

# Landlord and Tenant Act 1899 No 18

[1899-18]



New South Wales

## Status Information

### Currency of version

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### Provisions in force

The provisions displayed in this version of the legislation have all commenced.

### Notes—

- **Previously named**  
Landlord and Tenant Act of 1899
- **Does not include amendments by**  
[Justices Legislation Repeal and Amendment Act 2001 No 121](#) (not commenced — to commence on 7.7.2003)

### Authorisation

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# Landlord and Tenant Act 1899 No 18



New South Wales

An Act to consolidate the Statutes relating to the law of Landlord and Tenant.

## Part 1A Preliminary

### 1 Name of Act

This Act may be cited as the *Landlord and Tenant Act 1899*.

### 1A Definition of “land”

In this Act **land** means land, houses, or other corporeal hereditaments.

### 1B Exclusion of certain agreements from operation of Act

This Act does not apply to a residential tenancy agreement, or to land that is subject to a residential tenancy agreement, to which the *Residential Tenancies Act 1987* or the *Residential Parks Act 1998* applies.

## 2 Schedule A

- (1) The Acts in Schedule A to this Act, to the extent to which the same are there expressed to be repealed, are hereby repealed.
- (2) All rules and orders made or enacted under any of the enactments hereby repealed and in force at the commencement of this Act shall be deemed to have been made and enacted under the corresponding provisions of this Act.
- (3) Where any form of words or form used after the commencement of this Act refers to any enactment hereby repealed, such reference shall be taken to be a reference to this Act, and where any form of words or form so used as aforesaid would have been valid or have had a particular effect under any enactment hereby repealed, such form of words or form shall, notwithstanding the repeal of such enactment, have the same validity and effect as it would have had under the provisions of such repealed enactment if this Act had not been passed.

## Part 1 General

**2AA No taking possession of dwelling-house without court sanction**

- (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 1982*,
  - (b) is or forms part of a motel or boarding-house,
  - (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 or her in consequence of or in conjunction with his or her 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).
- (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 or she is lawfully deprived of possession of that land.

- (5) A person, on his or her 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 4), 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.

Maximum penalty: For an offence committed by an individual, 5 penalty units; for an offence committed by a body corporate, 10 penalty units.

- (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 or she took possession of the land, he or she believed on reasonable grounds that every tenant of the land or any part thereof, of whose tenancy notice had been given to him or her or, if he or she 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.

## **2A Restrictions upon recovery of possession**

- (1) No proceedings in the Supreme Court for possession, or action of ejectment in a District Court for recovery of any land or part of any land from the tenant or any person claiming under him or her who is actually occupying such land or part shall be commenced by the landlord if the land is or includes a dwelling-house and:

(a) where the term or interest of such tenant or person has not expired or been determined, if:

(i) such tenant or person is liable to the payment of rent, and

- (ii) such rent does not exceed twenty-five dollars twenty cents per week, or an equivalent sum calculated in respect of any other period, or
- (b) where the term or interest of such tenant or person has expired or been determined, if:
  - (i) such tenant or person was immediately before the expiration or determination of such term or interest liable to the payment of rent, and
  - (ii) such rent did not immediately before such expiration or determination exceed twenty-five dollars twenty cents per week or an equivalent sum calculated in respect of any other period.
- (2) In any case where by reason only of the provisions of subsection (1) a landlord is precluded from commencing any action or proceedings referred to in that subsection, he or she may take proceedings, under Part 4 for the recovery of possession of the land concerned and the provisions of that Part shall where applicable apply, mutatis mutandis, to any such proceedings.
- (3) A writ of possession to enforce a judgment for possession of land which is or includes a dwelling-house shall not be issued out of the Supreme Court until such time as the Court having regard to any hardship that will be caused to the defendant by the enforcement of the judgment shall order.

## **2B Spouse's tenancy rights on separation or desertion**

- (1) Where the tenant of any land which is or which includes a dwelling-house separates from or deserts his or her spouse, leaving the spouse in possession of the land, the provisions of this Act, and the provisions of any other enactment relating to the recovery of possession of tenements or to the control of rents and applicable to such land, shall, in respect of the period during which such separation or desertion continues, apply as if the spouse were the sole tenant of the land.

This section applies where the tenant separated from or deserted his wife before or after the commencement of the [Law Reform \(Married Persons\) Act 1964](#), but does not apply where the tenant separated from or deserted his wife before such commencement unless the wife was in possession of the land at such commencement.

- (2) In this section:

**spouse** of a person includes a person with whom the person has a de facto relationship within the meaning of the [Property \(Relationships\) Act 1984](#).

- (3) The amendments made to this section by the [Miscellaneous Acts Amendment \(Relationships\) Act 2002](#) apply where the tenant separated from or deserted his or her spouse before or after the commencement of those amendments but do not apply

where the tenant separated from or deserted his or her spouse before that commencement unless the spouse was in possession of the land as at that commencement.

## **2C Application of Act where part of demised land is prescribed premises**

Where any demised land consists partly of prescribed premises within the meaning of the *Landlord and Tenant (Amendment) Act 1948* and partly of other land, the lease may be determined in so far as it applies to the other land by a notice to quit or demand of possession and proceedings under this Act may, subject to this Act, be taken in respect of the other land.

