



Australian Capital Territory

# **Landlord and Tenant Act 1899 No 18**

## **Republication No 3**

Republication date: 28 February 2002

Last amendment made by Act 2001 No 56

Amendments incorporated to 5 September 2001

Authorised by the ACT Parliamentary Counsel

## About this republication

### The republished law

This is a republication of the *Landlord and Tenant Act 1899* as in force on 28 February 2002. It includes any amendment, repeal or expiry affecting the republished law to 5 September 2001 and any amendment made under the *Legislation Act 2001*, part 11.3 (Editorial changes).

The legislation history and amendment history of the republished law are set out in endnotes 3 and 4.

### Kinds of republications

The Parliamentary Counsel's Office prepares 2 kinds of republications of ACT laws (see the ACT legislation register at [www.legislation.act.gov.au](http://www.legislation.act.gov.au)):

- authorised republications to which the *Legislation Act 2001* applies
- unauthorised republications.

The status of this republication appears on the bottom of each page.

### Editorial changes

The *Legislation Act 2001*, part 11.3 authorises the Parliamentary Counsel to make editorial amendments and other changes of a formal nature when preparing a law for republication. Editorial changes do not change the effect of the law, but have effect as if they had been made by an Act commencing on the republication date (see *Legislation Act 2001*, s 115 and s 117). The changes are made if the Parliamentary Counsel considers they are desirable to bring the law into line, or more closely into line, with current legislative drafting practice.

This republication includes amendments made under part 11.3 (see endnote 1).

### Uncommenced provisions and amendments

If a provision of the republished law has not commenced or is affected by an uncommenced amendment, the symbol **U** appears immediately before the provision heading. The text of the uncommenced provision or amendment appears only in the last endnote.

### Modifications

If a provision of the republished law is affected by a current modification, the symbol **M** appears immediately before the provision heading. The text of the modifying provision appears in the endnotes. For the legal status of modifications, see *Legislation Act 2001*, section 95.

### Penalties

The value of a penalty unit for an offence against this republished law at the republication date—

- (a) if the person charged is an individual—\$100; or
- (b) if the person charged is a corporation—\$500.

Amendments incorporated to  
5 September 2001



Australian Capital Territory

# Landlord and Tenant Act 1899

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Amendments incorporated to  
5 September 2001



Australian Capital Territory

## Landlord and Tenant Act 1899

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An Act to consolidate the statutes relating to the law of landlord and tenant

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## Part 1 Preliminary

### 1 Name of Act

This Act is the *Landlord and Tenant Act 1899*.

### 2 Position of Crown

This Act does not bind the Territory Crown.

### 2A Application of Act

This Act does not apply to a residential tenancy agreement within the meaning of the *Residential Tenancies Act 1997* to which that Act applies.

## Part 1A                      Facilitation of leases

### 3            Short forms

Whenever any party to any deed made according to the tenor and effect of the form in schedule 1, or whenever any party to any other deed that is expressed to be made under this Act, employs in the deed any of the forms of words contained in an item of schedule 2, in column 2, the deed shall be taken to have the same effect and be construed as if the party had inserted in the deed the form of words contained in column 3 of the same item.

### 4            Deed to include buildings etc

Every such deed, unless any exception be specially made in the deed, shall be held and construed to include all outhouses, buildings, barns, stables, yards, gardens, cellars, ancient and other lights, paths, passages, ways, waters, watercourses, liberties, privileges, easements, profits, commodities emoluments, hereditaments, and appurtenances whatsoever to the lands and tenements therein comprised, belonging, or in anywise appertaining.

### 5            Fee for preparing deed not to be fixed by length only

In taxing any bill for preparing and executing any deed under this part, or which might be prepared under this part, the taxing officer of the Supreme Court, in estimating the proper sum to be charged for such transaction, shall consider not the length of such deed, but only the skill and labour employed and responsibility incurred in the preparation of the deed.

### 6            Saving of certain deeds

Any deed, or part of a deed, that fails to take effect under this part shall nevertheless be as valid and effectual, and shall bind the parties to it so far as the rules of law and equity permit, as if this Act had not been made.

