



Federal Circuit Court (Commonwealth Tenancy Disputes) Amendment Instrument 2016

I, George Brandis QC, Attorney-General, make the following instrument.

Dated 22 February 2016

George Brandis QC
Attorney-General

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1 Name

This is the *Federal Circuit Court (Commonwealth Tenancy Disputes) Amendment Instrument 2016*.

2 Commencement

- (1) Each provision of this instrument specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this instrument	The day after this instrument is registered.	

Note: This table relates only to the provisions of this instrument as originally made. It will not be amended to deal with any later amendments of this instrument.

- (2) Any information in column 3 of the table is not part of this instrument. Information may be inserted in this column, or information in it may be edited, in any published version of this instrument.

3 Authority

This instrument is made under the *Federal Circuit Court of Australia Act 1999*.

4 Schedules

Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

Schedule 1—Amendments

Federal Circuit Court (Commonwealth Tenancy Disputes) Instrument 2015

1 Section 3

Omit “subsection 10AA(3)”, substitute “section 10AA”.

2 Section 4

Insert:

ACT Residential Tenancies Act means the *Residential Tenancies Act 1997* (ACT), as in force in the Jervis Bay Territory under section 4A of the *Jervis Bay Territory Acceptance Act 1915*.

applicable Jervis Bay Territory law:

- (a) in relation to a dispute covered by Subdivision A of Division 2 of Part 3—has the meaning given by subsection 13(4); and
- (b) in relation to a dispute covered by Subdivision B of Division 2 of Part 3—has the meaning given by subsection 18(4).

3 After section 4

Insert:

Part 2—Conferral of jurisdiction

4A Commonwealth tenancy disputes involving non-self-governing territories

The Federal Circuit Court of Australia has jurisdiction to hear and determine a Commonwealth tenancy dispute involving land in a non-self-governing Territory between the parties to a lease, licence or other arrangement in which:

- (a) the Commonwealth, or a person suing or being sued on behalf of the Commonwealth, is:
 - (i) the lessor (other than as a sublessor); or
 - (ii) the licensor (other than as a sublicensor); or
 - (iii) the grantor of a right or permission to possess, occupy or use land owned by the Commonwealth; and
- (b) a Commonwealth officer or employee (other than a member of the Defence Force) is:
 - (i) the lessee (other than a sublessee); or
 - (ii) the licensee (other than a sublicensee); or
 - (iii) the grantee of the right or permission.

4 Part 2 (heading)

Repeal the heading, substitute:

Part 3—Provisions relating to Commonwealth tenancy disputes

Division 1—Commonwealth tenancy disputes involving land in New South Wales

5 Section 5 (heading)

Repeal the heading, substitute:

5 Operation of this Division

6 Subsections 5(1) to (3)

Omit “Part”, substitute “Division”.

7 At the end of the instrument

Add:

Division 2—Commonwealth tenancy disputes involving land in the Jervis Bay Territory

Subdivision A—Disputes involving tenancy arrangements to which the ACT Residential Tenancies Act applies

11 Operation of this Subdivision

- (1) This Subdivision makes provision in relation to the following matters in respect of a Commonwealth tenancy dispute involving land in the Jervis Bay Territory:
 - (a) the rights of the parties to the dispute;
 - (b) the law to be applied in determining the dispute;
 - (c) the powers that the Federal Circuit Court of Australia may exercise under that law;
 - (d) the powers that may be exercised when executing an order made by the Court.
- (2) This Subdivision does not apply in relation to a Commonwealth tenancy dispute involving land in the Jervis Bay Territory unless:
 - (a) the dispute involves a residential tenancy agreement within the meaning of the ACT Residential Tenancies Act; and
 - (b) disregarding the effect of this instrument, the ACT Residential Tenancies Act applies to the residential tenancy agreement.
- (3) Nothing in this Subdivision has effect so as to confer non-judicial power on the Federal Circuit Court of Australia, unless the non-judicial power is incidental to the exercise of judicial power by the Court.

