

LANDLORD AND TENANT (AMENDMENT) ACT.

Act No. 46, 1954.

An Act to amend the law relating to landlord and tenant and licensees; for this purpose to amend the Landlord and Tenant (Amendment) Act, 1948, the Landlord and Tenant Act of 1899, and certain other Acts in certain respects; and for purposes connected therewith. [Assented to, 16th December, 1954.]

Elizabeth II,
No. 46, 1954.

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:—

1. (1) This Act may be cited as the "Landlord and Tenant (Amendment) Act, 1954."

Short title
and
citation.

(2) The Landlord and Tenant (Amendment) Act, 1948, as amended by subsequent Acts and by this Act, may be cited as the Landlord and Tenant (Amendment) Act, 1948-1954.

(3)

Landlord and Tenant (Amendment) Act.

No. 46, 1954. — (3) The Landlord and Tenant Act of 1899, as amended by subsequent Acts and by this Act, may be cited as the Landlord and Tenant Act, 1899-1954.

Amendment of Act No. 25, 1948. **2.** The Landlord and Tenant (Amendment) Act, 1948, as amended by subsequent Acts, is amended—

Sec. 6A.
(Special premises.)

(a) (i) by inserting at the end of subsection one of section 6A the words “and may also by that order declare that each and every part of those prescribed premises which is at any time while the order has force or effect the subject of a separate agreement or arrangement whether oral or in writing of leave and license for the use of that part shall be ‘special premises’ for the purposes of this Act”;

(ii) by inserting next after the same subsection the following new subsection:—

(1A) (a) Any order made under subsection one of this section before the commencement of the Landlord and Tenant (Amendment) Act, 1954, and having force or effect immediately before such commencement declaring that any prescribed premises shall be “special premises” for the purposes of this Act shall have effect and shall be deemed always to have had effect as though that order had also declared that each and every part of those prescribed premises which is at any time while the order has force or effect the subject of a separate agreement or arrangement whether oral or in writing of leave and license for the use of that part shall be “special premises” for the purposes of this Act.

(b) A person shall not, by reason of the enactment of paragraph (a) of this subsection, be guilty of an offence against this Act in respect of anything done or omitted to be done by him before the commencement of the Landlord and Tenant Amendment

(Amendment) Act, 1954, if he would not have been so guilty had that paragraph not been enacted. No. 46, 1954.

- (iii) by omitting from paragraphs (a) and (b) of subsection two of the same section the words "any prescribed premises" wherever occurring and by inserting in lieu thereof the words "the 'special premises'";
- (iv) by omitting from paragraph (b) of the same subsection the words "any such premises" and by inserting in lieu thereof the words "the 'special premises'";
- (v) by omitting paragraph (a) of subsection three of the same section and by inserting in lieu thereof the following paragraph:—

(a) Where any prescribed premises (not being prescribed premises that are declared to be "special premises" under subsection one or subsection (1A) of this section) are after the commencement of the Landlord and Tenant (Amendment) Act, 1954, 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 (whether that agreement or arrangement was entered into before or after that commencement and whether the occupancy by that person for the purposes of residence under that agreement or arrangement commenced before or after that commencement), 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 (whether the lease was entered into before or after that date), the prescribed 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)

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Sec. 7.
(Holiday
premises.)

(b) (i) by inserting in subsection one of section seven after the words "one thousand nine hundred and forty-five," the words "and before the commencement of the Landlord and Tenant (Amendment) Act, 1952,";

(ii) by inserting in the same subsection after the words "three months" the words "or that they have at some time after the commencement of the Landlord and Tenant (Amendment) Act, 1952, been leased to or occupied by a lessee for a continuous period exceeding eight weeks";

Sec. 8.
(Defini-
tions.)

(c) (i) by omitting from subsection one of section eight the definition of "application";

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

(2A) No prescribed premises forming part of other prescribed premises shall be regarded as not forming a complete residence in themselves by reason only of the fact that a laundry or laundry facilities are used by the lessee of that part in common with any one or more of the following persons, namely, the lessor or other persons occupying other parts of the prescribed premises of which the firstmentioned prescribed premises form a part.

Sec. 9.
(Constitu-
tion and
abolition
of Fair
Rents
Boards.)

(d) by omitting from subsection three of section nine the words "pending appeals" wherever occurring and by inserting in lieu thereof the words "pending applications and appeals";

Sec. 15.
(Rent of
prescribed
premises.)

(e) (i) by omitting from subsection one of section fifteen the figures "1951" and by inserting in lieu thereof the figures "1954";

(ii) by omitting from subsection two of the same section the figures "1951" and by inserting in lieu thereof the figures "1954";

(iii)

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

(4) The rent fixed by subsection one or subsection two of this section shall—

(a) where that rent is so fixed in respect of prescribed premises without goods—

(i) be the fair rent of the prescribed premises without goods until a determination has been made in respect of those premises without goods; and

(ii) unless a rent is also fixed by subsection one or subsection two of this section in respect of the premises together with goods, be the fair rent of the prescribed premises together with goods until a determination has been made in respect of those premises together with goods;

(b) where that rent is so fixed in respect of the prescribed premises together with goods—

(i) be the fair rent of the prescribed premises together with goods until a determination has been made in respect of those premises together with goods; and

(ii) unless a rent is also fixed by subsection one or subsection two of this section in respect of the premises without goods,
be

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be the fair rent of the prescribed premises without goods until a determination has been made in respect of those premises without goods,

notwithstanding any alterations, additions, repairs or renovations to the prescribed premises (whether structural or otherwise), any change of ownership or tenancy, any change in the nature or value of the services supplied by the lessor or in the goods leased with the premises, any leasing of goods with the premises or any withdrawal from the premises of goods formerly leased therewith.

New sec.
16A.

- (f) by inserting next after section sixteen the following new section:—

Lessee
to furnish
information
as to sub-
letting.

