

LANDLORD AND TENANT  
(AMENDMENT) ACT.

Act No. 67, 1932.

An Act to make further provision relating to the postponement of ejection of persons who are in occupation of certain dwelling-houses and who are in impoverished circumstances; to make further provision relating to the reduction of rents in certain cases; to amend the Landlord and Tenant Act of 1899, and certain other Acts; and for purposes connected therewith. [Assented to, 30th December, 1932.]

George V.  
No. 67, 1932.

**B**E it enacted by the King'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:—

PART I.

PRELIMINARY.

**1.** (1) This Act may be cited as the "Landlord and Tenant (Amendment) Act, 1932." Short title.

(2) This Act is divided into Parts as follows:—

PART I.—PRELIMINARY.

PART II.—EJECTIONS POSTPONEMENT.

PART III.—REDUCTION OF RENT.

PART IV.—MISCELLANEOUS.

SCHEDULE.

**Landlord and Tenant (Amendment) Act.**

No. 67, 1932.

Commence-  
ment.

**2.** Parts I and IV of this Act shall commence on the day on which this Act receives the Royal Assent.

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.

---

**PART II.**
**EJECTMENTS POSTPONEMENTS.**

Repeals.

**3.** The Acts mentioned in the Schedule to this Act are to the extent therein indicated, hereby repealed.

Without limiting any saving made by the Interpretation Act of 1897, nothing in this section shall affect the operation of any order made by any court under any enactment hereby repealed.

Definitions.  
cf. Act No.  
30, 1931,  
s. 2.

**4.** In this Part, unless the context or subject-matter otherwise indicates or requires,—

“ Dwelling-house ” means any premises which at or after the commencement of this Part are leased wholly or partially for private residence at a rent not exceeding three pounds a week to a lessee who has become before such commencement and is thereat an occupier of them within the meaning of this Part, or who becomes such an occupier thereafter, and includes any land or appurtenances leased and occupied with such premises or part.

“ Lease ” includes every letting of a dwelling-house, whether oral, in writing, or by deed; and “ leased ” has a corresponding meaning.

“ Lessee ” includes a mesne lessee and also any person from time to time deriving title from the original lessee.

“ Occupier ”

“Occupier” means any person retaining possession of a dwelling-house after the termination of his lease, whether it terminated by effluxion of time, through determination by notice to quit, by forfeiture, or in any other way whatsoever, but does not include a mortgagor in possession of the mortgaged property.

“Owner” means the person for the time being entitled to the rents or profits of any dwelling-house.

“Rent” includes any payment for occupation or possession of premises.

5. (1) Subject to this section no person shall, except under an order of a competent court, take possession of any dwelling-house without the consent, express or implied, of the occupier.

No re-entry without order of court or consent of occupier.

(2) An owner of a dwelling-house to whom any rent is owing by the lessee thereof may by notice in writing served on any sublessee of such dwelling-house or part thereof require such sublessee to pay to the owner all rent then due and thereafter accruing due from such sublessee, and in default of payment in accordance with such notice sue for and recover the same from the sublessee as a debt in any court of competent jurisdiction.

Any amount received from any sublessee shall be applied towards the satisfaction of the rent owing by the lessee after payment of the costs and expenses of recovering the same, and any excess after the payment of such rent, costs and expenses shall be repaid to the lessee.

Any payment of rent by a sublessee in accordance with any such notice shall be deemed a good payment to the lessee, and the receipt of the owner shall be a good discharge to the sublessee of any claim by the lessee to the extent of the payment.

Nothing in this section shall operate to release a lessee from any liability for rent or from his obligations for the performance and observance of the covenants, agreements or stipulations contained in the lease.

This subsection extends to premises used wholly or partially for private residence and held under any letting or retained by a lessee after the termination of a letting.

In

No. 67, 1932.

In this subsection "owner" includes any person for the time being entitled to the rents and profits of the premises.

Postponement of  
ejection of  
impooverished  
occupiers

6. (1) Where in any court an order or judgment for the recovery of possession of any dwelling-house or for the ejection of the occupier therefrom is made, recorded, signed or given, the court, upon the application of the occupier, and upon being satisfied that he is in impoverished circumstances shall, notwithstanding anything contained in the Common Law Procedure Act, 1899, or any other Act or in the rules of court made under any Act, stay or suspend execution on any such order or judgment or postpone the date of possession for a period not exceeding three months from the date of the application.