## **Part 2** **Tenements recovery by ejectment in Supreme Court**

### **7 Tenants to give notice of ejectment to landlord**

Every tenant to whom any writ in ejectment is delivered, or to whose knowledge it comes, shall forthwith give notice of the writ to his or her landlord, or his or her bailiff or receiver, under penalty of forfeiting the value of 3 years improved or rack rent of the premises demised or held in the possession of the tenant to the person to whom he or she holds to be recovered by action in the Supreme Court.

## Part 4                      Tenements recovery in Magistrates Court

### 22      Definitions for pt 4

In this part:

*agent* means—

- (a) anyone usually employed by the landlord in letting the land or collecting its rents; or
- (b) anyone authorised to act in the particular matter by instrument signed by the landlord.

*land* means land, houses or other corporeal hereditaments.

### 23      Recovery of possession in Magistrates Court

- (1) When the term or interest of the tenant of any land held by the tenant for any term of years, or for any less estate or interest, either with or without being liable to the payment of any rent, has expired by effluxion of time or has been determined by notice to quit or demand of possession, and the tenant or any person claiming under the tenant who is actually occupying the land or any part of it neglects to quit and deliver up possession of the land or part, the landlord of the land or his or her agent may institute proceedings in the Magistrates Court against the person so neglecting to recover possession of the land.
- (2) If the Magistrates Court makes an order for the recovery of possession of any land, the court may—
  - (a) issue a warrant authorising a police officer or other person to enter (by force if necessary) into the land and give possession to the landlord or his or her agent; and
  - (b) postpone the issue of such a warrant, or suspend the execution of the warrant, for the period as it deems fit.



the case may be, over or in respect of the shares or interests or remaining property, but the right of re-entry shall remain in full force over or in respect of the shares or interests or property not the subject of the licence.

### **59 Apportionment of benefit of conditions of entry**

If the reversion on a lease is severed and the rent or other reservation is legally apportioned, the assignee of each part of the reversion shall, in respect of the apportioned rent or other reservation allotted or belonging to the assignee, be entitled to the benefit of all conditions or powers of re-entry for nonpayment of the original rent or other reservation in like manner as if the conditions or powers had been reserved to the assignee as incident to his or her part of the reversion in respect of the apportioned rent or other reservation allotted or belonging to the assignee.

### **60 Waiver**

If any actual waiver of the benefit of any covenant or condition in any lease on the part of any lessor or his or her heirs, executors, administrators, or assigns is proved to have taken place in any 1 particular instance, the actual waiver shall not be assumed, or deemed to extend to any instance or any breach of covenant or condition other than that to which the waiver specially relates, nor to be a general waiver of the benefit of any such covenant or condition unless an intention to that effect appears.

### **61 Application of pt 4**

The provisions of this part apply to leases for a term of years absolute or determinable on a life or lives, or otherwise, and also to a lease for the life of the lessee, or the life or lives of any other person or persons, whether such leases be made before or after the passing of this Act.

## Schedule 1

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## Schedule 1

(see s 3)

This indenture made the        day of        2002 (*or other year*), under the *Landlord and Tenant Act 1899*, between [*here insert the names of the parties and recitals if any*], witnesseth that the said lessor (or *lessors*) does (*or do*) demise to the said lessee (or *lessees*), his or her (or *their*) heirs or executors, administrators, and assigns, as the case may be, all, etc (*parcels*) from the        day of        for the term of        thence ensuing, yielding and paying therefor during the said term the rent of [*state the rent and mode of payment*].

In witness whereof the parties to have set their hands and seals.

## Schedule 2

(see s 3)

### Directions about forms in sch 2

- 1 Parties who use any of the forms in column 2 may substitute for the words 'lessee' or 'lessor' any name or names, and in every such case corresponding substitutions shall be taken to be made in the corresponding forms in column 3 of the same item.
- 2 The parties may substitute the feminine gender for the masculine, or the plural number for the singular in the forms in column 2, and corresponding changes shall be taken to be made in the corresponding forms in column 3 of the same item.
- 3 The parties may fill up the blank spaces left in the forms in column 2 of items 4 and 5, so employed by them with any words or figures, and the words or figures so introduced shall be taken to be inserted in the corresponding blank spaces left in the forms embodied.
- 4 The parties may introduce into or annex to any of the forms in column 2 any express addition to, exceptions from, or express qualifications, and the like additions, exceptions, or qualifications shall be taken to be made from or in the corresponding forms in column 3 of the same item.
- 5 If the premises demised are of freehold tenure, the covenants in items 1 to 10 shall be taken to be made with, and the proviso in item 11 to apply to, the heirs, executors, administrators, and assigns of the lessor, and, if the premises demised are of leasehold tenure, the covenants and proviso shall be taken to be made with and apply to the lessor, his or her executors, administrators, and assigns, unless otherwise stated.