16A. A lessor of prescribed premises may by notice in writing require the lessee to furnish him with a statutory declaration showing whether the prescribed premises or any part thereof has been sub-let by the lessee or is in the occupation of any other person, and if so, the names of the persons to whom the prescribed premises or any part thereof has been so sub-let and the rent payable by such persons together with the moneys received from such other persons in occupation, and the lessee shall furnish a statutory declaration accordingly within seven days after the receipt by him of the notice.

Sec. 18.
(Applica-
tion to have
fair rent
fixed.)

- (g) (i) by omitting from subsection one of section eighteen the words "date of the application" and by inserting in lieu thereof the words "date of the receipt of the application in the office of the clerk of the Board";
- (ii) by omitting from the same subsection the words "the owner of any such premises which are vacant" and by inserting in lieu thereof

thereof the words "the person having power to lease any such premises which are not leased in exercise of that power";

- (h) (i) by omitting from subsection one of section twenty-two the words "date of the application" and by inserting in lieu thereof the words "date of the receipt of the application in the office of the clerk of the Board";
- (ii) by inserting in subsection two of the same section after the words "such determination," the words "other than a determination made under section 23A of this Act,";
- (iii) by omitting from the same subsection the words "lessor and lessee" and by inserting in lieu thereof the words "the applicant";
- (iv) by inserting at the end of the same section the following new subsection:—

(3) After the making of any determination of the fair rent of any prescribed premises under section 23A of this Act, the clerk of the Board shall give notice in writing thereof, and of the date fixed as the date on which the determination shall come into force, to the persons to whom notice of the time, date and place fixed for that determination was given under subsection two of that section.

- (i) by omitting section twenty-three and by inserting in lieu thereof the following section:—

23. Where any fair rent has been determined by a Fair Rents Board it shall, as from the date fixed under section twenty-two of this Act—

(a) where that rent is so determined in respect of prescribed premises without goods—

(i) be the fair rent of the prescribed premises without goods until it is varied in pursuance of this Part; and

(ii)

(ii) unless a fair rent is also fixed or determined by or under this Part in respect of the premises together with goods, be the fair rent of the prescribed premises together with goods until a determination has been made in respect of those premises together with goods;

(b) where that rent is so determined in respect of prescribed premises together with goods—

(i) be the fair rent of the prescribed premises together with goods until it is varied in pursuance of this Part; and

(ii) unless a fair rent is also fixed or determined by or under this Part in respect of the premises without goods, be the fair rent of the prescribed premises without goods until a determination has been made in respect of those premises without goods.

New sec.
23A.

(j) by inserting next after section twenty-three the following new section:—

Premises
not leased.

23A. (1) A Fair Rents Board may, of its own motion, after inquiry determine the fair rent of any prescribed premises other than shared accommodation which are not leased.

(2) The Fair Rents Board shall cause to be given to such persons as it considers proper notice of the time, date and place fixed for the determination of the fair rent of the premises
and

and the notice or notices so given shall, for the purpose of this Division, be deemed to be an application. No. 46, 1954.

(3) In determining the fair rent of prescribed premises under this section, the Fair Rents Board shall have the same powers as it has in connection with an application, and any determination made by the Fair Rents Board shall have the same effect for all purposes as a determination made upon an application.

(k) by inserting next after section twenty-five the following new sections:— New secs.
25A, 25B.

25A. Where an application has been made under this Division for the determination of the fair rent of any prescribed premises and the Fair Rents Board is of opinion that the premises are shared accommodation situated within, or partly within and partly outside, the Metropolitan Area, the Fair Rents Board may refer the application to the Controller for determination. Reference
of applica-
tion to
Controller.

Any such reference to the Controller shall be deemed to be an application made to the Controller under Division 4 of this Part and may be dealt with accordingly.

For the purposes of subsection six of section twenty-seven of this Act, an application so referred shall be deemed to have been received in the office of the Controller on the date on which the application was received in the office of the clerk of the Board.

25B. Notwithstanding anything contained in section forty-one of this Act any decision of a Fair Rents Board under this Division that any prescribed premises are or are not shared accommodation shall be final and without appeal, and no writ of prohibition or certiorari shall lie in respect thereof. Certain
decisions
final.

(1)

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Sec. 26B.
(Determination of
rent of
shared
accommodation.)

- (1) (i) by omitting from subsection one of section 26B the words "date of the application" and by inserting in lieu thereof the words "date of the receipt of the application in the office of the clerk of the Board";
- (ii) by omitting from the same subsection the words "the owner of any such shared accommodation which is vacant" and by inserting in lieu thereof the words "the person having power to lease any such shared accommodation which is not leased in exercise of that power";
- (iii) by inserting in subsection three of the same section after the word "may" the words ", if it thinks fit,";
- (iv) by inserting at the end of subsection four of the same section the words ", whether or not the shared accommodation is leased at the time of inspection.";
- (v) by inserting at the end of subsection five of the same section the words ", or, in the case of shared accommodation which is not leased and is not vacant, to such persons as the Board considers proper";
- (vi) by inserting in subsection six of the same section after the words "shared accommodation" where firstly occurring the words "and any representations made by any other person to whom notice was given under subsection five of this section,";
- (vii) by omitting from subsection seven of the same section the words "received by the Board" and by inserting in lieu thereof the words "received in the office of the clerk of the Board";
- (viii) by omitting from subsection nine of the same section the words "to the lessor and the lessee concerned" and by inserting in lieu thereof the words "to the persons to whom notice of the time, date and place fixed

fixed for the making of the determination No. 46, 1954,
was given under subsection five of this
section'';

(ix) by omitting subsection ten of the same section and by inserting in lieu thereof the following subsection:—

(10) Where any fair rent has been determined in pursuance of this section it shall, as from the date on which the determination comes into force—

(a) where that rent is so determined in respect of shared accommodation without goods—

(i) be the fair rent of the shared accommodation without goods until it is varied in pursuance of this Part; and

(ii) unless a fair rent is also fixed or determined by or under this Part in respect of the shared accommodation together with goods, be the fair rent of the shared accommodation together with goods until a determination has been made in respect of the shared accommodation together with goods;

(b) where that rent is so determined in respect of shared accommodation together with goods—

(i) be the fair rent of the shared accommodation together with goods until it is varied in pursuance of this Part; and

(ii) unless a fair rent is also fixed or determined by or under this Part in respect of the shared accommodation without goods,
be

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be the fair rent of the shared accommodation without goods until a determination has been made in respect of the shared accommodation without goods.