(2) Where the order for the recovery of possession of a dwelling-house is made under the Landlord and Tenant Act of 1899, an application by the occupier under subsection one of this section shall be made at the time of the hearing of the application for or the making of the order for the recovery of possession.

(3) Where the action or proceeding for the ejection of an occupier of a dwelling-house is instituted in the Supreme Court or in a district court, an application under subsection one of this section may be lodged by the occupier at any time after the institution of such action or proceeding, and before the judgment in such action or proceeding is executed; and if an application is so lodged a judgment for the ejection of the occupier shall not be executed until such application has been heard and determined.

Occupation  
payment  
during  
period of  
postponement.

(4) Any stay or suspension of execution or postponement of possession made by the court under this section may be made conditionally on and subject to the payment by the occupier to the owner of such sum (if any) by way of compensation for his occupancy of the dwelling-house as is fixed by the court; and any occupation payment so fixed shall be paid by such instalments and at such times as the court orders.

In default of the compliance with any condition of the order, execution may be proceeded with forthwith.

(5)

(5) An occupier capable of working shall not be deemed to be in impoverished circumstances unless he, by evidence given on oath, satisfies the court—

No. 67, 1932.

When occupier able to work is not deemed to be in impoverished circumstances.

- (a) that by reason of unemployment he was unable to pay any rent which accrued due before the making of his application and is at the date of the application, through the same cause, unable to make payments for his possession equal in amount to the rent; and
- (b) that his failure to obtain sufficient employment has been through no fault on his part.

(6) Where the court has exercised its powers under this section it may on the application of the occupier made before the end of the period for which it has stayed or suspended execution of the order or judgment or has postponed the date of possession and in special circumstances make a further order of stay, suspension or postponement for such period in no case exceeding one month and upon such terms as to the court seems just.

7. (1) The court shall not grant any stay or suspension of execution or postponement of possession under this Act if it is satisfied by evidence given on oath—

Court not to grant postponement in certain circumstances.

- (a) that the owner would thereby suffer undue hardship; or
- (b) that the occupier or any person residing with him has been guilty of acts of waste depreciating the value of the dwelling-house; or
- (c) that the occupier has been convicted of using the premises or allowing the premises to be used for an immoral or illegal purpose.

(2) When a dwelling-house is reasonably required by the lessor as a residence for himself or for some member of his family the court shall not stay or suspend execution on an order or judgment for the recovery of possession of the dwelling-house or for the ejectment of the occupier therefrom for any period exceeding one month in all.

Qualification on power to postpone.

8. If during any stay or suspension or postponement of possession the occupier or any person residing with him commits any act of waste depreciating the value of the dwelling-house, the court may, upon the application of the

Court may order enforcement of order for waste.

owner

No. 67, 1932.

owner, revoke or vary any order made under section six, and may direct that the order or judgment for the recovery of possession of the dwelling-house, or for the ejection of the occupier therefrom, be immediately enforced.

Court may in certain circumstances increase amount of occupation payment.

**9.** The court at any time during any stay or suspension or postponement of possession, upon proof that the occupier can pay an occupation payment, may direct such to be made, or increase the amount of any occupation payment already ordered to such sum not exceeding the amount of the rent as it in its discretion considers reasonable; and upon proof that the occupier's financial circumstances have become worse it may decrease the amount of any occupation payment.

Should the occupier not comply with any order under this section the court may direct that the order or judgment for the recovery of possession or ejection be immediately enforced.

Rules of Supreme Court and district courts.

**10.** The judges of the Supreme Court and the judges of the district courts respectively may make rules of court regulating the procedure in the Supreme Court and in the district courts respectively in all matters arising under this Part.

Notification of order.

**11.** Where any court makes an order under this Part of this Act it shall notify the Minister of the making of the order in a form prescribed by rules of court, or in the case of courts of petty sessions in a form approved by the Minister.

Minister entitled to be represented in courts of petty sessions.

**12.** The Minister shall be entitled to be represented before any court of petty sessions on the hearing of any application under this Part or under Part IV of the Landlord and Tenant Act of 1899.

### PART III.

#### REDUCTION OF RENT.

Interpretation.

**13.** In this Part, unless the context or subject-matter otherwise indicates or requires,—

“ Lease ” includes every letting of premises whether oral, in writing, or by deed, and “ leased ” has a corresponding meaning.