## Schedule 2

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column 1 item	column 2	column 3
1	that the said ( <i>lessee</i> ) covenants with the said ( <i>lessor</i> ) to pay rent	and the said lessee does hereby for himself or herself, his or her heirs, executors, administrators, and assigns, covenant with the said lessor that he or she the said lessee, his or her executors, administrators, and assigns will, during the said term, pay to the said lessor the rent hereby reserved in manner hereinbefore mentioned without any deduction whatsoever
2	and to pay taxes	and also will pay all taxes, rates, duties, and assessments whatsoever now charged or hereafter to be charged on the said demised premises or on the said lessor on account thereof
3	and to repair	and also will, during the said term, well and sufficiently repair, maintain, pave, empty, clean, amend, and keep the said demised premises with the appurtenances in good and substantial repair, together with all chimney-pieces, windows, doors, fastenings, water closets, cisterns, partitions, fixed presses, shelves, pipes, pumps, pales, rails, locks and keys, and all other fixtures and things that, at any time during the said term, shall be erected and made when, where, and so often as need shall be
4	and to paint outside every [ ] year	and also that the said lessee, his or her executors, administrators, and assigns will, in every year in the said term, paint all the outside woodwork and ironwork belonging to the said premises with 2 coats of proper oil colours, in a workmanlike manner

**Schedule 2**

column 1 item	column 2	column 3
5	and to paint and paper inside every [ ] year	and also that the said lessee, his or her executors, administrators, and assigns will, in every year, paint the inside wood, iron, and other works now or usually painted with 2 coats of proper oil colours, in a workmanlike manner, and also will repaper with paper of a quality as at present such parts of the premises as are now papered, and also wash, stop, whiten, or colour the parts of the said premises as are now plastered
6	and to insure from fire in the joint names of the said ( <i>lessor</i> ) and the said ( <i>lessee</i> )	and also that the said lessee, his or her executors, administrators, and assigns will forthwith insure the said premises hereby demised to their full value in some respectable insurance office in the joint names of the said lessor, his or her executors, administrators, and assigns, and the lessee, his or her executors, administrators, and assigns, and keep the same so insured during the said term, and will on the request of the said lessor or his or her agent show the receipt for the last premium paid for such insurance for every current year, and as often as the said premises hereby demised shall be burnt down or damaged by fire all and every the sum or sums of money which shall be recovered or received by the said lessee, his or her executors, administrators, or assigns for or in respect of such insurance, shall be laid out and expended by him or her in building or repairing the said demised premises or such parts of them as shall be burnt down or damaged by fire as aforesaid

## Schedule 2

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column 1 item	column 2	column 3
7	and that the said ( <i>lessor</i> ) may enter and view state of repair, and that the said ( <i>lessee</i> ) will repair according to notice	and it is hereby agreed that it shall be lawful for the said lessor and his or her agents at all reasonable times during the said term to enter the said demised premises to take a schedule of the fixtures and things made and erected thereupon, and to examine the condition of the said premises, and further, that all wants of reparation that on such views shall be found, and for the amendment of which written notice shall be left at the premises, the said lessee, his or her executors, administrators, and assigns will, within 3 calendar months next after every such notice, well and sufficiently repair and make good accordingly
8	that the said ( <i>lessee</i> ) will not use premises as a shop	and also that the said lessee, his or her executors, administrators, and assigns will not convert, use, or occupy the said premises or any part of them into or as a shop, warehouse, or other place for carrying on any trade or business whatsoever, or suffer the said premises to be used for any such purpose or otherwise than as a private dwelling house, without the written consent of the said lessor
9	and will not assign without leave	and also that the said lessee shall not nor will, during the said term, assign, transfer, or set over, or otherwise, by any act or deed, procure the said premises or any of them, to be assigned, transferred, or set over to any person or persons whomsoever, without the written consent the said lessor his or her executors, administrators, or assigns first had and obtained

