

# Landlord and Tenant (Amendment) Act 1948 No 25

[1948-25]



New South Wales

## Status Information

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### Notes—

- **Does not include amendments by**  
*Miscellaneous Acts Amendment (Directors' Liability) Act 2012 No 97* (not commenced — to commence on 11.1.2013)

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# Landlord and Tenant (Amendment) Act 1948 No 25



New South Wales

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# Landlord and Tenant (Amendment) Act 1948 No 25



New South Wales

An Act relating to the control of rents of certain premises and the recovery of possession of certain premises; to repeal the *Fair Rents Act 1939*; to amend the *Landlord and Tenant Act of 1899* and certain other Acts; and for purposes connected therewith.

## Part 1 Preliminary

### 1 Name of Act and commencement

- (1) This Act may be cited as the *Landlord and Tenant (Amendment) Act 1948*.
- (2) This Act shall commence upon a day to be appointed by the Governor and notified by proclamation published in the Gazette.

### 2 Repeal of Act No 37, 1939

The *Fair Rents Act 1939* is hereby repealed.

### 3 (Repealed)

### 4 Savings

- (1) (Repealed)
- (2) All applications to, and other proceedings before, the Commonwealth Rent Controller under the Commonwealth Regulations which are pending or purport to be pending immediately before the commencement of this Act may be continued before, and may be determined by, the Controller under this Act, and any application pending or purporting to be pending shall be deemed to be an application to the Controller under this Act, and the provisions of this Act shall apply to those applications and proceedings as if they were applications to, or proceedings before, the Controller under this Act.
- (3) All proceedings before a Fair Rents Board in this State under the Commonwealth Regulations which are pending or purport to be pending immediately before the commencement of this Act, may be continued before and determined by a Fair Rents

Board under this Act, and the provisions of this Act shall apply to those proceedings as if they were proceedings before a Fair Rents Board under this Act.

- (4) All proceedings under Part 3 of the Commonwealth Regulations which are pending or purport to be pending immediately before the commencement of this Act may be continued and determined under Part 3 of this Act as if they had been commenced thereunder.
- (5) The generality of this section shall not be affected by any saving in any other section of this Act nor shall this section limit any saving in the *Interpretation Act of 1897*, as amended by subsequent Acts.

## **5 Crown not bound**

This Act shall not bind:

- (a) the Crown in right of the Commonwealth or of the State, or
- (b) the New South Wales Land and Housing Corporation.

## **5AA No new protected tenancies to be created from 1 January 1986**

On and from 1 January 1986, the provisions of Parts 2, 3, 4 and 5:

- (a) do not apply in respect of prescribed premises unless the premises were the subject of a lease immediately before 1 January 1986, and
- (b) cease to apply, and shall not thereafter apply, to any such premises upon vacant possession of the premises being obtained or upon those provisions ceasing to apply to the premises by reason of the operation of section 5A or any other provision of this Act.

## **5AB Evidence of vacant possession**

- (1) A statement, in or to the effect of the prescribed form, signed by the lessee of premises and stating that the lessee did not enter into possession of the premises until on or after 1 January 1986 is admissible in any proceedings arising out of or taken under this Act and, unless evidence is given to the contrary, shall be presumed to be correct.
- (2) A statement under this section is not admissible in proceedings unless the lessor of the premises became the lessor after the statement was signed by the lessee.

## **5A Parts 2, 3, 4 and 5 not to apply to certain premises**

- (1) The provisions of Parts 2, 3, 4 and 5 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 that was occupied personally by the lessor or his or her predecessor in title on or after that day, or
    - (b) vacant possession was obtained before that day and that has remained vacant from the time when vacant possession was obtained until that day,
  - (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 registrar of the Local Court, and
    - (b) that bears a certificate by that solicitor or registrar of the Local Court that he or she explained the lease to the lessee before it was executed by him or her, and
    - (c) (Repealed)
  - (iii) the lease of which is after that day registered in the Department,
- (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 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 registrar of the Local Court, and
  - (ii) that bears a certificate by that solicitor or registrar of the Local Court that he or she explained the lease to the lessee before it was executed by him or her, and
- (c) that after that first day of January is registered in the Department, 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 Department immediately after its execution by the lessee, have been exempt from the provisions of Parts 2, 3, 4 and 5 under the section that this section replaces as in force at the time when the lease was executed by the lessee,
- (f) a dwelling-house or a residential unit to which the provisions of Parts 2, 3, 4 and 5 have at any time ceased to apply by reason of paragraph (c), (d) or (e).

(2) For the purposes of:

- (a) paragraphs (c), (d) and (e) of subsection (1), “lease” does not include a concurrent lease, and
  - (b) paragraph (c) of subsection (1) “lease” does not include a lease that was or is registered in the Department 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 Department have been exempt from the provisions of Parts 2, 3, 4 and 5 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 (1), and in paragraph (b) of subsection (2), to the section that this section replaces as in force at a particular time shall be construed as a reference to section 5A, as inserted by the *Landlord and Tenant (Amendment) Act 1954*, and includes a reference to that section as amended up to that time.
- (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 Director-General 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 Director-General, 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 Director-General, in a register to be kept by the Director-General 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 (1) and section 5AA have effect subject to the provisions of subsection (1) of section 6, section 6A and section 81A.
- (8) Notwithstanding the provisions of subsection (1) and section 5AA, the provisions of sections 36 (except paragraph (a), subparagraph (i) of paragraph (b) and paragraph (c) of subsection (1)), 36A, 55, 77, 93, 95 and 98 apply in respect of premises exempted from the operation of provisions of the Act by subsection (1) or section 5AA.
- (9) The Director-General shall not register a lease under paragraph (d) or (e) of subsection (1) if he or she 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 77.
- (9A) On and after 1 January 1986, the Director-General shall not register a lease under this section unless:
  - (a) the lease was executed by the lessee before 1 January 1986, and
  - (b) the application for registration was made on or before 30 June 1986, or a Fair Rents Board has recommended under subsection (9C) that the application be dealt with.
- (9B) Where an application for the registration of a lease under this section is made to the Director-General after 30 June 1986, but before 1 January 1989, the Director-General

may refer the application to a Fair Rents Board if of the opinion that the Board could make a recommendation under subsection (9C) that the application be dealt with.

(9C) A Fair Rents Board may, if satisfied that in the particular circumstances of an application for registration referred to it under subsection (9B) there is a reasonable excuse for the delay in the making of the application, recommend to the Director-General that the application be dealt with.

(10) A certificate:

- (a) purporting to be signed by a solicitor or a registrar of the Local Court, 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 (1), 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 Director-General or his or her delegate and certifying:
  - (i) that a lease specified or referred to in the certificate was registered in the Department on a day specified in the certificate, or
  - (ii) the particulars referred to in subparagraph (i), 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 (1) purporting to be signed by a solicitor or a registrar of the Local Court, 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) and, where the certificate certifies that the lease bears a certificate as referred to in subparagraph (ii), 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 under paragraph (b) of subsection (10):

- (a) may be made by any person,
- (b) shall be made in writing to the Director-General, 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) In this section:

***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.

## **6 Declarations as to application of Act**

- (1) The Governor may, by order published in the Gazette, declare that the application of this Act shall extend to premises, or the premises included in any class of premises, specified in the order, and thereupon the application of this Act shall, notwithstanding anything contained in paragraph (b) of subsection (1) of section 12 or section 78, extend to those premises (including goods leased with those premises) or to the premises included in that class of premises (including goods leased with those premises).
- (2) The Governor may, by order published in the Gazette, declare that any premises, or the premises included in any class of premises, shall be excluded from the operation of this Act or of such of the provisions of this Act as are specified in the order, and thereupon those premises, or premises of that class, shall be excluded accordingly.
- (3) Any declaration made or purporting to have been made before the commencement of this Act under sub-regulation four or sub-regulation five of Regulation seven of the Commonwealth Regulations and having force or effect or purporting to have force or effect in this State immediately before such commencement shall continue to have force and effect in all respects as if this section had been in force at the time when such declaration was made or purported to have been made, and the declaration had been made thereunder by the Governor.

### **6A Special premises**

- (1) The Governor may, by order published in the Gazette, declare that any premises shall be “special premises” for the purposes of this Act and may also by that order declare that each and every part of those premises which is at any time while the order has force or effect the subject of a separate agreement or arrangement whether oral or in writing of leave and licence for the use of that part shall be “special premises” for the purposes of this Act.

(1A)

- (a) Any order made under subsection (1) before the commencement of the *Landlord and Tenant (Amendment) Act 1954* and having force or effect immediately before such commencement declaring that any premises shall be “special premises” for the purposes of this Act shall have effect and shall be deemed always to have had effect as though that order had also declared that each and every part of those premises which is at any time while the order has force or effect the subject of a separate agreement or arrangement whether oral or in writing of leave and licence for the use of that part shall be “special premises” for the purposes of this Act.
- (b) A person shall not, by reason of the enactment of paragraph (a), be guilty of an offence against this Act in respect of anything done or omitted to be done by him or her before the commencement of the *Landlord and Tenant (Amendment) Act 1954*, if he or she would not have been so guilty had that paragraph not been enacted.

(2) In the application of this Act to or in respect of “special premises”:

- (a) “lease” includes any leave and licence for the use of the “special premises” whether such leave and licence is granted orally or in writing; and “lessor”, “lessee”, “to lease”, and “to let”, and expressions derived therefrom shall have a corresponding meaning,
- (b) “rent” includes any payment or consideration in respect of any leave and licence for the use of the “special premises” and for any services provided for or supplied to any person using the “special premises” under leave and licence,

(c)

- (i) subsection (3) of section 62 shall be read and construed as if the words “for a period determined in accordance with section 63” were omitted therefrom and the words “for a period of at least seven days or, where a period shorter than seven days is reasonable in the circumstances, for that shorter period” were inserted in lieu thereof,
- (ii) subsection (5) of section 62 shall be read and construed as if paragraph (d) thereof were omitted and the following paragraph inserted in lieu thereof:

(d)

- (i) that the conduct of the lessee is obnoxious to any other occupant or occupants of the premises or of the building in which the premises are situated, or tends to bring the premises or building as aforesaid into disrepute, or

(d) where recovery of possession of the special premises is sought on the ground



referred to in subparagraph (i) of paragraph (d) of subsection (5) of section 62, as substituted by subparagraph (ii) of paragraph (c), sections 63 and 72 shall be deemed to be omitted therefrom.

