

LANDLORD AND TENANT (AMENDMENT) ACT.

New South Wales



ANNO SEPTIMO DECIMO

ELIZABETHÆ II REGINÆ

Act No. 58, 1968.

An Act to amend the law relating to landlord and tenant; for this purpose to amend the Landlord and Tenant Act of 1899, the Landlord and Tenant (Amendment) Act, 1948, the Common Law Procedure Act, 1899, and certain other Acts; and for purposes connected therewith. [Assented to, 13th December, 1968.]

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, 1968".

(2)

Short title,
citation and
commence-
ment.

Landlord and Tenant (Amendment).

(2) The Landlord and Tenant (Amendment) Act, No. 58, 1968 1948, as subsequently amended and as amended by this Act, may be cited as the Landlord and Tenant (Amendment) Act, 1948–1968.

(3) The Landlord and Tenant Act of 1899, as subsequently amended and as amended by this Act, may be cited as the Landlord and Tenant Act, 1899–1968.

(4) The provisions of—

- (a) subparagraph (ii) of paragraph (a), paragraph (b) and subparagraphs (ii), (iii) and (iv) of paragraph (e) of section two of this Act;
- (b) subparagraph (i) of paragraph (e), subparagraph (i) of paragraph (f) and paragraph (k) of section three of this Act;
- (c) paragraphs (c) and (d) of section five of this Act; and
- (d) sections seven, eight, nine and ten of this Act,

shall commence upon the first day of January, one thousand nine hundred and sixty-nine.

2. The Landlord and Tenant (Amendment) Act, 1948, as subsequently amended, is amended—

Amendment
of Act No.
25, 1948.

(Part I.—
Pre-
liminary.)

- (a) (i) by inserting in section three next after the matter relating to Division 2 of Part II the following new matter :—

Sec. 3.
(Division
into Parts.)

DIVISION 2A.—*Rent of Prescribed Premises
by Agreement.*

- (ii) by inserting in the same section next before the matter relating to Division 3 of the same Part the following new matter :—

DIVISION 2B.—*Rent of Certain Prescribed
Premises subject to Fixed Term Leases.*

(iii)

Landlord and Tenant (Amendment).

No. 58, 1968

(iii) by inserting in the same section next after the matter relating to Division 4A of the same Part the following new matter :—

DIVISION 4AA.—*Determination of Rents on Current Values.*

Subst. sec.
5A.

(b) by omitting section 5A and by inserting in lieu thereof the following section :—

Parts II,
III, IV and
V of this
Act not to
apply to
certain
premises.

5A. (1) The provisions of Parts II, III, IV and V of this Act do not apply in respect of the following prescribed premises, that is to say:—

- (a) a dwelling-house that was in the course of erection at, or the erection of which commenced after, the sixteenth day of December, one thousand nine hundred and fifty-four;
- (b) a residential unit that came into existence on or after the first day of January, one thousand nine hundred and sixty-nine;
- (c) a dwelling-house or a residential unit that was, at the first day of January, one thousand nine hundred and sixty-nine, the subject of a lease that is registered under the section that this section replaces as in force at the time when the registration was effected;
- (d) a dwelling-house or a residential unit—
 - (i) of which—
 - (a) vacant possession was obtained on or after the first day of January, one thousand nine hundred and sixty-nine; or
 - (b) vacant possession was obtained before that day and that has remained vacant or been occupied personally by the

Landlord and Tenant (Amendment).

the lessor or his predecessor **No. 58, 1968**
in title from the time when
vacant possession was
obtained until that day; and

- (ii) that is the subject of a lease, being a lease, except where the lessee is a company or other body corporate—
 - (a) the execution of which by the lessee was witnessed by a solicitor instructed and employed independently of the lessor or by a clerk of petty sessions;
 - (b) that bears a certificate by that solicitor or clerk of petty sessions that he explained the lease to the lessee before it was executed by him; and
 - (c) that after that day is registered in the office of the Rent Controller;

(e) a dwelling-house or a residential unit—

- (i) of which vacant possession was obtained before the first day of January, one thousand nine hundred and sixty-nine;
- (ii) that is the subject of a lease—
 - (a) that was executed by the lessee before that day;
 - (b) being a lease, except where the lessee is a company or other body corporate and the lease was executed by the company or other body corporate on or after the tenth day

Landlord and Tenant (Amendment).

No. 58, 1968

day of April, one thousand
nine hundred and fifty-
eight—

- (i) the execution of which by the lessee was witnessed by a solicitor instructed and employed independently of the lessor or by a clerk of petty sessions; and
- (ii) that bears a certificate by that solicitor or clerk of petty sessions that he explained the lease to the lessee before it was executed by him; and
- (c) that after that first day of January is registered in the office of the Rent Controller; and
- (iii) that, had this section not been substituted by the Landlord and Tenant (Amendment) Act, 1968, would, upon registration of that lease in the office of the Rent Controller immediately after its execution by the lessee, have been exempt from the provisions of Parts II, III, IV and V of this Act under the section that this section replaces as in force at the time when the lease was executed by the lessee;
- (f)

Landlord and Tenant (Amendment).

(f) a dwelling-house or a residential unit to which the provisions of Parts II, III, IV and V of this Act have at any time ceased to apply by reason of paragraph (c), (d) or (e) of this subsection. No. 58, 1968

(2) For the purposes of—

(a) paragraphs (c), (d) and (e) of subsection one of this section, “lease” does not include a concurrent lease; and

(b) paragraph (c) of subsection one of this section “lease” does not include a lease that was or is registered in the office of the Rent Controller on or after the twenty-sixth day of November, one thousand nine hundred and sixty-eight and that was executed by the lessee before the first day of January, one thousand nine hundred and sixty-nine, unless the premises the subject of the lease are premises that, had this section not been substituted by the Landlord and Tenant (Amendment) Act, 1968, would upon registration of the lease in the office of the Rent Controller have been exempt from the provisions of Parts II, III, IV and V of this Act under the section that this section replaces as in force at the time when the lease was executed by the lessee.

(3) A reference in paragraphs (c) and (e) of subsection one, and in paragraph (b) of subsection two, of this section to the section that this section replaces as in force at a particular time shall be construed as a reference to section 5A of this Act, as inserted by the Landlord and Tenant (Amendment) Act, 1954, and includes a reference to that section as amended up to that time.

(4)

No. 58, 1968

(4) An application for the registration under this section of a lease shall be made to, and in the form of a statutory declaration containing particulars required by, the Rent Controller and shall be accompanied by—

(a) the original lease and a copy thereof, which copy—

(i) shall be certified to be a true copy by the lessor, the lessor's solicitor or an agent of the lessor; and

(ii) shall be so certified in a manner approved by the Rent Controller; and

(b) a fee of two dollars or, where another fee has been prescribed in lieu thereof, by that other fee.

(5) The registration after the first day of January, one thousand nine hundred and sixty-nine, under this section of a lease shall be deemed to be effected upon the making of an entry in relation to the lease, in the manner approved by the Rent Controller, in a register to be kept by the Rent Controller for the purposes of this section and the endorsement on the original lease and certified copy thereof of a memorial of the entry.

(6) After registration under this section of a lease the original lease shall be returned to the person by whom the application for registration was made.

(7) The provisions of subsection one of this section have effect subject to the provisions of subsection one of section six, section 6A and section 81A, of this Act.

(8)

Landlord and Tenant (Amendment).

(8) Notwithstanding the provisions of 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), 36A, fifty-five, seventy-seven, ninety-three, ninety-five and ninety-eight of this Act apply in respect of the classes of prescribed premises referred to in subsection one of this section. No. 58, 1968

(9) The Rent Controller shall not register a lease under paragraph (d) or (e) of subsection one of this section if he is satisfied—

- (a) where the lease is of a dwelling-house, that the dwelling-house is a dwelling-house referred to in paragraph (a) of that subsection;
- (b) where the lease is of a residential unit, that the residential unit is a residential unit referred to in paragraph (b) of that subsection; or
- (c) that the lease is in contravention of any of the provisions of section seventy-seven of this Act.

(10) A certificate—

- (a) purporting to be signed by a solicitor or a clerk of petty sessions, being a certificate referred to in paragraph (b) of subparagraph (ii) of paragraph (d), or subparagraph (ii) of paragraph (b) of subparagraph (ii) of paragraph (e), of subsection one of this section, shall be admissible in any proceedings and shall, in all courts and upon all occasions whatsoever, be prima facie evidence of the particulars certified in and by the certificate; or

(b)

No. 58, 1968

(b) purporting to be signed by the Rent Controller and certifying—

- (i) that a lease specified or referred to in the certificate was registered in the office of the Rent Controller on a day specified in the certificate; or
- (ii) the particulars referred to in subparagraph (i) of this paragraph, that the lease bears a certificate referred to in paragraph (b) of subparagraph (ii) of paragraph (d), or subparagraph (ii) of paragraph (b) of subparagraph (ii) of paragraph (e), of subsection one of this section purporting to be signed by a solicitor or a clerk of petty sessions, and the particulars certified in and by the certificate that the lease bears,

shall be admissible in any proceedings and shall, in all courts and upon all occasions whatsoever, be prima facie evidence of the particulars referred to in subparagraph (i) of this paragraph and, where the certificate certifies that the lease bears a certificate as referred to in subparagraph (ii) of this paragraph, of the particulars certified in and by the certificate that the lease bears, as certified in and by the certificate under this paragraph.

(11) An application for a certificate by the Rent Controller under paragraph (b) of subsection ten of this section—

- (a) may be made by any person;
- (b) shall be made in writing to the Rent Controller; and
- (c) shall be accompanied by a fee of five dollars or, where another fee has been prescribed in lieu thereof, by that other fee.

(12)

Landlord and Tenant (Amendment).

(12) In this section—

No. 58, 1968

“dwelling-house” includes—

- (a) the premises of any lodging-house or boarding-house; and
- (b) any part of premises that is used or has been designed for use for the purposes of residence independently of any other part of the premises.

but does not include a residential unit or premises licensed for the sale of spirituous or fermented liquors;

“residential unit” means a part of a dwelling-house that is used or has been designed for use for the purposes of residence independently of any other part of the dwelling-house and that came into existence by reason of the conversion of the dwelling-house into those parts.