“ Lessor ”

- “ Lessor ” and “ lessee ” mean the parties to a lease, and respectively include a mesne lessor and a mesne lessee, and also any person from time to time deriving title under the original lessor or lessee, and also in the case of a lease of land subject to the provisions of the Real Property Act, 1900, a mortgagee in possession. No. 67, 1932.
- “ Premises ” includes lands and buildings, and also includes any part of a building separately leased.
- “ Prescribed ” means prescribed by this Part or by the regulations made under Part IV of this Act.

**14.** (1) This Part shall not apply to or in respect of a lease of any agricultural land to which the provisions of the Agricultural Lessees Relief Act, 1931, apply. Application of Act.

(2) Subject to the provisions of this section, this Part of this Act shall apply to and in respect of every lease which was subsisting at the thirtieth day of June, one thousand nine hundred and thirty, and then had a term which would not expire prior to the commencement of this Part of this Act, and shall apply to and in respect of every lease made prior to the said thirtieth day of June to commence at a date after such day and which has a term which has not expired at such commencement.

(3) Nothing in this Part of this Act contained shall in any way affect the liability of any occupier of licensed premises within the meaning of the Liquor Act, 1912, to pay to the owner thereof such increased rent as is provided for by section 40A of the Liquor Act, 1912, nor the remedy given to the occupier of licensed premises by subsection six of that section.

(4) This Part shall not operate to reduce the amount of any rent payable or to become payable to the Crown.

**15.** (1) Rent reserved by or under any lease to which this Part applies and accruing or to accrue due and payable during the period in which this Part remains in force is, subject to this section, hereby reduced by twenty-two and one-half per centum of the amount thereof, and shall be calculated and payable at such reduced rate accordingly. Reduction of rents.

(2)

No. 67, 1932.

(2) The reduction prescribed by subsection one of this section shall be made from the rate of the rent which was payable on the thirtieth day of June, one thousand nine hundred and thirty, or the rate payable from a later date under any lease made before the said thirtieth day of June, but in the case of a lease which provides for a variation in the rate at a later date from the rate for the time being provided for in the lease.

(3) Unless and until an order has been obtained from the court under this Part determining the rent under a lease at a rate higher or lower than that prescribed by the foregoing provisions of this section, the lease shall, during the period for which this Part of this Act remains in force, be deemed to be altered to such extent as is necessary to give effect to this section.

(4) The obligation of any lessee to pay rent accruing or to accrue due and payable during the period in which this Part of this Act remains in force at any higher rate than that allowed by or under this Part is hereby extinguished.

(5) For the purposes of this Part rent shall be deemed to accrue due and payable from day to day.

Determina-  
tion of rent  
by court.

**16.** (1) Any lessee or lessor may apply to the court to have the annual rent of a lease to which this Part of this Act applies determined for the balance of the term or during the period for which this Part of this Act is in force, whichever is the shorter period.

(2) Such application shall be made within three months of the commencement of this Part.

(3) Upon the hearing of an application the court may determine the rent at such higher rate (not exceeding that provided for in the lease) or at such rate lower than that provided for in subsection one of section fifteen, as the court, in all the circumstances of the case, may deem just and reasonable.

(4) If on any application under this section by a lessor it appears that any moneys by way of bonus, premium or foregift have been paid or are payable to the lessor as consideration for the grant of the lease the court shall—

(a) first determine in accordance with the provisions of section seventeen the annual rent of the lease;

(b)



- (b) then divide the total amount of the moneys paid or payable by way of bonus, premium or foregift by the number of years (excluding fractions thereof) of the term of the lease;
- (c) then deduct from the annual rent as determined by it under the provisions of paragraph (a) of this subsection the quotient obtained in pursuance of the provisions of paragraph (b) of this subsection.

No. 67, 1932.

If the remainder obtained after making such deduction be less than the amount of the rent on a yearly basis as reduced by subsection one of section fifteen, the court shall not make any order under this section.

If the said remainder be more than the amount of such rent the annual rent shall be determined at the amount of the said remainder or at the annual rent provided for in the lease, whichever is the lesser amount.

(5) Every order made by the court under this section shall have effect according to its tenor from such date not later than the date of the application or earlier than the commencement of this Part.

**17.** (1) In determining the annual rent the court shall first ascertain the capital value of the premises the subject-matter of the lease as at the time of the receipt of the application.

Determina-  
tion.

Such capital value shall be the capital sum which the fee-simple of the property comprising the premises the subject-matter of the lease and the land occupied therewith might be expected to realise if offered for sale on such reasonable terms and conditions as a bona-fide seller would require.