(3)

- (a) Where any premises (not being premises that are declared to be “special premises” under subsection (1) or subsection (1A)) are after the commencement of the *Landlord and Tenant (Amendment) Act 1958* occupied by any person for the purposes of residence under an agreement or arrangement whether oral or in writing of leave and licence for the use thereof (whether that agreement or arrangement was entered into before or after that commencement, whether or not that agreement or arrangement was entered into in substitution for a lease of such premises or of any part of such premises or of the premises of which such premises form a part, and whether the occupancy by that person for the purposes of residence under that agreement or arrangement commenced before or after that commencement), and such premises or any part of such premises or the premises of which such premises form a part have, after the thirtieth day of June, one thousand nine hundred and forty-nine, and before that agreement or arrangement was entered into, been the subject of a lease (whether the lease was entered into before or after that date and whether or not the lease is still subsisting), the premises shall, subject to paragraphs (b), (c) and (d), be deemed to be “special premises” for the purposes of this Act.
- (b) The Governor may, by order published in the Gazette, exempt any class of premises specified in the order from the operation of paragraph (a) and thereupon that paragraph shall not apply to the class of premises so specified.
- (c) The Director-General, in his or her discretion, may, either unconditionally or subject to such conditions as he or she thinks fit, issue a certificate excluding any premises from the operation of paragraph (a), for such period as is specified in the certificate and the premises shall, so long as the certificate remains in force, be excluded accordingly.

The Director-General may at any time revoke or vary any certificate issued under this paragraph.

- (d) In this subsection the expression “agreement or arrangement whether oral or in writing of leave and licence for the use thereof” in relation to premises does not include such an agreement or arrangement under which the licensee of the prescribed premises is a bona-fide boarder.

In this paragraph ***bona-fide boarder*** means a licensee who is supplied by the licensor with:

- (i) one meal before midday consisting of at least two courses, one of which

comprises cereal or porridge and the other of which comprises cooked meat, eggs or a like dish, together with bread (or toast), butter, jam and tea or coffee, and

- (ii) one meal after midday consisting of at least two courses, one of which comprises fish or meat (other than in sandwich form) and cooked vegetables, if the value of the meals so supplied forms a substantial portion of the whole charge paid by the licensee under the agreement or arrangement.

(e) Nothing in this subsection affects the operation of subsection (1).

## **7 Holiday premises**

- (1) Where any prescribed premises are not holiday premises by reason only of the fact that they have at some time subsequent to the first day of March, one thousand nine hundred and forty-five, and before the commencement of the *Landlord and Tenant (Amendment) Act 1952*, been leased to or occupied by a lessee for a continuous period exceeding three months or that they have at some time after the commencement of the *Landlord and Tenant (Amendment) Act 1952* been leased to or occupied by a lessee for a continuous period exceeding eight weeks, the owner or lessor of those prescribed premises may make application in writing to the Director-General to exclude the premises from the operation of this Act.
- (2) The applicant shall furnish such information in relation to the application as the Director-General requires.
- (3) The Director-General, in his or her discretion, may, either unconditionally or subject to such conditions as he or she thinks fit, issue a certificate excluding the premises from the operation of this Act or of such of the provisions of this Act as are specified in the certificate, for such period as is so specified and the premises shall, so long as the certificate remains in force, but subject to any variation thereof, be excluded accordingly.
- (4) Any certificate issued or purporting to have been issued before the commencement of this Act under sub-regulation three of Regulation 7A of the Commonwealth Regulations and having force or effect or purporting to have force or effect in this State immediately before such commencement shall continue to have force and effect in all respects as if this section had been in force at the time when such certificate was issued or purported to have been issued and the certificate had been issued under this section.
- (5) The Director-General may at any time revoke or vary any certificate issued under subsection (3) or continued in force under subsection (4).

## 8 Definitions

(1) In this Act, unless the contrary intention appears:

**appeal** means appeal to a Fair Rents Board from a determination of the Director-General.

**authorised officer** means:

- (a) a person appointed by the Director-General in writing to be an authorised officer for the purposes of this Act, or
- (b) an investigator appointed under section 18 of the *Fair Trading Act 1987*.

**Commonwealth Regulations** means the Regulations having the title of the *National Security (Landlord and Tenant) Regulations* as in force or as purporting to be in force immediately before the commencement of this Act under the *Defence (Transitional Provisions) Act 1946–1947* of the Parliament of the Commonwealth.

**Department** means the Department of Commerce.

**determination** means determination of the fair rent of any premises, or of any premises together with goods leased therewith, made or continued in force under this Act, but does not include a fixing of the rent of any premises under section 17A.

**Director-General** means:

- (a) the Commissioner for Fair Trading, Department of Commerce, or
- (b) if there is no such position in that Department, the Director-General of that Department.

**Fair Rents Board** or **Board** means a Fair Rents Board constituted or deemed to have been constituted under this Act.

**holiday premises** means any premises which:

- (a) during the period commencing on the first day of March, one thousand nine hundred and forty-five, and ending on the sixteenth day of December, one thousand nine hundred and forty-six, have ordinarily been leased for holiday purposes only,
- (b) have not at any time during that period been leased to or occupied by any lessee for a continuous period exceeding three months, and
- (c) were not, on the sixteenth day of December, one thousand nine hundred and forty-six, leased for purposes other than holiday purposes,

but does not include any such premises which:

- (d) at any time after that date are or were leased for purposes other than holiday purposes, or
- (e) at any time after that date but before the commencement of the *Landlord and Tenant (Amendment) Act 1952* were leased to or occupied by any lessee for a continuous period exceeding three months, or
- (f) at any time after the commencement of the *Landlord and Tenant (Amendment) Act 1952* are leased to or occupied by any lessee for a continuous period exceeding eight weeks.

**lease** includes every contract for the letting of any prescribed premises, whether the contract is express or implied or is made orally, in writing or by deed, and includes a contract for the letting of prescribed premises together with goods, and also includes any tenancy the existence of which is presumed by operation of section 22A of the *Landlord and Tenant Act of 1899* as amended by subsequent Acts, but does not include any lease arising under an attornment clause in a mortgage or in an agreement for the sale and purchase of land or any lease arising under a clause in a mortgage or in an agreement for the sale and purchase of land (however expressed and whenever executed) whereby in case of default the mortgagee or the vendor (as the case may be) is given the powers of a lessor with respect to the recovery of possession or ejectment, or any tenancy at will implied at law in any mortgage or agreement for the sale or purchase of land.

**lessor** and **lessee** mean the parties to a lease, or their respective successors in title, and include respectively:

- (a) a mesne lessor and a mesne lessee,
- (b) a sub-lessor and sub-lessee,
- (c) in respect of premises which are subject to a mortgage, a mortgagee who enters or has entered into possession of the premises under the mortgage and a person who was the lessee of the premises under the mortgagor immediately prior to the mortgagee entering into possession, and
- (d) the persons who, by operation of section 22A of the *Landlord and Tenant Act of 1899* as amended by subsequent Acts are presumed to be the landlord and tenant respectively.

**Metropolitan Area** means such part or parts of the County of Cumberland as may be prescribed as the Metropolitan Area and until any such part or parts are so prescribed means the County of Cumberland.

**Part** means Part of this Act.

**prescribed** means prescribed by this Act or the regulations.

**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.

**rates** includes any rates or charges made or levied by any local authority or other local governing body, including any municipal, shire or county council and water or sewerage authority.

**regulations** means regulations made under this Act.

**rent** means the actual rent payable under a lease, and includes:

- (a) the value to the lessor of any covenants, conditions or other provisions of, or relating to, the lease to be performed by the lessee, other than covenants, conditions and provisions usually entered into by a lessee, and
- (b) any rates or taxes payable by a lessee in respect of any prescribed premises, other than excess water rates,

and where, in any lease:

- (c) it is provided that a reduced amount, as rent, shall be accepted by the lessor upon any condition to be performed by the lessee, that reduced amount shall be deemed to be the rent payable under the lease, and
- (d) any rebate, discount, allowance or other reduction is provided for, the amount payable after each such reduction is made shall be deemed to be the rent payable under the lease.

**shared accommodation** means any prescribed premises leased, or intended to be leased, for the purpose of residence and forming part of other prescribed premises, but does not include any prescribed premises forming a complete residence in themselves.

**spouse** of a person includes a person with whom the person has a de facto relationship.

**Note—**

“De facto relationship” is defined in section 21C of the [Interpretation Act 1987](#).

**tax** includes any tax, whether on land or on income derived from land, imposed by any law of the Commonwealth or of the State.

**the prescribed date**, in relation to any prescribed premises, means the thirty-first day of August, one thousand nine hundred and thirty-nine.

(1A) In this Act (other than in section 112) unless the contrary intention appears, **dwelling-house** means any prescribed premises (including shared accommodation) leased for the purposes of residence, and includes:

- (a) the premises of any lodging-house or boarding-house,
- (b) any part of premises which is leased separately for the purposes of residence, but does not include premises licensed for the sale of spirituous or fermented liquors.

(1B) For the purposes only of the definition of **prescribed premises** in subsection (1), **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 (1) of section 6, 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), that is to say:
  - (i) premises that are, by the same lease, leased partly as a dwelling-house and partly as a shop within the meaning of the [Shop Trading Act 2008](#) 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 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 2, 3, 4 and 5 under subsection (2) of section 6.

(2) For the purposes of this Act, **lessee** includes a person who remains in possession of premises after the termination of his or her lease of the premises, and **lessor** has a

corresponding meaning.

- (2A) No prescribed premises forming part of other prescribed premises shall be regarded as not forming a complete residence in themselves by reason only of the fact that a laundry or laundry facilities are used by the lessee of that part in common with any one or more of the following persons, namely, the lessor or other persons occupying other parts of the prescribed premises of which the firstmentioned prescribed premises form a part.
- (3) Where the lessor of prescribed premises supplies or provides any service in connection with the premises and a separate charge is made for those services, the amount charged shall, for the purposes of this Act, be deemed to form part of the rent payable under the lease.
- (4) Any declarations made or purporting to have been made before the commencement of this Act under paragraph (b) of the definition of **prescribed premises** in sub-regulation one of Regulation eight of the Commonwealth Regulations and in force or purporting to be in force in this State immediately before such commencement 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).
- (5) Notes included in this Act do not form part of this Act.

## **Part 2 Fair rents**

### **Division 1 Administration**

#### **9 Constitution and abolition of Fair Rents Board**

- (1) The Minister may, for the purposes of this Act, constitute Fair Rents Boards at such places as he or she thinks fit.

All Fair Rents Boards constituted or purporting to have been constituted in this State before the commencement of this Act under Regulation nine of the Commonwealth Regulations and in existence or purporting to be in existence immediately before such commencement shall be deemed to have been constituted under this subsection.

- (2) The Minister may abolish any Fair Rents Board.
- (3) Where a Fair Rents Board is abolished, the Minister may, by order, make provision for the transfer of pending applications and appeals before the Board to some other Fair Rents Board and pending applications and appeals so transferred may be heard and determined by the Board to which they are transferred.

