

LANDLORD AND TENANT (AMENDMENT) ACT.

Act No. 42, 1966.

Elizabeth II, No. 42, 1966, An Act to make further provisions with respect to the fair rent of prescribed premises; for this and other purposes to amend the Landlord and Tenant (Amendment) Act, 1948, and certain other Acts; and for purposes connected therewith. [Assented to, 12th October, 1966.]

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
and
citation.

1. (1) This Act may be cited as the "Landlord and Tenant (Amendment) Act, 1966".

(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, 1948-1966.

Amendment
of Act No.
25, 1948.
(Part I.—
Preliminary.)
Sec. 5A.
(Certain
premises
excluded
from opera-
tion of Act.)

2. The Landlord and Tenant (Amendment) Act, 1948, as amended by subsequent Acts, is amended by inserting next after subsection six of section 5A the following new subsection :—

- (7) A concurrent lease—
- (a) granted after the commencement of the Landlord and Tenant (Amendment) Act, 1966, in respect of prescribed premises to which Part II, III, IV or V of this Act applies, shall be deemed not to be a lease; or
 - (b) granted before that commencement, in respect of prescribed premises to which any such Part applied at the time the concurrent lease was granted, shall, on and from that commencement, be deemed not to be a lease,

for

for the purposes of subparagraph (v) of paragraph (b), No. 42, 1966 paragraph (c), subparagraph (v) of paragraph (d), subparagraph (iv) of paragraph (e), subparagraph (iii) of paragraph (f) or subparagraph (iii) of paragraph (g) of subsection one, or subparagraph (iii) of paragraph (a) of subsection (1A), of this section.

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

Amendment
of Act No.
25, 1948.
(Part II.—
Fair Rents.)

- (a) (i) by omitting from subsection one of section twenty the word “may” where firstly occurring and by inserting in lieu thereof the word “shall”;
- (ii) by inserting in the same subsection after the word “premises” where lastly occurring the words “at an amount equal to the rent of the prescribed premises at the prescribed date adjusted by such amount as the Board deems proper having regard only to the matters specified in section twenty-one of this Act or, where the prescribed premises were not leased at the prescribed date, at an amount equal to the rental value of the prescribed premises at the prescribed date adjusted in like manner”;
- (iii) by omitting subsection two of the same section;
- (iv) by omitting from subsection three of the same section the words “as at the prescribed date is insufficient” and by inserting in lieu thereof the words “of the prescribed premises, being premises that were leased on the prescribed date, was, as at that date, insufficient”;
- (v) by omitting subsection four of the same section and by inserting in lieu thereof the following subsection:—

(4) In this section, “the prescribed date”, in relation to any prescribed premises, means the thirty-first day of August, one thousand nine

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nine hundred and thirty-nine or, where the prescribed premises were not in existence on that date, the date on which the erection of the premises was completed.

Sec. 21.
(Matters
to be
considered.)

- (b) (i) by omitting from subsection one of section twenty-one of this Act the words "Subject to section twenty of this Act, in" and by inserting in lieu thereof the word "In";
- (ii) by inserting in paragraph (e) of the same subsection after the word "rents" the words ", fixed by a determination in force under this Part,";
- (iii) by inserting at the end of paragraph (g) of the same subsection the words "or the value of any goods leased with the premises";
- (iv) by omitting paragraph (i) of the same subsection and by inserting in lieu thereof the following paragraph :—
- (i) the conduct of the parties; and
- (v) by omitting paragraph (j) of the same subsection and by inserting in lieu thereof the following paragraph :—
- (j) the amount, if any, that the Fair Rents Board is satisfied was necessarily expended by the lessor since the prescribed date referred to in subsection four of section twenty of this Act upon the improvement or structural alteration of the premises (but not including decoration, repairs or maintenance).
- (vi) by omitting from subsection (1A) of the same section the words "Subject to section twenty of this Act a" and by inserting in lieu thereof the word "A";
- (vii) by inserting next after the same subsection the following new subsection :—
- (1AB) In determining the fair rent of any prescribed premises a Fair Rents Board may include in the fair rent an allowance in respect of

of agent's collecting commission or, where an agent does not collect the rent of the prescribed premises, such amount in respect of the collection of the rent as the Board deems proper.

