

**LANDLORD AND TENANT (AMENDMENT)
ACT.**

Act No. 55, 1952.

**Elizabeth II.
No. 55, 1952.**

An Act to amend the Landlord and Tenant (Amendment) Act, 1948, and certain other Acts in certain respects; to repeal the Landlord and Tenant (War Service) Amendment Act, 1949; and for purposes connected therewith. [Assented to, 4th December, 1952.]

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

**Short title,
citation
and
commence-
ment.**

1. (1) This Act may be cited as the "Landlord and Tenant (Amendment) Act, 1952."

(2) The Landlord and Tenant (Amendment) Act, 1948, as amended by subsequent Acts, is in this Act referred to as the Principal Act.

(3) The Principal Act, as amended by this Act, may be cited as the Landlord and Tenant (Amendment) Act, 1948-1952.

(4) This Act shall commence upon the fifteenth day of December, one thousand nine hundred and fifty-two.

**Amendment
of Act No.
25, 1948.**

2. The Principal Act is amended—

**Sec. 6A.
(Special
premises.)**

(a) (i) by inserting in paragraph (c) of subsection two of section 6A before the words "subsection five" the following subparagraph and symbols:—

(i) subsection three of section sixty-two shall be read and construed as if the words "for a period determined in accordance

accordance with section sixty-three of this Act" were omitted therefrom and the words "for a period which in the circumstances of the particular case is reasonable, but not exceeding seven days" were inserted in lieu thereof;

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(ii)

(ii) by inserting at the end of the same section the following new subsection:—

(3) (a) Where any prescribed premises are after the commencement of the Landlord and Tenant (Amendment) Act, 1952, occupied by any person for the purposes of residence under an agreement or arrangement whether oral or in writing of leave and license for the use thereof, and such premises or any part of such premises or the premises of which such premises form a part have, after the thirtieth day of June, one thousand nine hundred and forty-nine, been the subject of a lease, the premises shall, subject to paragraphs (b), (c) and (d) of this subsection, be deemed to be "special premises" for the purposes of this Act.

(b) The Governor may, by order published in the Gazette, exempt any class of prescribed premises specified in the order from the operation of paragraph (a) of this subsection and thereupon that paragraph shall not apply to the class of premises so specified.

(c) The Controller, in his discretion, may, either unconditionally or subject to such conditions as he thinks fit, issue a certificate excluding any prescribed premises from the operation of paragraph (a) of this subsection, for such period as is specified

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specified in the certificate and the premises shall, so long as the certificate remains in force, be excluded accordingly.

The Controller may at any time revoke or vary any certificate issued under this paragraph.

(d) Paragraphs (c) and (d) of subsection two of this section shall not apply to or in respect of any prescribed premises which are deemed to be special premises by reason only of the operation of this subsection.

(e) Nothing in this subsection affects the operation of subsection one of this section.

Sec 8.
(Definitions.)

(b) by omitting from the definition of "holiday premises" in subsection one of section eight the words—

"but does not include any such premises which at any time after that date—

(d) are or were leased for purposes other than holiday purposes; or

(e) are or were leased to or occupied by any lessee for a continuous period exceeding three months"

and by inserting in lieu thereof the words—

"but does not include any such premises which—

(d) at any time after that date are or were leased for purposes other than holiday purposes; or

(e) at any time after that date but before the commencement of the Landlord and Tenant (Amendment) Act, 1952, were leased to or occupied by any lessee for a continuous period exceeding three months; or

(f).

Landlord and Tenant (Amendment) Act.

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(f) at any time after the commencement of the Landlord and Tenant (Amendment) Act, 1952, are leased to or occupied by any lessee for a continuous period exceeding eight weeks.”

(c) by inserting at the end of section twenty-one the following new subsection:—

Sec. 21.
(Matters to be considered.)

(2) In considering the matters referred to in paragraphs (i) and (j) of subsection one of this section,—

(a) any bonus, premium or sum of money (other than rent) or other consideration given or promised or agreed to be given by the lessor; or

(b) the purchase or exchange by the lessor of any goods or goodwill,

which would have been in contravention of subsection one of section thirty-six of this Act had the prescribed premises concerned not been excluded from the operation of that section or had the consent of the Controller or a Board, as the case may be, not been obtained, shall be disregarded.

(d) (i) by inserting after section thirty-one the following new heading and Division:—

New Division 4A.

DIVISION 4A.—Control of Rents of Caravans.

31A. In this Division, unless the contrary intention appears—

Interpretation.
S.A. 1942,
No. 33,
s. 28.

“caravan” means any vehicle without motive power constructed or adapted for the purposes of habitation, and includes any such vehicle which is not fitted with wheels but which is so constructed that it is capable of being fitted with wheels.

“hirer”,

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“hirer”, with respect to a caravan, means the party to whom the caravan is let.

“letting”, with respect to a caravan, includes any contract for the letting or hire of the caravan, whether the contract is made orally or in writing or otherwise, and includes a contract for the letting or hire of a caravan together with the use of furniture or other goods; and “let” has a corresponding meaning.

“owner”, with respect to a caravan, means the party by whom the caravan is let.

“owner”, with respect to land, means the person by whom, whether as owner, lessee, occupier or otherwise, any charge is made with respect to the use of any land upon which any caravan is placed for the purpose of habitation.

“rent”, with respect to a caravan, means any amount payable by the hirer to the owner of the caravan under any letting thereof, and includes any amount payable by the hirer to the owner for the use of any furniture or other goods in connection with the letting of the caravan.

“rent”, with respect to land, means any amount payable to the owner of the land by any person under any arrangement of any kind whereby any person is authorised to use or place or keep placed a caravan upon that land for the purpose of the habitation of the caravan (whether
by.

by the said person or otherwise), No. 55, 1952.
and includes—

- (a) any amount payable to the owner for the use of any dwelling-house, other building or any part thereof, or goods or for the use of any land other than the land upon which the caravan is actually placed;
- (b) any amount payable to the owner for the use of any sanitary, laundry or washing or like facilities;
- (c) any amount payable to the owner in respect of the supply of any electricity, gas, water, or fuel.

31B. (1) The Controller from time to time may, by notice published in the Gazette and in a daily newspaper circulating throughout the State, declare that, with respect to caravans situated within such part or parts of the State as are specified in the notice, the maximum rents payable in respect of the letting of such caravans shall, from a day or days to be specified in the notice, not exceed the rent or rents set out in the notice.

Fixation of rents in respect of letting of caravans. S.A. 1942, No. 33, s. 29.

Any such notice may fix different maximum rents—

- (a) for different kinds or classes of caravans;
- (b) for different parts of the State.

(2) The Controller may by notice published as aforesaid revoke or vary any declaration of rents made as aforesaid.

31c. (1) Notwithstanding any term or condition of any letting, the rent payable in respect of the letting of any caravan in respect of any period after the coming into operation of a declaration under section 31B

Payment of rent under letting of caravans. S.A., 1942, No. 33, s. 30.

of

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of this Act shall, except in the circumstances mentioned in section 31D or 31M of this Act, not exceed the rent fixed by the declaration and appropriate to the caravan.

(2) Any rent in excess of the rent provided to be paid by subsection one of this section shall, notwithstanding any agreement to the contrary, be irrecoverable.

31D. (1) The owner or the hirer of any caravan, the maximum rent in respect of the letting of which has been determined pursuant to section 31B of this Act, may from time to time apply in writing to the Controller for a determination of the maximum rent to be payable in respect of the letting of the caravan: Provided that no such application may be made in respect of any caravan by any person within six months after the making of a prior application by that person in respect of that caravan.