## **2D (Repealed)**

## **3 Recovery of land may be refused in cases of retaliatory eviction**

- (1) The Supreme Court or a Local Court may, where proceedings have been commenced against a tenant in either Court for recovery of land, refuse to give judgment for possession of land or issue a warrant for possession of land, as the case requires, if the Court is satisfied that the person who commenced the proceedings was wholly or partly motivated to do so:
  - (a) by the fact that the tenant had applied or proposed to apply to the Consumer, Trader and Tenancy Tribunal for an order that an increase in rent or the rent payable by the tenant was excessive, or
  - (b) by the fact that an order had been made by the Consumer, Trader and Tenancy Tribunal specifying the maximum amount of rent payable by the tenant.
- (2) If the Supreme Court or a Local Court is satisfied that a tenant against whom proceedings for recovery of possession of land have been commenced has, within the period of 12 months preceding that commencement, applied to the Consumer, Trader and Tenancy Tribunal for an order referred to in subsection (1) (a) or that an order referred to in subsection (1) (b) is in force in relation to the tenant, the burden lies on the person who commenced the proceedings to prove that the proceedings were not wholly or partly motivated by that fact.

## **4-6 (Repealed)**

## **Part 2 Tenements recovery in the Supreme Court**

### **6A Definitions of “tenancy”, “landlord” and “tenant”**

In the construction of this part the term **tenancy** includes a lease, the term **landlord** includes a lessor and the term **tenant** includes a lessee.



## **7 Tenants to give notice to landlord of proceedings for possession**

Every tenant to whom any originating process in proceedings in the Supreme Court for recovery of land is delivered, or to whose knowledge any such originating process comes, shall forthwith give notice thereof to his or her landlord, or his or her bailiff or receiver, under penalty of forfeiting the value of three years' improved or rack rent of the land demised or held in the possession of such tenant to the person of whom he or she holds to be recovered by proceedings in the Supreme Court.

## **8 Proceedings for possession**

- (1) In all cases between landlord and tenant whenever one half-year's rent is in arrear and the landlord to whom the same is due is entitled to re-enter for the non-payment thereof, such landlord may, without any formal demand or re-entry, commence proceedings in the Supreme Court for possession of the land demised, and service in accordance with the rules of the Supreme Court of the originating process shall stand in the place and stead of a demand and re-entry.
- (2) If half a year's rent was due before the originating process was served and the landlord had power to re-enter, the landlord may recover judgment and execution in the same manner as if the rent in arrear had been legally demanded and a re-entry made.
- (3) If the tenant, or his or her assignee or other person claiming or deriving under the tenancy, suffers judgment to be entered in such proceedings for possession and execution to be executed thereon, without paying the rent and arrears the recovery of which by action was not, on the date when the proceedings for possession were brought, barred by the [Limitation Act 1969](#), together with full costs, and without proceeding for relief against forfeiture within six months after such execution executed, such tenant, assignee, and all other persons claiming and deriving under the said tenancy shall be barred and foreclosed from all relief or remedy in law or equity, and the said landlord shall from thenceforth hold the said demised land discharged from such tenancy.
- (4) Nothing herein contained shall extend to bar the right of any mortgagee of such tenancy, or any part thereof, who is not in possession, provided that, within six months after such judgment obtained and execution executed, he or she pays all rent in arrear the recovery of which by action was not, on the date when the proceedings for possession were brought, barred by the [Limitation Act 1969](#), and all costs and damages sustained by such landlord, and performs all the covenants and agreement which on the part and behalf of the first tenant are and ought to be performed.

## **9 In proceedings for relief against forfeiture payment into Court of rent, arrears and costs may be ordered**

- (1) If proceedings for relief against forfeiture are taken within the time mentioned in

subsection (3) of section 8 the Court may, on the application of the landlord in such proceedings, order the applicant for such relief to pay into Court such sum of money in respect of rent and arrears the recovery of which by action was not, on the date when the proceedings for possession were brought, barred by the *Limitation Act 1969*, and the costs of the proceedings for possession as it thinks fit and by the same or other order it may order that such money, if paid into Court, shall be paid out to the landlord on such terms, if any, as to security or otherwise as it thinks fit.

- (2) If the applicant for relief against forfeiture has been ordered to pay money into Court but fails to do so within the time ordered or within such extended time as may be allowed, the Court may direct entry of judgment against the applicant.
- (3) If such proceedings for relief against forfeiture are taken within the time aforesaid and after execution is executed, the landlord shall be accountable only for so much as he or she shall really and bona fide, without fraud, deceit, or wilful neglect, make of the demised land from the time of his or her entering into the actual possession thereof, and if what is so made by the landlord be less than the rent reserved on the said tenancy, then the said tenant or his or her assignee, before he or she is restored to his or her possession, shall pay to such landlord the difference between the money so made by him or her and the reserved rent for the time such landlord held the said land.

#### **10 Before judgment, Court may stay proceedings for possession on payment of all rent and costs**

Where a landlord has commenced such proceedings for possession the Court may, on the application of the tenant or his or her assignee and upon payment by such tenant or assignee of rent and arrears the recovery of which by action was not, on the date when the proceedings for possession were brought, barred by the *Limitation Act 1969*, and costs, stay permanently, at any time before judgment for possession has been entered, such proceedings.

#### **11 (Repealed)**

#### **12 Recovery of mesne profits in proceedings for possession**

- (1) Where, in proceedings in the Supreme Court by a landlord, a claim for mesne profits is joined with a claim for possession of land, and the entitlement of the landlord to possession of the whole or of any part of the land is established, the landlord, notwithstanding that he or she has not recovered possession of the whole or of that part of the land, may:
  - (a) unless the proceedings are tried with a jury, have judgment for mesne profits up to the time of delivery of possession of the land for which he or she obtains judgment for possession, and
  - (b) if the proceedings are tried with a jury, have judgment for mesne profits up to the

time of the verdict of the jury.

- (2) A judgment for possession and for mesne profits under this section shall not bar any such landlord from bringing proceedings for mesne profits which shall accrue from the time up to which mesne profits are included in the judgment down to the day of delivery of possession of the land for which judgment for possession is obtained.