(viii) by inserting next after subsection (1B) of the same section the following new subsections :—

(1C) Where a Fair Rents Board would, but for this subsection, increase the fair rent of any prescribed premises and the Board is of opinion that the lessee would not reasonably be able to pay the fair rent as so increased, the Board shall, in determining the amount of the increase, if any, have regard to the financial circumstances of the lessor and the lessee.

(1D) In determining or varying the fair rent of any prescribed premises, a Fair Rents Board shall not make any allowance—

(a) based on paragraph (f) of subsection one of this section in excess of such percentage of the capital value of the prescribed premises at the prescribed date referred to in subsection four of section twenty of this Act as is equal to the difference between the rate per centum of interest charged upon overdrafts by the Commonwealth Bank of Australia, or the Commonwealth Trading Bank of Australia, as the case may be, at that prescribed date and the rate per centum of interest charged upon overdrafts by the Commonwealth Trading Bank of Australia at the date of the determination or variation ; or

(b) based on paragraph (j) of subsection one of this section in excess of eight per centum of the amount referred to in that paragraph.

(1E)

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(1E) In determining or varying the fair rent of any prescribed premises, a Fair Rents Board shall not make any allowance by reason of any change, since the prescribed date referred to in subsection four of section twenty of this Act or since any previous determination or variation or since any earlier date whatsoever, in any economic conditions affecting the community generally or a substantial part of the community.

(ix) by omitting from subsection two of the same section the words "paragraph (i) of";

Sec. 24A.
(Determina-
tion based
on increased
out-
goings.)

(c) (i) by inserting at the end of subsection three of section 24A the following new paragraph :—

In making an assessment of the fair rent of any prescribed premises under this section, the Controller shall not make any allowance for any increase in the rate of interest charged upon overdrafts by the Commonwealth Trading Bank of Australia in excess of such percentage of the capital value of the prescribed premises at the prescribed date referred to in subsection four of section twenty of this Act as is equal to the difference between the rate per centum of interest charged upon overdrafts by the Commonwealth Bank of Australia, or the Commonwealth Trading Bank of Australia, as the case may be, at the date on which the existing fair rent was determined under this Part and the rate per centum of interest charged upon overdrafts by the Commonwealth Trading Bank of Australia at the date of the assessment.

(ii) by omitting paragraph (b) of subsection seven of the same section ;

Sec. 26B.
(Determina-
tion of rent
of shared
accommoda-
tion.)

(d) (i) by omitting from subsection six of section 26B the words "may determine the fair rent of the shared accommodation" and by inserting in lieu thereof the words "shall, subject to subsection eight of this section, determine the fair rent

rent of the shared accommodation at such proportion as the Board deems proper of the fair rent of the prescribed premises of which the shared accommodation forms part or, where the fair rent of those prescribed premises is not the subject of a determination made under this Part, of the amount that would, in the opinion of the Board, be the fair rent of those prescribed premises if they were the subject of such a determination”;

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- (ii) by inserting in subsection eight of the same section after the word “Act” the words “in so far as they are applicable”;
- (e) (i) by omitting from subsection five of section twenty-seven the words “may determine the fair rent of the shared accommodation” and by inserting in lieu thereof the words “shall, subject to subsection seven of this section, determine the fair rent of the shared accommodation at such proportion as the Controller deems proper of the fair rent of the prescribed premises of which the shared accommodation forms part or, where the fair rent of those prescribed premises is not the subject of a determination made under this Part, of the amount that would, in the opinion of the Controller, be the fair rent of those prescribed premises if they were the subject of such a determination”;
- (ii) by inserting in subsection seven of the same section after the word “Act” the words “in so far as they are applicable”;
- (f) by omitting subsection one of section thirty-one and by inserting in lieu thereof the following subsection : —

Sec. 27.
(Determina-
tion of rent
of shared
accommoda-
tion.)

Sec. 31.
(Procedure
on appeal.)

(1) The Board shall hear the appeal and shall, having regard to the provisions of subsection five of section twenty-seven of this Act, confirm the determination of the Controller and dismiss the appeal, or shall determine the fair rent at such amount

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

amount as, in the opinion of the Board, should have been determined by the Controller under the provisions of this Division.

