



Federal Circuit Court (Commonwealth Tenancy Disputes) Instrument 2015

I, George Brandis QC, Attorney-General, make the following instrument.

Dated 4 March 2015

George Brandis QC
Attorney-General

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Part 1—Preliminary

1 Name

This is the *Federal Circuit Court (Commonwealth Tenancy Disputes) Instrument 2015*.

2 Commencement

This instrument commences on the day after it is registered.

3 Authority

This instrument is made under subsection 10AA(3) of the *Federal Circuit Court of Australia Act 1999*.

4 Definitions

In this instrument:

Act means the *Federal Circuit Court of Australia Act 1999*.

applicable NSW law has the meaning given by subsection 7(2).

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Part 2—Commonwealth tenancy disputes involving land in New South Wales

5 Operation of this Part

- (1) This Part makes provision in relation to the following matters in respect of a Commonwealth tenancy dispute involving land in New South Wales:
 - (a) the rights of the parties to the dispute;
 - (b) the law to be applied in determining the dispute;
 - (c) the powers that the Federal Circuit Court of Australia may exercise under that law;
 - (d) the powers that may be exercised when executing an order made by the Court.
- (2) This Part does not apply in relation to a Commonwealth tenancy dispute involving land in New South Wales unless the dispute involves a tenancy within the meaning of the *Residential Tenancies Act 2010* (NSW).
- (3) Nothing in this Part has effect so as to confer non-judicial power on the Federal Circuit Court of Australia, unless the non-judicial power is incidental to the exercise of judicial power by the Court.

6 Rights of the parties

- (1) This section applies to a party to a Commonwealth tenancy dispute involving land in New South Wales if:
 - (a) the party is a tenant within the meaning of the *Residential Tenancies Act 2010* (NSW); and
 - (b) the Federal Circuit Court of Australia has jurisdiction to hear and determine the dispute.
- (2) The party must not make an application to the Civil and Administrative Tribunal under the *Residential Tenancies Act 2010* (NSW) in relation to a lease, licence or other arrangement to possess, occupy or use land that is the subject of the dispute.

7 Law to be applied

- (1) In determining a Commonwealth tenancy dispute involving land in New South Wales, the *Residential Tenancies Act 2010* (NSW) and any regulations made under that Act are to be applied:
 - (a) to the extent necessary to determine the dispute; and
 - (b) subject to the modifications set out in section 8 of this instrument.
- (2) The law mentioned in subsection (1) is the *applicable NSW law*.

8 Modifications of applicable NSW law

- (1) The applicable NSW law is to be applied as if:
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- (a) a reference to the Tribunal were a reference to the Federal Circuit Court of Australia; and
 - (b) a reference to the principal registrar of the Tribunal were a reference to a Registrar of the Federal Circuit Court of Australia; and
 - (c) a reference to the Sheriff, or to a sheriff's officer, were a reference to the Sheriff of the Federal Circuit Court of Australia.
- (2) The *Residential Tenancies Act 2010* (NSW) is to be applied as if it included the following section:

Despite anything else in this Act, if the Federal Circuit Court of Australia makes a termination order in respect of residential premises, the Court may make such orders as it considers appropriate in relation to the day vacant possession of the premises is to be given to the landlord.

9 Powers of the Court

In determining a Commonwealth tenancy dispute involving land in New South Wales, the Federal Circuit Court of Australia may exercise any powers that are:

- (a) powers of the Civil and Administrative Tribunal under the applicable NSW law; and
- (b) relevant to determining the dispute.

10 Powers when executing orders made by the Court

- (1) If the Federal Circuit Court of Australia makes an order when exercising jurisdiction over a Commonwealth tenancy dispute involving land in New South Wales:
- (a) the Federal Circuit Court of Australia may exercise any powers of the Civil and Administrative Tribunal under the applicable NSW law; and
 - (b) a Registrar of the Federal Circuit Court of Australia may exercise any powers of the principal registrar of the Civil and Administrative Tribunal under the applicable NSW law; and
 - (c) subject to subsection (2), the Sheriff or a Deputy Sheriff of the Federal Circuit Court of Australia may exercise any powers of a sheriff's officer under section 7A of the *Sheriff Act 2005* (NSW);
- to the extent that those powers are relevant to the execution or enforcement of the order.
- (2) In exercising a power of a sheriff's officer under section 7A of the *Sheriff Act 2005* (NSW) to execute a warrant for possession of residential premises, the Sheriff or a Deputy Sheriff of the Federal Circuit Court of Australia:
- (a) may obtain the assistance of a member or special member of the Australian Federal Police; and
 - (b) must not enter a dwelling house between 9 pm one day and 6 am the next day unless the Sheriff or Deputy Sheriff reasonably believes that it would not be practicable to execute the warrant at another time; and
 - (c) must not use more force, or subject any person on the premises to greater indignity, than is necessary and reasonable to execute the warrant; and

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- (d) must not do anything that is likely to cause the death of, or grievous bodily harm to, any person on the premises unless the Sheriff or Deputy Sheriff reasonably believes that doing that thing is necessary to protect life or prevent serious injury to another person (including the Sheriff or Deputy Sheriff).
- (3) To avoid doubt, nothing in this section limits any other power of:
- (a) the Federal Circuit Court of Australia; or
 - (b) a Registrar of the Federal Circuit Court of Australia; or
 - (c) the Sheriff or a Deputy Sheriff of the Federal Circuit Court of Australia.