Sec. 27.
(Determination of rent of shared accommodation.)

- (m) (i) by omitting from subsection one of section twenty-seven the words "date of the application" and by inserting in lieu thereof the words "date of the receipt of the application in the office of the Controller";
- (ii) by omitting from the same subsection the words "the owner of any such shared accommodation which is vacant" and by inserting in lieu thereof the words "the person having power to lease any such shared accommodation which is not leased in exercise of that power";
- (iii) by inserting at the end of subsection three of the same section the words ", whether or not the shared accommodation is leased at the time of inspection";
- (iv) by inserting at the end of subsection four of the same section the words ", or, in the case of shared accommodation which is not leased and is not vacant, to such persons as the Controller considers proper";
- (v) by inserting in subsection five of the same section after the words "the shared accommodation" where firstly occurring the words "and any representations made by any other person to whom notice was given under subsection four of this section,";
- (vi) by omitting from subsection six of the same section the words "received by the Controller" and by inserting in lieu thereof the words "received in the office of the Controller";

(vii)

(vii) by omitting from subsection eight of the same section the words “to the lessor and the lessee concerned” and by inserting in lieu thereof the words “to the persons to whom notice of intention to make the determination was given under subsection four of this section”;

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

(9) Where any fair rent has been determined in pursuance of this section it shall, as from the date on which the determination comes into force—

(a) where that rent is so determined in respect of shared accommodation without goods—

(i) be the fair rent of the shared accommodation without goods until it is varied in pursuance of this Part; and

(ii) unless a fair rent is also fixed or determined by or under this Part in respect of the shared accommodation together with goods, be the fair rent of the shared accommodation together with goods until a determination has been made in respect of the shared accommodation together with goods;

(b) where that rent is so determined in respect of shared accommodation together with goods—

(i) be the fair rent of the shared accommodation together with goods until it is varied in pursuance of this Part; and

(ii)

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- (ii) unless a fair rent is also fixed or determined by or under this Part in respect of the shared accommodation without goods, be the fair rent of the shared accommodation without goods until a determination has been made in respect of the shared accommodation without goods.

New sec.
29A.

- (n) by inserting next after section twenty-nine the following new section:—

Reference
of applica-
tion to
Fair Rents
Board.

29A. Where an application has been made under this Division for the determination of the fair rent of any prescribed premises and the Controller is of opinion that the premises are not shared accommodation, the Controller may refer the application to the Fair Rents Board constituted at Sydney for determination.

Any such reference to the Fair Rents Board so constituted shall be deemed to be an application made to that Board under Division 3 of this Part by the person who made the application to the Controller and may be dealt with accordingly.

For the purposes of subsection one of section twenty-two of this Act, an application so referred shall be deemed to have been received in the office of the clerk of the Board on the date on which the application was received in the office of the Controller.

Sec. 30.
(Appeal
from
determina-
tion.)

- (o) (i) by omitting from subsection one of section thirty the words "The lessor or lessee of any shared accommodation, in respect of which a determination has been made under this Division" and by inserting in lieu thereof the words "Where a determination has been made under this Division any person to whom notice of the Controller's intention to make that determination was given under subsection four of section twenty-seven of this Act";

(ii)

(ii) by inserting in subsection two of the same section after the word "appeal" where firstly occurring the words "against the determination"; No. 46, 1954.

(iii) by omitting from the same subsection the words "to the lessor and lessee of the premises" and by inserting in lieu thereof the words "to the persons to whom notice of the Controller's intention to make that determination was given under subsection four of section twenty-seven of this Act";

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

(4) Notwithstanding anything contained in subsection one of this section or in section forty-one of this Act any decision of the Controller under this Division that any prescribed premises are or are not shared accommodation shall be final and without appeal, and no writ of prohibition or certiorari shall lie in respect thereof.

(p) (i) by inserting next after subsection one of section thirty-one the following new subsection:— Sec. 31.
(Procedure on appeal.)

(1A) Subject to subsection four of section thirty of this Act where on the hearing of the appeal the Board is of opinion that the Controller had no power or authority to make the determination purporting to have been made it may so find and the determination shall thereupon be quashed and shall be deemed never to have had any force or effect.

(ii) by omitting from subsection three of the same section the words "by the Controller" and by inserting in lieu thereof the words "in the office of the Controller";

(iii)

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

(4) Where any fair rent has been determined in pursuance of this section it shall, as from the date fixed under subsection three of this section—

(a) where that rent is so determined in respect of prescribed premises without goods—

(i) be the fair rent of the prescribed premises without goods until it is varied in pursuance of this Part; and

(ii) unless a fair rent is also fixed or determined by or under this Part in respect of the premises together with goods, be the fair rent of the prescribed premises together with goods until a determination has been made in respect of those premises together with goods;

(b) where that rent is so determined in respect of prescribed premises together with goods—

(i) be the fair rent of the prescribed premises together with goods until it is varied in pursuance of this Part; and

(ii) unless a fair rent is also fixed or determined by or under this Part in respect of the premises without goods, be the fair rent of the prescribed premises without goods until a determination has been made in respect of those premises without goods.

(q)

- (q) by inserting in Division 5 of Part II next before section 31N the following new sections:—

New secs.
31MA, 31MB.