**13 (Repealed)**

**14 Saving of former remedies**

Nothing in this Part contained shall be construed to prejudice or affect any other right to take proceedings or other remedy which landlords may possess in any of the cases hereinbefore provided for otherwise than hereinbefore expressly enacted.

**15 (Repealed)**

**Part 3**

**16-21 (Repealed)**

**Part 4 Tenements recovery before justices of the peace**

**21A Minister entitled to be represented in proceedings under this Part**

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

**22 Definition**

In the construction of this Part:

- (a) (Repealed)
- (b) The word **agent** means any person usually employed by the landlord in the letting of the land or in the collection of the rents thereof, or specially authorised to act in the particular matter by writing under the hand of such landlord.

**22A Special provisions applicable to Part 4**

For the purposes of this Part and notwithstanding anything in such Part contained:

- (a) Proof of the payment by any person of rent in respect of any land shall give rise to a conclusive presumption:
- (i) of the existence of a tenancy in respect of such land, and
  - (ii) that such person holds such land as tenant of the person to whom or to whose agent such rent is paid, and
  - (iii) that the person to whom or to whose agent such rent is paid is the landlord of whom such tenant holds such land.

- (b) Any tenancy the existence of which is so presumed shall, in the absence of proof to the contrary, be deemed to be a tenancy determinable at the will of either of the parties:
- (i) by one week's notice in writing in any case in which the rent is paid or payable in respect of weekly intervals,
  - (ii) by one month's notice in writing in any other case.
- (c) A warrant issued under this Part may be executed not only against the person against whom the information was exhibited but also against every person claiming under him or her who is in actual occupation of the land or any part thereof.

A person who became the occupier of the land or any part thereof, under a tenancy held of the person against whom the information was exhibited and whose occupancy is referable to such tenancy, shall be deemed to claim under the person against whom the information was exhibited whether or not such tenancy has expired or otherwise been determined.

- (d) Where a landlord has conveyed to a purchaser the land the subject of a tenancy, a notice in writing of such fact, signed by the landlord or his or her solicitor, specifying the name of the purchaser and directing the tenant to pay all future rents to such purchaser, served upon the tenant of such land, shall be deemed to operate as an attornment as tenant to such purchaser by such tenant at the rent and subject to the stipulations, agreements and conditions of such tenancy subsisting at the date of service of such notice.

Such notice may be served either personally or by leaving the same for the tenant at any occupied house or building which is or which is part of the land or by properly addressing, prepaying and posting a letter containing the notice, and where so served by the post the service shall be deemed to have been effected at the time at which the letter would be delivered in the ordinary course of post.

- (e) A notice to quit or a notice of intention to quit may expire at any time provided the length of the notice required by law or by the agreement of the parties is given, notwithstanding that the date indicated in the notice as the date upon which possession is to be given, does not coincide with the last day of a period of the tenancy.

### **23 Possession of tenements may be recovered before Magistrate**

- (1) When the term or interest of the tenant of any land held by him or her 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 such tenant or any person claiming under him or her who is actually occupying such land or any part thereof neglects to quit and deliver up possession of such land or of such part thereof respectively, the landlord of

such land or his or her agent may exhibit his or her information before any justice of the peace, who shall thereupon issue a summons, and if required so to do a duplicate thereof, under his or her hand against the person so neglecting to quit and deliver up possession, requiring such person to appear before a Local Court at the place where the Local Court of the district in which such land is situated usually sits to show cause why such landlord should not be put into possession of such land.

- (2) If at the time and place appointed in and by such summons, or at any adjournment thereof (whether the tenant or occupier appears or not), such landlord or such agent gives due proof according to law to the satisfaction of the justices before whom the matter is heard, or the majority of them, of the holding and of the expiration or determination in manner aforesaid of the tenancy, and that such landlord then has and had at the time of the service of the summons upon the tenant or occupier lawful right as against such tenant or occupier to the possession of such land, and that the tenant or occupier against whom such summons is issued was the tenant in possession or the actual occupier of such land at the time of the service of such summons, then (upon proof of the service of the summons in case the tenant or occupier does not appear) the said justices, or the majority of them, unless reasonable cause is shown or appears to them to the contrary, may:
- (a) adjudge the landlord by or for or on whose behalf such information shall be exhibited entitled to possession of such land, and
  - (b) award to the said landlord or to such agent by whom such information is exhibited his or her costs to be assessed by the said justices or the majority of them, and
  - (c) issue a warrant under their hands directed to the constables and peace officers of or acting in or for the district or place within which such land is situate, or to any of them, or to any other person as a special bailiff in that behalf, requiring and authorising them or him or her, within a period to be therein named, not less than ten nor more than thirty clear days from the date of such warrant, to enter (by force if needful) into such land and to give possession of the same to such landlord or such agent on his or her behalf, and such warrant shall be a sufficient authority to such constables, peace officers, or bailiff to enter upon such land with such assistants as they or he or she may deem necessary, and to give possession accordingly:

Provided that where the date of such warrant is later than the twenty-eighth day of February, one thousand nine hundred and fifty-five, the warrant shall not be executed earlier than five clear days from the date on which the warrant is actually delivered to any constable or peace officer of or acting in and for the district or place within which such land is situate or to any other person as a special bailiff in that behalf.

- (3) No entry upon any such warrant shall be made on a Sunday, Good Friday, or

Christmas Day, or at any time, except between the hours of nine of the clock in the morning and four of the clock in the afternoon.