- (c) by omitting from subsection one of section six the words “, section seventeen”; Sec. 6.
(Declarations as to application of Act.)
- (d) (i) by omitting from subsections one, (1A) and three of section 6A the word “prescribed” wherever occurring; Sec. 6A.
(Special premises.)
- (ii) by omitting from subparagraph (ii) of paragraph (c) of subsection two of the same section the following words :—
 - (ii) that the premises are reasonably required by the lessor for occupation by himself or by some person who ordinarily resides with him;
- (iii) by omitting from paragraph (d) of the same subsection the word “sections” and by inserting in lieu thereof the words “where recovery of

No. 58, 1968

of possession of the special premises is sought on the ground referred to in subparagraph (i) of paragraph (d) of subsection five of section sixty-two of this Act, as substituted by subparagraph (ii) of paragraph (c) of this subsection, sections”;

Sec. 8.
(Definitions.)

(e) (i) by inserting in the definition of “determination” in subsection one of section eight after the word “Act” the words “, but does not include a fixing of the rent of any premises under section 17A of this Act”;

(ii) by omitting from the same subsection the definition of “prescribed premises” and by inserting in lieu thereof the following definition :—

“prescribed premises” means—

- (a) where a dwelling-house does not form part of other premises—
—that dwelling-house;
- (b) where premises consist only of a number of dwelling-houses—
those premises and each of those dwelling-houses; and
- (c) where premises consist partly of dwelling-houses and partly of other premises—such part of the premises as consists of dwelling-houses and each dwelling-house of which that part consists,

and includes any land or appurtenances leased with any prescribed premises as defined in paragraph (a), (b) or (c) of this definition;

(iii)

Landlord and Tenant (Amendment).

(iii) by inserting next after subsection (1A) of the same section the following new subsection :—

No. 58, 1968

(1B) For the purposes only of the definition of "prescribed premises" in subsection one of this section, "dwelling-house"—

(a) includes—

(i) any premises, or the premises included in any class of premises, to which the application of this Act has been extended under subsection one of section six of this Act; and

(ii) any premises that are "special premises" for the purposes of this Act; and

(b) does not include any of the following premises that are not premises referred to in paragraph (a) of this subsection, that is to say—

(i) premises that are, by the same lease, leased partly as a dwelling-house and partly as a shop as defined in subsection one of section nine of the Factories, Shops and Industries Act, 1962, as subsequently amended, or that are the subject of a lease, part of the demised premises being a dwelling-house and the other part being such a shop;

(ii) premises that are at any time, on or after the first day of January, one thousand nine hundred and sixty-nine, used partly as a dwelling-house and partly for business or commercial purposes where the use of the premises for business or commercial

No. 58, 1968

commercial purposes constitutes the principal or a substantial use of the premises and where the use for business or commercial purposes does not arise by reason that the premises are sub-let for residential purposes;

(iii) holiday premises; or

(iv) any premises, or the premises included in any class of premises, excluded from the operation of Parts II, III, IV and V of this Act under subsection two of section six of this Act;

(iv) by omitting from subsection four of the same section the words "shall continue in force in all respects as if they had been made by the Governor under paragraph (c) of the definition of 'prescribed premises' in subsection one of this section" and by inserting in lieu thereof the words "shall, in so far as they relate to dwelling-houses that would, but for this subsection, be prescribed premises, have effect in respect of the premises referred to in the declarations as if they were premises referred to in subparagraph (iv) of paragraph (b) of subsection (1B) of this section".

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

Further amendment of Act No. 25, 1948.

(Part II.—Fair Rents.)

Part II,
Division 3.
(Heading.)

(a) by omitting the heading to Division 3 of Part II and by inserting in lieu thereof the following heading :—

DIVISION 2A.—Rent of Prescribed Premises by Agreement.

(b)

Landlord and Tenant (Amendment).

- (b) by omitting section 17A and by inserting in lieu thereof the following section :—

Subst. sec.
17A.

17A. (1) Where—

- (a) before the date upon which the assent of Her Majesty to the Landlord and Tenant (Amendment) Act, 1968, was signified, an agreement made or purporting to have been made under the section that this section replaces had been executed by the lessee of any prescribed premises; and

(b) that agreement—

- (i) was expressed to be in force for a specified period (whether or not it was also expressed to continue in force after the expiration of that specified period) and that specified period had not, on or before that date, expired; or
- (ii) did not contain any provision expressing it to be in force for a specified period but contained a provision fixing the fair rent of the premises as on and from a day being less than twelve months before that date,

the amount specified in the agreement as the rent shall, without any determination or further determination being made, be for all purposes the fair rent and the rent of the premises without goods or together with goods, as the case may be, on and from that date or the day specified in that behalf in the agreement not being earlier than the day on which the agreement was executed by the lessee, whichever is the later.

(2)

No. 58, 1968

(2) Where—

- (a) before the date on which the assent of Her Majesty to the Landlord and Tenant (Amendment) Act, 1968, was signified, an agreement made or purporting to have been made under the section that this section replaces had been executed by the lessee of any prescribed premises;
- (b) that agreement—
 - (i) was expressed to be in force for a specified period (whether or not it was also expressed to continue in force after the expiration of that specified period) and that specified period had, on or before that date, expired; or
 - (ii) did not contain any provision expressing it to be in force for a specified period but contained a provision fixing the fair rent of the premises as on and from a day being, or being more than, twelve months before that date; and
- (c) the lessee, in respect of the rent payable in respect of the premises on the due date for the payment of the rent that last occurred before that firstmentioned date, paid to the lessor as rent of the premises the amount specified in the agreement as rent,

the amount specified in the agreement as the rent shall, without any determination or further determination being made, be for all purposes the fair rent and the rent of the premises without goods or together with goods, as the case may be, on and from that firstmentioned date.

(3)

Landlord and Tenant (Amendment).

(3) Where on or after the date on which **No. 58, 1968** the assent of Her Majesty to the Landlord and Tenant (Amendment) Act, 1968, is signified, an agreement in writing is entered into by the lessor and lessee of any prescribed premises leased with or without goods and under that agreement the lessor and lessee agree as to the amount of the rent to be paid by the lessee to the lessor in respect of the premises, the rent shall, without any determination or further determination being made, be for all purposes the fair rent and the rent of the premises without goods or together with goods, as the case may be, on and from the day specified in that behalf in the agreement not being earlier than the day on which the agreement is executed by the lessee.

(4) Notwithstanding anything contained in any agreement referred to in subsection one, two or three of this section, the rent fixed under any such subsection shall continue to be the fair rent and the rent of the premises without goods or together with goods, as the case may be—

- (a) until it is varied by a further agreement referred to in subsection three of this section; or
- (b) until it is varied pursuant to an application made under subsection twelve or thirteen of this section or Division 4AA of this Part,

whichever first occurs.

(5) Notwithstanding any other provision of this Act, except subsections twelve and thirteen of this section and Division 4AA of this Part, no proceedings for the determination, and no application for the assessment, of the fair rent of any premises the fair rent of which is fixed under subsection one, two or three of this section shall be commenced or lodged under this Act.

(6)

Landlord and Tenant (Amendment).

No. 58, 1968

(6) In subsections one, two and three of this section, "agreement" means an agreement—

- (a) that is or was registered in the office of the Rent Controller within three months after the day on which it was executed by the lessee; and
- (b) except where the lessee is a company or other body corporate—
 - (i) the execution of which by the lessee was witnessed by a solicitor instructed and employed independently of the lessor or by a clerk of petty sessions; and
 - (ii) that bears a certificate by that solicitor or clerk of petty sessions that he explained the agreement to the lessee before it was executed by him.

(7) An application for the registration under this section of an agreement shall be made in writing to the Rent Controller and shall be accompanied by—

- (a) the original agreement and a copy thereof, which copy—
 - (i) shall be certified to be a true copy by the lessor, the lessor's solicitor or an agent of the lessor; and
 - (ii) shall be so certified in a manner approved by the Rent Controller; and
- (b) a fee of two dollars or, where another fee has been prescribed in lieu thereof, by that other fee.

(8)

Landlord and Tenant (Amendment).

(8) The registration, on or after the date No. 58, 1968 on which the assent of Her Majesty to the Landlord and Tenant (Amendment) Act, 1968, was signified, of an agreement shall be deemed to be effected upon the making of an entry in relation to the agreement, in the manner approved by the Rent Controller, in a register to be kept by the Rent Controller for the purposes of this section and the endorsement on the original agreement and certified copy thereof of a memorial of the entry.

(9) After registration under this section of an agreement the original agreement shall be returned to the person by whom the application for registration was made.

(10) A certificate—

- (a) purporting to be signed by a solicitor or a clerk of petty sessions, being a certificate referred to in subparagraph (ii) of paragraph (b) of subsection six of this section, shall be admissible in any proceedings and shall, in all courts and upon all occasions whatsoever, be prima facie evidence of the particulars certified in and by the certificate; or
- (b) purporting to be signed by the Rent Controller and certifying—
 - (i) that an agreement specified or referred to in the certificate was registered in the office of the Rent Controller on a day specified in the certificate; or

(ii)

No. 58, 1968

- (ii) the particulars referred to in subparagraph (i) of this paragraph, that that agreement bears a certificate referred to in subparagraph (ii) of paragraph (b) of subsection six of this section purporting to be signed by a solicitor or a clerk of petty sessions, and the particulars certified in and by the certificate that the lease bears,

shall be admissible in any proceedings and shall, in all courts and upon all occasions whatsoever, be prima facie evidence of the particulars referred to in subparagraph (i) of this paragraph and, where the certificate certifies that the agreement bears a certificate as referred to in subparagraph (ii) of this paragraph, of the particulars certified in and by the certificate that the agreement bears, as certified in and by the certificate under this paragraph.

(11) An application for a certificate by the Rent Controller under paragraph (b) of subsection ten of this section—

- (a) may be made by any person;
- (b) shall be made in writing to the Rent Controller; and
- (c) shall be accompanied by a fee of five dollars or, where another fee has been prescribed in lieu thereof, by that other fee.

(12) The lessee of any prescribed premises the fair rent of which is fixed under subsection one, two or three of this section may, notwithstanding the provisions of subsection two of section

thirty-two

Landlord and Tenant (Amendment).

thirty-two of this Act, make application at any time after the agreement in respect of those premises was executed by him—

- (a) where the prescribed premises are not shared accommodation referred to in section 26E of this Act—to a Fair Rents Board; or
- (b) where the prescribed premises are any such shared accommodation—to the Rent Controller,

for a determination of the fair rent of those premises and the Fair Rents Board or the Rent Controller, as the case may be, shall, in accordance with the provisions of this Act, determine the fair rent of those premises where the lessee proves to the satisfaction of the Fair Rents Board or the Rent Controller, as the case may be, that—

- (c) the amount specified in the agreement as rent was, at the time the agreement was executed by the lessee, harsh or unconscionable; or
- (d) the agreement was obtained by fraud, duress, intimidation or improper means.