31MA. Where an application has been made to a Fair Rents Board or the Controller for a determination, the Fair Rents Board or the Controller, as the case may be, may, at any stage of the proceedings on the application and notwithstanding anything contained in section twenty, subsection six of section 26B or subsection five of section twenty-seven of this Act and without having regard to the matters specified in section twenty-one of this Act, make an interim determination.

Interim
determina-
tion.

Any interim determination so made shall be deemed to be a determination, and shall remain in force until the application has been finally disposed of by the Board to which the application was made or the Controller, as the case may be, and no longer.

Any determination finally disposing of the application may be made as if the interim determination had not been made.

31MB. A Fair Rents Board or the Controller shall have and shall be deemed always to have had power to allow amendment of any application made to the Board or the Controller, as the case may be, on such terms and conditions as the Board or the Controller, as the case may be, may deem reasonable.

Amendment
of appli-
cations.

Such terms and conditions may include the granting of an adjournment of the proceedings to any party prejudiced or affected by the amendment.

- (r) (i) by inserting in subsections one and three of section 31o after the word "lessor" the words "or owner";
- (ii) by inserting in subsection two of the same section after the word "lessor" the words "or owner, as the case may be,";

Sec. 31o.
(Applica-
tion by
lessor con-
templating
repairs,
etc.)

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Sec. 32.
(Variation
of deter-
mination.)

(s) (i) by omitting from paragraph (e) of subsection two of section thirty-two the word "or" where lastly occurring;

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

(g) the rent payable by the lessor in respect of the premises has increased or decreased;

(h) any party to the determination (or to an appeal to a Board from the determination where the determination was made by the Controller) was prevented by absence, illness, or other cause considered by the Board or Controller, as the case may be, to be sufficient, from attending or making representations at the proceedings in which the determination was made; or

(i) a person entitled under this Act to notice of the time, date and place fixed for the making of the determination, or to notice of the Controller's intention to determine the fair rent of shared accommodation, did not in fact receive such notice.

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

(4) Notwithstanding anything in section twenty or section twenty-one of this Act, where an application for variation of a determination is made to a Board or to the Controller and it appears to the Board or the Controller, as the case may be, that the premises being a dwelling-house are in need of repair, no increase of rent shall be allowed by the Board or Controller, as the case may be, on account of any increase in the
the

the lessor's liability for repairs, maintenance and renewals of the premises and fixtures thereon. **No. 46, 1954.**

- (t) by inserting at the end of subsection one of section thirty-three the words “, or any leasing of goods with the premises or any withdrawal from the premises of any goods formerly leased therewith.” **Sec. 33.** (Effect of determination.)

The provisions of this subsection are in addition to and not in derogation of the provisions of section twenty-three, subsection ten of section 26B, subsection nine of section twenty-seven and subsection four of section thirty-one of this Act.”

- (u) (i) by inserting in paragraphs (a) and (b) of subsection one of section thirty-six after the word “give” where firstly occurring the words “, demand, solicit”; **Sec. 36.** (Certain payments prohibited.)
- (ii) by omitting from subparagraph (i) of paragraph (b) of the same subsection the word “or” where lastly occurring;
- (iii) by omitting the proviso to the same paragraph and by inserting in lieu thereof the following new subparagraphs and proviso:—
- (iii) for registering, or undertaking to register, the name or requirements of any person seeking a lease of any premises;
- (iv) for supplying, or undertaking to supply, to any person addresses or other particulars of any premises available, or which may become available, for letting;
- (v) for providing, or undertaking to provide, any person with an advertising or other service directed to the obtaining of a lease of any premises;
- (vi)

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- (vi) for registering, or undertaking to register, the name of any person as a member of a club or association upon the representation that such club or association or any person employed by or connected with such club or association will endeavour to obtain, on behalf of the person whose name is so registered or to whom such an undertaking is made, a lease of any premises; or
- (vii) for issuing, without the authority of the owner of any premises or his agent authorised thereunto in writing, any advertisement, list or other document describing those premises as being available for letting:

Provided that nothing in this paragraph shall preclude—

- (i) the payment to or receipt by a real estate agent, licensed under the Auctioneers, Stock and Station and Real Estate Agents Act, 1941-1954, by or from the owner of any premises of any fee or commission properly or normally payable to such agent for anything done by him in the course of his business as such estate agent;
- (ii) the payment to, or receipt by, a solicitor of any remuneration in respect of professional work done by him as such; or
- (iii) the payment to, or receipt by, the proprietor of any newspaper of any sum in consideration of the publication in such newspaper of any advertisement or notice received for the purpose in the ordinary course of business; or;
- (iv)

- (iv) by inserting at the end of the same sub-section the words— No. 46, 1954.

“In this subsection—

‘Newspaper’ means—

- (i) any newspaper; or
- (ii) any periodical or magazine,

published in good faith for the purpose of supplying mainly news and information other than news or information describing premises as being available for letting.

‘Owner’, in relation to premises, means the person having power to grant a lease of those premises.”

- (v) by inserting in paragraph (a) of subsection six of the same section after the words “of any” the words “premises or”;

- (v) by inserting in subsection one of section forty-three after the word “solemnities,” the words “and shall not be bound by any rules of evidence, but may inform itself or himself in such manner as it or he thinks fit,”; Sec. 43.
(Fair Rents Board or Controller not bound to conduct oral hearing.)
- (w) by inserting next after subsection one of section fifty-seven the following new subsection:— Sec. 57.
(Lessor to ascertain fair rent.)