## **10 Procedure of Fair Rents Boards**

- (1) The Governor may by regulations regulate the procedure of Fair Rents Boards.
- (2) (Repealed)

## **11 (Repealed)**

## **12 Powers of Director-General and Fair Rents Boards**

- (1) The Director-General and each Fair Rents Board shall have and may exercise such powers and functions as are conferred upon him or her or it respectively by this Act, and may exercise those powers and functions:
  - (a) in relation to all prescribed premises (including goods leased therewith), or
  - (b) where the Governor by order published in the Gazette, declares that it is desirable that the powers and functions of the Director-General and of Boards shall be exercisable with respect to certain prescribed premises only, or with respect to a limited class of prescribed premises only—in relation to those prescribed premises (including goods leased therewith) only or to that limited class of prescribed premises (including goods leased therewith) only.
- (2) The powers and functions of a Fair Rents Board may be exercised by any Magistrate.

## **13 Clerk of Fair Rents Board**

- (1) There shall be a clerk of each Fair Rents Board.
- (2) The Governor may, under and in accordance with the provisions of the *Public Service Act 1902*, as amended by subsequent Acts, appoint a clerk of the Fair Rents Board constituted at any place.
- (3) If no such appointment is made, the registrar of the Local Court for the place at which a Fair Rents Board is constituted is taken to be the clerk of the Fair Rents Board at that place.

## **14 Officers and employees**

Such officers and employees as may be necessary for the administration of this Act may be appointed under and in accordance with the provisions of the *Public Service Act 1902*, as amended by subsequent Acts.

## **Division 2**

### **15-17 (Repealed)**

## **Division 2A Rent of prescribed premises by agreement**



## **17A Fixing of rent of prescribed premises by agreement**

(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) 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) Where on or after the date on which 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 (1), (2) or (3), 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 (3), or
  - (b) until it is varied pursuant to an application made under subsection (12) or (13) or Division 4AA,
- whichever first occurs.
- (5) Notwithstanding any other provision of this Act, except subsections (12) and (13) and Division 4AA, 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 (1), (2) or (3) shall be commenced or lodged under this Act.
- (6) In subsections (1), (2) and (3), **agreement** means an agreement:
- (a) that is or was registered in the Department 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 registrar of the Local Court, and
    - (ii) that bears a certificate by that solicitor or registrar of the Local Court that he or she explained the agreement to the lessee before it was executed by him or her.
- (7) An application for the registration under this section of an agreement shall be made in writing to the Director-General 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 Director-General, and
  - (b) a fee of two dollars or, where another fee has been prescribed in lieu thereof, by that other fee.
- (8) The registration, on or after the date 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 Director-General, in a register to be kept by the Director-General 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 registrar of the Local Court, being a certificate referred to in subparagraph (ii) of paragraph (b) of subsection (6), 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 Director-General or his or her delegate and certifying:
    - (i) that an agreement specified or referred to in the certificate was registered in the Department on a day specified in the certificate, or
    - (ii) the particulars referred to in subparagraph (i), that that agreement bears a certificate referred to in subparagraph (ii) of paragraph (b) of subsection (6) purporting to be signed by a solicitor or a registrar of the Local Court, 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) and, where the certificate certifies that the agreement bears a certificate as referred to in subparagraph (ii), 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 under paragraph (b) of subsection (10):

- (a) may be made by any person,
- (b) shall be made in writing to the Director-General, 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 (1), (2) or (3) may, notwithstanding the provisions of subsection (2) of section 32, make application at any time after the agreement in respect of those premises was executed by him or her:

- (a) where the prescribed premises are not shared accommodation referred to in section 26E—to a Fair Rents Board, or
- (b) where the prescribed premises are any such shared accommodation—to the Director-General,

for a determination of the fair rent of those premises and the Fair Rents Board or the Director-General, 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 Director-General, 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 (1), (2) or (3) may, subject to subsection (2) of section 32, 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—to a Fair Rents Board,
- (b) where the prescribed premises are any such shared accommodation—to the Director-General, 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 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, and
- (iv) the prescribed premises are:

(a) premises referred to in paragraph (a) of subsection (2) of section 24A—to the Director-General, 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 Director-General 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 Director-General or a clerk of a Fair Rents Board in accordance with paragraph (c) of subsection (13), the reference in subsection (3) of section 24A 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 last fixed by a determination made under this Part, except Division 4AA, before the fair rent of the premises was fixed under this section.

(15) Any person, whether as principal or agent or otherwise, who procures the execution by a lessee of an agreement referred to in subsection (3) 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 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 (2), 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 (16) or (17), 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 (17) 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 or she continued to pay the amount of the rent 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.

- (19) A reference in this section to “the section that this section replaces” shall be construed as a reference to section 17A, 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.

## **Division 2B Rent of certain prescribed premises subject to fixed term leases**

### **17B Rent under certain fixed term leases**

Where any prescribed premises (not being prescribed premises referred to in section 32B) 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:

- (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—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), that contractual rent.

### **Division 3 Rent of prescribed premises other than shared accommodation**

#### **18 Application to have fair rent fixed**

- (1) The lessor, or a lessee 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 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, of any prescribed premises other than shared accommodation (not being prescribed premises in relation to which a Fair Rents Board is not authorised to exercise the powers conferred by this Part), or the person having power to lease any such premises which are not leased in exercise of that power, may apply in writing to a Fair Rents Board to have the fair rent of the prescribed premises determined by the Board.
- (2) Such application shall be made to the Board nearest to the prescribed premises or to any other Board if that other Board is satisfied that hardship will not be occasioned thereby to any party to the determination.

#### **19 Notice of application**

- (1) Where an application has been made for the determination of the fair rent of any prescribed premises other than shared accommodation, 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, if any, as the case may be, of the prescribed premises.
- (2) Where an application is made by a mesne lessor or mesne lessee, or by a sub-lessor or a sub-lessee, 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 his or her superior lessor, and the superior lessor shall be entitled to be a party to the application.
- (3) Where a superior lessor to whom notice is given under subsection (2) or under this subsection is himself or herself a lessee, mesne lessee or sub-lessee, he or she shall forthwith give notice in writing of the time, date and place fixed for the determination of the application to his or her superior lessor, and the superior lessor shall be entitled to be a party to the application.
- (4) Where any prescribed premises other than shared accommodation in respect of which an application is made 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 the mortgagee, who shall be entitled to be a party to the application.

Notice under this subsection 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) in any other case—be given forthwith upon the receipt of notice of the application under subsection (1), (2) or (3).

## **20 Determination of application**

- (1) Where an application has been made for the determination of the fair rent of any prescribed premises other than shared accommodation, the Fair Rents Board shall, after making such inquiries 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, determine the fair rent of the prescribed premises at an amount equal to the rent of the prescribed premises at the prescribed date adjusted by such amount as the Board deems proper having regard only to the matters specified in section 21 or, where the prescribed premises were not leased at the prescribed date, at an amount equal to the rental value of the prescribed premises at the prescribed date adjusted in like manner.
- (2) (Repealed)
- (3) Where the Fair Rents Board is of opinion, having regard to the matters specified in section 21, that the rent of the prescribed premises, being premises that were leased on the prescribed date, was, as at that date, insufficient, the determination may increase the fair rent (in addition to any other amount by which it is increased under this section) by an amount not exceeding the amount which, in the opinion of the Fair Rents Board, is the amount of the insufficiency.
- (4) In this section, ***the prescribed date***, in relation to any prescribed premises, means the thirty-first day of August, one thousand nine hundred and thirty-nine, or, where the prescribed premises were not in existence on that date, the date on which the erection of the premises was completed.

## **21 Matters to be considered**

- (1) In determining the fair rent a Fair Rents Board shall have regard to:
  - (a) the capital value of the premises at the prescribed date, or, if the premises were not in existence on that date, on the date on which the erection of the premises was completed,
  - (b) the lessor's liability for annual rates and insurance premiums in respect of such premises and fixtures thereon,
  - (c) the estimated annual cost of repairs, maintenance and renewals of the premises and fixtures thereon,



- (d) the estimated amount of annual depreciation in the value of the premises and the estimated time per annum during which the premises may be vacant,
- (e) the rents, fixed by a determination in force under this Part, of other prescribed premises (other than premises which are the subject of an agreement in force under section 17A or of a determination made under Division 4AA) which:
  - (i) are in the locality of,
  - (ii) are subject to the same provisions of this Act as are, and
  - (iii) are otherwise comparable in all respects to,the premises the subject of the application,
- (f) the rate of interest charged upon overdrafts by the Commonwealth Bank of Australia,
- (g) any services provided by the lessor or lessee in connection with the lease or the value of any goods leased with the premises,
- (h) any obligation on the part of the lessee to effect any improvements, alterations or repairs to the premises at his or her own expense,
- (i) the conduct of the parties, and
- (j) the amount, if any, that the Fair Rents Board is satisfied was necessarily expended by the lessor since the prescribed date referred to in subsection (4) of section 20 upon the improvement or structural alteration of the premises (but not including decoration, repairs or maintenance).

In determining the fair rent of any premises the Fair Rents Board shall not make any allowance by reason of any loss which might be imposed upon the lessor by an order fixing the rent of the premises at an amount less than the lessor's liability under a mortgage of, or contract of sale in respect of, the premises, or under a hire purchase agreement or contract of sale in respect of any goods leased with the premises.

Notwithstanding any other provision of this Act, a Fair Rents Board shall not, in making a determination, or a variation of a determination, of the fair rent of any prescribed premises have regard to any capital value of those premises other than the appropriate capital value of those premises referred to in paragraph (a).

- (1A) A Fair Rents Board in determining the fair rent of prescribed premises not being a dwelling-house shall in addition to the matters specified in subsection (1) have regard to land tax payable in respect of the premises by the lessor under the [Land Tax Management Act 1956](#) and the [Land Tax Act 1956](#), or any Act amending or replacing any such Act, or where such land tax is payable by the lessor in respect of the premises together with other lands, to the extent to which such land tax would be

payable were the premises the only land in respect of which the lessor was liable for any such land tax.