(13) The lessor of any prescribed premises the fair rent of which is fixed under subsection one, two or three of this section may, subject to subsection two of section thirty-two of this Act, make application at any time after the agreement in respect of those premises was executed by the lessee—

- (a) where the prescribed premises are not shared accommodation referred to in section 26E of this Act—to a Fair Rents Board;
- (b) where the prescribed premises are any such shared accommodation—to the Rent Controller; or

(c)

No. 58, 1968

(c) where—

- (i) the prescribed premises are not shared accommodation;
- (ii) the fair rent of the prescribed premises had been fixed by a determination made under this Part, except Division 4AA, and in force immediately before the time the agreement in respect of those premises was executed by the lessee;
- (iii) the application is made under section 24A of this Act; and
- (iv) the prescribed premises are—
 - (a) premises referred to in paragraph (a) of subsection two of section 24A of this Act—to the Rent Controller; or
 - (b) premises referred to in paragraph (b) of that subsection—to the clerk of the Fair Rents Board nearest to the premises,

for a determination or assessment of the fair rent of those premises and the Fair Rents Board, the Rent Controller or the clerk of the Fair Rents Board, as the case may be, shall, in accordance with the provisions of this Act, determine, or make an assessment of, the fair rent of those premises.

(14) Where an application is made to the Rent Controller or a clerk of a Fair Rents Board in accordance with paragraph (c) of subsection thirteen of this section, the reference in subsection three of section 24A of this Act to the existing fair rent of the prescribed premises shall, for the purpose of

Landlord and Tenant (Amendment).

of dealing with the application, be construed as a reference to the fair rent of those premises as last fixed by a determination made under this Part, except Division 4AA, before the fair rent of the premises was fixed under this section. No. 58, 1968

(15) Any person, whether as principal or agent or otherwise, who procures the execution by a lessee of an agreement referred to in subsection three of this section by fraud, duress, intimidation or improper means is guilty of an offence against this Act.

(16) Any provision in an agreement made or purporting to have been made under the section that this section replaces whereby the agreement is expressed to be in force for a specified period and to continue in force thereafter is, and shall be deemed always to have been, to the extent only that it is expressed to be in force after the expiration of that specified period, void.

(17) Where an agreement made or purporting to have been made under the section that this section replaces in relation to any premises—

- (a) was expressed to be in force for a specified period (whether or not it was also expressed to continue in force after the expiration of that specified period) and that specified period had expired before the date on which the assent of Her Majesty to the Landlord and Tenant (Amendment) Act, 1968, was signified; or
- (b) was not expressed to be in force for a specified period but contained a provision fixing the fair rent of the premises as on and from a day being more than twelve months before that date,

the

Landlord and Tenant (Amendment).

No. 58, 1968

the amount payable in respect of the fair rent and the rent of the premises without goods or together with goods, as the case may be, shall, subject to subsection two of this section, to any determination made under any of the provisions of this Act and to any further agreement made under the section that this section replaces or this section, be and be deemed always to have been—

- (c) in the case of an agreement that was expressed to be in force for a specified period—as on and from the expiration of that specified period; and
- (d) in the case of an agreement that was not expressed to be in force for a specified period—as on and from the expiration of the period of twelve months commencing on the day as on and from which the fair rent of the premises was fixed by the agreement.

the amount of the rent properly payable in respect of the premises immediately before the day as on and from which the fair rent of the premises was fixed by the agreement.

(18) Notwithstanding the provisions of subsection sixteen or seventeen of this section, where the lessee of any premises the subject of an agreement referred to in those subsections has, after the expiration of the period referred to in paragraph (c) or (d) of subsection seventeen of this section and before the date on which the assent of Her Majesty to the Landlord and Tenant (Amendment) Act, 1968, was signified, continued to pay the rent fixed by the agreement, the lessor is not liable to refund the difference between the amount of the rent so fixed and the amount of the rent that would have been payable by the lessee had he continued to pay the amount of the rent properly

Landlord and Tenant (Amendment).

properly payable in respect of the premises immediately before the day on and from which the fair rent of the premises was fixed by the agreement. No. 58, 1968

(19) A reference in this section to "the section that this section replaces" shall be construed as a reference to section 17A of this Act, as inserted by the Landlord and Tenant (Amendment) Act, 1964, or to that section as amended, as in force at the time the agreement was executed by the lessee.

- (c) by inserting next after section 17A the following new Division and heading thereto :— New
Division 2B.

DIVISION 2B.—*Rent of Certain Prescribed Premises subject to Fixed Term Leases.*

17B. Where any prescribed premises (not being prescribed premises referred to in section 32B of this Act) were the subject of a lease for a fixed term, the fair rent and the rent of the premises or of the premises together with goods leased therewith shall, notwithstanding any other provision of this Act, be, as on and from the date on which the assent of Her Majesty to the Landlord and Tenant (Amendment) Act, 1968, was signified and while the lease remains in force— Rent under
certain
fixed term
leases.

- (a) where the rent was fixed by a determination made before the twenty-sixth day of November, one thousand nine hundred and sixty-eight, and in force immediately before that day—the rent fixed by that determination; or
- (b) where the rent payable immediately before that day was fixed under section 17A of this Act—that rent,

or if the contractual rent provided for from time to time by the lease is greater than the rent referred to in paragraph (a) or (b) of this section, that contractual rent.

(d)

Landlord and Tenant (Amendment).

No. 58, 1968

New heading to Division 3, Part II.

- (d) by inserting next before section eighteen the following new heading :—

DIVISION 3.—*Rent of Prescribed Premises other than Shared Accommodation.*

Sec. 21.
(Matters to be considered.)

- (e) (i) by omitting from subsection (1A) of section twenty-one the words “used for business or commercial purposes” and by inserting in lieu thereof the words “, not being a dwelling-house,”;
- (ii) by omitting subsection (1B) of the same section;

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

- (f) (i) by omitting from subsection three of section 24A the words “used for business or commercial purposes” and by inserting in lieu thereof the words “not dwelling-houses”;
- (ii) by inserting in paragraph (a) of subsection seven of the same section before the words “and shall” the words “may be made at any time notwithstanding the provisions of that section”;

New Division 4AA.

- (g) by inserting next after Division 4A of Part II the following new Division :—

DIVISION 4AA.—*Determination of Rents on Current Values.*

Interpretation.

31MAA. (1) In this Division—

“allowable deduction” means an allowable deduction as defined in the Income Tax Act, not being—

- (a) a concessional deduction as so defined; or

(b)

Landlord and Tenant (Amendment).

- (b) a deduction allowable under section No. 58, 1968 seventy-five or seventy-six of that Act;

“attributable earnings” means—

- (a) in relation to a lessee of prescribed premises, not being a lessee referred to in paragraph (b), (c) or (d) of this definition—the total income (not including the amount paid for board or lodging by any boarder or lodger ordinarily residing in the premises) of the lessee, from all sources whether in or out of Australia, less any losses or outgoings incurred by the lessee in gaining or producing that income that are allowable deductions, but together with—
- (i) the total income, from all sources whether in or out of Australia of any resident of the prescribed premises, less any losses or outgoings incurred by that resident in gaining or producing that income that are allowable deductions;
 - (ii) in respect of a boarder or lodger ordinarily residing in the premises—the sum of two hundred and eight dollars;
- (b) in relation to a lessee, not being a lessee referred to in paragraph (c) or (d) of this definition, of prescribed premises which are sub-let in whole or in part by the lessee, with the express or implied consent of

No. 58, 1968

of the lessor, in the course of the lessee's business of sub-letting for residential purposes—the total income of the lessee, from all sources whether in or out of Australia, less any losses or outgoings incurred by the lessee in gaining or producing that income that are allowable deductions, but together with the total income, from all sources whether in or out of Australia, of any resident of the prescribed premises, less any losses or outgoings incurred by that resident in gaining or producing that income that are allowable deductions;

- (c) in relation to lessees of prescribed premises who hold the lease as members of a partnership—the total income of the partnership, from all sources whether in or out of Australia, less any losses or outgoings incurred in gaining or producing that income that are allowable deductions; and
- (d) in relation to a lessee of prescribed premises, being a company or other corporation—the total income of the company, from all sources whether in or out of Australia, together, where applicable, with any amount referred to in paragraph (a) of section one hundred and nine of the Income Tax Act, but less any losses or outgoings incurred by the company in gaining or producing that income that are allowable deductions;

“boarder”

Landlord and Tenant (Amendment).

“boarder” or “lodger”, in relation to any prescribed premises, does not include a boarder or lodger ordinarily residing in those prescribed premises who is a relative of the lessee, or, where there is more than one lessee, of any of the lessees, of those prescribed premises;

“current value rental”—

(a) in relation to a determination under this Division of the fair rent of any prescribed premises, not being prescribed premises that form part of any other premises, means the quotient obtained by dividing the aggregate of the assessed annual value of those premises and an amount equal to one-ninth of that assessed annual value, by the number of tenancy periods in a year applicable to those prescribed premises and by adding to that quotient a reasonable allowance determined by the Fair Rents Board for any goods or for maintaining any services supplied by the lessor in connection with the lease of those prescribed premises; and

(b) in relation to a determination under this Division of the fair rent of any prescribed premises that form part of any other premises, means the quotient obtained by dividing such proportion of the aggregate of—

(i) the assessed annual value of those other premises; and

(ii) an amount equal to one-ninth of that assessed annual value,

as

No. 58, 1968

as the Fair Rents Board may determine by the number of tenancy periods in a year applicable to those prescribed premises and by adding to that quotient a reasonable allowance determined by the Fair Rents Board for any goods or for maintaining any services supplied by the lessor in connection with the lease of those prescribed premises;

“financial year” means year ending on the thirtieth day of June;

“income” includes any income that is exempt income as defined in the Income Tax Act;

“Income Tax Act” means the Income Tax Assessment Act 1936 (as amended by subsequent Acts) of the Parliament of the Commonwealth;

“net income”, in relation to any financial year, means—

(a) in respect of a lessee or resident referred to in paragraph (a) or (b) of the definition of “attributable earnings” in this subsection, the total income derived by that lessee or resident during that year from all sources whether in or out of Australia less any losses or outgoings incurred by that lessee or resident in gaining or producing that total income that are allowable deductions; and

(b) in respect of a lessee referred to in paragraph (c) or (d) of the definition of “attributable earnings” in **this**

Landlord and Tenant (Amendment).

this subsection, the amount of the attributable earnings of that lessee for that year; No. 58, 1968

“prescribed amount” means the amount of four thousand dollars or, where another amount has been prescribed in lieu thereof, that other amount;

“relative”, in relation to a lessee, means a person related to the lessee in the first or second degree, ascertained by reference either to consanguinity or affinity or to both;

“resident”, in relation to any prescribed premises, means any person ordinarily residing in the premises other than the lessee, a sub-lessee, a relative of a sub-lessee ordinarily residing with that sub-lessee, a person under the age of sixteen years or a boarder or lodger.