(1A) Without prejudice to the generality of subsection one of this section, any person who proposes to lease any prescribed premises (or any prescribed premises together with goods) or to purchase any prescribed premises (or any prescribed premises together with goods) which are leased shall, before leasing or purchasing the premises (or the premises together with goods), as the case may be, make proper enquiry at the office of the clerk of the Fair Rents Board nearest to the premises or, in the case of shared accommodation

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accommodation situated within, or partly within and partly outside, the Metropolitan Area, at the office of the Rent Controller, as to whether the fair rent of the premises proposed to be leased or purchased is fixed by a determination and, if the fair rent has been so fixed, as to the amount of the fair rent:

Provided that any person who proposes to purchase any prescribed premises solely for his own occupation shall not be required to make such inquiry at the office of the Clerk of the Fair Rents Board in respect of the premises proposed to be purchased.

Further
amendment
of Act No.
25, 1948.

3. (1) The Landlord and Tenant (Amendment) Act, 1948, as amended by subsequent Acts, is further amended—

Sec. 62.
(Restriction
on eviction.)

- (a) (i) by inserting in paragraph (j) of subsection five of section sixty-two after the word "hospital" wherever occurring the words "or nursing service";
- (ii) by omitting from paragraph (q) of the same subsection the word "or" where lastly occurring;
- (iii) by inserting at the end of the same subsection the following word and new paragraph:—

or

- (s) that the lessor is a person, body or authority carrying on a school or educational establishment, or a trustee for such a person, body or authority, and the use of the premises is reasonably required for the purposes of the school or educational establishment (including the accommodation of the staff or students of the school or educational establishment);

(b)

(b) (i) by inserting at the end of paragraph (a) of subsection one of section 62A the words **“and also, if any such notice to quit has been given in relation to the transfer or assignment before the making of the order, that the notice to quit so given shall be void and of no effect”**; No. 46, 1954.
Sec. 62A.
(Judge may bar lessor's right to take proceedings.)

(ii) by inserting at the end of paragraph (b) of the same subsection the words **“and also, if any such notice to quit has been given in relation to the sub-lease before the making of the order, that the notice to quit so given shall be void and of no effect”**;

(iii) by inserting next after the same subsection the following new subsections:—

(1A) In any proceedings by a lessee before a judge of the District Court pursuant to paragraph (c) of subsection one of this section, the judge may, in addition to granting the order referred to in that paragraph, order that any notice to quit given before the making of the order to the lessee in relation to the premises concerned in the proceedings shall be void and of no effect, if the judge is not satisfied that the ground specified in the notice is true in fact.

(1B) Where an order has been granted under paragraph (c) of subsection one of this section the lessor of the premises the subject of the order shall not give to the lessee any notice to quit within one month after the making of the order.

Nothing in this subsection affects the operation of paragraph (a) of subsection three of this section.

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

(b) An order under this section that any notice to quit shall be void and of no effect shall have effect according to its tenor.

(c)

No. 48, 1954.

Sec. 64.

(Notice to quit not to be given within six months after determination.)

Sec. 65.

(Notice to quit where dwelling-house sold.)

New sec. 69A.

Tenancy Courts.

(c) by omitting from section sixty-four the word, symbols and letter "or (l)" and by inserting in lieu thereof the word, symbols and letters ", (l) or (s)";

(d) by omitting from subsection one of section sixty-five the words "one thousand nine hundred and fifty-five" and by inserting in lieu thereof the words "one thousand nine hundred and fifty-eight";

(e) by inserting next after section sixty-nine the following new section:—

69A. (1) The Governor may by proclamation published in the Gazette:—

(a) establish one or more Tenancy Courts to sit at such place or places as are specified in or provided for by the proclamation; and

(b) direct that any such court shall, subject to this section, exercise the jurisdiction exercisable by such courts of petty sessions as are mentioned in the proclamation (hereinafter in this section referred to as "specified courts of petty sessions").

(2) The Governor may by proclamation published in the Gazette revoke or vary any proclamation made under this section.

(3) A Tenancy Court—

(a) shall be a court of petty sessions, and without prejudice to the generality of the foregoing provisions of this paragraph shall be a court of petty sessions within the meaning of section sixty-nine of this Act;

(b) shall be holden before a Stipendiary Magistrate sitting alone:

(c)

(c) shall have the same jurisdiction— No. 46, 1954.

(i) to hear and determine any application made to it for the recovery of possession of or the ejection of any person from prescribed premises situated within any district for which any specified court of petty sessions mentioned in the proclamation by which the Tenancy Court was established is held;

(ii) to make all orders and to do all acts and things relating to or in connection with such recovery of possession or ejection,

as the specified court of petty sessions mentioned in that proclamation within whose district those premises are situated would have had if this section had not been enacted and such application had been made to that specified court; and

(d) shall not, except to the extent provided in paragraph (c) of this subsection, exercise the jurisdiction of a court of petty sessions.

(4) Nothing contained in this section or in any proclamation made thereunder shall prevent the exercise by a specified court of petty sessions mentioned in any such proclamation of any jurisdiction of a like character to that referred to in subparagraphs (i) and (ii) of paragraph (c) of subsection three of this section if the leave of the specified court of petty sessions to that exercise is first obtained, which leave the specified court of petty sessions is hereby authorised to give.

(5)

No. 46, 1954.

(5) For the avoidance of doubt it is hereby declared that an order for the recovery of possession of any prescribed premises (or of any prescribed premises together with goods leased therewith) made by a Tenancy Court under this Act may be enforced in the same manner as a like order, if made by a court of petty sessions otherwise than under this Act, might be enforced.

Sec. 70.
(Court to
consider
hardship.)