12 Rights of the parties

- (1) This section applies to a party to a Commonwealth tenancy dispute involving land in the Jervis Bay Territory if:

- (a) the party is a tenant within the meaning of the ACT Residential Tenancies Act; and
 - (b) the Federal Circuit Court of Australia has jurisdiction to hear and determine the dispute.
- (2) The party must not make an application to the ACT Civil and Administrative Tribunal under the ACT Residential Tenancies Act in relation to a lease, licence or other arrangement to possess, occupy or use land that is the subject of the dispute.

13 Law to be applied

- (1) This section applies when determining a Commonwealth tenancy dispute involving:
- (a) land in the Jervis Bay Territory; and
 - (b) any of the following:
 - (i) the recovery of rent or other payments payable under or in relation to a lease, licence or other arrangement;
 - (ii) the termination, or proposed termination, of a lease, licence or other arrangement;
 - (iii) the possession, occupation or use of the land.
- (2) To the extent that the Commonwealth tenancy dispute covers the matter mentioned in subparagraph (1)(b)(i), the following provisions:
- (a) section 83 of the ACT Residential Tenancies Act;
 - (b) any other provision of that Act or regulations made under that Act, to the extent that it relates to section 83 of that Act;
- are to be applied:
- (c) to the extent necessary to determine the dispute; and
 - (d) subject to the modifications set out in section 14 of this instrument.
- (3) To the extent that the Commonwealth tenancy dispute covers a matter mentioned in subparagraph (1)(b)(ii) or (iii), the following provisions:
- (a) Part 4 of the ACT Residential Tenancies Act;
 - (b) section 83 of that Act;
 - (c) clauses 92 and 93 of Schedule 1 to that Act;
 - (d) any other provision of that Act or regulations made under that Act, to the extent that they relate to Part 4 or section 83 of that Act, or clause 92 or 93 of Schedule 1 to that Act;
- are to be applied:
- (e) to the extent necessary to determine the dispute; and
 - (f) subject to the modifications set out in section 14 of this instrument.
- (4) The provisions mentioned in subsections (2) and (3) are the ***applicable Jervis Bay Territory law***.

14 Modifications of applicable Jervis Bay Territory law

- (1) The applicable Jervis Bay Territory law is to be applied as if:
- (a) a reference to the ACAT or the tribunal were a reference to the Federal Circuit Court of Australia; and
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- (b) a reference to the registrar were a reference to a Registrar of the Federal Circuit Court of Australia.
 - (2) The ACT Residential Tenancies Act is to be applied as if sections 76, 77, 78 and 86 were excluded.

15 Powers of the Court

In determining a Commonwealth tenancy dispute involving land in the Jervis Bay Territory, the Federal Circuit Court of Australia may exercise any powers that are:

- (a) powers of the ACT Civil and Administrative Tribunal under the applicable Jervis Bay Territory law; and
- (b) relevant to determining the dispute.

Subdivision B—Disputes involving tenancy arrangements to which the ACT Residential Tenancies Act does not apply

16 Operation of this Subdivision

- (1) This Subdivision makes provision in relation to the following matters in respect of a Commonwealth tenancy dispute involving land in the Jervis Bay Territory:
 - (a) the rights of the parties to the dispute;
 - (b) the law to be applied in determining the dispute;
 - (c) the powers that the Federal Circuit Court of Australia may exercise under that law;
 - (d) the powers that may be exercised when executing an order made by the Court.
- (2) This Subdivision does not apply in relation to a Commonwealth tenancy dispute involving land in the Jervis Bay Territory unless:
 - (a) disregarding the effect of this instrument, the ACT Residential Tenancies Act does not apply in relation to the relevant lease, licence or other arrangement; but
 - (b) if that Act did apply, the lease, licence or other arrangement would involve a residential tenancy agreement within the meaning of that Act.
- (3) Nothing in this Subdivision has effect so as to confer non-judicial power on the Federal Circuit Court of Australia, unless the non-judicial power is incidental to the exercise of judicial power by the Court.