(2) For the purposes of the definition of “current value rental” in subsection one of this section, the assessed annual value of any prescribed premises shall be deemed to be—

- (a) where the prescribed premises are situated on land, the assessed annual value of which, together with the improvements thereon, was shown in the valuation list under the Valuation of Land Act, 1916, as subsequently amended, last furnished to a rating or taxing authority in accordance with that Act, as so amended, before the date of the application for the determination of the fair rent of those premises under this Division—that assessed annual value or, where a valuation made by the Valuer-General within three months before the day the application for the determination was lodged with the clerk of the Fair Rents Board and showing the assessed annual value

No. 58, 1968
—

value of those premises is produced to the Fair Rents Board making the determination, the assessed annual value so shown;

- (b) where the prescribed premises are situated within the area of a council under the Local Government Act, 1919, as subsequently amended, and are on land, the assessed annual value of which, together with the improvements thereon, was not shown in a valuation list referred to in paragraph (a) of this subsection but was included in the last general valuation of the area of that council made under Schedule Three to that Act, as so amended—that assessed annual value or, where a valuation made by a valuer holding the prescribed qualifications under the Local Government Act, 1919, as subsequently amended, within three months before the day the application for the determination was lodged with the clerk of the Fair Rents Board and showing the assessed annual value of those premises is produced to the Fair Rents Board making the determination, the assessed annual value so shown;
- (c) in the case of any other prescribed premises—the assessed annual value, as defined in section seven of the Valuation of Land Act, 1916, as subsequently amended, of the land on which the premises are situated, together with the improvements thereon, as shown on a valuation made by the Valuer-General or by a valuer holding the prescribed qualifications under the Local Government Act, 1919, as subsequently amended, within three months before the day the application for the determination was lodged with the clerk of the Fair Rents Board; or

(d)

Landlord and Tenant (Amendment).

(d) where the Fair Rents Board is satisfied that **No. 58, 1968** any such assessed annual value is not correct as at the time to which it refers—such amount as in the opinion of the Board represents the correct assessed annual value as at that time.

(3) Where the current value rental of any prescribed premises calculated in accordance with this Division would, but for this subsection, be an amount that is not a multiple of five cents, the current value rental of the premises shall be the amount so calculated after deducting therefrom such amount as is in excess of a multiple of five cents.

(4) A reference in the definition of “attributable earnings” or “net income” in subsection one of this section to the total income of any person includes a reference to any income that is assessable income within the meaning of the Income Tax Act and where the question of whether any income is assessable depends upon a decision or determination of, or the exercise of any discretion by, the Commissioner of Taxation under the Income Tax Act, includes that income unless that Commissioner has by his decision or determination, or the exercise of his discretion, treated it as not being assessable income.

(5) For the purposes of paragraph (b) of the definition of “attributable earnings” and the definition of “resident” in subsection one of this section—

(a) a reference to sub-letting of prescribed premises includes a reference to permitting the use of prescribed premises under an agreement or arrangement whether oral or in writing of leave and license for the use thereof; and

(b)

Landlord and Tenant (Amendment).

No. 58, 1968

Lessor may require information as to net income of lessee and residents of prescribed premises.

- (b) a reference to a sub-lessee of prescribed premises includes a reference to a person who has the use of prescribed premises under such an agreement or arrangement.

31MBA. (1) A lessor of prescribed premises may by notice in writing served on the lessee of those premises or on a resident of those premises require that lessee or resident to furnish to the lessor within twenty-eight days after the service of the notice, a statutory declaration stating—

- (a) in relation to the financial year last preceding the date of service of the notice, the net income of the person on whom the notice was served, excluding, in the case of a lessee whose attributable earnings are to be ascertained under paragraph (a) of the definition of “attributable earnings” in subsection one of section 31MAA of this Act, any net income of that lessee derived by him from any boarder or lodger ordinarily residing in the prescribed premises ;
- (b) where the notice is served on a lessee, the names of all residents of those premises and, in the case of a lessee whose attributable earnings are to be ascertained under paragraph (a) of the definition of “attributable earnings” in subsection one of section 31MAA of this Act, the number of boarders and lodgers ordinarily residing in those premises.

(2) Where a lessor has served or caused to be served on a lessee or resident of prescribed premises a notice referred to in subsection one of this section requiring that lessee or resident to furnish a statutory declaration stating the net income of that lessee or resident in relation to any financial year, the lessor shall not serve or cause to be served on that lessee or resident another such notice requiring that lessee or resident to furnish a statutory declaration in relation to the same financial year.

(3)

Landlord and Tenant (Amendment).

(3) A person shall not whether as No. 58, 1968 principal or agent or in any other capacity disclose the information furnished in a statutory declaration made pursuant to a notice referred to in subsection one of this section other than to, or to a person employed in the office of, a Fair Rents Board, the Rent Controller, a clerk of a Fair Rents Board, a court, counsel or a solicitor acting on behalf of the lessor or lessee in connection with any proceedings commenced or proposed to be commenced under this Act or to, or to a person employed in the office of, an agent authorised in writing so to act.

(4) A statutory declaration made pursuant to a notice referred to in subsection one of this section shall, where a form for such a declaration has been prescribed, be in or to the effect of that form.

(5) Where such a form has been prescribed, a notice under subsection one of this section shall be deemed not to have been served unless the prescribed form of statutory declaration has been served with it.

31MCA. A lessor of prescribed premises may apply in writing to a Fair Rents Board for a determination of the fair rent of those premises in accordance with the provisions of this Division. Application for determination of fair rent under this Division.

31MDA. (1) Where, upon an application made under section 31MCA of this Act in respect of any prescribed premises, a Fair Rents Board is satisfied— Power of Fair Rents Board to determine fair rent at current value rental.

- (a) that the lessor of those premises has in accordance with subsection one of section 31MBA of this Act, within a period of three months before the day the application was lodged with the clerk of the Fair Rents Board, served notices referred to in that subsection on the lessee of those premises
and

Landlord and Tenant (Amendment).

No. 58, 1968

and on every person who is stated in any statutory declaration of the lessee furnished under that subsection within that period to be a resident of those premises ; and

- (b) that the lessee has neglected or failed within the time prescribed by the notice served on him in accordance with subsection one of section 31MBA of this Act, to furnish to the lessor the statutory declaration required by the notice or, where the lessee has so furnished such a declaration, any person who is stated in that statutory declaration to be a resident of those premises, has neglected or failed within the time prescribed in the notice served on him to furnish to the lessor the statutory declaration required by the notice.

and the Board is not satisfied that the attributable earnings of the lessee of those premises, in relation to the financial year last preceding the date the application for the determination was lodged with the clerk of the Board, were less than the prescribed amount, the Board shall determine the fair rent of the prescribed premises at the current value rental of those premises and the rent so determined shall, subject to any variation thereof made under this Division, pursuant to an agreement under section 17A of this Act executed by the lessee after the determination under this Division is made or pursuant to an application referred to in subsection three of section 31MFA of this Act but notwithstanding any other provision of this Act, be, for all purposes, the fair rent and the rent of the premises without goods or together with goods, as the case may be.

(2) Where, upon an application made under section 31MCA of this Act in respect of any prescribed premises a Fair Rents Board is satisfied whether or not any notices referred to in subsection one

Landlord and Tenant (Amendment).

one of section 31MBA have been served on the lessee or any resident referred to in that subsection, that the attributable earnings of the lessee of those premises, in relation to the financial year last preceding the date the application for the determination was lodged with the clerk of the Board, are not less than the prescribed amount, the Board shall determine the fair rent of the prescribed premises at the current value rental of those premises and the rent so determined shall, subject to any variation thereof made under this Division, pursuant to an agreement under section 17A of this Act executed by the lessee after the determination under this Division is made or pursuant to an application referred to in subsection three of section 31MFA of this Act but notwithstanding any other provision of this Act, be, for all purposes, the fair rent and the rent of the premises without goods or together with goods, as the case may be.

(3) In any proceedings for a determination under this Division of the fair rent of any prescribed premises situated within the area of a council under the Local Government Act, 1919, as subsequently amended (not including prescribed premises that are comprised in one of a number of lots in a strata plan, but including a building that is divided into lots in a strata plan, under the Conveyancing (Strata Titles) Act, 1961, as subsequently amended), a certificate issued by that council stating the assessed annual value of those premises as at a date being not earlier than six years before the date of the certificate and—

- (a) stating that the assessed annual value so specified was shown in the valuation list under the Valuation of Land Act, 1916, as subsequently amended, last furnished to the council in accordance with that Act, as so amended, before the date of the certificate;
or

(b)

Landlord and Tenant (Amendment).

No. 58, 1968

(b) stating that the assessed annual value so specified was not shown in such a valuation list but was included in the last general valuation of the area of the council made under Schedule Three to the Local Government Act, 1919, as subsequently amended, shall be prima facie evidence of the facts so stated.

(4) Unless evidence of the assessed annual value, referred to in paragraph (a), (b) or (c) of subsection two of section 31MAA of this Act, of any prescribed premises the subject of an application under this Division is adduced to the Fair Rents Board in proceedings on that application, the Board may refuse to make a determination under this section.

Fair Rents Board may order costs.

31MEA. A Fair Rents Board may in its discretion make such order as it deems proper as to the payment of the costs of any party to any proceedings under this Division and the provisions of subsection three of section sixty-one of this Act shall apply mutatis mutandis to and in respect of any such order.

Variations of determinations.

31MFA. (1) The lessor of any prescribed premises, or a lessee of any such premises who has paid or has offered (either to the lessor personally or to the person to whom the rent is ordinarily paid) the money payable for all rent due and payable under the lease of the prescribed premises up to a date not earlier than twenty-eight days before the date of the receipt of the application in the office of the clerk of the Board, may apply in writing to a Fair Rents Board to have any determination of the fair rent of the prescribed premises, made by the Board under this Division, varied on the ground that—

- (a) the assessed annual value of the premises that was taken into account for the purpose of determining the current value rental of those premises when that determination or variation was made has since increased or decreased; or
- (b)

Landlord and Tenant (Amendment).

