 31, 1990, s 6 rep No. 46, 1999, s 6
s 22	amd No. 19, 1982, s 32 sub No. 31, 1990, s 6 rep No. 46, 1999, s 6
s 23	amd No. 19, 1982, s 32 rep No. 31, 1990, s 6
ss 24 – 26	rep No. 31, 1990, s 6
s 27	amd No. 19, 1982, s 33 rep No. 31, 1990, s 6
ss 28 – 30	rep No. 31, 1990, s 6
s 30A	ins No. 19, 1982, s 11 rep No. 31, 1990, s 6
s 31	rep No. 31, 1990, s 6
pt IV hdg	rep No. 31, 1991, s 14
s 32	amd No. 19, 1982, s 12 rep No. 31, 1991, s 14
s 33	amd No. 19, 1982, s 13 rep No. 31, 1991, s 14
s 34	rep No. 19, 1982, s 14
pt V hdg	rep No. 46, 1999, s 6
ss 35 – 36	rep No. 46, 1999, s 6
pt VI hdg	rep No. 46, 1999, s 6
s 37	amd No. 19, 1982, s 15; No. 37, 1982, s 4; No. 31, 1990, s 7 rep No. 46, 1999, s 6
s 38	amd No. 19, 1982, s 16 rep No. 46, 1999, s 6
s 39	amd No. 19, 1982, s 17; No. 37, 1982, s 5; No. 37, 1983, s 2; No. 31, 1990, s 6; No. 31, 1990, s 7; No. 23, 1997, s 6; No. 37, 1998, s 4; No. 92, 1998, s 22 rep No. 46, 1999, s 6
s 40	amd No. 37, 1983, s 3; No. 23, 1997, s 6; No. 37, 1998, s 4 rep No. 46, 1999, s 6
s 41	amd No. 46, 1999, s 6
s 42	sub No. 19, 1982, s 18 amd No. 31, 1990, s 7; No. 46, 1999, s 6

s 42A	ins No. 19, 1982, s 18
s 42AA	ins No. 33, 2002, s 4
s 43	sub No. 19, 1982, s 18
s 46	amd No. 19, 1982, s 19; No. 46, 1999, s 6
s 47	amd No. 19, 1982, s 20
	rep No. 46, 1999, s 6
ss 47A – 47B	ins No. 19, 1982, s 21
	rep No. 46, 1999, s 6
s 48	sub No. 19, 1982, s 22
	amd No. 31, 1990, s 6; No. 31, 1990, s 7
s 49	amd No. 19, 1982, s 23
	rep No. 31, 1990, s 7
s 50	amd No. 31, 1990, s 7
s 51	amd No. 19, 1982, s 33
	sub No. 31, 1990, s 6; No. 77, 1991, s 13
	rep No. 46, 1999, s 6
s 51A	ins No. 19, 1982, s 24
	sub No. 31, 1990, s 6
	rep No. 46, 1999, s 6
s 52	rep No. 19, 1982, s 25
s 53	rep No. 31, 1990, s 7
s 54	sub No. 19, 1982, s 26
	rep No. 46, 1999, s 6
s 55	amd No. 19, 1982, s 27
	rep No. 46, 1999, s 6
s 55A	ins No. 19, 1982, s 28
	rep No. 46, 1999, s 6
s 55B	ins No. 37, 1982, s 6
	amd No. 46, 1999, s 6
s 57	rep No. 46, 1999, s 6
ss 58 – 59	amd No. 31, 1990, s 7
	rep No. 46, 1999, s 6
s 60	amd No. 19, 1982, s 33
	rep No. 46, 1999, s 6
s 61	rep No. 46, 1999, s 6
s 62	rep No. 31, 1990, s 7
s 63	amd No. 19, 1982, s 29
	rep No. 31, 1990, s 7
s 64	amd No. 19, 1982, s 33; No. 17, 1996, s 6
	rep No. 46, 1999, s 6
s 65	rep No. 46, 1999, s 6
s 66	amd No. 31, 1990, s 7
	rep No. 46, 1999, s 6
s 67	amd No. 19, 1982, s 30; No. 31, 1990, s 7
	rep No. 46, 1999, s 6
s 67A	ins No. 19, 1982, s 31
	amd No. 46, 1999, s 6
sch 1 – 2	rep No. 31, 1990, s 7
sch 3	amd No. 19, 1982, s 33
	rep No. 31, 1990, s 7
sch 4	amd No. 19, 1982, s 33
	rep No. 46, 1999, s 6