



Australian Capital Territory

# **Forfeiture and Validation of Leases Act 1905 No 8**

## **Republication No 3**

Republication date: 21 February 2002

Last amendment made by Act 2001 No 56

Amendments incorporated to 12 September 2001

Authorised by the ACT Parliamentary Counsel

## About this republication

### The republished law

This is a republication of the *Forfeiture and Validation of Leases Act 1905* as in force on 21 February 2002. It includes any amendment, repeal or expiry affecting the republished law to 12 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  
12 September 2001



Australian Capital Territory

# Forfeiture and Validation of Leases Act 1905

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Amendments incorporated to  
12 September 2001



Australian Capital Territory

# **Forfeiture and Validation of Leases Act 1905**

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An Act to grant relief against the exercise of rights of re-entry and forfeiture under leases, and against defects invalidating certain leases, and for other purposes

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## Part 1 Preliminary

### 1 Name of Act

This Act is the *Forfeiture and Validation of Leases Act 1905*.

## Part 2                      Forfeiture of leases

### 2        Definitions for pt 2

*Note*        A definition applies except so far as the contrary intention appears (see *Legislation Act 2001*, s 155).

In this part:

*lease* includes—

- (a) an original or derivative under-lease; and
- (b) an agreement for a lease if the lessee has become entitled to have the lease granted.

*lessee* includes an original or derivative under-lessee.

*lessor* includes an original or derivative under-lessor.

*under-lease* includes an agreement for an under-lease if the under-lessee has become entitled to have the under-lease granted.

*under-lessee* includes a person deriving title under or from an under-lessee.

*under-lessor* includes a person deriving title under or from an under-lessor.

### 3        Application of pt 2

- (1) This part applies to a lease or under-lease despite any provision of the lease to the contrary.
- (2) However, this part does not apply to a residential tenancy agreement under the *Residential Tenancies Act 1997*.

**4 Restrictions on re-entry or forfeiture**

- (1) A right of re-entry or forfeiture under a lease for breach of a provision of the lease is not enforceable by proceeding or otherwise unless—
- (a) the lessor gives the lessee a notice—
    - (i) specifying the breach; and
    - (ii) requiring the lessee to pay compensation for the breach; and
    - (iii) if the breach can be remedied—requiring the lessee to remedy the breach; and
  - (b) the lessee fails within a reasonable time after being given the notice—
    - (i) to pay reasonable compensation for the breach; and
    - (ii) if the breach can be remedied—to remedy the breach.
- Note* If a form is approved under s 12 (Approved forms) for a notice, the form must be used.
- (2) If the lessor under a lease seeks to enforce, by proceeding or otherwise, a right of re-entry or forfeiture under the lease for breach of a provision of the lease, the lessee may apply to the Supreme Court for relief.
- (3) If the lessee applies to the Supreme Court for relief, the court may grant or refuse relief.
- (4) If the Supreme Court grants relief, it may do so on the conditions it considers appropriate, including the granting of an injunction to restrain similar breaches of the lease in the future.
- (5) This section does not apply in relation to—
- (a) a lease granted by the Territory; or
  - (b) a lease for a term of 1 year or less; or

- (c) a provision of a lease—
    - (i) against assigning, under-leasing or parting with possession, or disposing, of the leased land; or
    - (ii) for forfeiture on the bankruptcy of the lessee; or
  - (d) the taking in execution of the lessee's interest; or
  - (e) re-entry or forfeiture for nonpayment of rent.
- (6) For this section, the term of a lease limited to continue only while the lessee does not breach the lease is taken to be the term for which the lease could continue apart from a breach.

#### **4A Notices under s 4 (1)**

- (1) A notice under section 4 (1) must be in writing.
- (2) If the lessee is not in the ACT, the notice may be given to the lessee by serving it personally on the lessee's lawyer or agent in the ACT.
- (3) Subsection (2) does not limit any other Territory law that authorises service of the notice in another way.

#### **5 Protection of under-lessees**

- (1) If the lessor under a lease seeks to enforce, by proceeding or otherwise, a right of re-entry or forfeiture under the lease for breach of a provision of the lease, a person (the *interested person*) claiming an interest in all or part of the leased property as under-lessee may apply to the Supreme Court for relief.
- (2) If the interested person applies to the Supreme Court for relief, the court may grant or refuse relief.
- (3) Without limiting subsection (2), the Supreme Court may stay any proceeding brought by the lessor to enforce the right of re-entry or forfeiture under the lease and vest all or any part of the leased property in the interested person as under-lessee, or in any other capacity, for a term not longer than the term of the lease.