(b) the value of the goods leased with the premises or of the services supplied by the lessor has materially increased or decreased since that determination was made, No. 58, 1968

and the Board shall, if it is satisfied that any such ground is established, determine the fair rent of the prescribed premises at the current value rental of those premises and the rent so determined shall, subject to any further variation thereof made under this section, pursuant to an agreement under section 17A of this Act executed by the lessee after the variation under this section is made or pursuant to an application referred to in subsection three of this section but notwithstanding any other provision of this Act, be, for all purposes, the fair rent and the rent of the premises without goods or with goods, as the case may be.

(2) The provisions of section 31MEA of this Act do not apply to the variation of any determination in accordance with subsection one of this section.

(3) The lessor of any prescribed premises the fair rent of which is fixed under this Division may, under and in accordance with the provisions of this Act other than this Division, make application—

(a) where the prescribed premises are not shared accommodation referred to in section 26E of this Act—to a Fair Rents Board;

(b) where the prescribed premises are any such shared accommodation—to the Rent Controller; or

(c) where—

(i) the prescribed premises are not shared accommodation;

(ii) the fair rent of the prescribed premises had been fixed by a determination made under the provisions of this Act other than this Division

and

Landlord and Tenant (Amendment).

No. 58, 1968

and in force immediately before the determination under this Division was made or, where more than one determination under this Division has been made in respect of the premises, in force immediately before the later or the last of those determinations;

(iii) the application is made under section 24A of this Act; and

(iv) the prescribed premises are—

(a) premises referred to in paragraph (a) of subsection two of section 24A of this Act—to the Rent Controller; or

(b) premises referred to in paragraph (b) of that subsection—to the clerk of the Fair Rents Board nearest to the premises,

for a determination or assessment of the fair rent of those premises, otherwise than under this Division, and the Fair Rents Board, the Rent Controller or the clerk of the Fair Rents Board, as the case may be, shall, in accordance with the provisions of this Act other than this Division, determine, or make an assessment of, the fair rent of those premises.

(4) Where an application is made to the Rent Controller or a clerk of a Fair Rents Board in accordance with paragraph (c) of subsection three of this section, the reference in subsection three of section 24A of this Act to the existing fair rent of the prescribed premises shall, for the purpose of dealing with the application, be construed as a reference to the fair rent of those premises as fixed by the determination in force as referred to in subparagraph (ii) of that paragraph.

31MGA.

Landlord and Tenant (Amendment).

31MGA. Any application under this Division for a determination shall be made to the Board nearest to the prescribed premises in respect of which the application is made or to any other Board if that other Board is satisfied that hardship will not be occasioned thereby to any party to the determination.

No. 58, 1968

Board to which application may be made.

31MHA. (1) Where an application has been made under this Division for the determination of the fair rent of any prescribed premises, the applicant shall give at least seven days' notice in writing of the time, date and place fixed for the determination of the application to the lessor or lessee, as the case may be, of the prescribed premises.

Notice of application.

(2) Where any prescribed premises in respect of which an application is made under this Division are the subject of a mortgage, the lessor shall give notice in writing of the time, date and place fixed for the determination of the application to that mortgagee, who shall be entitled to be a party to the application.

(3) Notice under subsection two of this section shall—

- (a) where the lessor is the applicant—be given at least seven days before the date fixed for the determination of the application; and
- (b) where the lessee is the applicant—be given forthwith upon the receipt by the lessor of notice of the application under subsection one of this section.

31MIA. Where an application has been made under this Division for the determination of the fair rent of any prescribed premises, the Fair Rents Board may, after making such enquiries and obtaining such reports (if any) as it considers necessary, and after considering any representations made by any person whose rights may be affected by the determination

Determination of application.

No. 58, 1968

Date of
operation
of deter-
mination.

determination determine the fair rent of the prescribed premises in accordance with the provisions of this Division.

31MJA. (1) Every determination of the fair rent of prescribed premises made under this Division by a Fair Rents Board shall come into operation on a date to be fixed by the Board, but the date so fixed shall not be earlier than the date of the receipt of the application in the office of the clerk of the Board.

(2) After the making of any such determination 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 applicant and to the other party to the application.

Lease of
prescribed
premises to-
gether with
goods.

31MKA. This Division shall extend in relation to prescribed premises together with goods leased therewith, and any reference in this Division to prescribed premises shall, so far as applicable, include a reference to prescribed premises together with goods leased therewith.

Non-
application
of certain
provisions of
this Act.

31MLA. The provisions of Division 5 of this Part, except sections 31MA, 31O, thirty-two, thirty-four, thirty-eight, thirty-nine and forty-two of this Act, apply to and in respect of any application or determination under this Division.

Deter-
mination
includes
variation
of deter-
mination.

31MMA. A reference in this Division to a determination under this Division includes, where applicable, a reference to a variation of such a determination.

Sec. 31N.
(Application
by lessor
for fair
rent deter-
mination
to indicate
amount of
rent
sought.)

- (h) (i) by omitting from subsection one of section 31N the words "and particulars of how that amount is calculated";
- (ii) by omitting from the same subsection the words "amount and particulars" and by inserting in lieu thereof the word "amount";

(i)

Landlord and Tenant (Amendment).

(i) (i) by omitting from paragraph (g) of subsection two of section thirty-two the words “, otherwise than by reason of an agreement in force under section 17A of this Act” and by inserting in lieu thereof the words “by reason of a determination or a variation of a determination, not being a determination or a variation of a determination made under Division 4AA of this Part”;

No. 58, 1968
Sec. 32.
(Variation
of deter-
mination.)

(ii) by omitting from subsection four of the same section the words “the Board or the Controller in making the variation shall, where it or he considers that any repairs, maintenance, or renewals of the premises or any fixtures thereon should be carried out, exclude from the rent as varied any allowance in respect of such repairs, maintenance or renewals, based on paragraph (c) of subsection one of section twenty-one of this Act” and by inserting in lieu thereof the words “and it appears to the Board or Controller, as the case may be, that the premises being a dwelling-house are not in fair and tenable 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 lessor’s liability for repairs, maintenance and renewals of the premises and fixtures thereon”;

(j) by omitting section 32A;

Sec. 32A.
(State of
repair not
to be raised
by lessee
in certain
cases.)

(k) by inserting next before section thirty-three the following new section :—

New sec.
32B.

32B. (1) Where any premises that form part of other premises cease at any time to be partly described premises, the rent and the fair rent payable

No. 58, 1968

payable in respect of the prescribed premises, if any, that form the remaining part of those other premises and that are the subject of a lease that does not include any other premises shall, after that time, be the rent that was properly payable in respect of those prescribed premises immediately before that time until the fair rent of those prescribed premises is determined or varied under this Part or is fixed by virtue of an agreement made under subsection three of section 17A of this Act.

(2) Where any premises that form part of other premises cease at any time to be prescribed premises and those other premises are the subject of a lease to a lessee who has sub-let those other premises or any part or parts of those other premises, the rent and the fair rent payable in respect of those other premises shall, after that time, be the rent that was properly payable in respect of those other premises immediately before that time until—

- (a) the fair rent of the part of those other premises that consists of prescribed premises is determined under this Part or is fixed by virtue of an agreement made under subsection three of section 17A of this Act ; and
- (b) the rent of the part of those other premises that does not consist of prescribed premises is fixed by agreement between the lessor and the lessee.

(3) Where the rent of any premises referred to in subsection two of this section, as fixed under that subsection, ceases to be the rent of the premises by reason of paragraphs (a) and (b) of that subsection, the lease of the premises shall be deemed to be—

- (a) a lease of the part of the premises that consists of prescribed premises, at the rent determined

Landlord and Tenant (Amendment).

determined or fixed in the manner referred to in paragraph (a) of that subsection; and

- (b) a lease of the part of the premises that does not consist of prescribed premises, at the rent fixed by an agreement as referred to in paragraph (b) of that subsection.

(4) Where the rent of any premises referred to in subsection two of this section, as fixed under that subsection, does not cease to be the rent of the premises by reason of paragraphs (a) and (b) of that subsection and the lessor of the premises determines the lease of the premises in so far as the lease applies to the part of the premises that does not consist of prescribed premises, the rent and the fair rent of the part of the premises that consists of prescribed premises shall, after the lease is so determined, be the rent that was properly payable in respect of the whole of the premises unless that rent has been or is determined under this Part or fixed by virtue of an agreement made under subsection three of section 17A of this Act.

(5) The provisions of this section do not apply so as to fix the rent of any premises (including prescribed premises) referred to in subsection one or two of this section that are the subject of a lease for a fixed term but the rent of any such premises shall, notwithstanding any other provision of this Act, be, while the lease remains in force—

- (a) where the rent was fixed by a determination made before the twenty-sixth day of November, one thousand nine hundred and sixty-eight, and in force immediately before that day—the rent fixed by that determination; or

(b)

No. 58, 1968

(b) where the rent payable immediately before that day was fixed under section 17A of this Act—that rent,

or if the contractual rent provided for from time to time by the lease is greater than the rent referred to in paragraph (a) or (b) of this subsection, that contractual rent.

(6) This section shall extend in relation to premises (including prescribed premises) together with goods leased therewith, and any reference in this section to premises (including prescribed premises) shall, so far as applicable, include a reference to premises (including prescribed premises) together with goods leased therewith.

Sec. 36.
(Certain
payments
prohibited.)

(1) by inserting at the end of paragraph (a) of subsection one of section thirty-six the following new proviso :—

Provided further that nothing in this subsection shall be construed as enabling the Controller or the Fair Rents Board to grant a consent relating to any prescribed premises where the bonus, premium, sum of money or other consideration is in the opinion of the Controller or the Fair Rents Board, as the case may be, sought, demanded, solicited or received by a person who is not the lessee of the premises or by a person who has become the lessor of the premises by virtue of a concurrent lease in consideration of, or partly in consideration of, or in connection with, the obtaining of vacant possession of the premises, or is in the opinion of the Controller or the Fair Rents Board, as the case may be, offered, promised or agreed to be received by such a person, in consideration of, or partly in consideration of, or in connection with, the obtaining of vacant possession of the premises;

(m)

Landlord and Tenant (Amendment).