(f) (i) by omitting from paragraph (c) of subsection one of section seventy the symbols, word and letters "and (m)" and by inserting in lieu thereof the symbols, word and letters ", (m) and (s)";

(ii) by omitting paragraph (a) of the first proviso to subsection two of the same section and by inserting in lieu thereof the following paragraph:—

(a) the lessor (not being himself a lessee of the dwelling-house under a concurrent lease) is a protected person within the meaning of Part V of this Act and the lessee is not a protected person within the meaning of that Part or is not a person in receipt of age pension under the Social Services Consolidation Act 1947 (as amended by subsequent Acts) of the Parliament of the Commonwealth; or;

(iii) by omitting from subparagraph (ii) of paragraph (d) of the same proviso the words "third day of September, one thousand nine hundred and thirty-nine" and by inserting in lieu thereof the words "twenty-first day of July, one thousand nine hundred and forty-eight";

(iv)

(iv) by omitting subparagraphs (iii), (iv) No. 48, 1951 and (v) of the same paragraph and by inserting in lieu thereof the following subparagraphs:—

(iii) the lessor does not own and has not, since the twenty-first day of July one thousand nine hundred and forty-eight, owned any other dwelling-house; and

(iv) the lessor has resided in the Commonwealth for not less than ten years; or;

(v) by omitting from paragraph (e) of the same proviso the word “dwelling-house:” where lastly occurring and by inserting in lieu thereof the words “dwelling-house; or”;

(vi) by inserting next after the same paragraph the following new paragraphs:—

(f) (i) evidence is adduced to the court by or on behalf of the lessor that the means of the lessee (including the means of any spouse, parent and child of the lessee ordinarily resident with such lessee) are such that the lessee is reasonably able to provide reasonably suitable alternative accommodation for the occupation of himself and the members of his family ordinarily occupying the prescribed premises:

(ii) the lessee fails to satisfy the court on evidence as to his means (including the means of any spouse, parent and child of the lessee ordinarily resident with such lessee) that he is not reasonably able to provide reasonably suitable

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suitable alternative accommodation for the occupation of himself and the members of his family ordinarily occupying the prescribed premises; and

- (iii) the court is satisfied on the evidence before it as to the means of the lessee and of the lessor (including the means of any spouse, parent and child of the lessee or lessor, as the case may be, ordinarily resident with such lessee or lessor, as the case may be) that the lessee is financially better able to provide reasonably suitable alternative accommodation for the occupation of himself and the members of his family ordinarily occupying the prescribed premises than is the lessor; or
- (g) the proceedings are for the recovery of shared accommodation on the ground specified in paragraph (g) of subsection five of section sixty-two of this Act and the court is satisfied that—
 - (i) at the date on which the notice to quit was given and during the period of twelve months immediately preceding that date the lessor resided in the dwelling-house of which the shared accommodation forms part; and
 - (ii) at the date on which the notice to quit was given and during the twelve months immediately preceding that date only one lease of shared accommodation in that dwelling-house was in force at any one time: ;
 - (vii)

(vii) by omitting from the second proviso to the same subsection the words "Social Services Consolidation Act 1947-1948" and by inserting in lieu thereof the words "Social Services Consolidation Act 1947 (as amended by subsequent Acts)";

(viii) by omitting from the same subsection the words "one thousand nine hundred and fifty-five" and by inserting in lieu thereof the words "one thousand nine hundred and fifty-eight";

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

(5) Where an order for the recovery of possession of any prescribed premises is made in any case where the order could not have been made if paragraph (d) or paragraph (f) of the first proviso to subsection two of this section had not been enacted, the date for recovery of possession to be specified in such order shall not be earlier than six months after the date on which the order is made.

(g) by inserting at the end of section seventy-six the following new subsections:—

(2) The costs of any proceedings under this section shall be in the discretion of the court.

(3) The court, when allowing any costs to any party in proceedings under this section, may assess the amount thereof, and the provisions of subsection three of section sixty-one of this Act shall apply, mutatis mutandis, to and in respect of any order allowing costs under this section.

Sec. 76.
(Court may order compensation for misrepresentation.)

(h) (i) by omitting from paragraph (a) of subsection one of section seventy-seven the word, symbols and letter "or (k)" and by inserting in lieu thereof the word, symbols and letters ", (k) or (s)";

Sec. 77.
(Premises not to be sold or relet in certain cases.)

(ii)

Landlord and Tenant (Amendment) Act.

No. 46, 1954.

(ii) by inserting next after paragraph (c) of the same subsection the following new paragraph:—

(c1) Where a notice to quit has been given and the premises in respect of which the notice was given have been vacated within a period of six months after the giving of the notice, the premises shall, unless the contrary is proved or an order for the recovery of possession of the premises has been made within that period, be deemed for the purposes of this section to have been vacated in accordance with the notice.

Sec. 84.
(Costs not
to be
allowed.)

(i) by inserting in section eighty-four after the word “proceedings” where secondly occurring the words “under section seventy-six of this Act or”;

New secs.
85A, 85B.

(j) by inserting next after section eighty-five the following new sections:—

Application
of certain
sections in
Part II.

85A. The provisions of sections forty-four to forty-nine, both inclusive, and section fifty-one of this Act shall apply to and in respect of any matter coming before a Fair Rents Board or the Controller under this Part.

Application
by solicitor
or agent.

85B. Any application to the Controller under section eighty-six, eighty-seven or 87B of this Act may be made by the lessor, proposed lessor, owner or lessee, as the case may be, or by his solicitor, or by his agent thereunto authorised in writing.

Sec. 86.
(Exclu-
sion of
premises.)

(k) (i) by omitting from subsection one of section eighty-six the words “of less than three years”;

(ii) by omitting from subsection three of the same section the words “not exceeding three years”;

(iii)

- (iii) by inserting at the end of the same sub-No. 46, 1954
section the words—

“The period specified in the certificate shall not exceed five years unless the lessor and lessee or proposed lessor and proposed lessee under the lease or proposed lease are employer and employee”;

- (iv) by inserting in paragraph (b) of subsection four of the same section after the words “this Part” the words “and Part V of this Act”;

- (v) by omitting from the same subsection the words “three years” and by inserting in lieu thereof the words “five years, unless the lessor and lessee are employer and employee”;

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

(5) Where any certificate—

(a) is issued under this section for a period in excess of five years; or

(b) is extended so that the aggregate of—

(i) the period of the original exemption; and

(ii) the period of any extension granted or, where more than one extension is granted, the total of the periods of extension so granted,

is in excess of five years,
the certificate shall become void and of no effect if the premises the subject thereof are leased to any person other than an employee of the lessor.