- (1AB) In determining the fair rent of any prescribed premises a Fair Rents Board may include in the fair rent an allowance in respect of agent's collecting commission or, where an agent does not collect the rent of the prescribed premises, such amount in respect of the collection of the rent as the Board deems proper.
- (1B) (Repealed)
- (1C) Where a Fair Rents Board would, but for this subsection, increase the fair rent of any prescribed premises and the Board is of opinion that the lessee would not reasonably be able to pay the fair rent as so increased, the Board shall, in determining the amount of the increase, if any, have regard to the financial circumstances of the lessor and the lessee.
- (1D) In determining or varying the fair rent of any prescribed premises, a Fair Rents Board shall not make any allowance:
- (a) based on paragraph (f) of subsection (1) in excess of such percentage of the capital value of the prescribed premises at the prescribed date referred to in subsection (4) of section 20 as is equal to the difference between the rate per centum of interest charged upon overdrafts by the Commonwealth Bank of Australia, or the Commonwealth Trading Bank of Australia, as the case may be, at that prescribed date and the rate per centum of interest charged upon overdrafts by the Commonwealth Trading Bank of Australia at the date of the determination or variation, or
  - (b) based on paragraph (j) of subsection (1) in excess of eight per centum of the amount referred to in that paragraph.
- (1E) In determining or varying the fair rent of any prescribed premises, a Fair Rents Board shall not make any allowance by reason of any change, since the prescribed date referred to in subsection (4) of section 20 or since any previous determination or variation or since any earlier date whatsoever, in any economic conditions affecting the community generally or a substantial part of the community.
- (2) In considering the matters referred to in subsection (1):
- (a) any bonus, premium or sum of money (other than rent) or other consideration given or promised or agreed to be given by the lessor, or
  - (b) the purchase or exchange by the lessor of any goods or goodwill,
- which would have been in contravention of subsection (1) of section 36 had the prescribed premises concerned not been excluded from the operation of that section or had the consent of the Director-General or a Board, as the case may be, not been

obtained, shall be disregarded.

## **22 Date of operation of determination**

- (1) Every determination of the fair rent of prescribed premises other than shared accommodation made by a Fair Rents Board shall come into force on a date 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, other than a determination made under section 23A, 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 any other person to whom it has been established in the proceedings that notice has been given under section 19 or section 24.
- (3) After the making of any determination of the fair rent of any prescribed premises under section 23A, the clerk of the Board shall give notice in writing thereof, and of the date fixed as the date on which the determination shall come into force, to the persons to whom notice of the time, date and place fixed for that determination was given under subsection (2) of that section.

## **23 Effect of determination**

Where any fair rent has been determined by a Fair Rents Board it shall, as from the date fixed under section 22:

- (a) where that rent is so determined in respect of prescribed premises without goods:
  - (i) be the fair rent and the rent of the prescribed premises without goods until it is varied in pursuance of this Part, and
  - (ii) unless a fair rent is also fixed or determined by or under this Part in respect of the premises together with goods, be the fair rent and the rent of the prescribed premises together with goods until a determination has been made in respect of those premises together with goods,
- (b) where that rent is so determined in respect of prescribed premises together with goods:
  - (i) be the fair rent and the rent of the prescribed premises together with goods until it is varied in pursuance of this Part, and
  - (ii) unless a fair rent is also fixed or determined by or under this Part in respect of the premises without goods, be the fair rent and the rent of the prescribed premises without goods until a determination has been made in respect of those premises without goods.

### **23A Premises not leased**

- (1) A Fair Rents Board may, of its own motion, after inquiry determine the fair rent of any prescribed premises other than shared accommodation which are not leased.
- (2) The Fair Rents Board shall cause to be given to such persons as it considers proper notice of the time, date and place fixed for the determination of the fair rent of the premises and the notice or notices so given shall, for the purpose of this Division, be deemed to be an application.
- (3) In determining the fair rent of prescribed premises under this section, the Fair Rents Board shall have the same powers as it has in connection with an application, and any determination made by the Fair Rents Board shall have the same effect for all purposes as a determination made upon an application.

### **24 Fair Rents Board may determine fair rent of its own motion**

- (1) A Fair Rents Board may, of its own motion but subject to section 17A, after inquiry, determine the fair rent of any prescribed premises other than shared accommodation.
- (2) The Fair Rents Board shall cause to be given to the lessor and lessee of the prescribed premises and to the other persons referred to in section 19, notice of the time, date and place fixed for the determination of the fair rent of the premises, and the notice so given to the lessor shall, for the purpose of this Division, be deemed to be an application.
- (3) In determining the fair rent of prescribed premises under this section, the Fair Rents Board shall have the same powers as it has in connection with an application, and any determination made by the Fair Rents Board shall have the same effect for all purposes as a determination made upon an application.

### **24A Determination based on increased out-goings**

- (1) This section applies to any prescribed premises, other than shared accommodation, the fair rents of which are fixed by a determination.
- (2) The lessor of any prescribed premises to which this section applies may make application in writing:
  - (a) where the premises are situated within, or partly within and partly outside, the Metropolitan Area—to the Director-General, or
  - (b) where the premises are situated wholly outside the Metropolitan Area—to the clerk of the Fair Rents Board nearest to the premises,for an increase in the fair rent of the premises pursuant to the provisions of this section.

(3) The Director-General or the clerk of the Fair Rents Board, as the case may be, shall thereupon make an assessment of the fair rent of the premises by adding to the existing fair rent thereof, calculated on an annual basis, a reasonable allowance for any increase in the rate of interest charged upon overdrafts by the Commonwealth Trading Bank of Australia and the amount by which he or she is satisfied that the lessor's liability in respect of such premises and fixtures thereon for annual rates and insurance premiums and agent's collecting commission and for the annual costs of repairs, maintenance and renewals has increased since:

(a) the date of the last determination of the fair rent of the premises, or

(b) (Repealed)

In the application of the foregoing provisions of this subsection to and in respect of premises to which this section applies "rates" includes land tax payable in respect of the premises by the lessor under the [Land Tax Management Act 1956](#) and the [Land Tax Act 1956](#), or any Act amending or replacing any such Act, or where such land tax is payable by the lessor in respect of the premises together with other lands the land tax which would be payable were the premises the only land in respect of which the lessor was liable for any such land tax.

In making an assessment of the fair rent of any prescribed premises under this section, the Director-General shall not make any allowance for any increase in the rate of interest charged upon overdrafts by the Commonwealth Trading Bank of Australia in excess of such percentage of the capital value of the prescribed premises at the prescribed date referred to in subsection (4) of section 20 as is equal to the difference between the rate per centum of interest charged upon overdrafts by the Commonwealth Bank of Australia, or the Commonwealth Trading Bank of Australia, as the case may be, at the date on which the existing fair rent was determined under this Part and the rate per centum of interest charged upon overdrafts by the Commonwealth Trading Bank of Australia at the date of the assessment.

(4)

(a) Notice of the fair rent so assessed shall be given in writing by the Director-General or the clerk of the Fair Rents Board, as the case may be, to the lessee of the premises.

The fair rent so assessed may be expressed on a weekly basis or on such other basis as the Director-General or the clerk of the Fair Rents Board, as the case may be, may determine.

(b) Such notice shall specify a date not less than twenty-eight days from the date on which the notice is given before which objection to the fair rent so assessed may be lodged with the Director-General or the clerk of the Fair Rents Board, as the case may be, by the lessee of the premises.

(5)

(a) If no such objection is lodged with the Director-General or the clerk of the Fair Rents Board, as the case may be, before the date so specified:

(i) the rent specified in the notice of assessment shall, as from the date so specified and until varied in pursuance of this Part, be the fair rent and the rent of the premises in all respects as if the same had been determined by a Fair Rents Board in accordance with this Part,

(ii) notice that the rent specified in the notice of assessment is to be the fair rent and the rent of the premises as from the date so specified shall be given by the Director-General or the clerk of the Fair Rents Board, as the case may be, to the lessor and lessee of the premises.

(b) If any such objection is lodged with the Director-General or the clerk of the Fair Rents Board, as the case may be, before the date so specified, the Director-General or the clerk of the Fair Rents Board, as the case may be, shall refer the lessor's application to the Fair Rents Board nearest to the premises.

(6) Any application made to the Director-General or the clerk of a Fair Rents Board, as the case may be, pursuant to subsection (2) may, notwithstanding the provisions of subsection (3), at any time be referred by him or her of his or her own motion to the Fair Rents Board nearest to the prescribed premises.

(7) Any reference to a Fair Rents Board under paragraph (b) of subsection (5) or under subsection (6) shall be deemed to be:

(a) where the fair rent of the premises has been previously fixed by a determination—an application by the lessor to that Fair Rents Board pursuant to section 32 for a variation of the last determination may be made at any time notwithstanding the provisions of that section,

(b) (Repealed)

and shall be dealt with accordingly.

(8) Notwithstanding anything contained in subsection (2) of section 32, application may be made at any time to vary a determination of the fair rent of any prescribed premises made by the Director-General or the clerk of the Fair Rents Board and having effect pursuant to subsection (5) as a determination made by a Fair Rents Board.

## **25 Lease of prescribed premises together with goods**

(1) 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.

- (2) In the case of prescribed premises which are leased together with goods, a Fair Rents Board may fix the fair rent of the prescribed premises irrespective of the goods or may, in its discretion, fix the fair rent of the prescribed premises together with goods leased therewith.

### **25A Reference of application to Director-General**

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

Any such reference to the Director-General shall be deemed to be an application made to the Director-General under Division 4 and may be dealt with accordingly.

For the purposes of subsection (6) of section 27, an application so referred shall be deemed to have been received in the office of the Director-General on the date on which the application was received in the office of the clerk of the Board.

### **25B Certain decisions final**

Notwithstanding anything contained in section 41 any decision of a Fair Rents Board under this Division that any prescribed premises are or are not shared accommodation shall be final and without appeal, and no writ or prohibition or certiorari shall lie in respect thereof.

### **26 Inspection of prescribed premises**

A Fair Rents Board may, if it thinks fit, cause any prescribed premises to be inspected in connection with the determination of the fair rent of the premises.

## **Division 3A Rent of shared accommodation outside the Metropolitan Area**

### **26A Application of Division**

The provisions of this Division shall apply to and in respect of shared accommodation situated wholly outside the Metropolitan Area.

### **26B Determination of rent of shared accommodation**

- (1) The lessor, or the lessee 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 up to a date not earlier than seven days before the date of the receipt of the application in the office of the clerk of the Board, under a lease of shared accommodation (not being shared accommodation in relation to which a Fair Rents Board is not authorised to exercise the powers conferred by this Part), or the person having power to lease any such shared accommodation which is not leased

in exercise of that power, may make application in writing to a Fair Rents Board to determine the fair rent thereof.