- (m) (i) by omitting from subsection one of section No. 58, 1968
fifty-two the words "and on payment of the prescribed fee"; Sec. 52.
(Information as to fair rent.)
- (ii) by inserting in the same subsection after the word "Controller" where secondly occurring the words "or by an agreement referred to in section 17A of this Act";
- (iii) by inserting next after the same subsection the following new subsection :—
(1A) An application under subsection one of this section shall be in writing and shall be accompanied by a fee of two dollars or, where another fee has been prescribed in lieu thereof, by that other fee.
- (n) by inserting next after subsection one of section Sec. 54.
fifty-four the following new subsection :— (Representation by agent.)
(1A) A person shall not act, or agree to act, on behalf of another person in any proceedings under this Part if he so acts or agrees to act for a consideration or partly for a consideration that is based on, dependent upon or related to any increase in the fair rent of any premises that may be granted pursuant to those proceedings.
- (o) by inserting next after subsection (1A) of section Sec. 57.
fifty-seven the following new subsection:— (Lessor to ascertain fair rent.)
(1B) An enquiry under subsection (1A) of this section shall be in writing and shall be accompanied by a fee of two dollars or, where another fee has been prescribed in lieu thereof, by that other fee.
- (p) by inserting at the end of section fifty-eight the Sec. 58.
following new subsection :— (Certificate as to fair rent.)
(3) An application for a certificate under subsection one of this section shall be in writing and shall be accompanied by a fee of two dollars or, where another fee has been prescribed in lieu thereof, by that other fee.

Landlord and Tenant (Amendment).

No. 58, 1968 **4.** The Landlord and Tenant (Amendment) Act, 1948,
as subsequently amended, is further amended—

Further
amendment
of Act No.
25, 1948.

(Part III.—
Recovery
of Posses-
sion of
Prescribed
Premises.)

Sec. 62.
(Restriction
on eviction.)

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

(1A) Where any premises consist partly of prescribed premises and partly of other premises, the provisions of this Part apply to such part of the premises as consists of prescribed premises.

(1B) Subject to subsection (1C) of this section, where there are two or more lessees of any prescribed premises and they are not lessees under the same lease—

- (a) a notice, given before or after the date upon which the assent of Her Majesty to the Landlord and Tenant (Amendment) Act, 1968, was signified, to terminate the tenancy of any one of the lessees shall not have any force or operation against the other lessee or any of the other lessees, whether or not the other lessee or any of the other lessees has attorned tenant to the lessee to whom the notice was given ; and
- (b) an order, made under this Part after that day, for the recovery of possession of the premises shall not have any force or operation against any such lessee unless such a notice had been validly given to him, whether or not he has attorned tenant to another of the lessees against whom such an order has been made.

(1C)

Landlord and Tenant (Amendment).

(1C) Nothing in subsection (1B) of this section prevents a notice to terminate the tenancy of, or an order for the recovery of possession of premises from, or for the ejection from premises of, a sub-lessor having force or operation against a sub-lessee to whom that sub-lessor has sub-let the premises.

(1D) Where before the date upon which the assent of Her Majesty to the Landlord and Tenant (Amendment) Act, 1968, was signified an order for the recovery of possession of any prescribed premises had been made on the application of a person who became the lessor by virtue of a concurrent lease and the order had not, before that day, been executed, the order shall not be executed against any lessee of the premises other than that person.

(ii) by omitting from paragraph (t) of subsection five of the same section the words "that the premises were purchased or acquired by the lessor or the deceased spouse of the lessor before the tenth day of April, one thousand nine hundred and fifty-eight,";

(iii) by omitting from paragraph (u) of the same subsection the word "or";

(iv) by inserting next after paragraph (v) of the same subsection the following new paragraphs:—

(w) that, where the premises are a dwelling-house, the means of the lessee (together with the means of any person ordinarily residing in the premises other than a child under the age of sixteen years, a sub-lessee or a boarder who is not a relative, as defined in subsection one of section 31MAA of this Act, of the lessee or a lodger who

is

No. 58, 1968

is not such a relative) are such that it is reasonable that the lessee or the lessee and any such persons should acquire or lease other premises ;

- (x) that the lessor is a personal representative or trustee of the estate of a deceased person, that the value of the premises determined for the purposes of the Stamp Duties Act, 1920, as subsequently amended, constituted not less than one-half the dutiable estate under that Act of which they form or formed part and that the lessor, as such personal representative or trustee, holds the premises subject to a trust for sale; or
- (y) that, where the premises are a dwelling-house, the lessor has available for the lessee's occupation as a residence reasonably suitable alternative accommodation which has been erected with assistance provided under the Aged Persons Homes Act 1954 (as amended by subsequent Acts) of the Parliament of the Commonwealth at a rental which does not exceed the rental being paid by the lessee of the prescribed premises and which accommodation is available without payment of any premium or other money by the lessee.

- (v) by omitting paragraph (b) of subsection six of the same section and by inserting in lieu thereof the following paragraphs :—

(b) In paragraphs (g) and (l) of subsection five of this section, "dwelling-house" does not include any premises referred to in subparagraph (i) or (ii) of paragraph (b) of subsection

Landlord and Tenant (Amendment).

subsection (1B) of section eight of this Act No. 58, 1968 that is a dwelling-house for the purposes of the definition of "prescribed premises" in subsection one of that section, by reason of paragraph (a) of the said subsection (1B).

(b1) A notice to terminate the tenancy of a lessee of a lodging-house or boarding-house shall not be given on a ground specified in paragraph (n) or (o), or subparagraph (i) of paragraph (p), of subsection five of this section where the assignment, transfer, subletting or parting with possession of the premises took place before the date on which the assent of Her Majesty to the Landlord and Tenant (Amendment) Act, 1968, was signified, or on the ground specified in subparagraph (ii) of paragraph (p) of that subsection unless the lessee has, since that date, ceased for a period exceeding six months to be a bona fide occupant of the premises.

- (vi) by omitting subparagraph (iii) of paragraph (b) of subsection nine of the same section;
- (vii) by omitting subsection (9A) of the same section;
- (viii) by inserting next after subsection ten of the same section the following new subsections :—

(11) Where notice to quit is given on the ground specified in paragraph (m) of subsection five of this section, the court shall not be precluded from making an order on the ground that the lessor intends to occupy the whole or part of the premises as reconstructed or the whole or part of any premises proposed to be erected in the place of the premises after their demolition.

(12)

No. 58, 1968

(12) For the purposes of paragraph (u) of subsection five of this section reasonably suitable alternative accommodation shall be deemed to be available for the lessee's occupation for residential purposes where he is the lessor of reasonably suitable alternative accommodation that is not subject to Parts II, III, IV and V of this Act and he could, within a reasonable time, obtain vacant possession thereof.

Sec. 64.
(Notice to quit not to be given within six months after determination.)

Sec. 70.
(Court to consider hardship.)

- (b) by omitting from section sixty-four the word, symbols and letter "or (s)" and by inserting in lieu thereof the symbols, letters and word ", (s) or (w)";
- (c) (i) by omitting subsection two of section seventy;
- (ii) by omitting from subsection (2A) of the same section the following words:—
- (a) that the lessor had provided at the date of expiry of the notice to quit and has immediately available for the occupation of the persons occupying such dwelling-house reasonably suitable alternative accommodation;
- (iii) by inserting in paragraph (c) of the same subsection after the word "cannot" the word "reasonably";
- (iv) by omitting subsections (2B), (3A) and three of the same subsection;
- (v) by omitting from subsection four of the same section the words "specified in subsection three or subsection (3A) of this section" and by inserting in lieu thereof the words "made on a ground specified in subparagraph (ii) of paragraph (b), or paragraph (n), (o), (p) or (q), of subsection five of section sixty-two of this Act";

(vi)

Landlord and Tenant (Amendment).

(vi) by inserting in subsection (4A) of the same section after the letter and symbols "(t)" the word, letter and symbols "or (x)";

(vii) by omitting from the same subsection the words "or if the lessee is in receipt of an age pension under the Social Services Consolidation Act 1947 (as amended by subsequent Acts) of the Parliament of the Commonwealth";

(viii) by omitting subsection five of the same section;

(d) by omitting section 70A;

Sec. 70A.
(Certain dwelling-houses to be subject to this Act notwithstanding section 5A.)

(e) (i) by inserting in paragraphs (a), (b) and (c) of subsection one of section seventy-seven after the word "sold" wherever occurring the words "or otherwise disposed of (except by will or on intestacy)";

Sec. 77.
(Premises not to be sold or re-let in certain cases.)

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

(a1) If a notice to quit has been given on the ground specified in paragraph (t) or (x) of subsection five of section sixty-two of this Act, and the premises in respect of which the notice to quit was given have been vacated in accordance with the notice, or if an order for the recovery of possession of the premises has been made on either such ground, the premises shall not without the consent of the court be again leased, or made the subject of an agreement or arrangement whether oral or

in

No. 58, 1968

- in writing of leave and license for the use thereof, or agreed to be leased or made the subject of an agreement or arrangement whether oral or in writing of leave and license for the use thereof, by the lessor who obtained vacant possession in accordance with the notice or order for the recovery of possession of the premises.
- (iii) by inserting in paragraph (d) of the same subsection after the word "subsection" the words ", except paragraph (a1)";
- (iv) by inserting next after the same paragraph the following new paragraph :—
- (e) In paragraph (a1) of this subsection—
- (i) a reference to a notice to quit given on the ground specified in paragraph (t) of subsection five of section sixty-two of this Act shall include a reference to a notice to quit given on that ground before the date on which the assent of Her Majesty to the Landlord and Tenant (Amendment) Act, 1968, was signified;
- (ii) a reference to a vacation of premises in accordance with such a notice shall include a reference to a vacation of premises in accordance with such a notice before that date; and
- (iii) a reference to an order for the recovery of possession of premises made on such a ground shall include a reference to any such order made before that date.
- (v) by omitting subsection two of the same section and by inserting in lieu thereof the following subsection :—
- (2) Nothing in subsection one of this section shall prevent, where notice to quit has been

Landlord and Tenant (Amendment).

been given on the ground specified in paragraph (h), (i), (j), (k) or (s) of subsection five of section sixty-two of this Act, the letting of the premises—

- (a) to a minister of religion;
- (b) to a beneficiary under the trust;
- (c) to a person for whom the use of the premises was reasonably required for the purposes of the hospital or nursing service (including the accommodation of the staff of the hospital or nursing service);
- (d) to some person in the employ of, or about to become an employee of, the lessor, in consequence of his employment by the lessor; or
- (e) to a person for whom the use of the premises was 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),

respectively.

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

(4) If subsection one of this section is contravened the lessor, licensor or vendor or the person who, where the premises are agreed to be leased or made the subject of an agreement or arrangement whether oral or in writing of leave and license for the use thereof or sold or otherwise disposed of, would if the agreement were carried into effect, be the lessor, licensor or vendor shall be guilty of an offence against this Act.

(5) The fact that a person has been convicted of an offence against this Act arising under this section in respect of any premises does

Landlord and Tenant (Amendment).