(6)

No. 46, 1954.

(6) Where the fair rent of any prescribed premises is fixed or determined by or under Part II of this Act in respect of those premises without goods but no rent is fixed by subsection one or two of section fifteen of this Act in respect of those premises together with goods and no determination has been made either before or after the commencement of the Landlord and Tenant (Amendment) Act, 1954, in respect of those premises together with goods, the Controller may in any certificate issued under this section excluding those premises from the operation of this Part and Part V of this Act specify the rent to be paid for those premises together with goods.

The rent so specified shall—

- (a) be deemed to have been determined by a determination made under and in accordance with Part II of this Act; and
- (b) as on and from a date to be specified in the certificate (which date shall be not earlier than the date upon which the application for the exclusion of the premises from this Part and Part V of this Act was received in the office of the Controller) and notwithstanding anything contained in Part II of this Act, be the fair rent of those premises together with goods until it is varied under and in accordance with that Part.

Application to vary the rent so specified may, notwithstanding the provisions of subsection two of section

section thirty-two of this Act, be made at any time after the issue of the certificate: No. 46, 1954.

Provided that where no determination of the fair rent of those premises is made during the currency of the certificate either increasing, decreasing or confirming the rent so specified, the fair rent of those premises shall, after the certificate ceases to have force or effect, be the same as if this subsection had not been enacted.

- (1) (i) by omitting paragraph (b) of subsection one of section eighty-seven; Sec. 87.
(Exclusion of certain subdivided premises, etc., from operation of Part III and Part V.)
- (ii) by omitting from paragraph (a) of subsection three of the same section the words "two years" and by inserting in lieu thereof the words "five years";
- (iii) by inserting next after the same subsection the following new subsection:—

(3A) 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 and Part V of this Act 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 five years.

- (iv) by omitting from subsection four of the same section the words "issue of the certificate" and by inserting in lieu thereof the words "date of receipt in the office of the Controller of the application for the certificate"; (m)

Landlord and Tenant (Amendment) Act.

No. 46, 1954.

New sec.
87B.Exclusion
of certain
premises
from opera-
tion of
Part III and
Part V.

(m) by inserting next after section 87A the following new section:—

87B. (1) While a certificate under this section is in force in relation to part of any prescribed premises, the provisions of this Part and Part V of this Act shall not, as between the person upon whose application the certificate was granted and any sub-lessee of that part under a sub-lease granted by that person after the date of receipt in the office of the Controller of the application for the certificate, apply to or in relation to that part.

(2) Where the lessee of any prescribed premises being a dwelling-house is desirous of sub-letting part of those premises to one sub-lessee only and he has not sub-let any other part of those premises he may, with the consent in writing of the lessor of those premises, apply to the Controller for a certificate that the part of the premises to be so sub-let is premises to which this Part and Part V of this Act do not apply.

(3) The Controller may—

- (a) grant the application and issue the certificate, either unconditionally or subject to such conditions as he thinks fit and for such period not exceeding five years as he thinks fit; or
- (b) refuse the application.

(4) The Controller may grant one or more extensions of any certificate issued under subsection three of this section excluding the premises so sub-let or to be so sub-let from the operation of the provisions of this Part and Part V of this Act for a further period or periods but the aggregate of—

- (a) the period of the original exemption;
and
- (b)

- (b) the period of any extension so granted No. 46, 1954.
or, where more than one extension is
granted, the total of the periods of
extension so granted,

shall not exceed five years.

(5) A certificate issued under this section in respect of part of any prescribed premises shall become void and of no effect if more than one sub-lease granted by the person to whom the certificate was issued is in force in respect of those premises at any one time.

(6) Notice to quit on the ground specified in paragraph (q) of subsection five of section sixty-two of this Act shall not be given to the person to whom a certificate is issued under this section in respect of rents received by him from the sub-lessee of that part of any prescribed premises which is the subject of that certificate.

(7) Where a certificate has been issued under this section excluding part of prescribed premises from the operation of this Part and Part V of this Act, any person who after the date of receipt in the office of the Controller of the application for the certificate became a sub-lessee of that part from the person (hereinafter in this subsection referred to as the "lessee") upon whose application the certificate was issued shall not have, as against the lessor of the lessee, any right under this Act or otherwise to possession or to remain in possession of that part after the lease of the prescribed premises to the lessee has been terminated whether by surrender or otherwise and, in such circumstances, proceedings to recover possession of that part from the sub-lessee or for the ejection of the sub-lessee therefrom may be taken by the lessor as if this Part and Part V of this Act had not been enacted.

(2)

No. 46, 1954. (2) The amendment made by subparagraph (ii) of paragraph (f) of subsection one of this section shall be deemed to have commenced on the fifteenth day of December, one thousand nine hundred and fifty-two.