- (2) Such application shall be made to the Board nearest to the shared accommodation or to any other Board if that other Board is satisfied that hardship will not be occasioned thereby to any party to the determination.
- (3) The Board may, if it thinks fit, thereupon cause the shared accommodation to be inspected for the purpose of determining the fair rent thereof.
- (4) A Board may of its own motion, from time to time, cause any shared accommodation to be inspected for the purpose of determining the fair rent thereof, whether or not the shared accommodation is leased at the time of inspection.
- (5) At least seven days prior to the date fixed for the determination of the fair rent of any shared accommodation, the Board shall cause notice of the time, date and place fixed for the making of the determination to be given to the lessor and lessee of the shared accommodation, or, in the case of shared accommodation which is vacant, to the intending lessor of that shared accommodation, or, in the case of shared accommodation which is not leased and is not vacant, to such persons as the Board considers proper.
- (6) After making such inquiries and obtaining such reports (if any) as the Board considers necessary, and after considering any representations made by the lessor (or intending lessor), and any representations made by the lessee (if any), of the shared accommodation, and any representations made by any other person to whom notice was given under subsection (5), the Board shall, subject to subsection (8), determine the fair rent of the shared accommodation at such proportion as the Board deems proper of the fair rent of the prescribed premises of which the shared accommodation forms part or, where the fair rent of those prescribed premises is not the subject of a determination made under this Part, of the amount that would, in the opinion of the Board, be the fair rent of those prescribed premises if they were the subject of such a determination.
- (7) Every such determination shall come into force on a date fixed by the Board, but the date so fixed shall not be earlier than the date upon which the application for a determination was received in the office of the clerk of the Board or, in any case in which the Board causes any shared accommodation to be inspected pursuant to subsection (4), not be earlier than the date of such inspection.
- (8) In determining the fair rent of any shared accommodation a Board shall have regard to the matters specified in section 21 in so far as they are applicable.
- (9) 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 persons to whom notice of the time, date and place fixed for



the making of the determination was given under subsection (5).

- (10) Where any fair rent has been determined in pursuance of this section it shall, as from the date on which the determination comes into force:
- (a) where that rent is so determined in respect of shared accommodation without goods:
    - (i) be the fair rent and the rent of the shared accommodation without goods until it is varied in pursuance of this Part, and
    - (ii) unless a fair rent is also fixed or determined by or under this Part in respect of the shared accommodation together with goods, be the fair rent and the rent of the shared accommodation together with goods until a determination has been made in respect of the shared accommodation together with goods,
  - (b) where that rent is so determined in respect of shared accommodation together with goods:
    - (i) be the fair rent and the rent of the shared accommodation together with goods until it is varied in pursuance of this Part, and
    - (ii) unless a fair rent is also fixed or determined by or under this Part in respect of the shared accommodation without goods, be the fair rent and the rent of the shared accommodation without goods until a determination has been made in respect of the shared accommodation without goods.

**26C Variation in arrangement of shared accommodation to be notified**

Where, after the fair rent of any shared accommodation has been determined:

- (a) any part of the shared accommodation is leased separately,
- (b) the whole or any part of the shared accommodation is leased as part of other shared accommodation,
- (c) the shared accommodation is leased:
  - (i) without the use of any convenience or service which was available to the tenant at the time when the determination was made, or
  - (ii) with the use of any convenience or service which was not so available,
- (d) the lessor commences to supply to any lessee of the shared accommodation any services not supplied at the date of the determination,
- (e) the nature and extent of any services supplied by the lessor to any lessee of the shared accommodation is changed,
- (f) any part of the premises not leased by the lessor at the date of the determination is

leased,

- (g) the lessor enters into occupation of any part of the premises which has been the subject of that determination, or
- (h) the shared accommodation ceases to be occupied by a lessee and becomes occupied by a lodger,

the lessor shall:

- (i) within seven days notify the fact in writing to the clerk of the Board which made the determination, giving full particulars of any new lease, including particulars of the rent and charges payable, and of any other material facts,
- (ii) within fourteen days apply for a determination or for a variation of the determination of the fair rent of the shared accommodation.

#### **26D Rent of shared accommodation and goods leased therewith**

- (1) This Division shall extend in relation to shared accommodation together with goods leased therewith, and any reference in this Division to shared accommodation shall, so far as applicable include a reference to shared accommodation together with goods leased therewith.
- (2) In the case of shared accommodation which is leased together with goods, a Fair Rents Board may determine the fair rent of the shared accommodation irrespective of the goods or may, in its discretion, determine the fair rent of the shared accommodation together with goods leased therewith.

### **Division 4 Rent of shared accommodation within the Metropolitan Area**

#### **26E Application of Division**

The provisions of this Division shall apply to and in respect of shared accommodation situated within, or partly within and partly outside, the Metropolitan Area.

#### **27 Determination of rent of shared accommodation**

- (1) The lessor, or the lessee 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 up to a date not earlier than seven days before the date of the receipt of the application in the office of the Director-General, under a lease of shared accommodation (not being shared accommodation in relation to which the Director-General is not authorised to exercise the powers conferred by this Part), or the person having power to lease any such shared accommodation which is not leased in exercise of that power, may make application in writing to the Director-General to determine the fair rent thereof.

- (2) The Director-General shall thereupon cause the shared accommodation to be inspected for the purpose of determining the fair rent thereof.
- (3) The Director-General may of his or her own motion, from time to time, cause any shared accommodation to be inspected for the purpose of determining the fair rent thereof, whether or not the shared accommodation is leased at the time of inspection.
- (4) At least seven days prior to determining the fair rent of any shared accommodation, the Director-General shall give notice of his or her intention to determine the fair rent to the lessor and lessee of the shared accommodation, or, in the case of shared accommodation which is vacant, to the intending lessor of that shared accommodation, or, in the case of shared accommodation which is not leased and is not vacant, to such persons as the Director-General considers proper.
- (5) After an inspection of any shared accommodation has been made under subsection (2) or subsection (3), after making such inquiries and obtaining such reports (if any) as the Director-General considers necessary, and after considering any representations made by the lessor (or intending lessor), and any representations made by the lessee (if any), of the shared accommodation, and any representations made by any other person to whom notice was given under subsection (4), the Director-General shall, subject to subsection (7), determine the fair rent of the shared accommodation at such proportion as the Director-General deems proper of the fair rent of the prescribed premises of which the shared accommodation forms part or, where the fair rent of those prescribed premises is not the subject of a determination made under this Part, of the amount that would, in the opinion of the Director-General, be the fair rent of those prescribed premises if they were the subject of such a determination.
- (6) Every such determination shall come into force on a date fixed by the Director-General, but the date so fixed shall not be earlier than the date upon which the application for a determination was received in the office of the Director-General or, in any case in which the Director-General causes any shared accommodation to be inspected pursuant to subsection (3), not earlier than the date of such inspection.
- (7) In determining the fair rent of any shared accommodation the Director-General shall have regard to the matters specified in section 21 in so far as they are applicable.
- (8) After making any such determination, the Director-General shall give notice in writing thereof, and of the date fixed as the date on which the determination shall come into force, to the persons to whom notice of intention to make the determination was given under subsection (4).
- (9) Where any fair rent has been determined in pursuance of this section it shall, as from the date on which the determination comes into force:
  - (a) where that rent is so determined in respect of shared accommodation without goods:

- (i) be the fair rent and the rent of the shared accommodation without goods until it is varied in pursuance of this Part, and
  - (ii) unless a fair rent is also fixed or determined by or under this Part in respect of the shared accommodation together with goods, be the fair rent and the rent of the shared accommodation together with goods until a determination has been made in respect of the shared accommodation together with goods,
- (b) where that rent is so determined in respect of shared accommodation together with goods:
- (i) be the fair rent and the rent of the shared accommodation together with goods until it is varied in pursuance of this Part, and
  - (ii) unless a fair rent is also fixed or determined by or under this Part in respect of the shared accommodation without goods, be the fair rent and the rent of the shared accommodation without goods until a determination has been made in respect of the shared accommodation without goods.

## **28 Variation in arrangement of shared accommodation to be notified**

Where, after the fair rent of any shared accommodation has been determined:

- (a) any part of the shared accommodation is leased separately,
- (b) the whole or any part of the shared accommodation is leased as part of other shared accommodation,
- (c) the shared accommodation is leased:
  - (i) without the use of any convenience or service which was available to the tenant at the time when the determination was made, or
  - (ii) with the use of any convenience or service which was not so available,
- (d) the lessor commences to supply to any lessee of the shared accommodation any services not supplied at the date of the determination,
- (e) the nature and extent of any services supplied by the lessor to any lessee of the shared accommodation is changed,
- (f) any part of the premises not leased by the lessor at the date of the determination is leased,
- (g) the lessor enters into occupation of any part of the premises which have been the subject of that determination, or
- (h) the shared accommodation ceases to be occupied by a lessee and becomes occupied by a lodger,

the lessor shall:

- (i) within seven days, notify the fact in writing to the Director-General, giving full particulars of the new lease, including particulars of the rent and charges payable, and of any other material facts,
- (ii) apply within fourteen days for a determination or for a variation of the determination of the fair rent of the shared accommodation.

## **29 Rent of shared accommodation and goods leased therewith**

- (1) This Division shall extend in relation to shared accommodation together with goods leased therewith, and any reference in this Division to shared accommodation shall, so far as applicable, include a reference to shared accommodation together with goods leased therewith.
- (2) In the case of shared accommodation which is leased together with goods, the Director-General may determine the fair rent of the shared accommodation irrespective of the goods or may, in his or her discretion, determine the fair rent of the shared accommodation together with goods leased therewith.
- (3) A copy of any determination of the fair rent of any shared accommodation or of any shared accommodation together with goods leased therewith made after the commencement of the *Landlord and Tenant (Amendment) Act 1949* shall be exhibited and kept exhibited in a prominent position in the premises by the lessor or person in charge of the premises.
- (4) The Director-General or an authorised officer, if, in his or her opinion, the copy of the determination exhibited is not legible to persons who occupy or who may contemplate occupying the premises as lessees, may direct that it be exhibited in such position or in such manner as he or she thinks fit, and the lessor or person in charge of the premises shall forthwith cause the copy to be exhibited in accordance with the direction.
- (5)
  - (a) The Director-General, or an authorised officer, may, at any time, by notice in writing, require the lessor or person in charge of any such premises to furnish him or her with details of the copy which is purported to be exhibited in pursuance of this section.
  - (b) A person shall not refuse or fail to comply with any requirement made or given under this subsection.

## **29A Reference of application to Fair Rents Board**

Where an application has been made under this Division for the determination of the fair rent of any prescribed premises and the Director-General is of opinion that the premises

are not shared accommodation, the Director-General may refer the application to the Fair Rents Board constituted at Sydney for determination.

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

For the purposes of subsection (1) of section 22, an application so referred shall be deemed to have been received in the office of the clerk of the Board on the date on which the application was received in the office of the Director-General.