(2) The Controller may thereupon from time to time determine the maximum rent which shall be payable in respect of the letting of the caravan from the day to be fixed by him.

(3) Notwithstanding the provisions of section 31C of this Act, the rent so determined shall, from the day fixed as aforesaid, be the maximum rent which shall be payable in respect of the letting of the caravan and any rent in excess of such maximum rent shall, notwithstanding any agreement to the contrary, be irrecoverable.

31E. (1) The Controller from time to time may, by notice published in the Gazette and in a daily newspaper circulating throughout the State, declare that the maximum rents which shall be payable in respect of land within such part or parts of the State as are specified in the notice under any arrangements of any kind whereby persons are

Application
for special
determina-
tion of rent
of caravan.
S.A., 1942,
No. 33,
s. 31.

Fixation
of rents
of land
for use for
caravans.
S.A. 1942,
No. 33,
s. 32.

are authorised to place caravans upon such land for the purpose of habitation, shall, from a day or days to be specified in the notice, not exceed the rents set out in the notice.

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Any such notice may—

- (a) in respect of different items included in rent with respect to land, as defined in section 31A of this Act, fix different amounts as the maximum rents to be payable in respect of those items;
- (b) fix different maximum rents for different parts of the State.

(2) The Controller may by notice published as aforesaid revoke or vary any declaration of rents made as aforesaid.

31F. (1) Notwithstanding any term or condition of any contract or arrangement, the rent payable in respect of any land under any arrangement of any kind whereby any person is authorised to place a caravan upon that land for the purpose of the habitation of the caravan (whether by the said person or otherwise) and in respect of any period after the coming into operation of a declaration under section 31E of this Act, shall, except in the circumstances mentioned in section 31G of this Act, not exceed the rent fixed by the declaration and appropriate to the land and the arrangement with respect thereto.

Payment of rent in respect of land.
S.A. 1942, No. 33, s. 33.

(2) Any rent in excess of the rent provided to be paid by subsection one of this section shall, notwithstanding any agreement to the contrary, be irrecoverable.

31G. (1) The owner of any land in respect of which a maximum rent has been determined pursuant to section 31F of this Act may, from time to time, apply in writing to the Controller for a determination of the maximum rent to be payable in respect of the

Application for special determination of rent of land.
S.A. 1942, No. 33, s. 34.

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the land for the purposes referred to in section 31F of this Act: Provided that no such application may be made in respect of any land by the owner thereof within six months after the making of any prior application by that owner in respect of that land.

(2) The Controller may thereupon from time to time determine the maximum rent which shall be so payable from a day to be fixed by him.

(3) Notwithstanding the provisions of section 31F of this Act, the rent so determined shall, from the day fixed as aforesaid, be the maximum rent which shall be payable in respect of the land for the purposes referred to in section 31F of this Act and any rent in excess of such maximum rent shall, notwithstanding any agreement to the contrary, be irrecoverable.

Display of
maximum
rent.

S.A. 1942,
No. 83,
s. 35.

31H. (1) If any rent is determined pursuant to section 31D or 31G of this Act in respect of any caravan or land, the Controller shall supply to the owner of the caravan or land, as the case may be, a notice stating the maximum rent payable pursuant to this Division in respect of the caravan or land and the owner of the caravan or land, as the case may be, shall, within a time to be specified by the Controller, cause the notice to be affixed to the caravan or, as the case may be, displayed on the land in a manner directed by the Controller.

(2) Any person who destroys, defaces or removes any such notice affixed or displayed as aforesaid shall be guilty of an offence against this Act.

Duty to give
receipt for
rent.

S.A. 1942,
No. 33,
s. 36.

31I. Any person who, whether as principal or agent, receives any payment of any rent with respect to any caravan to the letting of which this Division applies or of any rent with respect to any land to which
this

this Division applies shall, at the time of receiving the payment or within twenty-four hours of the making of the payment, give or cause to be given to the person making the payment a receipt for the payment specifying the amount paid, the period in respect of which the payment is made, and the caravan or land, as the case may be, in respect of which the payment is made. No. 55, 1952.

31j. (1) Any person who, whether as principal or agent or in any other capacity, in any book or other document wilfully makes any entry showing or purporting to show any person as being in arrear in respect of any sum which by virtue of this Division is irrecoverable, or wilfully makes in any book or other document any false entry in a material particular with respect to the rent of any caravan or land to which this Division applies shall be guilty of an offence against this Act. Penalty for recovering rent above that fixed. S.A. 1942, No. 33, s. 37.

(2) Any person who, whether as principal or agent or in any other capacity, wilfully demands or wilfully receives as rent in respect of any caravan or land any sum which by virtue of this Division is irrecoverable, shall be guilty of an offence against this Act.

31k. Where any sum has been paid to any owner on account of any rent, being a sum which by virtue of this Division would have been irrecoverable by the owner, the sum so paid shall, at any time within six months after the date of payment, be recoverable from the owner who received the payment by the person by whom it was paid, and may, without prejudice to any other method of recovery, be deducted by that person from any rent payable within such six months by him to such owner. Recovery of overpaid rent. S.A. 1942, No. 33, s. 38.

31l.

No. 55, 1952.

Powers of
entry and
inspection.

S.A. 1942,
No. 33,
s. 39.

31L. (1) For the purposes of this Division, the Controller or any authorised officer—

- (a) may at a reasonable time of the day and after reasonable notice has been given enter upon any land upon which any caravan used for the purposes of habitation is situated, and may enter and inspect any such caravan;
- (b) may require any person being the owner or hirer of any caravan or being the owner of any land or being the agent of any such owner or hirer to answer any question relating to the letting thereof or to any rent payable in respect of any caravan or land.

(2) Any person who—

- (a) obstructs or hinders the Controller or any such officer in the exercise of any of the powers conferred by subsection one of this section; or
- (b) refuses to answer any question put by the Controller or any such officer as provided by paragraph (b) of subsection one of this section or who wilfully gives any false answer to any such question,

shall be guilty of an offence against this Act.

31M. If any caravan is let to any person for holiday purposes only, this Division shall not, except as hereinafter provided, apply with respect to the rent of that caravan whilst the caravan is so let, but if any caravan is let to any person for holiday purposes and the letting continues for a period exceeding eight weeks, this Division shall, after the expiration of eight weeks from the commencement of the letting thereof, apply to the caravan whilst it is let to that person.

(ii)

Exemption
from opera-
tion of this
Division.

S.A. 1942,
No. 33,
s. 40.

(ii) by inserting in section three after the words No. 55, 1952.
 “DIVISION 4—*Rent of Shared Accommodation within the Metropolitan Area*” the Sec. 3.
 words “DIVISION 4A—*Control of Rents of Caravans*”;
(Division into Parts.)

(e) by inserting in Division 5 next before section New secs.
 thirty-two the following new sections:— 31N and 31o.

31N. (1) Every application by a lessor for a Application by lessor for fair rent determination to indicate amount of rent sought.
 determination or for a variation of a determination (other than an application made under subsection two of section 24A of this Act or an application which is deemed to be an application to a Fair Rents Board pursuant to subsection seven of that section) shall state an amount which it is sought to have determined as the fair rent of the premises the subject of the application.

(2) Notwithstanding anything in this Part of this Act, the fair rent determined pursuant to any such application shall be not more than the amount so stated in the application.

31o. (1) A lessor of prescribed premises other than shared accommodation may give notice in Application by lessor contemplating repairs, etc. S.A. 1942, No. 28, s. 26.
 writing to the Fair Rents Board nearest to the premises stating that he intends carrying out such repairs, renovations, improvements, alterations or additions to the premises as are specified in the notice and requesting the Board to give an estimate of the probable fair rent of the premises after the carrying out of the work so specified.