- (4) If such landlord or agent fails to appear or to give such proofs as aforesaid at the time and place aforesaid, such justices or the majority of them may dismiss his or her information, and award to the person against whom such information is exhibited, his or her costs to be assessed by such justices or the majority of them.
- (5) All costs awarded under the provisions hereof, together with the reasonable charges of taking and keeping the distress, shall be recoverable by distress and sale of the goods and chattels of the person adjudged or ordered to pay the same.
- (6) The proceedings upon the hearing of the matter of any such information as aforesaid shall be conducted as near as may be in accordance with the proceedings upon the trial of an issue of fact in the Supreme Court, and the parties to such information shall have the like right of addressing the Court as well in reply as otherwise as the parties upon the trial of any such issue of fact in the Supreme Court would have or be entitled to.

Such right may be exercised by themselves, their counsel, or attorneys, or if the justices think fit, by their agents.

#### **24 Power to justices to suspend proceedings on adjudication for one month**

The justices by whom such adjudication is made may postpone the issuing of such warrant and other proceedings under such adjudication, or suspend the execution of such warrant and other proceedings for any period not exceeding one month from the day of such adjudication, either upon such terms as to security or otherwise, or absolutely without imposing any terms, as to such justices seems meet:

Provided that where the land to which the adjudication relates is or includes a dwelling-house, the justices, having regard to any hardship that will be caused to the tenant or occupier by the issuing of the warrant and other proceedings or the execution of the warrant and other proceedings, may postpone the issuing of such warrant and other proceedings under the adjudication, or suspend the execution of such warrant and other proceedings, for such period exceeding one month as the justices shall order.

#### **25 Mode of service of summons**

- (1) Such summons shall be served three clear days before the day appointed for the hearing of the matter of the information upon which the same issues, and such summons shall be served by delivering the same or a duplicate thereof personally to the person summoned thereby, or in case notwithstanding all due diligence in that behalf such person cannot be personally served as aforesaid, then by leaving the same with the spouse or servant of such person or some other competent person, either on the land in respect of which such summons has been issued or at the place of abode of the person so summoned, and in all such cases as aforesaid the person

serving such summons shall explain the nature and effect thereof to the person to whom the same or the duplicate thereof is delivered, unless such last-mentioned person shall prevent such explanation from being made.

(2) If notwithstanding all due diligence in that behalf it is from any cause impracticable to serve such summons in any of the ways aforesaid, then the posting of the same or a duplicate thereof on some conspicuous part of the land in respect of which the same has been issued shall be deemed to be good service of such summons.

(3) In this section:

**spouse** of a person includes a person with whom the person has a de facto relationship within the meaning of the [Property \(Relationships\) Act 1984](#).

## **26 Execution of warrant to be suspended upon security to defend an action for recovery of the land**

(1) If any tenant or occupier against whom any such warrant is granted offers at the time when the adjudication in respect thereof is made to give security to defend proceedings against him or her for possession of the land in question in the Supreme Court or an action of ejectment or other appropriate action against him or her for recovery of the said land in any other Court having competent jurisdiction in that behalf to be brought by or on behalf of the landlord, by or for or on whose behalf the information upon which such adjudication is made has been exhibited, then the execution of such warrant and all other proceedings under such adjudication shall be suspended for three clear days.

(2) If during that interval such tenant or occupier gives to such landlord, his or her executors and administrators, security by a joint and several bond of two other responsible persons, to be approved of by the justices by whom the matter of such information is heard, or the majority of them, in such sum of money as to them (regard being had to the value of such land and to the probable cost of such action, and the probable length of time which must elapse before the same can be determined) seems reasonable, and they direct, conditioned to be void (in case such landlord, his or her heirs, executors, or administrators succeeds in such action), upon payment of all such costs of suit as are awarded to or recovered by such landlord, his or her heirs, executors, or administrators in such action, and of all mesne profits of the said land accruing between the time of such adjudication and the time when such landlord, his or her heirs, executors, or administrators obtain possession of such land by virtue of such action, and of all such costs as are awarded by such justices, or the majority of them, to be paid by such tenant or occupier to such landlord or his or her agent, then such warrant shall not be executed or put in force, but shall be void; and no further proceedings shall be taken under or in pursuance of such adjudication for recovery of such last mentioned costs or otherwise.

(3) This section does not apply where the land in question is or includes a dwelling-house

and the rent payable in respect of the land does not exceed twenty-five dollars twenty cents per week, or an equivalent sum calculated in respect of any other period.

## **27 Bond to be approved and certified by justices**

- (1) Every such bond shall be approved of, and certified as so approved of, by the justices by whom the matter of such information is heard, or the majority of them, by a memorandum in writing signed by them, which memorandum shall be on or annexed to such bond.
- (2) The Court in which any such proceedings for possession of the land in question or action of ejectment or other action for the recovery of the land in question is brought may, upon application of any party bound by such bond, his or her heirs, executors, or administrators, in a summary way give such relief to the person making such application, or make such other order in the premises as may be agreeable to justice; and every order made by such Court thereupon shall have the nature and effect of a defeasance to such bond.
- (3) If any unreasonable delay occurs in the bringing or prosecuting such proceedings for possession of such land, or action of ejectment, or other action for recovery of such land, then the Court in which such proceedings are or action is brought or in case no such proceedings have or action has been brought and been depending, then any Court having competent jurisdiction to entertain any such proceedings or action may, upon application of the parties bound by any such bond, or either of them, their or either of their heirs, executors, or administrators, in a summary way order such bond to be cancelled and given up to the person making such application, or make such other order in the premises as may be agreeable to justice.
- (4) If an order is thereupon made by any such Court ordering such bond to be cancelled, then such bond shall, upon the making of such order, be thenceforth void, but without prejudice to any action or other remedy thereon for any previous breach of the condition or defeasance thereof.

## **28 Protection of justices, constables etc**

It shall not be lawful to bring any action or prosecution against the said justices by whom such warrant as aforesaid has been issued, or against any constable, peace officer, or bailiff by whom such warrant has been executed for issuing such warrant or executing the same respectively by reason that the landlord, by or for or on whose behalf the same is obtained, had not lawful right to the possession of the land in respect of which such warrant has issued.