### **30 Appeal from determination**

- (1) Where a determination has been made under this Division any person to whom notice of the Director-General's intention to make that determination was given under subsection (4) of section 27 may, within twenty-one days after the giving of the notice referred to in subsection (8) of section 27, by a notice in writing lodged with the clerk of the Fair Rents Board nearest to the premises (or of any other Fair Rents Board if that other Board is satisfied that hardship will not be occasioned thereby to any party to the appeal), appeal to that Board from the determination of the Director-General.
- (2) The Board shall, at least seven days prior to hearing the appeal against the determination, cause notice to be given in writing of the time, date and place of the hearing of the appeal to the persons to whom notice of the Director-General's intention to make that determination was given under subsection (4) of section 27.
- (3) While any such appeal is pending, the determination of the Director-General shall continue to have full force and effect.
- (4) Notwithstanding anything contained in subsection (1) or in section 41 any decision of the Director-General under this Division that any prescribed premises are or are not shared accommodation shall be final and without appeal, and no writ of prohibition or certiorari shall lie in respect thereof.

### **31 Procedure on appeal**

- (1) The Board shall hear the appeal and shall, having regard to the provisions of subsection (5) of section 27, confirm the determination of the Director-General and dismiss the appeal, or shall determine the fair rent at such amount as, in the opinion of the Board, shall have been determined by the Director-General under the provisions of this Division.
- (1A) Subject to subsection (4) of section 30 where on the hearing of the appeal the Board is of opinion that the Director-General had no power or authority to make the determination purporting to have been made it may so find and the determination shall thereupon be quashed and shall be deemed never to have had any force or effect.

- (2) On the hearing of the appeal the Board shall make a thorough investigation without regard to legal forms or solemnities, and shall not be bound by any rules of evidence, but may inform itself in such manner as it thinks fit.
- (3) The determination of the Board shall have effect from and including the date fixed by the Board, but the date so fixed shall not be earlier than the date upon which the application for a determination was received in the office of the Director-General or, in any case in which the Director-General has caused any shared accommodation to be inspected pursuant to subsection (3) of section 27, not be earlier than the date of such inspection.
- (4) Where any fair rent has been determined in pursuance of this section it shall, as from the date fixed under subsection (3):
  - (a) where that rent is so determined in respect of prescribed premises without goods:
    - (i) be the fair rent and the rent of the prescribed premises without goods until it is varied in pursuance of this Part, and
    - (ii) unless a fair rent is also fixed or determined by or under this Part in respect of the premises together with goods, be the fair rent and the rent of the prescribed premises together with goods until a determination has been made in respect of those premises together with goods,
  - (b) where that rent is so determined in respect of prescribed premises together with goods:
    - (i) be the fair rent and the rent of the prescribed premises together with goods until it is varied in pursuance of this Part, and
    - (ii) unless a fair rent is also fixed or determined by or under this Part in respect of the premises without goods, be the fair rent and the rent of the prescribed premises without goods until a determination has been made in respect of those premises without goods.
- (5) The Board shall furnish a copy of its determination to the Director-General.

## **Division 4A**

### **31A-31M (Repealed)**

## **Division 4AA Determination of rents on current values**

### **31MAA Definitions**

- (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) a deduction allowable under section 75 or 76 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 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 109 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 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, or 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 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 subsection, the amount of the attributable earnings of that lessee for that year.

**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 (1), 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 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) but was included in the last general valuation of the area of that council made under Schedule 3 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 7 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) where the Fair Rents Board is satisfied that 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 (1) 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 or her decision or determination, or the exercise of his or her 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 (1):
  - (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 licence for the use thereof, and
  - (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 Lessor may require information as to net income of lessee and residents of prescribed premises**

- (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 (1) of section 31MAA, any net income of that lessee derived by him or her 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 (1) of section 31MAA, 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 (1) 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) A person shall not whether as 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 (1) other than to, or to a person employed in the office of, a Fair Rents Board, the Director-General, 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 (1) 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 (1) shall be deemed not to have been served unless the prescribed form of statutory declaration has been served with it.

### **31MCA Application for determination of fair rent under this Division**

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.

### **31MDA Power of Fair Rents Board to determine fair rent at current value rental**

- (1) Where, upon an application made under section 31MCA in respect of any prescribed premises, a Fair Rents Board is satisfied:
  - (a) that the lessor of those premises has in accordance with subsection (1) of section 31MBA, 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 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 or her in accordance with subsection (1) of section 31MBA, 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 or her 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 executed by the lessee after the determination under this Division is made or pursuant to an application referred to in subsection (3) of section 31MFA 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 in respect of any prescribed premises a Fair Rents Board is satisfied whether or not any notices referred to in subsection (1) 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 executed by the lessee after the determination under this Division is made or pursuant to an application referred to in subsection (3) of section 31MFA 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 within the meaning of the *Strata Titles Act 1973*, but including a building that is divided into lots within the meaning of that Act), 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) 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 3 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 (2) of section 31MAA, 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.

**31MEA Fair Rents Board may order costs**

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 (3) of section 61 shall apply mutatis mutandis to and in respect of any such order.

**31MFA Variation of determinations**

- (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,
- (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, or
- (c) the amount determined as the current value rental was incorrectly calculated,

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 executed by the lessee after the variation under this section is made or pursuant to an application referred to in subsection (3) 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 do not apply to the variation of any determination in accordance with subsection (1).
- (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—to a Fair Rents Board,
- (b) where the prescribed premises are any such shared accommodation—to the Director-General, 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 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, and
  - (iv) the prescribed premises are:
    - (a) premises referred to in paragraph (a) of subsection (2) of section 24A—to the Director-General, 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 Director-General 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 Director-General or a clerk of a Fair Rents Board in accordance with paragraph (c) of subsection (3), the reference in subsection (3) of section 24A 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 Board to which application may be made**

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.

### **31MHA Notice of application**

- (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.
- (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 (2) 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 (1).
- (4) Where a notice required under subsection (1) or subsection (2) is not given in respect of any prescribed premises and a Fair Rents Board has determined the fair rent of the prescribed premises at the current value rental of those premises the Board, on application to it by the person to whom the notice was required to be given made not later than one month after the determination was made, may set aside that determination.
- (5) Where a determination is set aside under subsection (4), the fair rent of the premises shall, for the purposes of subsection (3) of section 35, be deemed to have been, from the date fixed by the Fair Rents Board for the coming into operation of the determination, the rent that was payable in respect of the premises without goods or with goods, as the case may be, immediately before the determination was made and that rent shall, subject to its being varied under any of the provisions 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.

### **31MIA Determination of application**

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



**31MJA Date of operation of determination**

- (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.

**31MKA Lease of prescribed premises together with goods**

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.

**31MLA Non-application of certain provisions of this Act**

The provisions of Division 5, except sections 31MA, 31O, 32, 34, 38, 39 and 42, apply to and in respect of any application or determination under this Division.

**31MMA Determination includes variation of determination**

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

**Division 5 General**

**31MA Interim determination**

Where an application has been made to a Fair Rents Board or the Director-General for a determination, the Fair Rents Board or the Director-General, as the case may be, may, from time to time and at any stage of the proceedings on the application and notwithstanding anything contained in section 20, subsection (6) of section 26B or subsection (5) of section 27 and without having regard to the matters specified in section 21, make an interim determination.

Any interim determination so made shall be deemed to be a determination, and shall remain in force until:

- (a) the making of a later interim determination in the proceedings, or
- (b) the application has been finally disposed of by the board to which the application was made or the Director-General, as the case may be,

whichever first happens, and no longer.

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

### **31MB Amendment of applications**

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

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

Notwithstanding the foregoing provisions of this section, an amendment of an application whereby the amount stated pursuant to subsection (1) of section 31N is proposed to be varied shall not be allowed unless the lessor proves to the satisfaction of the Fair Rents Board, or the Director-General, as the case may be, that reasonable notice has been given to the lessee of the lessor's intention to seek an amendment of the application.

### **31N Application by lessor for fair rent determination to indicate amount of rent sought**

- (1) Every application by a lessor for a determination or for a variation of a determination (other than an application made under subsection (2) of section 24A or an application which is deemed to be an application to a Fair Rents Board pursuant to subsection (7) of that section) shall state an amount which it is sought to have determined as the fair rent of the premises the subject of the application. A notice setting out such amount shall be given to the lessee together with the notice given to him or her pursuant to subsection (1) of section 19.
- (2) Subject to section 31MB, but notwithstanding any other provision in this Part, the fair rent determined pursuant to any such application shall be not more than the amount so stated in the application or the application as amended pursuant to section 31MB.

### **31O Application by lessor or owner contemplating repairs etc**

- (1) A lessor or owner of prescribed premises other than shared accommodation may give notice in writing to the Fair Rents Board nearest to the premises stating that he or she intends carrying out such repairs, renovations, improvements, alterations or additions to the premises as are specified in the notice and requesting the Board to give an estimate of the probable fair rent of the premises after the carrying out of the work so specified.
- (2) The Board shall cause the premises to be inspected and after making such inquiries and obtaining such reports as the Board considers necessary, the Board shall inform the lessor or owner, as the case may be, of what would be the probable estimated fair rent of the premises if the repairs, renovations, improvements, alterations, or additions, as the case may be, are properly carried out.

- (3) If subsequent to the carrying out of the work the fair rent of the premises is to be fixed by a determination of a Fair Rents Board made upon the application of the lessor or owner or otherwise, the Board shall:
- (a) subject to paragraph (b) determine the fair rent of the premises in accordance with this Act, and
  - (b) have such regard to the estimate of the fair rent given as aforesaid as the Board deems just in the circumstances, but shall not be bound by such estimate.

### **32 Variation of determination**

- (1) A determination may be varied:
- (a) on application made in the same manner as an application for a determination, or
  - (b) subject to section 17A, by a Fair Rents Board of its own motion, or by the Director-General of his or her own motion, as the case may be,
- and the provisions of this Part relating to determinations shall, so far as applicable and, mutatis mutandis, apply to and in relation to variations of determinations.
- (2) During such period as is specified in the determination, or, if no period is so specified, during the period commencing with the date of the determination and ending twelve months after that date, an application shall not be made to vary a determination, or to determine the fair rent of prescribed premises, or of prescribed premises together with goods leased therewith, in respect of which a determination has been made, nor shall a Board of its own motion, nor the Director-General of his or her own motion, vary a determination, except on the ground that:
- (a) by an error or omission the determination was incorrectly made,
  - (b) increased outgoings or losses have been or will be incurred by the lessor by reason of the use made by the lessee of the premises since the date of the determination,
  - (c) the determination has been based on an incorrect estimate of the value of the premises or of goods leased therewith or of the services supplied by the lessor, or of premises of which the premises form part, or on a clerical error,
  - (d) there has been a substantial alteration in the terms and conditions upon which the premises are leased,
  - (e) substantial alterations or additions have been made to the premises, to the goods leased therewith, or to the services supplied by the lessor, since the determination was made,
  - (f) the value of the goods leased with the premises or of the services supplied by the

- lessor has materially decreased or increased since the determination was made,
- (g) the rent payable by the lessor in respect of the premises has increased or decreased 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,
  - (h) any party to the determination (or to an appeal to a Board from the determination where the determination was made by the Director-General) was prevented by absence, illness, or other cause considered by the Board or Director-General, as the case may be, to be sufficient, from attending or making representations at the proceedings in which the determination was made,
  - (i) a person entitled under this Act to notice of the time, date and place fixed for the making of the determination, or to notice of the Director-General's intention to determine the fair rent of shared accommodation, did not in fact receive such notice, or
  - (j) where the premises are prescribed premises, land tax has, since the determination, become payable or ceased to be payable in respect of the premises by the lessor under the [Land Tax Management Act 1956](#) and the [Land Tax Act 1956](#), or any Act amending or replacing any such Act or the amount of land tax payable in respect of the premises by the lessor under those Acts has, since the determination, increased or decreased.