No. 58, 1968

does not prevent the Governor from exercising his powers under subsection one of section six, or under section 6A, of this Act in respect of those premises or a class of premises that includes those premises.

(6) The fact that the Governor has exercised his powers under subsection one of section six, or under section 6A, of this Act in respect of any premises or a class of premises that includes those premises shall not be taken into account by any court in imposing a penalty on any person who has been convicted of an offence against this Act arising under this section in respect of those premises.

Sec. 82.
(Protection
of sub-
lessees.)

- (f) (i) by inserting in subsection five of section eighty-two after the word "paragraph" where firstly occurring the symbols, letters and word "(n), (o), (p) or";
- (ii) by omitting subparagraph (ii) of paragraph (a) of the same subsection;
- (iii) by omitting paragraph (c) of the same subsection;

Sec. 83.
(Protection
of certain
persons in
possession
of
premises.)

- (g) (i) by inserting in subparagraph (ii) of paragraph (c) of subsection one of section eighty-three after the word "years" the words "who, at the date of the lessee's death, was a protected person or was in receipt of a pension under the Social Services Consolidation Act 1947 (as amended by subsequent Acts) of the Parliament of the Commonwealth";
- (ii) by inserting at the end of the same subparagraph the word "or";
- (iii) by omitting from subparagraph (iii) of the same paragraph the words "a brother or sister, or the father or mother, of the lessee" and by inserting in lieu thereof the words "the father or mother of the lessee";

(iv)

Landlord and Tenant (Amendment).

- (iv) by omitting from the same subparagraph the word "or" where lastly occurring; No. 58, 1968
- (v) by omitting subparagraph (iv) of the same paragraph;
- (vi) by omitting from the same subsection the words "brother or sister or the father or mother, or other person" and by inserting in lieu thereof the words "or the father or mother";
- (vii) by omitting from subsection two of the same section the symbols and word ", (iii) or (iv)" and by inserting in lieu thereof the word and symbols "or (iii)";
- (h) (i) by inserting in paragraph (b) of subsection one of section 83A after the word "years" the words "who, at the date of the lessee's death, was a protected person or was in receipt of a pension under the Social Services Consolidation Act 1947 (as amended by subsequent Acts) of the Parliament of the Commonwealth"; Sec. 83A.
(Protection of member of the family of deceased lessee.)
- (ii) by inserting at the end of the same paragraph the word "or";
- (iii) by omitting from paragraph (c) of the same subsection the words "a brother or sister, or the mother or father," and by inserting in lieu thereof the words "the father or mother";
- (iv) by omitting from the same paragraph the word "or" where lastly occurring;
- (v) by omitting paragraph (d) of the same subsection;
- (vi) by omitting from the same subsection the words "brother or sister or the father or mother, or other person, as the case may be" and by inserting in lieu thereof the words "or the father or mother";
- (vii)

Landlord and Tenant (Amendment).

No. 58, 1968

(vii) by omitting from subsection (1A) of the same section the symbols and words “, (c) or (d)” and by inserting in lieu thereof the word and symbols “or (c)”;

New sec.
83C.

(i) by inserting next after section 83B the following new section :—

Periodic leases may not be disposed of by will or pass on intestacy.

83C. Where a lessee under a periodic lease of prescribed premises dies on or after the date on which the assent of Her Majesty to the Landlord and Tenant (Amendment) Act, 1968, was signified, the lease shall not be capable of being disposed of by the will, or of passing on the intestacy, of the lessee, except as to the balance of the periodic term current at the date of death, but nothing in this section affects the operation of section 83A of this Act or of section sixty-one of the Wills, Probate and Administration Act, 1898, as subsequently amended.

Further amendment of Act No. 25, 1948. (Part IV.—Miscellaneous.)

5. The Landlord and Tenant (Amendment) Act, 1948, as subsequently amended, is further amended—

Sec. 88A. (Dwelling-house not to be sold unless tenant given opportunity to purchase.)

(a) by inserting in subsection two of section 88A after the word “Act” the words “and a prosecution for the offence may be commenced at any time within six months after the completion of the sale”;

New secs.
88C, 88D.

(b) by inserting next after section 88B the following new sections :—

Penalty for publishing certain statements.

88C. (1) A person shall not, whether as principal or agent or in any other capacity, publish

or

Landlord and Tenant (Amendment).

or cause, permit or authorise to be published a No. 58, 1968 statement—

- (a) stating, suggesting, or implying, in any way, that he or any other person is willing or able to obtain a determination, variation or assessment of the fair rent of any prescribed premises or is willing or able to recover possession of any prescribed premises or that he or that other person is willing to act for or on behalf of, represent or advise any other person in or in connection with any proceedings under this Act; or
- (b) inviting other persons to consult him or any other person in connection with any such determination, variation or assessment, in connection with the recovery of possession of prescribed premises or in connection with any such proceedings.

(2) A statement shall be deemed to be published within the meaning of this section only if it is—

- (a) inserted in any newspaper (including a periodical publication) or any other publication printed and published in New South Wales;
- (b) contained in any document gratuitously sent or delivered to any person or thrown on to or left at any place;
- (c) broadcast by wireless transmission or by television; or
- (d) published in any other prescribed manner.

88D. (1) In every lease of prescribed premises there shall be implied the following covenants by the lessee :— Implied powers in lessor.

- (a) that the lessor or his agents may, twice in every year at a reasonable time of the day between eight o'clock in the morning and eight

*Landlord and Tenant (Amendment).***No. 58, 1968**

eight o'clock in the evening on any day other than a Saturday, Sunday or public holiday and after at least seven days' notice in writing of intention to do so has been given to the lessee, enter upon the premises and view the state of repair thereof;

- (b) that the lessor or his agents, servants, workmen or contractors may enter the premises for the purpose of effecting necessary repairs or maintenance after reasonable notice has been given to the lessee.

(2) The expression "reasonable time" in paragraph (a) of subsection one of this section does not include any time at which the lessee and the other adult members of his household are ordinarily absent from the prescribed premises in the course or by reason of their respective trades, businesses, occupations or employments.

(3) Section eighty-five of the Conveyancing Act, 1919, as subsequently amended, does not apply to a lease of prescribed premises, whether made before or after the date on which the assent of Her Majesty to the Landlord and Tenant (Amendment) Act, 1968, was signified.

(4) Subsection one of this section has effect subject to any provision of the lease of the premises.

Sec. 89.
(Contracting out prohibited.)

- (c) by omitting from section eighty-nine the words "to a covenant or agreement entered into for the purposes of paragraph (a) of subsection (1A) of section 5A of this Act nor";

Sec. 90.
(Contracts to evade Act prohibited.)

- (d) by omitting from section ninety the words "a lease for the purposes of paragraph (a) of subsection (1A) of section 5A of this Act or";

(e)

Landlord and Tenant (Amendment).

(e) by inserting next after section ninety the following new section :—

New sec.
90A.

90A. (1) A person shall not, whether as principal or agent or in any other capacity, enter into any contract or arrangement, whether oral or in writing, under which it is agreed—

Certain
contracts
to be void.

(a) that in consideration of any person acting for or on behalf of, representing or advising another person in proceedings under Part II of this Act a sum of money or any other consideration, based on, dependent upon or related to any increase in the fair rent of any prescribed premises that may be granted pursuant to those proceedings shall be paid, taken or given; or

(b) that, dependent upon whether vacant possession of any prescribed premises is obtained, a sum of money or any other consideration will be paid, taken or given.

(2) Any person who contravenes subsection one of this section is guilty of an offence against this Act.

(3) Any such contract or arrangement entered into before the date on which the assent of Her Majesty to the Landlord and Tenant (Amendment) Act, 1968, was signified shall be void, but nothing in this subsection shall prevent either party to such a contract or agreement enforcing it if he has, before that commencement, performed all of his obligations under the contract or agreement.

(f) (i) by omitting paragraph (d) of subsection three of section ninety-four;

Sec. 94.
(Proof of
instru-
ments.)

(ii)

Landlord and Tenant (Amendment).

No. 58, 1968

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

(4) An application for a certificate under this section or under section 6A, seven, eighty-six, 86A, eighty-seven or 87B of this Act shall be accompanied by a fee of two dollars or, where another fee has been prescribed in lieu thereof, by that other fee.

Sec. 95.
(Offences
and
penalties.)

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

(5) Any person who is guilty of an offence against this Act arising under section seventy-seven of this Act—

(a) by reason that premises are or are agreed to be leased or are or are agreed to be made the subject of an agreement or arrangement referred to in that section shall, in addition to any other penalty provided by this section, be liable to a penalty not exceeding one hundred dollars for each day on which the premises are the subject of such a lease, agreement or arrangement; or

(b) by reason that premises are sold or otherwise disposed of or agreed to be sold or otherwise disposed of shall, instead of the penalty provided by subsection three of this section, be liable—

(i) if a body corporate—to a penalty not exceeding two thousand dollars; or

(ii) if any other person—to a penalty not exceeding one thousand dollars, or to imprisonment for a term not exceeding twelve months, or to both such penalty and imprisonment.

Landlord and Tenant (Amendment).

6. The Landlord and Tenant (Amendment) Act, 1948, No. 58, 1968 as subsequently amended, is further amended—

(a) by omitting from section one hundred the word, symbols and letter “or (v)” and by inserting in lieu thereof the symbols, letters and word “, (v), (w), (x) or (y)”;

(b) by omitting from subsection two of section one hundred and one the word, symbols and letter “or (v)” and by inserting in lieu thereof the symbols, letters and word “, (v), (w), (x) or (y)”.

7. (1) The Landlord and Tenant Act of 1899, as subsequently amended, is amended—

(a) by omitting from section one the words “Landlord and Tenant Act of” and by inserting in lieu thereof the words “Landlord and Tenant Act.”;

(b) by inserting next after section 2B the following new sections :—

2c. Where any demised premises consist partly of prescribed premises within the meaning of the Landlord and Tenant (Amendment) Act, 1948, as subsequently amended, and partly of other premises, the lease may be determined in so far as it applies to the other premises by a notice to quit or demand of possession and proceedings under this Act may, subject to this Act, be taken in respect of the other premises.

2d. On and from the first day of January, one thousand nine hundred and sixty-nine, and until the expiration of the thirty-first day of December, one thousand nine hundred and seventy-two, this Act shall be deemed to be amended in the manner set forth in Schedule N to this Act.

Further amendment of Act No. 25, 1948.

(Part V.—Protected Persons.)

Sec. 100. (Limitation on power of court to make order for recovery of possession.)

Sec. 101. (Protection of protected person claiming under lessee where tenancy determined.)

