

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Note: This table relates only to the provisions of this instrument as originally made.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Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.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

(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

(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.