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

- (2A) For the purpose of this section, any reference in section 19, section 24 or section 26B to notice of the time, date and place fixed for the making of a determination shall be read as a reference to notice of the time, date and place fixed for the making of a variation of a determination.
- (3) For the purposes of this section, any reference in section 27 to notice of intention to make a determination shall be read as a reference to notice of intention to consider the making of a variation of a determination.
- (4) Notwithstanding anything in section 20 or section 21, where an application for variation of a determination is made to a Board or to the Director-General, and it appears to the Board or Director-General, as the case may be, that the premises being a dwelling-house are not in fair and tenantable repair, no increase of rent shall be allowed by the Board or Director-General, 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.

(5)

- (a) Where a party to a determination (not being a determination in which a period is specified within which an application shall not be made to vary the determination) has, during the period commencing with the date of the determination and ending twelve months after that date, made application under subsection (2) for variation of the determination, he or she shall not, within the last-mentioned period, make further application to a Fair Rents Board or to the Director-General, as the case may be, for variation of the determination unless he or she has first obtained the leave of the Fair Rents Board or the Director-General, as the case may be, to do so.
- (b) A Fair Rents Board or the Director-General, as the case may be, may, for the purposes of this section, grant or refuse leave to apply for a variation of the determination without a formal or oral hearing of the persons interested or their representatives.

**32A (Repealed)**

**32B Rent of premises partly decontrolled**

- (1) Where any premises that form part of other premises cease at any time to be prescribed premises, the rent and the fair rent 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 (3) of section 17A.
- (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 (3) of section 17A, 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 (2), 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 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 (2), 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 (3) of section 17A.
- (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 (1) or (2) 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) where the rent payable immediately before that day was fixed under section 17A—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), 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.

### **33 Effect of determination**

- (1) A determination shall apply to any lease of the prescribed premises or, where a determination is made in respect of prescribed premises and of goods leased therewith, to any lease of those premises together with goods, for the time being subsisting, and to the lessor and lessee thereof, notwithstanding any alterations, additions, repairs or renovations to the prescribed premises (whether structural or otherwise) or any change of ownership or tenancy or in the nature or value of the

services supplied by the lessor or in the goods leased with the premises, or any leasing of goods with the premises or any withdrawal from the premises of any goods formerly leased therewith.

The provisions of this subsection are in addition to and not in derogation of the provisions of section 23, subsection (10) of section 26B, subsection (9) of section 27 and subsection (4) of section 31.

- (2) The rent payable by the lessee of any prescribed premises, or of any prescribed premises together with goods leased therewith, shall not exceed the fair rent thereof determined under this Part, notwithstanding any term or covenant in any lease in force at the time of the application or at any time thereafter.

#### **34 Lessor to notify change in services supplied or in nature of occupancy**

- (1) Where the fair rent of any prescribed premises (other than shared accommodation) has been determined, the lessor shall give notice in writing to the clerk of the Board nearest to such premises, or if some other Board has made the determination then to the clerk of such other Board, of:
  - (a) the nature and extent of any services, not supplied at the date of the determination, which he or she commences to supply to any lessee, and
  - (b) the fact that the prescribed premises cease to be occupied by a lessee and become occupied by a lodger, and
  - (c) the leasing of any part of the prescribed premises not leased at the date of the determination, and
  - (d) the fact that he or she enters into occupation of any part of the prescribed premises.
- (2) A notice under this section shall be given within seven days after the matter required to be notified arises.

#### **35 Premises not to be let at rent exceeding fair rent**

- (1) A person shall not, whether as principal or agent or in any other capacity:
  - (a) let premises, or premises together with goods, at a rent exceeding the fair rent thereof, or
  - (b) demand, receive or pay any sum as rent exceeding the fair rent thereof.
- (2) The legal remedies for the enforcement of any covenant or agreement:
  - (a) to pay rent for premises, or for premises together with goods, exceeding the fair rent thereof, or

(b) which, directly or indirectly, would secure to any person the payment of rent or of money in respect of the occupation of premises, or of the occupation of premises and the use of goods leased therewith, so that the amount received by the person would exceed the fair rent thereof,

shall be limited to the enforcement of payment of the fair rent thereof.

(3) Any sum paid as rent:

(a) for or in respect of the occupation of premises, or

(b) for or in respect of the occupation of premises and the use of goods leased therewith,

exceeding the fair rent thereof, shall at any time during the period of six years after the date of payment, to the extent of the excess, be recoverable in an action for debt in any court of competent jurisdiction by the lessee from the lessor to whom it was paid.

(4) In any prosecution for an offence arising under this section, the averment of the prosecutor:

(a) that the prescribed premises were let to a specified person on the prescribed date, and

(b) as to the rent payable in respect of the prescribed premises at the prescribed date,

shall be prima facie evidence of the matter or matters averred.

(5) Any evidence given by a witness in support or rebuttal of a matter so averred shall be considered on its merits and the credibility and probative value of the evidence shall not be increased or diminished by reason of this section.

(6) An averment shall not be made under this section unless the Crown Solicitor, or an Assistant Crown Solicitor is satisfied that the averment is reasonably necessary for the due administration of justice and will not impose hardship upon, or occasion injustice to, the defendant and certifies in writing accordingly on the paper containing the averment.

(7) An averment shall not be evidence for the purposes of this section unless a copy of the paper containing the averment has been served on the defendant in the same manner as the process requiring his or her attendance before the court.

(8) Service of the copy of the paper containing the averment may be proved in the same manner as service of the process requiring the defendant's attendance before the court may be proved.



- (9) Upon the hearing of an information for an offence arising under this section, the court may, if the amendments can be made without hardship or injustice to the defendant, allow such amendments to be made in the writing containing an averment as appear to it to be desirable or to be necessary to enable the real question in the dispute to be determined.
- (10) If in any such case the court considers the defendant has been misled by the form of the averment, it may refuse to allow the amendments, or may, as a condition of allowing the amendments, adjourn the hearing of the case for such period as it thinks fit and may make such order as to the costs of the adjournment as it thinks proper.

### **36 Certain payments prohibited**

- (1) A person shall not, whether as principal or agent, or in any other capacity:
- (a) seek, give, demand, solicit or receive, or offer, promise or agree to give or receive, any bonus, premium or sum of money (other than rent), or other consideration, or sell, purchase or exchange any goods or good-will, in consideration of, or in association whether directly or indirectly with:
- (i) the grant, acceptance, assignment, transfer, or surrender of any lease of,
- (ii) the renewal or extension of a lease, or the continuance of a letting of,
- (iii) any agreement for a lease, or for the renewal, extension, assignment, transfer, or surrender of a lease of,
- (iv) the giving or procuring of any consent to a sub-lease or to the assignment of a lease of,
- (v) the vacating or parting with the possession (whether alone or in conjunction with or as an incident of any of the foregoing transactions) of,

any prescribed premises (including any dwelling-house) except with the consent of the Director-General in the case of shared accommodation situated within, or partly within and partly outside, the Metropolitan Area, or except with the consent of the Fair Rents Board nearest to the premises in the case of any other prescribed premises.

Provided that nothing in this paragraph shall preclude the payment to, or the receipt by a real estate agent licensed under the *Auctioneers, Stock and Station and Real Estate Agents Act 1941-1946* of any fee or commission properly or normally payable to such agent for anything done in the course of his or her business as such estate agent.

Provided further that in the case of any transaction of the nature referred to in the foregoing provisions of this paragraph in which a business agent licensed under the *Business Agents Act 1935-1941* is concerned, the application for consent shall

contain a statement of the amount of fee or commission payable to such business agent in respect of the transaction; and the Director-General or the Fair Rents Board, as the case may be, shall have power either to allow such fee or commission mentioned in the statement or to disallow such amount and to allow in lieu thereof such amount as to him or her or it appears reasonable, by way of fee or commission. No person shall demand, seek receive or pay any amount in respect of fee or commission in excess of the fee or commission allowed by the Director-General or the Board, as the case may be.

Provided further that nothing in this subsection shall be construed as enabling the Director-General 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 Director-General 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 Director-General 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,

- (b) pay, give, demand, solicit or receive, or offer, promise or agree to pay, give or receive, any sum of money or other consideration:
- (i) for obtaining or making available a key of any prescribed premises (including any dwelling house),
  - (ii) for information as to a lease, or as to the possibility or likelihood of obtaining a lease, of any prescribed premises (including any dwelling-house),
  - (iii) for registering, or undertaking to register, the name or requirements of any person seeking a lease of any premises,
  - (iv) for supplying, or undertaking to supply, to any person addresses or other particulars of any premises available or represented to be available, or which may become available, for letting,
  - (v) for providing, or undertaking to provide, any person with an advertising or other service directed to the obtaining of a lease of any premises,
  - (vi) for registering, or undertaking to register, the name of any person as a member of a club or association upon the representation that such club or association or any person employed by or connected with such club or association will endeavour to obtain, on behalf of the person whose name is so registered or to whom such an undertaking is made, a lease of any premises,

or

- (vii) for issuing, without the authority of the owner of any premises or his or her agent authorised thereunto in writing, any advertisement, list or other document describing those premises as being available for letting:

Provided that nothing in this paragraph shall preclude:

- (A) the payment to or receipt by a real estate agent, licensed under the *Auctioneers, Stock and Station and Real Estate Agents Act 1941-1954*, by or from the owner of any premises of any fee or commission properly or normally payable to such agent for anything done by him or her in the course of his or her business as such estate agent,
  - (B) the payment to, or receipt by, a solicitor of any remuneration in respect of professional work done by him or her as such, or
  - (C) the payment to, or receipt by, the proprietor of any newspaper of any sum in consideration of the publication in such newspaper of any advertisement or notice received for the purpose in the ordinary course of business, or
- (c) make it a condition of the granting of any lease of a dwelling-house that the lessee shall effect any improvements, alterations or repairs at his or her own expense.