## **29 Where landlord's title good not to be deemed a trespasser, but be liable by action for damages for any irregularity**

In all cases where at the time of executing any such warrant, the landlord, by whom or for or on whose behalf such warrant has been obtained, has, as against the person in



possession of such land, lawful right to the possession thereof, then neither such landlord, nor his or her agent nor any other person acting on his or her behalf, shall be deemed to be a trespasser by reason merely of any irregularity or informality in the mode of proceeding for obtaining possession under the authority of this Part, but the party aggrieved may bring an action for damages for any such irregularity or informality.

### **30 Act not to protect persons who have no legal right**

- (1) No such warrant, nor anything herein contained, shall protect any landlord by whom, or for or on whose behalf, any such warrant for the delivery of possession of any land is obtained as aforesaid, from any action which may be brought against him or her by any person in possession of such land, or any part thereof, for or in respect of any entry upon or taking possession thereof, under or by virtue of any such warrant, where such landlord at the time of executing the same has not, as against such person in possession, lawful right to the possession thereof.
- (2) In all such cases as last aforesaid such landlord shall be liable in respect of such entry and taking possession in like manner as if the same had been made or taken by him or her, or by his or her direction without the authority of any such warrant.
- (3) Nothing herein contained shall prejudicially affect any rights to which any person may be entitled as out-going tenant by the custom of the country or otherwise.

### **31 Conduct of proceedings where no express provision**

- (1) In all proceedings under this Part not herein expressly provided for, the same shall be regulated and conducted in accordance with the provisions of the law in force for the time being respecting summary proceedings before justices of the peace out of sessions, and all such provisions shall, so far as the same are applicable, be in force and observed in all proceedings under this Part not herein expressly provided for; but no person shall be imprisoned for non-payment of any costs awarded under the provisions of this Part.
- (2) An appeal from any determination, order, adjudication or warrant made or issued under the provisions of this Part shall lie to the Supreme Court and shall be made and determined in the same manner as an appeal from the conviction or order of justices in the exercise of their summary jurisdiction.
- (3) (Repealed)
- (4) At any stage of such an appeal the Supreme Court may, either as a term of granting a stay of proceedings or otherwise, from time to time extend for such period as it thinks fit the period named in any warrant for the execution thereof (whether the warrant has expired or not).

**32 Power of amendment**

No objection shall be taken or allowed to any information, complaint, summons, conviction, or warrant made or preferred under or by virtue of this Part for any alleged defect in substance or in form, or for any variance between it and the evidence adduced on the part of the complainant, but if any such variance or defect appears to the justices present at and acting in the hearing of the case, they may, upon such terms as they think fit, cause the said proceedings to be amended and to adjourn the hearing of the case to some future day if necessary.

**33 Forms**

- (1) The forms in Schedule E, or any other forms to the like effect, may be used in the carrying out of the provisions of this Part.
- (2) This enactment shall not invalidate any information, summons, adjudication, order, bond, warrant, or other proceeding which may be laid or drawn in any other appropriate form or manner.

**Parts 5, 6****34-61 (Repealed)****Schedule A**

(Section 2)

<b>Date of Act</b>	<b>Title of Act</b>	<b>Extent of Repeal</b>
5 Vic No 9	Advancement of Justice	Section 27.
7 Vic No 13	An Act for regulating the powers and duties of Sheriff in New South Wales.	Section 4.
11 Vic No 28	Leases Facilitation	The whole Act.
15 Vic No 11	Distress for Rent	The whole Act.
17 Vic No 10	Tenements Recovery	The whole Act.
17 Vic No 21	Common Law Procedure	Sections 160-168 (both inclusive), and so much of s 174 as refers to ss 160-168.
22 Vic No 18	District Courts	Sections 19-23 (both inclusive), 106-108 (both inclusive), and so much of s 1 as refers to ss 19-23 and 106-108.
26 Vic No 12	Trust Property	Sections 1-4 (both inclusive).
No 43, 1898	<i>Distress for Rent Restriction Act 1898</i>	The whole Act.

## Schedules B-D (Repealed)

### Schedule E

(Section 33)

#### Form of information

District of  
(*the district in which  
the land of which  
possession is sought to  
be recovered is situate*).  
to wit.

} BE it remembered that on the            day of            in the year of our  
Lord one thousand eight hundred and            at            in the  
Colony of New South Wales (A.B.) or (C.D. the agent of A.B.) the landlord  
of the land hereinafter described, informed me,

, Esquire, one of Her Majesty's justices of the peace in and for the Colony aforesaid (*describing the jurisdiction of the justice before whom the information is exhibited*) that theretofore E.F. held from the said A.B., by virtue of a tenancy (for a term of years or from year to year, or from month to month, or from week to week, or at will or at sufferance, or otherwise as the case may be) (all that parcel of land or all that messuage or dwelling-house or otherwise according to the fact) situate in the (*city, town, parish, or other locality*) in the district of            in the Colony aforesaid, bounded (*describing the land by name, abuttals, or otherwise with sufficient particularity to identify the same*), and that the said tenancy (expired by effluxion of time) or (was determined by notice to quit or demand of possession) on or about the            day of            (then instant or last past or otherwise according to the fact), and that such land was at the time of my being so informed as aforesaid actually occupied by the said E.F.) or (G.H., a person claiming under the said E.F.), and that the said (E.F.) or (G.H.) neglected to quit and deliver up possession thereof, and that the said A.B. then had lawful right as against the said (E.F.) or (G.H.) to the possession of such land, and thereupon the said (A.B.) or (C.D.) prayed that the said A.B. might be put into possession of the said land under and by virtue of the provisions of the statute in such case made and provided.