Amendment of Act No. 18, 1899.

Sec. 1. (Short title and Division into Parts.)

New secs. 2c, 2d.

Application of Act where premises are partly prescribed premises and partly other premises.

Certain amendments of Act effective on and from 1/1/1969 until 31/12/1972.

(c)

Landlord and Tenant (Amendment).

No. 58, 1968

New
Schedule N.
Sec. 2D.

(c) by inserting next after Schedule M the following new Schedule :—

SCHEDULE N.

The Landlord and Tenant Act, 1899, as subsequently amended, is amended—

Sec. 2A.
(Restriction
on actions
of ejectment
and proceed-
ings under
section
seventeen
of this
Act.)(a) (i) by inserting next after subsection ~~or~~ of section 2A the following new subsections:—

(1A) No action for ejectment in the Supreme Court or a District Court, or proceedings under section seventeen of this Act, for the recovery of any land or premises or part of any land or premises from the tenant or person claiming under him who is actually occupying such land or premises or part shall be commenced by the landlord if—

(a) there is situated on the land excluded premises; and

(b) the excluded premises are actually occupied by the person who on the first day of January, one thousand nine hundred and sixty-nine, was the tenant or by some person claiming under him,

and where—

(c) the term or interest of such tenant or person has not expired or been determined, if—

(i) such tenant or person is liable to the payment of rent; and

(ii) such rent does not exceed twenty-five dollars twenty cents per week, or an equivalent sum calculated in respect of any other period; or

(d) the term or interest of such tenant or person has expired or been determined, if—

(i) such tenant or person was immediately before the expiration or determination of such term or interest liable to the payment of rent; and

(ii)

Landlord and Tenant (Amendment).

- (ii) such rent did not immediately before such expiration or determination exceed twenty-five dollars twenty cents per week, or an equivalent sum calculated in respect of any other period. No. 58, 1968

(1B) Subsection (1A) of this section applies notwithstanding the provisions of subsection one of this section.

- (ii) by omitting from subsection two of the same section the words "provisions of subsection one" and by inserting in lieu thereof the words "foregoing provisions";

New secs.
2E, 2F.

Special
provision
relating
to excluded
premises.

- (b) by inserting next after section 2D the following new sections:—

2E. (1) In an action of ejectment in the Supreme Court or a District Court, or proceedings under section seventeen or twenty-three of this Act, for the recovery of any land on which excluded premises, not being premises the subject of a lease for a fixed term, are situated, the Court or justices before whom the matter comes for hearing shall have no jurisdiction unless there was filed with the instrument initiating the proceedings a statutory declaration by the person taking the proceedings declaring that on a day not less than six months before the day on which the proceedings were instituted, but after the first day of January, one thousand nine hundred and sixty-nine, the person taking the proceedings served upon the tenant of the premises or person claiming under him, a notice in writing stating his intention to take proceedings under this Act in respect of that land.

(2) Notwithstanding the provisions of subsection one of this section a Court or justices shall have jurisdiction in any proceedings referred to in that subsection notwithstanding that a statutory declaration has not been filed as referred to in that subsection and that a notice referred to in that subsection has not been served where the person taking the proceedings alleged in the notice to quit or demand of possession that—

- (a) the rent has remained unpaid in respect of a period of not less than twenty-eight days; or

(b)

Landlord and Tenant (Amendment).

No. 58, 1968

(b) the tenant has failed to perform or observe some term or condition of the lease and the performance or observance of that term or condition has not been waived or excused by the landlord,

but the Court or justices shall not adjudge the landlord entitled to possession of the land unless it is or they are satisfied that the ground specified in the allegation has been established.

Interpre-
tation.

2F. In this Act, "excluded premises" means any premises that—

(a) immediately before the first day of January, one thousand nine hundred and sixty-nine, were prescribed premises within the meaning of the Landlord and Tenant (Amendment) Act, 1948, as subsequently amended, and were subject to the provisions of Part III of that Act, as so amended; and

(b) ceased on that day to be prescribed premises within the meaning of that Act, as so amended and as amended by the Landlord and Tenant (Amendment) Act, 1968.

Sec. 17.
(Possession of tenements may be recovered in District Courts by landlords where terms have expired or been determined.)

(c) by inserting in subsection two of section seventeen after the words "dwelling-house is" the words "or excluded premises are";

Sec. 18.
(Possession of small tenements may be recovered in District Court by landlords for non-payment of rent.)

(d) by inserting in subsection six of section eighteen after the word "dwelling-house" the words "or excluded premises";

(e)

Landlord and Tenant (Amendment).

Sec. 24. (e) by inserting in section twenty-four after the words "dwelling-house is" the words "or excluded premises are";

(Power to justices to suspend proceedings on adjudication for one month.)

No. 58, 1968

Sec. 26. (f) by inserting in subsection three of section twenty-six after the word "dwelling-house" the words "or excluded premises".

(Execution of warrant to be suspended upon security to defend an action for recovery of the land.)

(2) Upon the expiration of the thirty-first day of December, one thousand nine hundred and seventy-two, section 2D of, and Schedule N to, the Landlord and Tenant Act of 1899, as subsequently amended and as amended by this Act, are hereby repealed.

8. (1) Section two hundred and twenty-eight of the Common Law Procedure Act, 1899, as subsequently amended, shall be construed as if the words "or excluded premises within the meaning of the Landlord and Tenant Act, 1899, as subsequently amended, are" were inserted after the words "dwelling-house is" in that section.

Amendment of
Common
Law Pro-
cedure
Act, 1899.
Sec. 228.(Judgment
upon
finding for
claimant.)

(2) Upon the expiration of the thirty-first day of December, one thousand nine hundred and seventy-two, this section is hereby repealed.

9.

Landlord and Tenant (Amendment).

No. 58, 1968

Rent of premises excluded from Landlord and Tenant (Amendment) Act, 1948, as subsequently amended, and as amended by this Act.

9. (1) Where any premises were prescribed premises within the meaning of the Landlord and Tenant (Amendment) Act, 1948, as subsequently amended, immediately before the first day of January, one thousand nine hundred and sixty-nine, and ceased on that day to be prescribed premises within the meaning of that Act, as so amended and as amended by this Act, and—

(a) those premises were, immediately before that day, subject to the provisions of Part II of that Act, as subsequently amended and in force immediately before that day, but were not the subject of a lease for a fixed term the rent payable in respect of those premises—

(i) shall, in the case of premises, not being premises referred to in subparagraph (ii) or (iii) of this paragraph, be, as on and from that day, the fair rent last determined before that day under the provisions of the Landlord and Tenant (Amendment) Act, 1948, as subsequently amended up to and including that day and in force at the time the determination was made or where the rent of the premises was immediately before that day fixed under section 17A of that Act, as so amended and in force, the rent so fixed;

(ii) shall, in the case of premises in respect of which an application is pending as referred to in paragraph (a) of subsection one of section ten of this Act, be—

(a) as on and from that day, but subject to paragraph (b) of this subparagraph, the fair rent last determined before that day under the provisions of the Landlord and Tenant (Amendment) Act, 1948, as subsequently amended up to and including that day and in force at the time
the

Landlord and Tenant (Amendment).

the determination was made or where the rent of the premises was immediately before that day fixed under section 17A of that Act, as so amended, the rent so fixed; and

(b) as on and from the day fixed by the determination made pursuant to that application, the fair rent fixed by the determination; or

(iii) shall, in the case of premises in respect of which there was no determination in force under the Landlord and Tenant (Amendment) Act, 1948, as subsequently amended, immediately before that day or the rent of which was not, immediately before that day, fixed under section 17A of that Act, as so amended and as amended by this Act, be the contractual rent provided for by the lease immediately before that day,

and that rent shall continue to be the rent payable under the lease until the lease has been determined by notice to quit or demand of possession or until the rent is varied by agreement between the landlord, agent or other person having authority to lease the premises and the tenant; or

(b) those premises were, immediately before that day, subject to the provisions of Part II of that Act, as subsequently amended and in force immediately before that day, and were the subject of a lease for a fixed term, the rent payable in respect of those premises shall be as on and from that day—

(i) where the rent was fixed by a determination made before the twenty-sixth day of November, one thousand nine hundred and sixty-eight, and in force immediately before that lastmentioned day, the rent fixed by that determination; or

and

(ii)

Landlord and Tenant (Amendment).

No. 58, 1968

(ii) where the rent payable immediately before that first day of January was fixed under section 17A of this Act, the rent so fixed,

or if the contractual rent provided for from time to time by the lease of the premises is greater than the rent referred to in subparagraph (i) or (ii) of this paragraph, that contractual rent and that rent shall continue to be the rent payable under the lease until the expiry of the lease by effluxion of time or the lease has been determined by notice to quit or demand of possession or until the rent is varied by agreement between the landlord, agent or other person having authority to lease the premises and the tenant.

(2) This section shall extend in relation to premises together with goods leased therewith, and any reference to premises shall include a reference to premises together with goods leased therewith.

(3) This section has effect subject to the provisions of section 32B of the Landlord and Tenant (Amendment) Act, 1948, as subsequently amended and as amended by this Act.

Savings.

10. (1) Notwithstanding any other provisions of this Act—

(a) where any application for a determination (including a variation of a determination) or assessment of the fair rent of any premises that were prescribed premises under the Landlord and Tenant (Amendment) Act, 1948, as subsequently amended, immediately before the first day of January, one thousand nine hundred and sixty-nine, and ceased to be prescribed premises under that Act, as so amended and as amended by this Act, had been lodged before that day and the determination, variation or assessment had not
been

Landlord and Tenant (Amendment).

been made pursuant to that application before that day, the application may, notwithstanding that the prescribed premises cease by reason of any of those provisions to be prescribed premises, be dealt with in all respects as if those provisions had not been enacted; and

- (b) where any proceedings for the recovery of possession of any premises that were prescribed premises under the Landlord and Tenant (Amendment) Act, 1948, as subsequently amended, immediately before the first day of January, one thousand nine hundred and sixty-nine, and ceased to be prescribed premises under that Act, as so amended and as amended by this Act, had been instituted by an information exhibited before that day, and those proceedings had not been completed on that day, those proceedings may be continued and completed and an order for the recovery of possession of the premises may be made, refused, appealed against or otherwise dealt with and, if made, enforced, in all respects as if those provisions had not been enacted.

(2) Paragraph (a) of subsection one of this section does not apply to an application for the determination, variation or assessment of the fair rent of any prescribed premises referred to in section 17B, or subsection five of section 32B, as inserted by this Act in the Landlord and Tenant (Amendment) Act, 1948, as subsequently amended.

BROKEN