Schedule 2

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column 1 item	column 2	column 3
10	and that he or she will leave premises in good repair	and further that the said lessee will, at the expiration or other sooner determination of the said term, peaceably surrender and yield up to the said lessor the said premises hereby demised with the appurtenances, together with all buildings, erections, and fixtures, now or hereafter to be built or erected thereon, in good and substantial repair and condition in all respects reasonable wear and tear and damage by fire only excepted
11	proviso for re-entry by the said lessor on nonpayment of rent or nonperformance of covenants	provided always and it is expressly agreed that if the rent hereby reserved or any part thereof shall be unpaid for 15 days after any of the days on which the same ought to have been paid (although no formal demand shall have been made thereof), or for the breach or nonperformance of any of the covenants and agreements herein contained on the part of the said lessee, his or her executors, administrators, and assigns, then and in either of such cases it shall be lawful for the said lessor at any time thereafter into and on the said demised premises or any part thereof in the name of the whole to re-enter, and the same to have again repossess and enjoy as of his or her or their former estate, anything therein contained to the contrary notwithstanding

## Schedule 2

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column 1 item	column 2	column 3
12	the said ( <i>lessor</i> ) covenants with the said ( <i>lessee</i> ) for quiet enjoyment	and the lessor does hereby for himself or herself, his or her heirs, executors, administrators, and assigns, covenant with the said lessee, his or her executors, administrators, and assigns, that he or she and they paying the rent hereby reserved and performing the covenants hereinbefore on his or her and their part contained shall and may peaceably possess and enjoy the said demised premises for the term hereby granted, without any interruption or disturbance from the said lessor, his or her executors, administrators, or assigns, or any other person or persons lawfully claiming by, from, or under him or her, them, or any of them

## Endnotes

### 1 About the endnotes

Amending and modifying laws are annotated in the legislation history and the amendment history. Current modifications are not included in the republished law but are set out in the endnotes.

Not all editorial amendments made under the *Legislation Act 2001*, part 11.3 are annotated in the amendment history. Full details of any amendments can be obtained from the Parliamentary Counsel's Office.

Uncommenced amending laws are listed in the legislation history and the amendment history. These details are underlined. Uncommenced provisions and amendments are not included in the republished law but are set out in the last endnotes.

If all the provisions of the law have been renumbered, a table of renumbered provisions gives details of previous and current numbering.

The endnotes also include a table of earlier republications.

If the republished law includes penalties, current information about penalty unit values appears on the republication inside front cover.

### 2 Abbreviation key

am = amended	ord = ordinance
amdt = amendment	orig = original
ch = chapter	p = page
cl = clause	par = paragraph
def = definition	pres = present
dict = dictionary	prev = previous
disallowed = disallowed by the Legislative Assembly	(prev...) = previously
div = division	prov = provision
exp = expires/expired	pt = part
Gaz = Gazette	r = rule/subrule
hdg = heading	reg = regulation/subregulation
ins = inserted/added	renum = renumbered
LA = Legislation Act 2001	reloc = relocated
LR = legislation register	R[X] = Republication No
LRA = Legislation (Republication) Act 1996	s = section/subsection
mod = modified / modification	sch = schedule
num = numbered	sdiv = subdivision
No = number	sub = substituted
o = order	SL = Subordinate Law
om = omitted/repealed	<u>underlining</u> = whole or part not commenced

## Endnotes

3 Legislation history

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### 3 Legislation history

This Act was originally a NSW Act—the Landlord and Tenant Act 1899 No 18 (NSW).

The Act was in force in NSW immediately before 1 January 1911 (the date of establishment of the ACT) and was continued in force by the *Seat of Government Acceptance Act 1909* (Cwlth), s 6.

Under the *Seat of Government (Administration) Act 1910* (Cwlth), s 4, the Act had effect in the ACT as if it were an ACT law (subject to ordinances made under the *Seat of Government (Administration) Act 1910*).