(2) The Board shall cause the premises to be inspected and after making such inquiries and obtaining such reports as the Board considers necessary, the Board shall inform the lessor of what would be the probable estimated fair rent of the premises if the repairs, renovations, improvements, alterations, or additions, as the case may be, are properly carried out.

(3)

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(3) If subsequent to the carrying out of the work the fair rent of the premises is to be fixed by a determination of a Fair Rents Board made upon the application of the lessor or otherwise, the Board shall—

- (a) subject to paragraph (b) determine the fair rent of the premises in accordance with this Act; and
- (b) have such regard to the estimate of the fair rent given as aforesaid as the Board deems just in the circumstances, but shall not be bound by such estimate.

Sec. 35.
(Premises not to be let at rent exceeding fair rent.)

- (f) by inserting in subsection three of section thirty-five after the word "shall" the words "at any time during the period of six years after the date of payment";

Sec. 36.
(Certain payments prohibited.)

- (g) (i) by omitting from subparagraph (ii) of paragraph (b) of subsection one of section thirty-six the word "tenancy" wherever occurring and by inserting in lieu thereof the word "lease";
- (ii) by omitting from the same subparagraph the symbols and word " ; or" where lastly occurring;
- (iii) by inserting at the end of the same paragraph the following proviso:—

Provided that nothing in this paragraph shall preclude the payment to or the receipt by—

- (i) a real estate agent licensed under the Auctioneers, Stock and Station and Real Estate Agents Act, 1941-1946; or
- (ii) a business agent licensed under the Business Agents Act, 1935-1941, of any fee or commission properly or normally payable to such agent for anything done in the course of his business as such estate agent or business agent; or;

(iv)

- (iv) by inserting next after the same subsection No. 55, 1952.
the following new subsection:—

(1A) Where a person is charged with any offence arising under subsection one of this section and it appears at the hearing at which he is present or is represented by counsel or attorney that he has not committed the offence with which he was charged but has committed some other offence arising under that subsection he may, notwithstanding subsection two of section ninety-five of this Act or any other provision of this or any other Act, be charged at the hearing with such other offence and dealt with accordingly.

- (v) by inserting at the end of the same section the following new subsections:—

(5) (a) Where a person is convicted of an offence arising under this section, the court, in addition to imposing a penalty on such person for the offence, may order that the amount which in its opinion would be the amount recoverable in civil proceedings pursuant to subsection two, subsection three or subsection four of this section shall be paid by the offender to the clerk of the court within a time to be specified in the order. Any amount so paid shall be paid by the clerk to the person by whom the amount would have been recoverable in civil proceedings as aforesaid.

(b) Any such order shall be deemed to be a conviction or order whereby a sum of money is adjudged to be paid within the meaning of the Justices Act, 1902-1951.

(c) Where an order has been made under paragraph (a) of this subsection, any other remedy which would, but for this paragraph, have been available against the
Offender

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offender apart from this subsection for the recovery of the amount the subject of the order shall cease to be available.

(6) For the purposes of this section—

- (a) “lease” and “letting” includes any leave and license for the use of any prescribed premises, and “lessor” and “lessee” have a corresponding meaning;
- (b) prescribed premises used under conditions of leave and license shall be deemed to be shared accommodation;
- (c) “rent” includes any payment or consideration in respect of any leave and license for the use of any prescribed premises and for any services provided for or supplied to any person using any such premises under leave and license.

New sec.
36A.

(h) by inserting next after section thirty-six the following new section:—

Particulars
of certain
advertisements
to be
furnished
to the
Controller.

36A. A person who causes to be inserted in any newspaper an advertisement or notice in which any goods are offered for sale in association with the grant of a lease of, or of any other right or license to occupy, any prescribed premises (not being premises excluded from the operation of section thirty-six of this Act,) shall within seven days of the publication of that advertisement or notice lodge with the Controller a copy of the advertisement or notice accompanied by a statement of his name and address, and the address of the prescribed premises.

Sec. 41.
(Appeals.)

(i) (i) by omitting from section forty-one the words “this Part” and by inserting in lieu thereof the words “sections thirty and thirty-one of this Act and this section”;

(ii)

- (ii) by inserting at the end of the same section No. 55, 1952.
the following new subsection:—

(2) There shall be an appeal, as to questions of law only, to the Supreme Court in the manner provided by sections one hundred and one to one hundred and ten, both inclusive, of the Justices Act, 1902-1951, from any decision or determination of a Fair Rents Board or of the Controller in proceedings under this Part for the determination of the fair rent of any premises.

The provisions of the said sections shall apply mutatis mutandis to appeals under this subsection from any such decision or determination and the provisions of the said sections applicable to justices in the exercise of their summary jurisdiction shall apply to a Fair Rents Board and to the Controller.

- (j) by inserting in section fifty-two after the words Sec. 52.
“on application” wherever occurring the words (Information as to
“and on payment of the prescribed fee”; fair rent.)
- (k) by omitting subsection two of section fifty-four Sec. 54.
and by inserting in lieu thereof the following (Representation by
subsections:— agent.)

(2) A Board or the Controller may assess the amount of fees payable by any party to any proceedings taken under this Part before the Board or the Controller, as the case may be, to his solicitor or agent in respect of the proceedings and all matters incidental to or associated with the proceedings.

(3) Where the amount of fees payable to a solicitor or agent has been assessed pursuant to subsection two of this section, the solicitor or agent shall not demand, receive or accept in respect of any such proceedings and any matters incidental thereto or associated therewith any fee in excess of the amount so assessed. Any sum paid in excess of the amount so assessed shall be recoverable by the party paying the same as a debt in any court of competent jurisdiction.

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Further
amendment
of Act No.
25, 1948.
Sec. 62.
(Restriction on
eviction.)

3. The Principal Act is further amended—

(a) (i) by inserting next after subsection four of section sixty-two the following new subsection:—

(4A) (a) Where a lessee of prescribed premises has died and probate or letters of administration of his estate have not been granted, any notice to quit which might have been given to the legal personal representative of the deceased lessee had probate or letters of administration of his estate been granted may be given by affixing the same to the premises and—

(i) where any person or persons are apparently residing in or in occupation of the premises—by delivering the notice to any of such persons apparently residing in or in occupation of the premises;

(ii) in any other case—by giving notice of the same twice in a daily newspaper circulating in the district in which the premises are situated.

(b) Where any proceedings for an order for the recovery of possession of any prescribed premises are taken in reliance on any notice to quit given in the manner provided in paragraph (a) of this subsection, any occupant of the premises or other person claiming an interest therein shall be entitled to be heard in the proceedings. The contesting of any such proceedings shall not of itself be regarded as an act of administration or as intermeddling in the estate of the deceased lessee or as constituting the person so contesting any such proceedings executor de son tort of the deceased lessee.

(c).

(c) Nothing in this subsection shall affect the right of a lessor to give notice to quit otherwise than as provided in this subsection. No. 55, 1952.

(ii) by inserting at the end of paragraph (p) of subsection five of the same section the following new subparagraph:—

(ii) that the lessee, not having parted with possession of the premises being a dwelling-house, has, without the consent or approval of the lessor, ceased for a period exceeding six months to be a bona fide occupant of the premises;

(iii) by omitting paragraph (q) of subsection five of the same section and by inserting in lieu thereof the following paragraph:—

(q) that the lessee by subletting or parting with possession of the premises or any part thereof or by permitting use of the premises or any part thereof by any other person for reward is receiving rents or profits equal to or in excess of an amount equivalent to one hundred and twenty per centum of the rent paid by him; or;

(iv) by inserting at the end of the same subsection the following new paragraph:—

(r) that the premises being a garage (not ordinarily used as a dwelling) situated within the curtilage of a dwelling-house are reasonably required for letting to a lessee of that dwelling-house or part thereof, and that the lessee of the garage is not a lessee of the dwelling-house or any part thereof (other than the garage).