Further amendment of Act No. 25, 1948. **4.** The Landlord and Tenant (Amendment) Act, 1948, as amended by subsequent Acts, is further amended—

Sec. 100. (Limitation on power of court to make order for recovery of possession.) (a) by omitting from section one hundred the word, symbols and letter “or (q)” and by inserting in lieu thereof the word, symbols and letters “, (q) or (r)”;

Sec. 101. (Protection of protected person claiming under lessee where tenancy determined.) (b) (i) by omitting from subsection one of section one hundred and one all words and symbols following the words “prescribed premises or any part thereof” and by inserting in lieu thereof the words “was a protected person, or had ceased to be a protected person for a period not exceeding two years, at the date on which an order for recovery of possession of those premises was made, that order shall not be enforced against that person unless the court which made the order—

(a) is satisfied that, had that person been in fact the lessee of those premises from the person in whose favour the order was made, the person in whose favour the order was made could establish any one or more of the grounds set out in subsection five of section sixty-two of this Act (other than the ground set out in subparagraph (ii) of paragraph (b) or in paragraph (n) of that subsection); and

(b) gives leave to enforce the order against that person.”;

(ii)

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

(2) Except in the case where under subsection one of this section the court is satisfied that the person in whose favour an order was made could establish any one or more of the grounds set out in paragraph (a) or subparagraph (i) of paragraph (b) or paragraph (c), (d), (e), (f), (k), (m), (n), (o), (p), (q) or (r) of subsection five of section sixty-two of this Act, a court shall not give leave to enforce an order against a person who was a protected person, or had ceased to be a protected person for a period not exceeding two years, at the date on which the order was made, unless the court, in addition to being satisfied upon any other matter upon which the court is required to be satisfied, is satisfied that reasonably suitable alternative accommodation is available for the occupation of that person in lieu of the premises in respect of which the giving of leave to enforce an order is sought.

- (c) (i) by omitting from paragraph (b) of section one hundred and two the words “Social Services Consolidation Act 1947-1951” and by inserting in lieu thereof the words “Social Services Consolidation Act 1947 (as amended by subsequent Acts)”;

Sec. 102.
(Sections 100 and 101 not to apply where lessor is a protected person or age pensioner.)

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

(2) The provisions of section one hundred of this Act shall not apply in the case of proceedings for the recovery of possession of prescribed premises where the court in which the proceedings are taken is satisfied
that

No. 46, 1954.

that the refusal to make an order would prejudice any claim or proposed claim by the lessor for age pension under the Social Services Consolidation Act 1947 (as amended by subsequent Acts) of the Parliament of the Commonwealth.

(3) Where pursuant to section one hundred and one of this Act the leave of the court which made an order for the recovery of possession of prescribed premises is sought to enforce that order, the court, notwithstanding that it may not be satisfied upon any of the matters upon which it is required to be satisfied by that section, shall not refuse to give that leave if it is satisfied that refusal to give that leave would prejudice any claim or proposed claim by the lessor for age pension under the Social Services Consolidation Act 1947 (as amended by subsequent Acts) of the Parliament of the Commonwealth.

Further amendment of Act No. 25, 1948.
New sec. 5A.

5. The Landlord and Tenant (Amendment) Act, 1948, as amended by subsequent Acts, is further amended by inserting next after section five the following new section:—

Certain premises excluded from operation of Act.

5A. (1) The provisions of Parts II, III, IV and V of this Act do not apply in respect of:—

(a) any dwelling-house the erection of which commenced after the commencement of the Landlord and Tenant (Amendment) Act, 1954;

(b) any dwelling-house that—

(i) was in existence at the commencement of the Landlord and Tenant (Amendment) Act, 1954;

(ii)

- (ii) has not been, either in whole or in part, the subject of a lease at any time between the seventh day of December, one thousand nine hundred and forty-one, and that commencement; No. 46, 1954.
- (iii) does not form part of any premises that were the subject of a lease at any time between the seventh day of December, one thousand nine hundred and forty-one, and that commencement;
- (iv) is not "special premises" for the purposes of this Act; and
- (v) is the subject of a lease (not being a lease of shared accommodation)—
 - (a) that is registered in the office of the Rent Controller;
 - (b) the execution of which by the lessee is witnessed by a solicitor instructed and employed independently of the lessor; and
 - (c) that is certified by that solicitor as provided in subsection two of this section; or
- (c) any dwelling-house that, being in course of erection at the commencement of the Landlord and Tenant (Amendment) Act, 1954, is the subject of a lease (not being a lease of shared accommodation)—
 - (i) that is registered in the office of the Rent Controller;
 - (ii)

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(ii) the execution of which by the lessee is witnessed by a solicitor instructed and employed independently of the lessor; and

(iii) which is certified by that solicitor as provided in subsection two of this section.

(2) A solicitor certifying to a lease for the purposes of subsection one of this section—

(a) shall explain the lease to the lessee, special reference being made to the circumstances in which the lease may be terminated by the lessor, the notice required for that purpose, and whether or not the rent payable may be varied at will by the lessor;

(b) shall examine the lessee touching his knowledge of the lease;

(c) if he thinks fit may so examine the lessee separately and apart from any other person; and

(d) if he is satisfied that the lessee understands the true purport and effect thereof and freely and voluntarily executes the same, shall certify in writing upon the lease that the lease has been so explained, and that he has examined the lessee and is satisfied as hereinbefore required, and that the lessee has executed the lease in his presence.

(3) Notwithstanding anything in subsection one of this section, the provisions of sections thirty-six (except paragraph (a), subparagraph (i) of paragraph (b), and paragraph (c) of subsection one thereof), 36A, ninety-five and ninety-eight of this Act apply in respect of the classes of dwelling-houses referred to in subsection one of this section.

6. (1) The Landlord and Tenant Act of 1899, as No. 46, 1954. amended by subsequent Acts, is amended—

Amendment
of Act No.
18, 1899.

- (a) by omitting from paragraph (c) of subsection two of section twenty-three the word “seven” and by inserting in lieu thereof the word “ten”;
- (b) by inserting at the end of the same paragraph the following new proviso:—

Sec. 23.
(Possession
of tenements
may be
recovered
before
justices.)

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

(2) The amendment made by paragraph (a) of subsection one of this section does not apply to or in respect of any such warrant as is referred to in paragraph (c) of subsection two of section twenty-three of the Landlord and Tenant Act of 1899, as amended by subsequent Acts, issued in respect of any such adjudgment as is referred to in paragraph (a) of the said subsection two if that adjudgment was given before the commencement of this section.

(3) This section shall commence upon the first day of January, one thousand nine hundred and fifty-five.