

**LANDLORD AND TENANT (AMENDMENT)  
ACT, 1978, No. 11**

**New South Wales**



ANNO VICESIMO SEXTO

**ELIZABETHÆ II REGINÆ**

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**Act No. 11, 1978.**

An Act to amend the Landlord and Tenant Act, 1899, so as to prevent possession being taken of certain dwelling-houses that are the subject of tenancies except pursuant to a judgment or order of, or a warrant issued pursuant to a judgment, order or direction of, a court; and to amend the Landlord and Tenant (Amendment) Act, 1932. [Assented to, 6th March, 1978.]

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**BE** it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows :—

Short title.      **1.** This Act may be cited as the "Landlord and Tenant (Amendment) Act, 1978".

Amendment of Act No. 18, 1899.      **2.** The Landlord and Tenant Act, 1899, is amended—

Sec. 1.  
(Short title and Division into Parts.)

- (a) (i) by omitting from the matter relating to Part I in section 1 the matter "2A" and by inserting instead the matter "2AA";
- (ii) by omitting from the matter relating to Part IV in section 1 the matter "22" and by inserting instead the matter "21A";

Sec. 2AA.

- (b) by inserting before section 2A the following section :—

No taking possession of dwelling-house without court sanction.

**2AA.** (1) In subsection (5) the reference to land that is or includes a dwelling-house that is subject to a tenancy does not include a reference to land that is or includes a dwelling-house that—

- (a) is or forms part of any premises in respect of which a licence or permit is in force under the Liquor Act, 1912;
- (b) is or forms part of a motel or boarding-house;

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- (c) is let as a dwelling-house and forms part of premises the subject of the tenancy, where another part of the premises the subject of the same tenancy is let as a shop as defined in section 9 (1) of the Factories, Shops and Industries Act, 1962;
- (d) is the subject of a mining lease;
- (e) is let as a dwelling-house to an employee of the landlord and is occupied by him in consequence of or in conjunction with his employment;
- (f) is let for holiday purposes; or
- (g) is a dwelling-house of a prescribed class or description.

(2) For the purposes of subsection (1) (f), a dwelling-house is let for holiday purposes if—

- (a) the agreement under which the dwelling-house is let expresses the tenancy to be for a term of one month or less; and
- (b) the dwelling-house is not subject to a periodic tenancy that arose after the expiration of that term.

(3) The Governor may make regulations for the purposes of subsection (1) (g), and section 41 of the Interpretation Act, 1897, applies to any such regulation as if it were a regulation under an Act passed after the commencement of the Interpretation (Amendment) Act, 1969.

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(4) For the purposes, and without limiting the operation of any other provision, of this section and for the purposes of any proceedings against a person acting in contravention of subsection (5)—

- (a) land a tenancy of which has expired or been determined shall be deemed to continue to be land the subject of that tenancy;
- (b) a person who, immediately before a tenancy of land expired or was determined, was the landlord or tenant under that tenancy shall be deemed to continue to be the landlord or tenant, as the case may be, under that tenancy until that person is lawfully deprived of possession of that land; and
- (c) a person who is, or would, but for the expiration or determination of any tenancy of land have been, entitled as against a tenant of that land or any part thereof to possession of that land or any part thereof shall be deemed to be or to continue to be a tenant of that land until he is lawfully deprived of possession of that land.

(5) A person, on his own behalf or on behalf of another person, shall not, except pursuant to a judgment or order of, or a warrant issued pursuant to a judgment, order or direction of, a court (including two or more justices of the peace sitting under Part IV), take possession of any land that is or includes a dwelling-house and that is the subject of a tenancy the tenant under which is a person other than the person taking possession.

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**Penalty:** For an offence committed by an individual, \$500; for an offence committed by a body corporate, \$1,000.

(6) Subsection (5) does not apply to or in respect of the taking of possession of land that is or includes a dwelling-house where the land is mortgaged and possession of the land is taken—

- (a) in pursuance of the powers of the mortgagee under the mortgage; or
- (b) by a receiver under the mortgage in respect of the land,

and is so taken—

- (c) by receiving the rents and profits thereof;  
or
- (d) as against a tenant under a tenancy that is not binding on the mortgagee.

(7) It is a sufficient defence to a prosecution for an offence under subsection (5) if the defendant proves that, at the time he took possession of the land, he believed on reasonable grounds that every tenant of the land or any part thereof, of whose tenancy notice had been given to him or, if he is not the landlord, to the landlord, had ceased to reside on the land and did not intend to resume residing on the land.

(8) This section has effect notwithstanding anything contained in any other Act or in any contract, agreement or arrangement.

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Sec. 21A. (c) by inserting before section 22 the following section :—

Minister  
entitled to  
be repre-  
sented in  
proceedings  
under this  
Part.  
cf. Act No.  
67, 1932,  
s. 12.

21A. The Minister is entitled to be represented in any proceedings under this Part.

Amendment of Act No. 67, 1932. **3. The Landlord and Tenant (Amendment) Act, 1932, is amended—**

Sec. 1. (Short title.) (a) by omitting from section 1 (2) the matter relating to Parts II and III;

Sec. 2. (Commence-  
ment.) (b) by omitting from section 2 the following words :—  
  
Part II of this Act shall commence on a day to be appointed by the Governor and notified by proclamation published in the Gazette.

Part III of this Act shall commence on the thirty-first day of December, one thousand nine hundred and thirty-two.

Parts II, III and IV. (c) by omitting Parts II, III and IV, except sections 25, 26 and 26A;

Schedule. (d) by omitting the Schedule.

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