(iv)

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- (v) by inserting in subsection eight of the same section after the words "on the ground specified in" the words "subparagraph (i) of";
- (vi) by inserting next after the same subsection the following new subsection:—

(8A) Notice to quit on the ground specified in subparagraph (ii) of paragraph (p) of subsection five of this section shall not be given—

(a) where the lessee ceased to be a bona fide occupant of the premises before the commencement of the Landlord and Tenant (Amendment) Act, 1952;

(b) where the lease is for a fixed term—unless that term has expired; or

(c) in the case of a periodic lease—unless the period which was current at the date on which the lessee ceased to be a bona fide occupant of the premises has expired.

Any such notice may be given only where the lease contains no covenant, whether absolute or conditional, requiring the lessee to be a bona fide occupant of the premises.

- (vii) by omitting subsection nine of the same section and by inserting in lieu thereof the following subsection:—

(9) Notice to quit on the ground specified in paragraph (q) of subsection five of this section—

(a) may be given whether or not the subletting, parting with possession or permission to use was in breach of any covenant; and

(b)

(b) shall not be given—

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- (i) where the lease is for a fixed term—unless that term has expired;
- (ii) in the case of a periodic lease—unless the period which was current at the date on which the sub-letting took effect or the parting with possession took place or the permission to use was given has expired;
- (iii) in the case of prescribed premises being a dwelling-house used exclusively as such, if the lessee is a bona fide occupant of part of the premises.

(viii) by inserting in subsection ten of the same section after the word “eight” the symbols, figure and letter “(8A)”.

(b) by inserting next after section sixty-two the following new sections:—

New secs.
62A, 62B.

62A. (1) A judge of the District Court for the district in which prescribed premises not being premises used solely as a dwelling-house are situated may—

Judge may bar lessor's right to take proceedings where refusal of consent to assignment, etc., unreasonable.

(a) on application in that behalf made by the lessee who has become the lessee of the premises by virtue of a transfer or assignment, order that a notice to quit upon the ground specified in paragraph (b), or paragraph (n) of subsection five of section sixty-two of this Act shall not be given in relation to the transfer or assignment;

(b) on application in that behalf made by the lessee of the premises, who has sublet the premises, order that a notice to

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to quit on the ground specified in paragraph (b) or paragraph (o) of the said subsection shall not be given in relation to the sub-lease;

- (c) on application in that behalf made by the lessee of the premises who proposes to sublet the premises or to transfer or assign the lease of the premises, order that a notice to quit on the ground specified in paragraph (b), paragraph (n) or paragraph (o) of the said subsection shall not, if the proposed sub-lease, transfer or assignment is subsequently made or effected, be given in relation to the sub-lease, transfer or assignment,

if the judge is satisfied—

- (i) that the lessor, having been requested to consent to or approve that transfer or assignment or sub-lease or proposed sub-lease or proposed transfer or assignment of the lease, unreasonably refused or unreasonably withheld that consent or approval; and
- (ii) that the lessor has not offered to pay to the lessee making the application a fair and reasonable price for the lease (including the goodwill of any business carried on by the lessee upon the premises).

(2) (a) Any party to any proceedings in a District Court under subsection one of this section may appeal to the Supreme Court against the decision of the judge of the District Court given in those proceedings granting or refusing an order of the nature referred to in that subsection.

(b) The appeal shall be by way of rehearing and shall be made in accordance with rules of court.

(3)

(3) A notice to quit given in contravention of an order made under this section and subsisting at the date upon which the notice to quit is given shall be void and of no effect. No. 55, 1952.

62B. (1) (a) A judge of the District Court for the district in which prescribed premises not being premises used solely as a dwelling-house are situated may, on application in that behalf made by a person who is, and has been since the commencement of the Landlord and Tenant (Amendment) Act, 1952, a lessee at will of the premises, authorise the applicant to transfer his lease at will to a person named in the application, if the judge is satisfied— Power to assign certain tenancies at will.

- (i) that the lessee has offered to surrender his lease at will on the condition that the lessor grant a lease of the premises on reasonable terms and conditions to the person named in the application and that the lessor has unreasonably refused to grant such a lease; and
- (ii) that the lessor has not offered to pay to the lessee a fair and reasonable price for his lease (including the goodwill of any business carried on by the lessee upon the premises).

(b) The transferee under any transfer of a lease at will of prescribed premises made pursuant to an authority granted under paragraph (a) of this subsection shall, as from the date upon which the transfer takes effect, be deemed to have become the lessee at will of the premises from the person who immediately before that date was the lessor under the lease at will so transferred upon the same terms and conditions as the terms and conditions (as in force immediately before the transfer took effect) of the lease at will so transferred.

(2)

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(2) (a) Any party to any proceedings in a District Court under subsection one of this section may appeal to the Supreme Court against the decision of the judge of the District Court given in those proceedings granting or refusing an authority of the nature referred to in that subsection.

(b) The appeal shall be by way of rehearing and shall be made in accordance with rules of court.

Sec. 70.
(Court to consider hardship.)

(c) (i) by omitting from paragraph (c) of subsection one of section seventy the symbols and letter “(k)”;

(ii) by omitting from paragraph (a) of the first proviso to subsection two of the same section the symbol and word “; or ” and by inserting in lieu thereof the words “or is not a person in receipt of age pension under the Social Services Consolidation Act 1947-1951 of the Parliament of the Commonwealth; or”;

(iii) by inserting next after paragraph (c) of the same proviso the following word and new paragraphs:—

or

(d) (i) the lessor is of or above the age of sixty years or is a widow;

(ii) the lessor or the deceased spouse of the lessor purchased or acquired the dwelling-house before the third day of September, one thousand nine hundred and thirty-nine;

(iii) the lessor does not own and has not, since the third day of September, one thousand nine hundred and thirty-nine, owned any other dwelling-house;

(iv)

- (iv) the lessor has resided in the Commonwealth for not less than ten years; and
- (v) the lessor has, after the commencement of the Landlord and Tenant (Amendment) Act, 1952, given the lessee at least six months' notice in writing of his intention to serve notice to quit; or
- (e) (i) (a) at the date on which proceedings for the recovery of possession of the dwelling-house are taken an order for the recovery of possession of some other dwelling-house occupied by the lessor is in force but has not been executed, or
- (b) not more than six months before the date on which such proceedings are taken an order for the recovery of possession of some other dwelling-house occupied by the lessor has been executed; and
- (ii) the lessee is, and has been for at least two years, lessor of some other dwelling-house and in proceedings for the recovery of possession thereof on the ground specified in paragraph (g) of subsection five of section sixty-two of this Act would not be under any obligation pursuant to this subsection to provide reasonably suitable alternative accommodation for the persons occupying that dwelling-house.

(iv)

No. 55, 1952.

(iv) by inserting in subsection three of the same section after the letter and symbols “(o)” the letter and symbols “(p)”;

Sec. 74.
(Appeals.)

(d) by inserting in subsection two of section seventy-four after the words “order of” the word “such”;

New sec.
83A.

(e) by inserting next after section eighty-three the following new section:—

Protection
of member
of the
family of
deceased
lessee.