Where the premises the subject-matter of the lease are licensed premises within the meaning of the Liquor Act, 1912, the court shall include in and treat as part of the capital value of such premises the added value, if any, of such premises due to the fact that such premises are licensed premises.

(2) The court shall determine the annual rent at a rate of not less than one and one-half per centum above the rate of interest which is for the time being charged upon

No. 67, 1932.

upon overdrafts by the Commonwealth Bank of Australia on the capital value of the premises the subject-matter of the lease determined as aforesaid, plus the annual rates on the same, plus the amount estimated to be required annually for repairs (including painting), maintenance, and renewal, and plus insurance of any buildings, and plus an amount estimated to be the annual depreciation in value of the buildings, if such depreciation diminishes their letting value, and plus in the case of licensed premises within the meaning of the Liquor Act, 1912, the estimated annual amount which may be deducted from the rent by the lessee or recovered from the lessor in pursuance of subsection two of section twenty-one of that Act less the estimated annual amount which may be reimbursed to the lessor under that subsection.

Lessee of part of a dwelling-house.

**18.** Where premises the subject-matter of the lease are occupied by two or more separate lessees, the court shall determine the annual rent of the whole, and then determine the proportion of such rent which it shall deem to be the annual rent of the portion occupied by the lessee making the application.

Effect of payment or reductions.

**19.** (1) Every payment of rent made in pursuance of the provisions of this Part or an order made under this Part shall be a full discharge of the lessee's liability for rent under his lease in respect of the period to which such payment relates.

(2) No reduction made by this Part or by any order made under this Part shall in any case continue in force beyond the period during which this Part of this Act remains in force.

Leases affected by section four of Reduction of Rents Act, 1931.

**20.** (1) Where a lease was made after the eighth day of October, one thousand nine hundred and thirty-one, and is subsisting at the commencement of this Part of this Act, the lessor may apply to the court for a redetermination of the rent payable under the lease.

(2) The court shall, in such a case, have jurisdiction and authority to determine the rent payable for the balance of the term of the lease at such fair sum as the court thinks fit, notwithstanding that such sum may exceed the rent provided for in the lease, and on any such determination the lease shall be deemed to be altered for the balance of the term to the extent necessary to give effect to the determination.

**21.**

**21.** (1) The courts having jurisdiction under this Part of this Act shall be—

No. 67, 1932.  
Courts.

- (a) in any application in respect of a lease of licensed premises within the meaning of the Liquor Act, 1912, the Licenses Reduction Board constituted under the Liquor (Amendment) Act, 1919, or where the amount of the annual rent reserved by the lease is less than two hundred pounds, a member of that board;
- (b) in any application in respect of a lease (other than a lease of licensed premises) in which the annual rent reserved is more than three hundred pounds, the Land and Valuation Court;
- (c) in any application in respect of a lease other than those specified in paragraphs (a) and (b) of this subsection—the district court for the district in which the premises are situated or where the annual rent reserved by the lease is less than one hundred and fifty-seven pounds a court of petty sessions holden in and for the police district in which the premises are situated before a stipendiary or police magistrate.

(2) If on any application to a court under this Part of this Act an objection is taken to the jurisdiction of the court based on the amount of the annual rent reserved or upon the situation of the premises leased, the court shall determine the objection summarily, and no order made by the court shall be challenged for defect of jurisdiction based on any such objection, but the decision of the court as to such amount shall not operate as an estoppel between the parties or their privies in any subsequent proceedings.

**22.** (1) The jurisdiction conferred on a court by this Part of this Act may be exercised by a judge of the court sitting either in court or in chambers, or in the case of a court of petty sessions, by a stipendiary or police magistrate.

Jurisdiction  
of court:  
how exer-  
cised.  
cf. Act No.  
48, 1930,  
s. 9.

(2) Any application to the Land and Valuation Court or a district court under this Part of this Act may be made on motion or summons in accordance with the rules of court respectively applicable to motions or summonses in such courts.

(3)

No. 67, 1932.

(3) Any court hearing any application under this Part of this Act may order notice to be given to any mortgagee or any other person as it thinks fit, or such court may, under such circumstances as it thinks fit, hear any application *ex parte*, or order substituted service of notice of the application on, or dispense with notice to, such persons affected by the application as it thinks fit.

(4) In dealing with an application under this Part of this Act the court may—

- (a) grant or adjourn the application upon such terms and conditions (if any) as the court thinks fit; or
- (b) refuse the application; or
- (c) at any stage of the hearing allow such amendments of the application or other process as it thinks fit.