Exhibited at            aforesaid on the day and  
year first above written before me.

}

J.P.  
The justice above named.

#### Form of summons

To [E.F.] or [G.H.]

WHEREAS an information has been exhibited this day before me the undersigned [*here describe the justice as in the information*] by (A.B.) or (C.D. the agent of A.B.) praying that the said A.B. may, under and by virtue of the provisions of the statute in such case made and provided, be put into possession of [*here describe the land as in the information*] of which it is therein alleged you are now in the actual occupation on the ground that the same was held from the said A.B. by (you) or (E.F., under whom it is also therein alleged you claim), by virtue of a tenancy (for a term of years or otherwise as averred in the information), which (expired by effluxion of time or otherwise as averred in the information) on or about the            day of            (now instant or last past or otherwise as averred in the information), and that you neglect to quit and deliver possession of the said land. These are therefore to command you in Her Majesty's name to be and appear on the            day of            now (instant) or (next ensuing) at the hour of            of the clock in the forenoon at (*the place where the Local Court of the district in which the land in question is situated usually sits*), and so from day to day at the same hour of the day until the matter of the said information shall be disposed of, before such two or more of Her Majesty's justices of the peace as may then be there, to show cause why the said A.B. should not be put into possession of the said land, and why you should not be adjudged to pay to the said (A.B.) or (C.D.) his or her costs of proceeding to obtain and of recovering possession of the said land. And take notice that if you fail to appear and show such

cause as aforesaid you will be liable to have a warrant issued against you under which such possession of the said land may be given to the said A.B., and to be adjudged to pay such costs as aforesaid.

Given under my hand the                      day of                      , in the year of our Lord one thousand eight hundred and

J.P.

The justice above named.

**Form of adjudication in favour of landlord and award of costs to him or her or his or her agent**

District of  
(as in information)  
to wit.



WHEREAS an information was exhibited on the                      day of  
now (instant) or (last past) by (A.B.) or (C.D., the agent of A.B.), praying  
that the said A.B. might under and by virtue of the provisions of the  
statute in such case made and provided be put into possession of

[here describe the land as in the information] of which it was therein alleged that (E.F.) or (G.H.) was then in the actual occupation, on the ground that the same was held from the said A.B. by (the said E.F.) or (E.F., under whom it was also therein alleged the said G.H. claimed) by virtue of a tenancy (for a term of years or otherwise as averred in the information), which (expired by effluxion of time or otherwise as in the information), on or about the                      day of                      (then instant or last past or otherwise as averred in the information), and that the said (E.F.) or (G.H.) neglected to quit and deliver possession of the said land. And whereas thereupon a summons to the said (E.F.) or (G.H.) was duly issued and served whereby the said (E.F.) or (G.H.) was duly summoned to be and appear on the                      day of                      now (instant) or (last past) at the hour of                      of the clock in the forenoon, at (as in the summons) (being the place where the petty sessions of the said district usually sit), and so from day to day until the matter of the said information should be disposed of, before such two or more of Her Majesty's justices of the peace as might then be there to show cause why the said (A.B.) should not be put into possession of the said land, and why the said (E.F.) or (G.H.) should not be adjudged to pay to the said (A.B.) or (C.D.) his or her costs of proceeding to obtain and recovering possession of the said land: And whereas the matter of the said information has in pursuance of such summons to the said (E.F.) or (G.H.) as aforesaid been duly heard by and before us (the justices making adjudication)                      of Her Majesty's justices of the peace in and for the Colony aforesaid (describing the jurisdiction of the justices by whom the matter is heard), at the said place at which the said (E.F.) or (G.H.) was so summoned to appear as aforesaid, we being (all) or (a majority of) the justices then and there sitting. And the said (A.B.) or (C.D.) hath given due proof according to law to the satisfaction of us of the creation and of the (expiration) or (determination) in manner aforesaid of the said tenancy, and that the said (A.B.) had at the time of the service of the said summons upon the said (E.F.) or (G.H.), and at the time of the said hearing, and now has lawful right as against the said (E.F.) or (G.H.) to the possession of the said land, and that the said (E.F.) or (G.H.) was the tenant in possession or the actual occupier of the said land at the time of the said service of the said summons [and whereas the said (E.F.) or (G.H.) duly appeared in pursuance of the said summons and according to the exigency thereof before us to defend himself or herself touching the matter of the said information, but did not show any reasonable cause to us], or [and whereas the said (E.F.) or (G.H.) not having appeared in pursuance of the said summons or according to the exigency thereof, due proof of the service of the said summons was given to us], and no reasonable cause was in fact shown or appeared to us why we should not adjudge the said (A.B.) to be entitled to possession of the said land: Now, therefore, we do hereby adjudge that the said (A.B.) is entitled to the possession of the said land, and that a warrant shall issue according to the provisions of the statute in such case made and provided for putting the said (A.B.) into possession of the said land within the period beginning on the                      day of (here name a day not less than seven clear days from the date of the warrant), and ending on the                      day of (here name a day not more than thirty clear days from the date of the warrant). (Here add in case costs shall be awarded to the landlord or his or her agent)—And we do assess the costs of the said (A.B.) or (C.D.) of proceeding to obtain and of recovering possession of the said land at the sum of                      which said sum of money we do award to the said (A.B.) or (C.D.) for his or her said costs, and we do order and adjudge that the same shall be paid forthwith by the said (E.F.) or (G.H.) to the said (A.B.) or (C.D.): And we do further award and adjudge that if the same be not paid forthwith the same be levied by distress and sale of the goods and chattels of the said (E.F.) or (G.H.).

Witness our hands and seals the                      day of                      in the year of our Lord one thousand eight hundred

and

J.P. (L.S.)