83A. (1) Where a lessee of prescribed premises dies, and

- (a) the spouse of the lessee resided with the lessee immediately before the death of the lessee and is actually in possession of the premises immediately after the death of the lessee; or
- (b) where the spouse of the lessee was not so residing or is not so in possession or the lessee was not married at the date of his death, a child of the lessee (being a child of or over the age of twenty-one years) so resided and is so in possession,

such spouse or child, as the case may be, shall, subject to subsection two of this section and until probate or letters of administration of the estate of the deceased lessee are granted, have the like right to continue in possession of the premises as the deceased lessee would have had if he had not died.

In this subsection “child of the lessee” means, where more than one child of the lessee so resided and is so in possession, the elder or eldest of such children.

(2) Proceedings may be taken against such spouse or child, as the case may be, for the recovery

recovery of possession of the premises from him in accordance with the provisions of this Act as if he were a lessee of the premises. No. 55, 1952.

(3) Nothing in this section affects any right which such spouse or child may have upon the grant of probate or letters of administration to continue in possession of the premises.

- (f) (i) by omitting from subsection one of section eighty-six the words "or former lessor"; Sec. 86.
(Exclusion of pre-
mises let
for a short
term from
operation
of Part
III.)
- (ii) by omitting from the same subsection the words "not exceeding one year" and by inserting in lieu thereof the words "of less than three years";
- (iii) by inserting in the same subsection after the words "at any time" the words "during the currency of the lease";
- (iv) by omitting from the same subsection the words "or former lessee";
- (v) by omitting from subsection three of the same section the words "one year" and by inserting in lieu thereof the words "three years";
- (vi) by omitting paragraph (b) of subsection four of the same section and by inserting in lieu thereof the following paragraph:—

(b) The Controller may grant one or more extensions of any certificate issued under subsection three of this section excluding the premises from the operation of the provisions of this Part for a further period or periods but the aggregate of—

- (a) the period of the original exemption; and
- (b) the period of any extension so granted or, where more than one extension is granted, the total of the periods of extension so granted shall not exceed three years.

(g)

Landlord and Tenant (Amendment) Act.

No. 55, 1952.

New sec.
87A.Part III not
to apply to
a dwelling-
house let on
behalf of an
insane
patient.

(g) by inserting next after section eighty-seven the following new section:—

87A. Where the Master in Lunacy has, before or after the commencement of the Landlord and Tenant (Amendment) Act, 1952, leased a dwelling-house—

- (a) forming part of the estate of a person who at the time when the lease was granted was an insane patient within the meaning of the Lunacy Act, 1898-1949; and
- (b) which was the residence of such person before he became an insane patient within the meaning of that Act,

the provisions of this Part of this Act shall not, in respect of that lease, apply to the dwelling-house.

Sec. 93.

(Powers of
entry and
inspection.)

(h) by inserting at the end of section ninety-three the following new subsection:—

(2) Any person who—

- (a) refuses to allow the Controller or an authorised officer to enter or inspect at a reasonable time of the day and after reasonable notice has been given any land or premises;
- (b) wilfully obstructs or aids in obstructing or solicits any other person to obstruct or aid in obstructing the Controller or an authorised officer in the exercise of the power conferred on him by subsection one of this section

shall be guilty of an offence against this Act.

Sec. 94.

(Proof of
instru-
ments.)

(i) by inserting at the end of section ninety-four the following new subsection:—

(2) A certificate purporting to be a certificate given by the clerk of a Fair Rents Board or by the

the Controller and to be signed by such clerk or by the Controller certifying— No. 55, 1952.

- (a) that in a period specified therein no application has been made to the Fair Rents Board of which he is clerk, or to the Rent Controller, as the case may be, for a determination of the fair rent of prescribed premises described therein; or
- (b) that any such determination has been made and as to amount and date of operation thereof,

shall be received in evidence and shall, until the contrary is proved, be accepted as evidence of the matters therein set out.

4. (1) (a) The Landlord and Tenant (War Service) Amendment Act, 1949, is hereby repealed. Repeal of Act No. 22, 1949.

(b) Any application or other proceeding under the Landlord and Tenant (War Service) Amendment Act, 1949-1951, which was pending immediately before the commencement of this Act, shall be deemed to be an application or proceeding under Part V of the Landlord and Tenant (Amendment) Act, 1948-1952, and may be continued and dealt with under that Part as if that Part had been in force at the date of the making of such application or the commencement of such proceeding, as the case may be.

(c) Any warrant granted under the Landlord and Tenant (War Service) Amendment Act, 1949-1951, and not executed at the commencement of this Act, shall be deemed to have been granted under Part V of the Landlord and Tenant (Amendment) Act, 1948-1952, and shall have force and effect in all respects as if that Part had been in force at the time when such warrant was granted.

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No. 55, 1952.

Further
amendment
of Act No.
25, 1948.
New
Part V.

(2) The Principal Act is further amended—

(a) by inserting next after section ninety-eight the following new Part:—

PART V.—PROTECTED PERSONS.Defini-
tions.

99. (1) In this Part, unless the contrary intention appears—

“discharged member of the Forces” means a person who having been a member of the Defence Force engaged on war service during the present war or in connection with any naval, military or air operations conducted by or on behalf of the United Nations Organisation—

(a) has been discharged from the Defence Force, or has ceased to be engaged on war service, for a period not exceeding the prescribed period; or

(b) having been discharged from the Defence Force, or having ceased to be engaged on war service, for a period exceeding the prescribed period—

(i) is receiving a pension from the Commonwealth; or

(ii) is not receiving such a pension, but is receiving from the Commonwealth medical treatment of such a nature as to prevent him either wholly or partly from engaging in his occupation;

“female dependant of a member” means a female who is wholly or substantially dependent for her support upon a member

member of the Forces or a member of the United Nations Forces; No. 55, 1952.

“female dependant of a discharged member” means—

(a) a female who is wholly or substantially dependent for her support upon a person who, having been a member of the Defence Force engaged on war service during the present war or in connection with any naval, military or air operations conducted by or on behalf of the United Nations Organisation, has been discharged from the Defence Force, or has ceased to be engaged on war service, for a period not exceeding the prescribed period;

(b) a female who is wholly or substantially dependent for her support upon a pension payable in consequence of the incapacity or the death of a person who has been a member of the Forces or a member of the United Nations Forces;

(c) the wife of a person who, having been a member of the Defence Force engaged on war service during the present war or in connection with any naval, military or air operations conducted by or on behalf of the United Nations Organisation—

(i) has been discharged from the Defence Force; or

(ii) has ceased to be engaged on war service,

and

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and although not receiving a pension, is receiving from the Commonwealth medical treatment of such a nature as to prevent him either wholly or partly from engaging in his occupation;

- (d) the widow of a member of the Forces or of a member of the United Nations Forces who died while engaged on war service during the present war or in connection with any naval, military or air operations conducted by or on behalf of the United Nations Organisation;

“member of the Forces” means a member of the Defence Force engaged on war service (otherwise than in connection with any naval, military or air operations conducted by or on behalf of the United Nations Organisation), and includes any person who is on active service (otherwise than in connection with any such naval, military or air operations) with the Naval, Military or Air Forces—

- (a) of the United Kingdom or of any other part of the Queen's dominions (other than the Commonwealth);
- (b) of any foreign power allied or associated with Her Majesty in any war in which Her Majesty is engaged; or
- (c) maintained by any foreign authority recognised by Her Majesty as competent to maintain Naval, Military or Air Forces

Forces for service in association with Her Majesty's Forces; No. 55, 1952.