**Part 2** Forfeiture of leases

Section 5

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- (4) If the Supreme Court grants relief, it may do so on the conditions it considers appropriate.
- (5) For this section, the term of a lease limited to continue only while the lessee does not breach the lease is taken to be the term for which the lease could continue apart from a breach.

## **Part 3 Invalid leases under powers**

### **5A Application of pt 3 to Territory**

This part does not bind the Territory.

### **6 Lease taken to be granted in intended exercise of power**

If—

- (a) a valid power of leasing is vested in or may be exercised by a person granting a lease; and
- (b) the lease cannot have effect, or continue to have effect, according to its terms independently of the power (because of the ending of the estate or interest of the person or otherwise);

the lease is, for this part, taken to be granted in the intended exercise of the power, even though the power is not mentioned in the lease.

### **7 Certain invalid leases to be construed as agreements to lease**

- (1) If in the intended exercise of any power of leasing, whether derived under a law in force in the ACT or under any instrument lawfully creating the power, a lease is granted that is, by reason of the nonobservance or omission of some condition or restriction, or by reason of any other deviation from the terms of the power, invalid as against the person entitled after the determination of the interest of the person granting the lease to the reversion, or against other the person who, subject to any lease lawfully granted under the power, would have been entitled for any estate to the hereditaments comprised in the lease, the lease, in case the same have been made bona fide, and the lessee named in the lease, his or her executors, administrators, or assigns (as the case may require) have entered under the lease, shall be considered in equity as a contract for a grant at the request of the lessee, his or her executors, administrators, or assigns (as the case may require), of a valid lease under the power,

to the like purport and effect as the invalid lease, save so far as any variation may be necessary to comply with the terms of the power; and all persons who would have been bound by a lease lawfully granted under the power shall be bound in equity by the contract.

- (2) However, no-one is entitled under the equitable contract mentioned in subsection (1) to obtain a variation of the lease if the people who would have been bound by the contract are willing to confirm the lease without variation.

## **8 Certain leases validated**

- (1) This section applies if—
  - (a) a lease granted in the intended exercise of a valid power of leasing is invalid because, when the lease was granted, the person granting the lease could not lawfully grant it; and
  - (b) the person was at least 18 years old at that time; and
  - (c) the person can, at a later time, lawfully grant the lease or a similar lease under the power.
- (2) If this section applies, the lease is taken to have been granted by the person under the power at the later time.
- (3) This part applies to the lease.

## **9 Acceptance of rent taken to be confirmation of lease**

- (1) This section applies if, on or before acceptance of rent under an invalid lease, a written receipt, memorandum or note confirming the lease is signed by the person accepting the rent or by someone authorised by that person.
- (2) The acceptance of the rent is, as against the person accepting the rent, taken to be a confirmation of the lease.

## 10 Lessee bound to accept confirmation

- (1) This section applies if—
  - (a) a person (the *first person*) is in possession of land under an invalid lease; and
  - (b) someone else (the *other person*) is entitled, subject to the interest of the first person in the land, to possession of the land or to receipt of its rents and profits; and
  - (c) the other person can confirm the lease without variation.
- (2) The first person (or a person deriving title to the lease under or from the first person), or anyone else who would have been bound by the lease if it had been valid, must, if asked by the other person, accept confirmation of the lease by the other person.
- (3) The confirmation may be made by a written memorandum or note signed by the other person and the person accepting the confirmation.
- (4) On the confirmation of the lease, the lease is taken to have been valid from the time it was granted.

## 11 Saving of other rights

This part does not affect the rights of anyone in relation to a breach of a provision of an invalid lease.

### Example

Rights of a person named as lessor of an invalid lease to re-entry or forfeiture for breach of a provision of the lease.

## Part 4                      Miscellaneous

### 12    **Approved forms**

- (1) The registrar-general may, in writing, approve forms for this Act.
- (2) If the registrar-general approves a form for a particular purpose, the approved form must be used for that purpose.
- (3) An approved form is a notifiable instrument.