(5) Any court hearing any application under this Part of this Act may in its discretion direct that the application be heard *in camera*.

(6) Any determination, decision, judgment, direction, order, or assessment made or given by any court in any matter arising under this Part of this Act shall be final and conclusive and without appeal, but all district courts and courts of petty sessions and the Licenses Reduction Board shall be bound by and follow decisions of the Land and Valuation Court or a judge thereof on the construction of this Act.

(7) The court may reconsider any matter which has been dealt with by it, or rescind, alter, or amend any decision or order previously made by it.

(8) The costs of any application under this Part of this Act to the court shall be in the discretion of the court, and the court when allowing any costs to any party under such Part may, if it thinks fit, assess the amount thereof.

Enforcement  
of orders.  
cf. Act No.  
43, 1930,  
s. 9 (6).

(9) Any order for the payment of money or of costs made by the Licenses Reduction Board or a member thereof or by a court of petty sessions under this Part of this Act shall operate as an order for the payment

ment of money under the Small Debts Recovery Act, 1912, and be enforceable as such under the provisions of that Act.

No. 67, 1932.

**23.** Any order made on any application under the provisions of this Part of this Act may be registered in the office of the Registrar-General in the manner prescribed by regulations under the Conveyancing Act, 1919-1930.

Registration of orders.

**24.** (1) If any lessor or lessee is a trustee—

Trustees.

- (a) he shall not be deemed guilty of any breach of trust by reason only of his bona fide failure to make an application under section sixteen of this Act;
- (b) he shall not be deemed guilty of any breach of trust by reason only of his agreeing to a reduction or increase of the rent payable under any lease forming part of the trust estate; and
- (c) the court in making any order as to costs shall have regard to his fiduciary position.

(2) In this section "trustee" includes legal representative of a deceased person, committee of the estate of an insane person, manager of the estate of an incapable person, the Master in Lunacy, the Master in Equity, director of a company, and any other person acting in any fiduciary capacity.

---

#### PART IV.

##### MISCELLANEOUS.

**25.** The Landlord and Tenant Act of 1899 is amended—

Amendment of Act No. 18 of 1899.

- (a) by omitting from subsection two of section twenty-three the proviso inserted therein by the Landlord and Tenant Amendment (Distress Abolition) Act, 1930, and amended by subsection one of section eight of the Ejectments Postponement Act, 1931;

Sec. 23 (2).

(b)

No. 67, 1932.

Sec. 24.

(b) by omitting section twenty-four as inserted by the Ejectments Postponement Act, 1931, and by inserting in lieu thereof the following section:—

Power to justices to suspend proceedings on adjudication for one month.  
17 Vic. No. 10, s. 3.

24. 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.

Amendment of Act No. 49, 1930, s. 3 (a) (i).

26. The Landlord and Tenant Amendment (Distress Abolition) Act, 1930, is amended by omitting subparagraph one of paragraph (a) of section three.

Regulations.

27. (1) The Governor may make regulations not inconsistent with this Act prescribing all matters which by this Act are required or permitted to be prescribed, or which are necessary or convenient to be prescribed, in order to give effect to this Act.

Without limiting the generality of the foregoing provisions of this section the regulations may prescribe the forms to be used and the fees to be paid in connection with applications to the court under this Act.

(2) The regulations shall—

- (a) be published in the Gazette;
- (b) take effect from the date of publication, or from such later date as is specified in the regulations;
- (c) be laid before both Houses of Parliament within fourteen sitting days after the publication thereof, if Parliament is then in session, and if not, then within fourteen sitting days after the commencement of the next session.

(3) If either House of Parliament passes a resolution of which notice has been given at any time within fifteen sitting days after such regulations have been laid before such House disallowing any regulation or part thereof, such regulation or part shall thereupon cease to have effect.

**Public Service Salaries (Further Amendment)  
Act.**

691

No. 67, 1932.

**28.** The provisions of Parts II and III of this Act shall cease to have effect upon the thirty-first day of December, one thousand nine hundred and thirty-five.

Duration of  
Parts II and  
III of Act.

SCHEDULE

Sec. 3.

No. of Act.	Short title.	Extent of repeal.
No. 30, 1931...	Ejectments Postponement Act, 1931.	The whole Act.
No. 26, 1932...	Ejectments Postponement (Amendment) Act, 1932.	The whole Act.
No. 18, 1899 ...	Landlord and Tenant Act of 1899	So much of section twenty-three as was inserted by subsection one of section eight of the Ejectments Postponement Act, 1931, and section twenty-four.