“member of the United Nations Forces” means a member of the Defence Force engaged on war service in connection with any naval, military or air operations conducted by or on behalf of the United Nations Organisation, and includes any person who is on active service, in connection with such naval, military or air operations, with the Naval, Military or Air Forces—

- (a) of the United Kingdom or of any other part of the Queen's dominions (other than the Commonwealth); or
- (b) of any foreign power aiding or assisting the United Nations Organisation in the conduct of such naval, military or air operations;

“parent of a member” means a person who is a parent of, and is wholly or substantially dependent for his support upon, a member of the Forces or a member of the United Nations Forces;

“parent of a discharged member” means—

- (a) a person who is a parent of, and is wholly or substantially dependent for his support upon, a person who, having been a member of the Defence Force engaged on war service during the present war or in connection with any naval, military or air operations conducted by or on behalf of the United Nations Organisation, has been discharged from the Defence Force,

or

or has ceased to be engaged on war service, for a period not exceeding the prescribed period;

(b) a person who is a parent of, and is wholly or substantially dependent for his support upon a pension payable in consequence of the incapacity or death of, a person who has been a member of the Forces or a member of the United Nations Forces;

(c) a parent of a person who, having been a member of the Defence Force engaged on war service during the present war or in connection with any naval, military or air operations conducted by or on behalf of the United Nations Organisation—

(i) has been discharged from the Defence Force; or

(ii) has ceased to be engaged on war service,

and, although not receiving a pension, is receiving from the Commonwealth medical treatment of such a nature as to prevent him, either wholly or partly, from engaging in his occupation, and upon whom that parent was, immediately prior to the discharge of that person, or immediately prior to that person ceasing to be engaged on war service, wholly or substantially dependent for his support;

“pension” means a pension (including a service pension) under the Repatriation Act 1920-1951 of the Parliament of the Commonwealth, and includes a pension payable

payable under any law of a country outside the Commonwealth providing for payment of pensions to members, or former members of the Naval, Military or Air Forces of that country;

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“prescribed period” means eight years or such extended period as the Governor may, from time to time by proclamation published in the Gazette, appoint;

“present war” means any war in which His Late Majesty King George VI became engaged on or after the third day of September, one thousand nine hundred and thirty-nine, and includes any prescribed naval, military or air operations (whether such operations commenced before or after the commencement of the Landlord and Tenant (Amendment) Act, 1952);

“protected person” means—

(a) a member of the Forces or a member of the United Nations Forces who—

(i) is; or

(ii) was, for a total period of not less than twelve months during his period of war service,

required, by reason of his war service, to live in premises other than premises occupied by him, or by a member of the household to which he belongs, as a home;

(b) a discharged member of the Forces who was—

(i) immediately prior to his discharge;

(ii) for a continuous period of not less than three months during

during the period of six months immediately prior to his discharge; or

- (iii) for a total period of not less than twelve months during his period of war service,

so required;

- (c) a female dependant of a member or a parent of a member and that member—

- (i) is; or

- (ii) was, for a total period of not less than twelve months during his period of war service,

so required; or

- (d) a female dependant of a discharged member or a parent of a discharged member and that member was—

- (i) immediately prior to his discharge, ceasing to be engaged on war service, or death, as the case may be;

- (ii) for a continuous period of not less than three months during the period of six months immediately prior to his discharge, ceasing to be engaged on war service, or death, as the case may be; or

- (iii) for a total period of not less than twelve months service, during his period of war

so required;

“war

“war service” means—

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- (a) the service of a member of the Citizen Forces when called up for war service under the Defence Act 1903-1941 of the Parliament of the Commonwealth or during continuous training under that Act, the Naval Defence Act 1910-1934 of the Parliament of the Commonwealth or the Air Force Act 1923-1941 of the Parliament of the Commonwealth;
- (b) the continuous service under any of those Acts of any person who volunteers and is accepted for such service during war or in connection with any naval, military or air operations conducted by or on behalf of the United Nations Organisation;
- (c) the continuous service of a person called upon to serve in the Defence Force in pursuance of any Act of the Parliament of the Commonwealth or of any regulations under an Act of the Parliament of the Commonwealth; and
- (d) the service during war or in connection with any naval, military or air operations conducted by or on behalf of the United Nations Organisation of a member of the Permanent Forces.

(2) For the purpose of determining whether a person was or has been a member of the Forces, any reference in this section to Her Majesty or to the Queen shall be construed as including a reference to His Late Majesty King George VI.

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Limitation
on power
of court
to make
order for
recovery
of
possession.

100. Except in the case of an order made upon any one or more of the grounds set out in paragraph (a), (b), (c), (d), (e), (f), (k), (m), (n), (o), (p) or (q) of subsection five of section sixty-two of this Act, an order for the recovery of possession of any prescribed premises shall not be made against a protected person unless the court, in addition to being satisfied upon any other ground upon which the court is required to be satisfied, is further satisfied—

- (a) that reasonably suitable alternative accommodation is, or has been since the date upon which notice to quit was given, available for the occupation of the protected person in lieu of the prescribed premises in respect of which the making of an order is sought; or
- (b) that the protected person (being the lessee) has sub-let the prescribed premises in respect of which the making of an order is sought and is permanently residing elsewhere; or
- (c) that the lessor is the occupant of a dwelling-house the subject of an order for recovery of possession made in favour of a protected person and that such protected person has not provided suitable alternative accommodation for such lessor and any other persons occupying such dwelling-house.

Protection
of
protected
person
claiming
under lessee
where
tenancy
determined.

101. (1) Where a tenancy of prescribed premises has been lawfully determined and a person claiming under the lessee pursuant to some arrangement or agreement made or entered into before the commencement of the Landlord and Tenant (Amendment) Act, 1952, and actually in possession of the prescribed premises or any part thereof is a protected person, an order

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order for the recovery of possession of those premises shall not be enforced against the protected person unless the court which made the order is satisfied—

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- (a) that the protected person has failed to pay the rent in respect of a period of not less than fifty-six days;
- (b) that the protected person has failed to perform or observe some other term or condition of his tenancy and the performance or observance of that other term or condition has not been waived or excused by his landlord;
- (c) that the protected person has failed to take reasonable care of the premises, or of any goods the property of his landlord, or has committed waste;
- (d) that the protected person has been guilty of conduct which is a nuisance or annoyance to adjoining or neighbouring occupiers;
- (e) that the protected person or some other person has been convicted, while the protected person was actually in possession of the premises or part thereof, of an offence arising out of the use of the premises or part thereof for an illegal purpose or that a court has found or declared that the premises or part thereof have, while the protected person was actually in possession of the premises or part thereof, been used for some illegal purpose;
- (f) that the premises—
 - (i) being a dwelling-house—are reasonably required by the person in whose favour the order was

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was made for occupation by himself or by some person who ordinarily resides with, and is wholly or partly dependent upon, him; or

(ii) not being a dwelling-house—are reasonably required for occupation by the person in whose favour the order was made or by a person associated or connected with him in his trade, profession, calling or occupation;

(g) that the premises are used as, or have been acquired for use as, a parsonage, vicarage, presbytery or other like premises and are reasonably required for the personal occupation of a minister of religion (including a person who, although not ordained, is performing all the duties of a minister of religion);

(h) that the person in whose favour the order was made is a trustee and the premises are reasonably required by a beneficiary under the trust for his personal occupation or for the occupation of some person who ordinarily resides with, and is wholly or partly dependent upon, him; or

(i) that the person, body or authority in whose favour the order was made is a person, body or authority carrying on a hospital, or a trustee for such a person, body or authority, and the use of the premises is reasonably required for the purposes of the hospital (including the accommodation of the staff of the hospital),

and gives leave to enforce the order against the protected person.