17 Rights of the parties

- (1) This section applies to a party to a Commonwealth tenancy dispute involving land in the Jervis Bay Territory if:
 - (a) the party is a tenant within the meaning of the ACT Residential Tenancies Act; and
 - (b) the Federal Circuit Court of Australia has jurisdiction to hear and determine the dispute.
- (2) The party must not make an application to the ACT Civil and Administrative Tribunal under the ACT Residential Tenancies Act in relation to a lease, licence

or other arrangement to possess, occupy or use land that is the subject of the dispute.

18 Law to be applied

- (1) This section applies when determining a Commonwealth tenancy dispute involving:
 - (a) land in the Jervis Bay Territory; and
 - (b) any of the following:
 - (i) the recovery of rent or other payments payable under or in relation to a lease, licence or other arrangement;
 - (ii) the termination, or proposed termination, of a lease, licence or other arrangement;
 - (iii) the possession, occupation or use of the land.
- (2) To the extent that the Commonwealth tenancy dispute covers the matter mentioned in subparagraph (1)(b)(i), the following provisions:
 - (a) section 83 of the ACT Residential Tenancies Act;
 - (b) any other provision of that Act or regulations made under that Act, to the extent that it relates to section 83 of that Act;are to be applied:
 - (c) to the extent necessary to determine the dispute; and
 - (d) subject to the modifications set out in section 19 of this instrument.
- (3) To the extent that the Commonwealth tenancy dispute covers a matter mentioned in subparagraph (1)(b)(ii) or (iii), the following provisions:
 - (a) Part 4 of the ACT Residential Tenancies Act;
 - (b) section 83 of that Act;
 - (c) any other provision of that Act or regulations made under that Act, to the extent that they relate to Part 4 or section 83 of that Act;are to be applied:
 - (d) to the extent necessary to determine the dispute; and
 - (e) subject to the modifications set out in section 19 of this instrument.
- (4) The provisions mentioned in subsections (2) and (3) are the *applicable Jervis Bay Territory law*.

19 Modifications of applicable Jervis Bay Territory law

- (1) The applicable Jervis Bay Territory law is to be applied as if:
 - (a) a reference to the ACAT or the tribunal were a reference to the Federal Circuit Court of Australia; and
 - (b) a reference to the registrar were a reference to a Registrar of the Federal Circuit Court of Australia; and
 - (c) a reference to a residential tenancy agreement were a reference to a lease, licence or other arrangement; and
 - (d) a reference to standard residential tenancy terms were a reference to terms and conditions of the lease, licence or other arrangement; and
 - (e) a reference to a tenancy dispute were a reference to a Commonwealth tenancy dispute; and

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- (f) the reference to the Territory in paragraph 83(c) were omitted; and
 - (g) a reference to “under the Residential Tenancies Act 1997, schedule 1” in subparagraph 5(a)(iii) of the *Residential Tenancies Regulation 1998* (ACT) were a reference to “under the lease, licence or other arrangement”.
- (2) The ACT Residential Tenancies Act is to be applied as if the following provisions of that Act were excluded:
- (a) Part 2;
 - (b) paragraph 43(1)(b);
 - (c) subparagraph 48(1)(a)(iv);
 - (d) paragraph 54(1)(b);
 - (e) sections 72, 76, 77 and 78;
 - (f) paragraphs 82(a) and 83(e);
 - (g) section 86.

20 Powers of the Court

In determining a Commonwealth tenancy dispute involving land in the Jervis Bay Territory, the Federal Circuit Court of Australia may exercise any powers that are:

- (a) powers of the ACT Civil and Administrative Tribunal under the applicable Jervis Bay Territory law; and
- (b) relevant to determining the dispute.