*Note*    A notifiable instrument must be notified under the *Legislation Act 2001*.

- (4) A form in the *Forfeiture Leases Act 1901*, schedule immediately before the commencement of this section is, after the commencement, taken to be an approved form.
- (5) However, the form need not be notified under the *Legislation Act 2001*.
- (6) Subsections (4) and (5) are laws to which the *Legislation Act 2001*, section 88 (Repeal does not end transitional or validating effect etc) applies.
- (7) Subsections (4) to (6) and this subsection expire 1 year after this section commences.

## 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 *Forfeiture and Validation of Leases Act 1905* No 8 (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.

#### **New South Wales legislation**

##### **Forfeiture and Validation of Leases Act 1905 No 8**

assented to 21 August 1905

commenced 21 August 1905

as amended by

#### **Commonwealth legislation**

##### **New South Wales Acts Application Ordinance 1984 No 41 sch 2 pt 15**

assented to 2 August 1984

commenced 2 August 1984

#### **Legislation after self-government**

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

notified 27 August 1993 (Gaz S165)

commenced 27 August 1993 (s 2 and Gaz S 165)

**Land Titles (Consequential Amendments) Act 1995 No 54 sch pt 1**

notified 20 December 1995 (Gaz 1995 No S313)

ss 1-3 commenced 20 December 1995 (s 2 (1))

sch pt 1 commenced 20 June 1996 (s 2 (3))

**Statute Law Amendment Act 2001 (No 2) No 56 sch 3 pt 3.22  
amds 3.278-3.298**

notified 5 September 2001 (Gaz 2001 No S65)

s 1, s 2 commenced 5 September 2001 (s 2 (1))

sch 3 pt 3.22 amds 3.278, 3.279, 3.282-3.298 commenced

5 September 2001 (s 2 (1))

sch 3 pt 3.22 amds 3.280, 3.281 commenced 12 September 2001  
(s 2 (2))

**4 Amendment history**

The *New South Wales Acts Application Act 1984* (previously the *New South Wales Acts Application Ordinance 1984*), schedule 2, part 15 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. This endnote, therefore, only details amendments made after that date.

**Title**

title am 2001 No 56 amdt 3.278

**Name of Act**

s 1 sub 2001 No 56 amdt 3.279

**Definitions for pt 2**

s 2 ins 2001 No 56 amdt 3.280

**Application of pt 2**

s 3 sub 2001 No 56 amdt 3.280

**Restrictions on re-entry or forfeiture**

s 4 sub 2001 No 56 amdt 3.280, amdt 3.281

**Notices under s 4 (1)**

s 4A ins 2001 No 56 amdt 3.281

**Protection of under-lessees**

s 5 sub 2001 No 56 amdt 3.282

**Application of pt 3 to Territory**

s 5A ins 1993 No 44 sch 1  
sub 2001 No 56 amdt 3.283

**Lease taken to be granted in intended exercise of power**

s 6 sub 2001 No 56 amdt 3.284

## Endnotes

### 5 Earlier republications

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#### **Certain invalid leases to be construed as agreements to lease**

s 7 am 1995 No 54 sch pt 1  
am 2001 No 56 amdt 3.285-3.292

#### **Certain leases validated**

s 8 sub 2001 No 56 amdt 3.293

#### **Acceptance of rent taken to be confirmation of lease**

s 9 sub 2001 No 56 amdt 3.294

#### **Lessee bound to accept confirmation**

s 10 sub 2001 No 56 amdt 3.295

#### **Saving of other rights**

s 11 sub 2001 No 56 amdt 3.296

#### **Miscellaneous**

pt 4 ins 2001 No 56 amdt 3.298

#### **Approved forms**

s 12 om 2001 No 56 amdt 3.297  
reloc from *Forfeiture of Leases Act 1901* by 2001 No 56 amdt  
3.299  
s 12 (4)-(7) exp 12 September 2002

## 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.

<b>Republication No</b>	<b>Amendments to</b>	<b>Republication date</b>
1	Ord 1984 No 41	31 August 1992
2	Act 1993 No 44	31 January 1994

Authorised when accessed at [www.legislation.act.gov.au](http://www.legislation.act.gov.au) or in authorised printed form

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