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(2) Except in the case of an order made in the circumstances specified in paragraph (a), (b), (c), (d) or (e) of subsection one of this section, a court shall not give leave to enforce an order against a protected person, unless the court, in addition to being satisfied upon any other ground upon which the court is required to be satisfied, is satisfied that reasonably suitable alternative accommodation is available for the occupation of the protected person in lieu of the premises in respect of which the giving of leave to enforce an order is sought.

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Limitation on power of court to grant leave to enforce order for recovery of possession.

102. The provisions of sections one hundred and one hundred and one of this Act shall not apply in relation to prescribed premises of which the lessor is—

Sections 100 and 101 not to apply where lessor is a protected person or age pensioner.

(a) a protected person; or

(b) a person in receipt of age pension under the Social Services Consolidation Act 1947-1951 of the Parliament of the Commonwealth.

103. The proviso to subsection one of section sixty-five of this Act shall not apply in respect of prescribed premises of which the lessor is a protected person.

Proviso to section 65 (1) not to apply in certain cases.

104. (1) A protected person may, if he thinks fit, apply in writing to the court of petty sessions for the district in which is situated a dwelling-house which is unoccupied or about to become unoccupied for a warrant authorising and requiring the delivery of possession of the dwelling-house to the applicant.

Letting of unoccupied houses to protected persons.

(2) An application under subsection one of this section may be made by the protected person personally or by some person authorised by him in writing to act as his agent for the purposes of this section.

(3) A copy of an application under subsection one of this section together with a notice of hearing shall be served on—

(a) the owner of the dwelling-house; or

(b)

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No. 35, 1952.

(b) any person who ordinarily acts as an agent in relation to the dwelling-house or to whom the rent of the dwelling-house is ordinarily paid,

either personally, or by registered letter sent to the place of business or abode of the owner or person.

(4) After service of the copy of the application and notice of hearing, and until the application has been heard and determined, or, if the court grants the application, until the warrant issued pursuant thereto has been executed, the owner of the dwelling-house shall not, whether personally or by his agent, permit any person to enter into occupation of the dwelling-house or himself enter into occupation of the dwelling-house.

(5) The jurisdiction of a court of petty sessions under this section shall not be exercised except by a stipendiary magistrate.

Dwelling-house is to be deemed to be unoccupied in certain cases.

105. (1) For the purposes of section one hundred and four of this Act a dwelling-house shall be deemed to be unoccupied notwithstanding that the owner has permitted a person to enter into occupation of the dwelling-house in contravention of subsection four of that section or has, before the commencement of the Landlord and Tenant (Amendment) Act, 1952, permitted a person to enter into occupation of the dwelling-house in contravention of subsection four of section five of the Landlord and Tenant (War Service) Amendment Act, 1949-1951, and, in any such case, the court may grant the application notwithstanding that the person in occupation of the dwelling-house is not before the court on the hearing of the application.

(2) For the purposes of section one hundred and four of this Act a dwelling-house shall be deemed to be unoccupied notwithstanding that the owner has entered into

occupation .

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occupation of the dwelling-house in contraven- **No. 55, 1952.**
tion of subsection four of that section or has,
before the commencement of the Landlord and
Tenant (Amendment) Act, 1952, entered into
occupation of the dwelling-house in contraven-
tion of subsection four of section five of the
Landlord and Tenant (War Service) Amend-
ment Act, 1949-1951.

(3) For the purposes of section one hundred and four of this Act a dwelling-house shall not be deemed to be occupied by reason only of the fact that it is furnished.

106. (1) Upon the hearing of an application **Hearing of application.**
under section one hundred and four of this Act the court shall take into consideration in addition to all other relevant matters—

- (a) any hardship which would be caused to the owner or to any other person (not being a person who has entered into occupation of the dwelling-house in contravention of subsection four of section one hundred and four of this Act or has, before the commencement of the Landlord and Tenant (Amendment) Act, 1952, entered into occupation of the dwelling-house in contravention of subsection four of section five of the Landlord and Tenant (War Service) Amendment Act, 1949-1951) by the granting of the application; and
- (b) any hardship which would be caused to the applicant or to any other person by the refusal to grant the application,

and, unless the court is satisfied that there is reasonable cause why the application should not be granted, the court shall grant the application.

(2) An averment in an application under section one hundred and four of this Act that a dwelling-house is unoccupied shall be prima facie evidence of the fact so averred.

(3)

No. 55, 1952.

(3) If the dwelling-house is about to become unoccupied, the court may postpone the execution of the warrant until such time as it thinks fit.

(4) The fact that the dwelling-house is ordinarily leased for holiday purposes only shall not be a ground for refusing to grant the application.

(5) An application shall not be granted under this section—

(a) if the owner of the dwelling-house is a protected person and reasonably requires the dwelling-house for his own occupation or for the occupation of some person who resides with him or is wholly or partly dependent on him for his support;

(b) if the dwelling-house was erected or acquired for the accommodation of a particular person or class of persons and the dwelling-house is reasonably required for the occupation of that person or a person of that class;

(c) if the dwelling-house has not previously been occupied and is reasonably required for the occupation of the owner of the dwelling-house; or

(d) if the dwelling-house is a newly erected dwelling-house which—

(i) was erected by the owner for the purposes of sale; and

(ii) has been unoccupied for a period not exceeding two months.

(6) The court shall specify in the warrant the person or persons by whom it may be executed.

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107. (1) Where more than one application is made under section one hundred and four of this Act in respect of the same dwelling-house, the person on whom the applications were served shall forthwith notify each other applicant of the other application or applications, together with the name and address of the other applicant or applicants and the court shall hear and determine all the applications at the same time and for that purpose may adjourn the hearing of any application or applications.

No. 55, 1952.

Provisions where several applications made in respect of same dwelling-house.

(2) Where two or more applications are heard at the same time, the court shall take into consideration the degree of hardship which would be caused to each applicant or to any other person by the refusal to grant the application and, where the degree of hardship is the same in the case of two or more applicants or other persons, may take into consideration the priority of service of the applications under section one hundred and four of this Act.

108. A warrant granted by a court under section one hundred and six of this Act may be enforced in the same manner as a warrant of possession granted by that court may be enforced.

Enforcement of warrants.

109. (1) Upon delivery of possession of a dwelling-house to a protected person under a warrant granted under section one hundred and six of this Act, the protected person shall be deemed to be a tenant of the owner of the dwelling-house.

Rent of dwelling-house.

(2) The rent to be paid for any dwelling-house of which possession has been so obtained shall be—

- (a) where the rent is, as at the commencement of the tenancy, fixed or determined by or under this Act—such rent (not exceeding the rent so fixed or determined) as is agreed upon between the owner

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owner and the tenant or as, in default of agreement, is fixed by the court which granted the application; or

- (b) in any other case—such rent as is agreed upon between the owner and the tenant or, in default of agreement, as is fixed by the court which granted the application,

but nothing in this subsection shall be deemed to prevent the subsequent alteration subject to this Act of any rent so agreed upon or fixed.

(3) The court granting an application under section one hundred and four of this Act shall at the time of such grant fix terms and conditions to be implied in the tenancy and such terms and conditions shall apply and have effect in like manner as if the same had been agreed to in writing by the protected person and the owner.

**Interpre-
tation.**

110. For the purposes of section one hundred and four to one hundred and nine, both inclusive, of this Act the expression "owner" in relation to a dwelling-house which is the subject of a lease or sub-lease, means—

- (a) where the dwelling-house is unoccupied—the lessee or sub-lessee immediately entitled to possession of the dwelling-house; and
- (b) where the dwelling-house is about to become unoccupied—the person immediately entitled to possession of the dwelling-house upon its becoming unoccupied.