J.P. (L.S.)

### Form of warrant of possession

District of  
(as in information)  
to wit.



[To a constable or peace officer of or acting for the district of  
(or other place as the case may be) in the Colony of New South  
Wales, and to all other constables and peace officers of or acting for the  
said district (or other place as the case may be) and to each of them.]

Or [To all constables and peace officers of or acting for the district of  
(or other place as the case may be) in the Colony of New South  
Wales and to each of them.]

Or [To a special bailiff for the purposes hereinafter mentioned.]

Or [To and special bailiffs for the purposes hereinafter  
mentioned and to each of them.]

WHEREAS we the undersigned of Her Majesty's Justices of the Peace in and for the Colony of New South Wales (*describing the jurisdiction of the justices making the adjudication*), in pursuance of the provisions of Part 4 of the [Landlord and Tenant Act 1899](#), did on this day of in the year of our Lord one thousand eight hundred and upon the hearing of the matter of an information exhibited by (A.B.) or (C.D., the agent of A.B.) against (E.F.) or (G.H) adjudge that the said A.B. is entitled to the possession of [*here describe the land as in the information*]. And we did also adjudge that a warrant should issue according to the provisions of the said Act for putting the said A.B. into possession of the said land within the period beginning on the day of and ending on the day of (*as in adjudication*): Now therefore we do authorise and command you [and (*if directed to more than one person*) each of you] within the period of clear days from the date hereof on any day except on Sunday (*and if either Christmas Day or Good Friday shall occur during the interval add "or Christmas Day" or "Good Friday" as the case may require*), between the hours of nine of the clock in the forenoon and four of the clock in the afternoon [with or without the aid of the said (A.B.) or (C.D.) or any other person or persons whom you may think requisite to call to your assistance], to enter (by force if needful) into and upon the said land, and to eject all persons thereout and therefrom, and to give possession of the same to the said (A.B.) or (C.D., as such agent as aforesaid on behalf of the said A.B.).

Given under our hands the day of in the year of our Lord one thousand eight hundred and

J.P.

J.P.

### Form of bond as security to defend action and supersede execution of warrant

Know all men by these presents that we, K.L., of , in the Colony of New South Wales , and M.N., of , in the Colony aforesaid , are jointly and severally held and firmly bound unto A.B., of , in the Colony aforesaid , in the sum of pounds of lawful British money, to be paid to the said A.B., his or her executors or administrators, for which payment, to be well and truly made, we bind ourselves, our heirs, executors, and administrators jointly, and each of us binds himself or herself, his or her heirs, executors, and administrators, severally by these presents. Sealed with our seals.—Dated the day of , in the year of our Lord one thousand eight hundred and

WHEREAS Esquires, of Her Majesty's justices of the peace in and for the Colony of New South Wales (*describing the jurisdiction of the justices by whom the adjudication was made*), in pursuance of the provisions of Part 4 of the [Landlord and Tenant Act 1899](#), did on the day of now (instant) or (last past) upon hearing the matter of an information exhibited by (the above-named A.B.) or (C.D., the agent of the above-named A.B.) against (E.F.) or (G.H.) adjudge that the said A.B. was entitled to the possession of [*here describe the land as in the information*], and did also adjudge that a warrant should issue according to the

provisions of the said Part of the said Act for putting the said A.B. into possession of the said land [*here add in case costs were awarded to the landlord or his or her agent*], and the said justices assessed the costs of the said (A.B.) or (C.D.) of proceeding to obtain and of recovering possession of the said lands at the sum of (as in the adjudication), which sum they did award to the said (A.B.) or (C.D.) for his or her said costs, and the said justices did order and adjudge that the same should be paid by the said (E.F.) or (G.H.) to the said (A.B.) or (C.D.): And whereas at the time when the said adjudication was made the said (E.F.) or (G.H.), in pursuance of the provisions in that behalf contained in the said Part of the said Act, offered to give security to defend an action of ejectment or other appropriate action against him or her for recovery of possession of the said land in the Supreme Court of the said Colony, or any other Court having competent jurisdiction in that behalf, to be brought by or on behalf of the said A.B.: And whereas the said justices, in accordance with the provisions in that behalf contained in the said Part of the said Act, directed that the sum of money in which the bond in that behalf mentioned in the said part of the said Act should be given should be the above-named sum of pounds; and the said justices have approved of the above bounden K.L. and M.N. as two responsible persons to enter into the said bond, and the said justices have approved hereof as such bond as aforesaid: Now, the condition of the above-written bond is such that (in case the said A.B., his or her heirs, executors, or administrators, shall succeed in such action as aforesaid for the recovery of the said land) if the said (E.F.) or (G.H.), his or her executors or administrators, or any person on his or her or their behalf, shall pay to the said A.B., his or her heirs, executors, or administrators, all such costs of suit as shall be awarded to or recovered by the said A.B., his or her heirs, executors, or administrators, in such action, and all mesne profits of the said land accruing between the time of the aforesaid adjudication and the time when the said A.B., his or her heirs, executors, or administrators shall obtain possession of the said land by virtue of such action [*here add in case costs were awarded to the landlord or his or her agent*], and the said sum of so ordered and adjudged by the said justices to be paid by the said (E.F.) or (G.H.) to the said (A.B.) or (C.D.) as aforesaid, then the said above-written bond shall be void.

K.L. (L.S.)

M.N. (L.S.)

Signed, sealed, and delivered by the abovenamed K.L. and M.N. in the presence of O.P. (*the attesting witness or witnesses*).

}

**Form of memorandum to be written on or annexed to such bond and signed by the justices**

We, the justices named in this (*or the annexed*) bond do hereby certify that we approve thereof.

As witness our hands, the day of , in the year of our Lord one thousand eight hundred and

J.P.