- (g) (i) by omitting from paragraph (a) of subsection two of section thirty-two the words "an injustice has been occasioned by the determination" and by inserting in lieu thereof the words "the determination was incorrectly made";
- (ii) by omitting from paragraph (c) of the same subsection the words "an incorrect calculation, and by reason thereof an injustice has been occasioned by the determination" and by inserting in lieu thereof the words "a clerical error";
- (iii) by inserting at the end of the same subsection the following new paragraph :—

In varying the fair rent of any prescribed premises under this section, the Fair Rents Board shall not make any allowance based on paragraph (e) of this subsection by reason of any improvement or structural alteration (not including decoration, repairs or maintenance) of the premises in excess of eight per centum of the amount, if any, that the Fair Rents Board is satisfied was necessarily expended by the lessor since the determination was made upon any such improvement or structural alteration.

Amendment
of Act No.
25, 1948.

(Part III.—
Recovery of
Possession
of Prescribed
Premises.)

Sec. 70.
(Court to
consider
hardship.)

Sec. 70A.
(Certain
dwelling-
houses to be
subject to
this Act not-
withstanding
section 5A.)

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

- (a) by omitting from subsection five of section seventy the words "(d) or paragraph (f)" and by inserting in lieu thereof the words "(c) or paragraph (e)";
- (b) by omitting from paragraph (a) of subsection one of section 70A the words "subsection two" and by inserting in lieu thereof the words "subsections two and (2A)";
- (c)

(c) by inserting in paragraph (a) of subsection four of section eighty-one after the word "sections" the word "twenty,";

Sec. 81.

(Persons not to interfere with use or enjoyment of premises.)

(d) by omitting from subsection six of section eighty-six the words "but no rent is fixed by subsection one or two of section fifteen of this Act in respect of those premises together with goods".

Sec. 86.

(Exclusion of premises from operation of Part III and Part V.)

5. (1) Subject to subsection two of this section, this section applies to a determination or a determination, as varied, of the fair rent of any prescribed premises that was made under the Principal Act after the sixteenth day of June, one thousand nine hundred and sixty-six and before the commencement of this Act.

Variations of determinations of fair rent of prescribed premises made after 16th June, 1966.

(2) This section does not apply to the prescribed premises known as 16 Grafton Street, Naremburn, in the State of New South Wales.

(3) A lessee of any prescribed premises that are the subject of a determination, or a determination, as varied, to which this section applies may, within three months after the commencement of this Act, apply—

(a) where the prescribed premises are not shared accommodation or are shared accommodation situated wholly outside the Metropolitan Area—to a Fair Rents Board; or

(b) where the prescribed premises are shared accommodation situated within or partly within and partly outside the Metropolitan Area—to the Controller,

for that determination, or that determination, as varied, to be varied or further varied in accordance with subsection four of this section.

(4)

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(4) Where an application in respect of any prescribed premises is made to a Fair Rents Board or the Controller in accordance with the provisions of this section and the Board or the Controller, as the case may be, is satisfied—

- (a) that the premises are the subject of a determination or a determination, as varied, to which this section applies; and
- (b) that that determination, or that determination, as varied, included an allowance by reason of any change, since the prescribed date referred to in subsection four of section twenty of the Principal Act, as amended by this Act, or since any previous determination or variation of a determination or since any earlier date whatsoever, in any economic conditions affecting the community generally or a substantial part of the community,

the Board or the Controller shall vary the fair rent of the prescribed premises by reducing it by the amount that, in its or his opinion, was included by way of that allowance.

(5) A variation of the fair rent of any prescribed premises made under subsection four of this section shall have effect as on and from the date on which the determination or the determination, as varied, to which this section applies, came into force in relation to the prescribed premises and any rent of the prescribed premises paid by the lessee since that date in excess of the fair rent of those premises as varied under subsection four of this section may be recovered in an action for debt in any court of competent jurisdiction by the lessee from the lessor to whom the rent was paid or may be offset by the lessee against any rent payable by him to the lessor in respect of those premises.

Any amount offset by a lessee under this subsection shall, for the purposes of this Act, be deemed to have been paid by him to the lessor.

(6) Subject to this section, the provisions of Part II of the Principal Act, as amended by this Act, so far as applicable, apply, mutatis mutandis, to and in respect of variations made under **this section**.

(7)

Prisons (Amendment) Act.

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(7) In this section, "Principal Act" means the Land-No. 42, 1966
lord and Tenant (Amendment) Act, 1948, as amended by
subsequent Acts enacted before the commencement of this
Act.