**Rental of
farms by
members of
the Forces,
etc.**

111. (1) The owner of any land to which this section applies (not being land the fair rent of which is fixed or determined by or under, or may be fixed or determined by or under, this Act) shall not, without the leave of the appropriate court, increase the rent thereof, and any increase

made

made in contravention of this section shall, notwithstanding any agreement to the contrary, be irrecoverable:

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Provided that—

- (a) where the owner incurs expenditure on the improvement of the land, or the structural alteration of any building erected on the land (not including expenditure on decoration or repairs) an increase of rent at a rate not exceeding eight pounds per centum per annum on the amount so expended shall not be deemed to be an increase for the purposes of this section;
- (b) any transfer to a tenant of any burden or liability previously borne by the owner shall for the purposes of this section be treated as an alteration of rent, and where as the result of such a transfer the terms on which the land is held are on the whole less favourable to the tenant than the previous terms the rent shall be deemed to be increased whether or not the sum periodically payable by way of rent is increased;
- (c) any increase of rent in respect of any transfer to the owner of any burden or liability previously borne by the tenant where as the result of the transfer the terms on which the land is held are on the whole more favourable to the tenant than the previous terms shall be deemed not to be an increase of rent for the purposes of this section; and
- (d) where the owner pays the rates payable by the occupier of any land an increase of the rent of the land payable for any period shall not be deemed to be an increase for the purposes of this section if the amount of the increase does not exceed the increase in the amount payable by the owner in respect of the rates
during

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during the same period and for the purposes of this paragraph the expression "rates" includes water rates and charges.

(2) A person shall not, in consideration of the grant, renewal, or continuance of a tenancy of any land to which this section applies, require from any protected person the payment of any fine, premium or other like sum in addition to the rent.

(3) In this section—

"farming or dairying pursuits" includes agriculture, fruit-growing, bee-farming, poultry-farming, stock-raising, or any kindred pursuit;

"land to which this section applies" means land occupied by a protected person and used—

(a) for the purposes of carrying on farming or dairying pursuits; or

(b) for such other purposes as the Minister, by order published in the Gazette, specifies;

"the appropriate court" means—

(a) where the rent payable does not exceed seventy pounds per annum—a court of petty sessions constituted by a stipendiary magistrate sitting alone;

(b) where the rent payable exceeds seventy pounds per annum—a District Court.

(4) This section shall, notwithstanding section five of this Act, bind the Crown.

112. (1) Where a soldier's dependant is in occupation of a dwelling-house which was occupied by a member of the Forces or a member of the United Nations Forces by virtue of his employment, whether on terms of payment

of

Prohibition
of eviction
of
dependants
of members
of the
Forces in
certain
cases.

of rent or the provision of any other consideration or otherwise, it shall not be lawful for any person to evict the soldier's dependant from the dwelling-house unless—

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- (a) the soldier's dependant has failed to comply with the terms and conditions (if any) on which the soldier's dependant was permitted to occupy the dwelling-house; and
- (b) the person seeking to evict the soldier's dependant has obtained the leave of the court.

(2) The court, in considering any application for leave under subsection one of this section, shall take into consideration all the circumstances of the case, and in particular, shall have regard to any provision made by the person seeking the leave for other accommodation for the soldier's dependant.

(3) This section shall, notwithstanding section five of this Act, bind—

- (a) the Crown;
- (b) the Housing Commission of New South Wales.

(4) In this section—

“soldier's dependant” means—

- (a) parent of a member of the Forces or of a member of the United Nations Forces; or
- (b) female dependant of a member of the Forces or of a member of the United Nations Forces;

“the court”, in relation to any application under this section, means the court of petty sessions constituted by a stipendiary magistrate sitting alone for the district in which the dwelling-house is situated.

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(5) The provisions of this section shall be in addition to and not in substitution for any of the other provisions of this Act.

This Part
not to
apply in
certain
cases.

113. (1) Any person (in this section referred to as "the claimant") who desires to do, or to continue or complete the doing of, any act against any person (in this section referred to as "the respondent") in respect of the rental or possession of any premises may, if the respondent is resident in Australia and is not, to the knowledge of the claimant, a protected person, serve on the respondent, in the manner provided by this section, a notice requiring the respondent to inform the claimant, within fourteen days after the receipt of the notice, whether or not the respondent is a protected person within the meaning of this Part.

(2) A notice under subsection one of this section shall be served personally or by registered letter sent to the respondent's last place of abode known to the claimant.

(3) If, within the period specified in subsection one of this section, a statutory declaration by the respondent or by some person having knowledge of the facts stating that the respondent is a protected person within the meaning of this Part is not furnished to the claimant, then, notwithstanding that the respondent is, or at any subsequent time becomes, a protected person, this Part shall not apply in respect of the doing, or in respect of the continuance or completion of the doing, of an act of the kind referred to in subsection one of this section, provided the claimant commences to do, or to continue or complete the doing of, the act within three weeks after the expiration of the period specified in that subsection.

(4)

(4) For the purposes of subsection three of this section, where the doing of any act is dependent on the completion of any preliminary act, the commencement of the doing, or the continuance or completion of the doing, of the preliminary act shall be deemed to be the commencement of the doing of the first-mentioned act. No. 55, 1952.

(5) If the claimant produces evidence (supported by statutory declaration) to the satisfaction of an officer thereto authorised in writing by the Minister, that the respondent—

- (a) has abandoned the property in respect of which the claimant desires to do, or to continue or complete the doing of, any act; or
- (b) cannot be found and that the claimant has made reasonable efforts to ascertain his whereabouts, and that the claimant is not aware that the respondent is a protected person,

the officer may issue to the claimant a certificate to that effect and thereupon this Part shall not apply in respect of the doing, or in respect of the continuance or completion of the doing, of the act by the claimant.

(6) A certificate purporting to be issued in pursuance of subsection five of this section shall, in the absence of proof to the contrary, be deemed to have been duly issued.

- (b) by inserting at the end of section three the following words:— Sec. 3.
(Division into Parts.)

PART V.—PROTECTED PERSONS.

- (c) (i) by omitting from subsection one of section eight the definition of “dwelling-house”; Sec. 8.
(Definitions.)
(ii)

Landlord and Tenant (Amendment) Act.

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- (ii) by inserting next after subsection one of the same section the following new subsection:—

(1A) In this Act (other than in sections one hundred and four to one hundred and ten, both inclusive, and section one hundred and twelve of this Act) unless the contrary intention appears, “dwelling-house” means any prescribed premises (including shared accommodation) leased for the purposes of residence, and includes—

- (a) the premises of any lodging-house or boarding-house;
- (b) any part of premises which is leased separately for the purposes of residence,

but does not include premises licensed for the sale of spirituous or fermented liquors.

Sec. 70.
(Court to consider hardship.)

- (d) (i) by omitting from paragraph (a) of the first proviso to subsection two of section seventy the words “for the purposes of section four of the Landlord and Tenant (War Service) Amendment Act, 1949” and by inserting in lieu thereof the words “within the meaning of Part V of this Act”;
- (ii) by omitting from the same paragraph the words “for the purposes of that section” and by inserting in lieu thereof the words “within the meaning of that Part”;

Sec. 86.
(Exclusion of premises let for a short term.)

- (e) by inserting in subsections one and three of section eighty-six after the words “this Part” wherever occurring the words “and Part V of this Act”;

(f)

General Loan Account (Appropriation) Act.

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- (f) (i) by inserting in paragraph (a) of subsection one of section eighty-seven after the words "this Part" the words "and Part V of this Act";
- (ii) by omitting from subsection two of the same section the words "this Part does" and by inserting in lieu thereof the words "this Part and Part V of this Act do".

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Sec. 87.

(Exclusion of certain subdivided premises, etc.)