The *Australian Capital Territory (Self-Government) Act 1988* (Cwlth) converted certain former NSW laws in force in the ACT into ACT enactments. This allowed the ACT Legislative Assembly to amend and repeal the laws. This Act was converted into an ACT enactment on self-government (11 May 1989).

Under the *Interpretation Act 1967*, s 63 all former NSW Acts in force in the ACT immediately before 10 November 1999 became, for all purposes, laws made by the ACT Legislative Assembly. This completed the process of making former NSW laws fully into ACT laws.

#### NSW legislation

##### **Landlord and Tenant Act 1899 No 18**

assented to 20 November 1899  
commenced 20 November 1899

as amended by

#### Commonwealth legislation

##### **Landlord and Tenant Ordinance 1972 No 36 s 5**

notified 9 November 1972  
commenced 9 November 1972

##### **New South Wales Acts Application Ordinance 1984 No 41 sch 2 pt 21**

notified 10 August 1984 (Cwlth Gaz 1984 No S313)  
commenced 10 August 1984

##### **Magistrates Court Ordinance 1985 No 67 sch pt 1**

notified 19 December 1985  
sch pt 1 commenced 1 February 1986 (s 2 and Cwlth Gaz 1986 No G3)

## Legislation after becoming Territory enactment

### Acts Revision (Position of Crown) Act 1993 No 44 sch 1

notified 27 August 1993 (Gaz 1993 No S165)

commenced 27 August 1993 (s 2)

### Residential Tenancies (Consequential Provisions) Act 1998 No 4 sch

notified 25 May 1998 (Gaz 1998 No S150)

commenced 25 May 1998 (s 2)

### Statute Law Amendment Act 2001 (No 2) 2001 No 56 pt 3.28

notified 5 September 2001 (Gaz 2001 No S65)

commenced 5 September 2001 (s 2 (1))

## 4 Amendment history

The *New South Wales Acts Application Act 1984*, schedule 2, part 21 set out the text of this Act in an amended form and provided for the amended form to apply as the text of the Act in force in the ACT. (Under the amended form of the Act, section 2, part 2 (ss 7-13), part 3 (ss 16-21), sections 24-33 and schedules A and D-M of the Act were omitted. Part 5 (ss 34-56) had previously omitted by the *Landlord and Tenant Act 1972*.) This endnote, therefore, only details amendments made after that date.

### Preliminary

pt 1 hdg ins 2001 No 56 amdt 3.423

### Name of Act

s 1 sub 2001 No 56 amdt 3.423

### Position of Crown

s 2 ins 1993 No 44 sch 1; R3 LA

### Application of Act

s 2A ins 1998 No 4 sch

### Facilitation of leases

pt 1A hdg (prev pt 1 hdg) renum 2001 No 56 amdt 3.424

### Short forms

s 3 am 2001 No 56 amdt 3.425, amdt 3.426

### Tenements recovery in Magistrates Court

pt 4 hdg am 1985 No 67 sch pt 1

### Definitions for pt 4

s 22 sub 2001 No 56 amdt 3.427

def **agent** ins 2001 No 56 amdt 3.427

## Endnotes

### 5 Earlier republications

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def *land* ins 2001 No 56 amdt 3.427

**Recovery of possession in Magistrates Court**

s 23 am 1985 No 67 sch pt 1; 2001 No 56 amdt 3.428

**Waiver**

s 60 am 2001 No 56 amdt 3.429

**schedule 1**

sch 1 hdg (prev sch B hdg) renum 2001 No 56 amdt 3.430

**schedule 2**

sch 2 hdg (prev sch C hdg) renum 2001 No 56 amdt 3.431

## 5 Earlier republications

Some earlier republications were not numbered. The number in column 1 refers to the publication order.

Since 12 September 2001 every authorised republication has been published in electronic pdf format on the ACT legislation register. A selection of authorised republications have also been published in printed format. These republications are marked with an asterisk (\*) in column 1. Except for the footer, electronic and printed versions of an authorised republication are identical.

Republication No	Amendments to	Republication date
1	Ord 1985 No 67	31 October 1992
2	Act 1993 No 44	31 August 1993

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