J.P.

**Form of adjudication in favour of tenant or occupier and award of costs to him or her**

District of  
(*as in information*)  
to wit.

}

WHEREAS an information was exhibited on the day of now (instant) or (last past) by (A.B.) or (C.D.) the agent of A.B. praying that the said A.B. might under and by virtue of the provisions of the

statute in such case made and provided be put into possession of certain lands situate in the district of , in the Colony of New South Wales, therein described or referred to, of which it was therein alleged that (E.F.) or (G.H.) was then in the actual occupation, and thereupon a summons to the said (E.F.) or (G.H.) was duly issued and served, whereby the said (E.F.) or (G.H.) was duly summoned to be and appear on the day of , now (instant) or (last past), at the hour of of the clock in the forenoon, at (*as in the summons*) (the place where the Local Court of the district in which the land in question is situated usually sits), and so from day to day, until the matter of the said information should be disposed of before such or two more of Her Majesty's justices of the peace as might then be there to show cause why the said A.B. should not be put in possession of the said land: And whereas the matter of the said information has in pursuance of such summons to the said (E.F.) or (G.H.) as aforesaid, being duly called on before us (*the justices making the adjudication*)

of Her Majesty's justices of the peace in and for the Colony aforesaid (*describing the jurisdiction of the justices before whom the matter is called on*), at the said place at which the said (E.F.) or (G.H.) was so summoned to appear as aforesaid, we being (all) or (a majority of) the justices then and there sitting, and the said (E.F.) or (G.H.) having then and there appeared before us to defend and oppose the said information, and the said (A.B.) or (C.D.) (having failed to appear) or (having also appeared but having failed to give proof to our satisfaction) in support of his or her said information we do, therefore adjudge that the said information be dismissed, and the same is hereby dismissed accordingly. (*Here add in case costs shall be awarded to the tenant or occupier—*). And we do assess the costs of the said (E.F.) or (G.H.) of appearing and defending and opposing the said information at the sum of \_\_\_\_\_ which said sum of money we do award to the said (E.F.) or (G.H.) for his or her said costs. And we do order and adjudge that the same shall be paid by the said (A.B.) or (C.D.) to the said (E.F.) or (G.H.), and we do further award and adjudge that if the same be not paid forthwith the same be levied by distress and sale of the goods and chattels of the said (A.B.) or (C.D.).

Witness our hands and seals the \_\_\_\_\_ day of \_\_\_\_\_, in the year of our Lord one thousand eight hundred and \_\_\_\_\_

J.P. (L.S.)

J.P. (L.S.)

### **Form of distress warrant for non-payment of costs**

[To \_\_\_\_\_, a constable or peace officer of or acting for the district of (*or other place as the case may be*) in the Colony of New South Wales, and to all other constables and peace officers of or acting for the said district (*or other place as the case may be*) and to each of them.]

Or [To all constables and peace officers of or acting for the district of \_\_\_\_\_ (*or other place as the case may be*) in the Colony of New South Wales and to each of them.]

Or [To \_\_\_\_\_ a person specially named for the purposes hereinafter mentioned.]

Or [To \_\_\_\_\_ and \_\_\_\_\_ persons specially named for the purposes hereinafter mentioned and to each of them.]

WHEREAS on the \_\_\_\_\_ day of \_\_\_\_\_ now (instant) or (last past) at (*the place where the adjudication took place*) in the district of \_\_\_\_\_ in the Colony of New South Wales, the matter of an information exhibited by (A.B.) or (C.D. the agent of A.B.) against (E.F.) or (G.H.), under and by virtue of the provisions of Part 4 of the [Landlord and Tenant Act 1899](#), was duly heard and adjudicated upon by (*the justices making the adjudication*) of Her Majesty's justices of the peace in and for the said Colony (*describing the jurisdiction of the justices making the adjudication*), and such adjudication was in favour of the said (A.B.) or (C.D. on behalf of the said A.B.) or (E.F.) or (G.H.), and in and by such adjudication the said justices did assess the costs of the said (A.B.) or (C.D.) or (E.F.) or (G.H.) in the premises at the sum of \_\_\_\_\_ (*as in the adjudication*), and did award to the said (A.B.) or (C.D.) or (E.F.) or (G.H.) the said sum of money for his or her said costs, and did order and adjudge that the same should be paid forthwith by the said (E.F.) or (G.H.) to the said (A.B.) or (C.D.) [or by the said (A.B.) or (C.D.) to the said (E.F.) or (G.H.)], and that if the same should not be forthwith paid, the same should be levied by distress and sale of the goods and chattels of the said (E.F.) or (G.H.) or (A.B.) or (C.D.). And whereas the said (E.F.) or (G.H.) or (A.B.) or (C.D.) hath not paid the said sum of money so ordered and adjudged to be paid by him or her for the said costs as aforesaid, but therein hath made default. These are, therefore, to command you in Her Majesty's name forthwith to make distress of the goods and chattels of the said (E.F.) or (G.H.) or (A.B.) or (C.D.), and if within the period of \_\_\_\_\_ clear days after the making of such distress, the said sum of money abovementioned, together with the reasonable charges of taking and keeping the said distress, shall not be paid, that then you do sell the said goods and chattels so by you distrained, and do pay the money arising from such sale unto \_\_\_\_\_ the Clerk of the Local Court for the said district of \_\_\_\_\_, in order that he or she may pay and apply the same as by law directed, and may render the over-plus (if any) on demand to the said (E.F.) or (G.H.) or (A.B.) or (C.D.).

Given under my hand and seal the \_\_\_\_\_ day of \_\_\_\_\_, in the year of our Lord one thousand eight hundred and \_\_\_\_\_

J.P. (L.S.)

## **Schedules F-N (Repealed)**