In this subsection:

**Newspaper** means:

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

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

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

- (1A) Where a person is charged with any offence arising under subsection (1) and it appears at the hearing at which he or she is present or is represented by counsel or attorney that he or she has not committed the offence with which he or she was charged but has committed some other offence arising under that subsection he or she may, notwithstanding subsection (2) of section 95 or any other provision of this or any other Act, be charged at the hearing with such other offence and dealt with accordingly.
- (2) Any sum paid in contravention of this section may be recovered by the person who paid it from the person to whom it was paid in an action for debt in any court of

competent jurisdiction, or, if the person to whom it was paid is the lessor, may, without prejudice to any other method of recovery, be deducted by the lessee from any rent payable by him or her to the lessor within six months after the date of the payment.

- (3) Where a person has, in contravention of this section, purchased or exchanged any goods or goodwill, he or she may recover in any court of competent jurisdiction, from the person from whom the goods or goodwill was purchased or with whom the goods were exchanged, so much of any amount paid for the goods or goodwill purchased as exceeds the fair value thereof, or, as the case may be, an amount equal to the excess of the fair value of the goods which he or she has exchanged over the fair value of the goods which he or she has received in exchange.
- (4) Where a person has, in contravention of this section, sold any goods or goodwill, he or she may recover in any court of competent jurisdiction, from the person to whom the goods or goodwill was sold, so much of the fair value thereof as exceeds the amount for which the goods or goodwill was sold.
- (5)
  - (a) Where a person is convicted of an offence arising under this section, the court, in addition to imposing a penalty on such person for the offence, may order that the amount which in its opinion would be the amount recoverable in civil proceedings pursuant to subsection (2), subsection (3) or subsection (4) shall be paid by the offender to the clerk of the court within a time to be specified in the order. Any amount so paid shall be paid by the clerk to the person by whom the amount would have been recoverable in civil proceedings as aforesaid.
  - (b) Any such order shall be deemed to be a conviction or order whereby a sum of money is adjudged to be paid within the meaning of the *Justices Act 1902-1951*.
  - (c) Where an order has been made under paragraph (a), any other remedy which would, but for this paragraph, have been available against the offender apart from this subsection for the recovery of the amount the subject of the order shall cease to be available.
- (6) For the purposes of this section:
  - (a) **lease** and **letting** includes any leave and licence for the use of any premises or prescribed premises, and **lessor** and **lessee** have a corresponding meaning,
  - (b) prescribed premises used under conditions of leave and licence shall be deemed to be shared accommodation,
  - (c) **rent** includes any payment or consideration in respect of any leave and licence for the use of any prescribed premises and for any services provided for or supplied to any person using any such premises under leave and licence.

### **36A Particulars of certain advertisements to be furnished to the Director-General**

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

### **37 Certain representations etc prohibited**

- (1) A person shall not make any representation, or do any other act, whereby a person is informed, either expressly or by implication, that, upon the purchase or exchange of any goods or goodwill, he or she will or may receive or obtain, or be entitled to receive or obtain, the grant, transfer, assignment, renewal or extension of a lease, or consent to a sub-lease, of any prescribed premises (including any dwelling-house).
- (2) In any prosecution for a contravention of this section, it shall be a defence if the defendant proves that:
  - (a) at the time of the representation or act, he or she specified a price for the purchase, and that the price so specified was not unreasonable, or
  - (b) that the proposed exchange was not unfair.

### **38 Refusal to let dwelling-house to applicant with family prohibited**

- (1) A person shall not refuse, or procure any person to refuse, to let a dwelling-house to any person on the ground that it is intended that a child shall live in the dwelling-house.
- (2) In any prosecution for an offence arising under subsection (1), where all the facts and circumstances constituting the contravention, other than the ground of the refusal, are proved, it shall lie upon the defendant to prove that the ground of refusal was not the ground alleged in the charge.
- (3) A person shall not:
  - (a) instruct any other person not to let, or
  - (b) state his or her intention, whether by advertisement or otherwise, not to let, a dwelling-house to any person if it is intended that a child shall live in the dwelling-house.
- (4) A person shall not, for the purpose of determining whether or not he or she will let a dwelling-house, inquire from any prospective tenant of the dwelling-house whether:

- (a) the prospective tenant has any children, or
- (b) it is intended that a child shall live in the dwelling-house if it is let to that prospective tenant.

(5) In any prosecution for an offence arising under subsection (4), where all the facts and circumstances constituting the contravention, other than the purpose of the inquiry, are proved, it shall lie upon the defendant to prove that the purpose of the inquiry was not the purpose alleged in the charge.

### **39 Dwelling-house not to be let unless in good repair**

A person shall not let a dwelling-house which to his or her knowledge is, at the date of the letting, not in fair and tenantable repair.

### **40 Premises leased for holiday purposes only**

Notwithstanding anything contained in this Act or in any declaration issued in pursuance of this Act, a dwelling-house shall, for the purposes of sections 36, 37, 38 and 39, be deemed to include holiday premises.

### **41 Appeals**

- (1) Every determination of a Fair Rents Board or of the Director-General shall, except as provided by sections 30 and 31 and this section, be final and without appeal, and no writ of prohibition or certiorari shall lie in respect thereof.
- (2) There shall be an appeal, as to questions of law only, to the Supreme Court in the manner provided by Part 5 of the *Crimes (Local Courts Appeal and Review) Act 2001*, from any decision or determination of a Fair Rents Board or of the Director-General in proceedings under this Part for the determination of the fair rent of any premises.

The provisions of Part 5 of the *Crimes (Local Courts Appeal and Review) Act 2001* shall apply mutatis mutandis to appeals under this subsection from any such decision or determination and the provisions of that Part applicable to justices in the exercise of their summary jurisdiction shall apply to a Fair Rents Board and to the Director-General.

### **42 Costs not to be allowed**

No costs shall be allowed in any proceedings under this Part, not being proceedings in respect of an offence arising under this Part.

### **43 Fair Rents Board or Director-General not bound to conduct oral hearing**

- (1) Before making a determination, or a variation of a determination, a Fair Rents Board or the Director-General shall make a thorough investigation without regard to legal forms or solemnities, and shall not be bound by any rules of evidence, but may inform

itself or himself or herself in such manner as it or he or she thinks fit, and may proceed to make the determination or variation without a formal or oral hearing of the persons interested or their representatives.

- (2) This section shall not affect the right of any person to make representations to a Fair Rents Board or the Director-General in writing, or the duty of a Fair Rents Board or the Director-General to consider any such representations.

#### **44 Summoning of witnesses and production of documents**

- (1) The Director-General, or the Magistrate constituting a Fair Rents Board, or the clerk of a Fair Rents Board at the direction of the Director-General or such a Magistrate or at the request of a party to any proceedings under this Part or the authorised agent of such a party, may by summons in writing under the hand of the Director-General, Magistrate or clerk, as the case may be, summon any person to attend the Director-General or Board at the time and place mentioned in the summons, and then and there to give evidence and to produce books, documents or writings in his or her custody or control which he or she is required by the summons to produce.

(1A) A request for the issue of a summons under subsection (1) shall be accompanied by a fee of two dollars or, where another fee has been prescribed in lieu thereof, by that other fee.

- (2) The Director-General or a Board may administer an oath or affirmation to any person appearing as a witness before the Director-General or Board, whether the witness has been summoned or appears without being summoned, and may examine the witness upon oath or affirmation.

#### **45 Failure to attend or produce documents**

- (1) A person who has been served with a summons to attend the Director-General or a Fair Rents Board shall not, without reasonable excuse, refuse or fail to attend the Director-General or Board or to produce any documents, books, or writings in his or her custody or control which he or she was required by the summons to produce.
- (2) It shall be a defence to a prosecution for failing, without reasonable excuse, to produce any documents, books or writings if the defendant proves that the documents, books or writings were not relevant to the subject-matter of the proceedings before the Director-General or Board.

#### **46 Refusal to be sworn or give evidence**

A person appearing as a witness before the Director-General or a Fair Rents Board shall not refuse to be sworn or make an affirmation or to answer any question relevant to any proceedings before the Director-General or Board put to him or her by the Director-General or the Board or by any counsel, solicitor or agent appearing before the Director-General or Board.

#### **47 False testimony**

A witness before the Director-General or a Fair Rents Board shall not knowingly give false testimony in any evidence given by him or her to the Director-General or Board.

#### **48 Protection to and liability of witness**

A witness before the Director-General or a Fair Rents Board shall have the same protection and shall, in addition to the penalties provided by this Act, be subject to the same liabilities in any civil or criminal proceedings, as a witness in any case tried in the Supreme Court.

#### **49 Protection of reports and proceedings**

- (1) No action or proceeding, whether civil or criminal, shall lie against any person for publishing in good faith for the information of the public:
  - (a) a copy of or a fair extract from, or a fair abstract of, any determination made by the Director-General or a Fair Rents Board, or
  - (b) a fair and accurate report of any proceedings before the Director-General or a Board.
- (2) A publication shall be deemed to be made in good faith for the information of the public if the person by whom it is made was not actuated by ill-will against the person defamed or by any other improper motive.

#### **50 Contempt of Board**

- (1) A person shall not wilfully insult or disturb a Fair Rents Board, or interrupt the proceedings of a Board, or use any insulting language to a Board, or by writing or speech use words which are false or defamatory of a Board, or otherwise commit any wilful contempt of a Board.
- (2) The Magistrate constituting a Fair Rents Board shall, in relation to any contravention of subsection (1) committed in the face of the Board, have all the powers of a court of summary jurisdiction sitting in open court in relation to a contempt committed in the face of the court.

#### **51 Protection of Board**

The Director-General and a Fair Rents Board shall, in the exercise of his or her or its functions under this Part, have the same protection and immunity as a Justice of the Peace.

#### **52 Information as to fair rent**

- (1) The Director-General shall, on application, furnish to any person information as to the fair rent of any shared accommodation (or shared accommodation together with



goods leased therewith) situated within, or partly within and partly outside, the Metropolitan Area fixed by the Board or by the Director-General or by an agreement referred to in section 17A.

- (1A) An application under subsection (1) 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.
- (2) The clerk of the Fair Rents Board nearest to any premises shall, on application and on payment of the prescribed fee, furnish to any person information as to the fair rent of any prescribed premises (not being shared accommodation situated within, or partly within and partly outside, the Metropolitan Area) or of any prescribed premises (not being shared accommodation situated within, or partly within and partly outside, the Metropolitan Area) together with goods leased therewith, fixed by a Board or by the Director-General or by an agreement referred to in section 17A.

### **53 Intervention by Minister**

The Minister may, at any stage of any proceedings under this Part before a Fair Rents Board, intervene by counsel, solicitor or agent and may examine witnesses and address the Board.

### **54 Representation by agent**

- (1) Any person who is a party to proceedings under this Part or who may be affected by the result of any such proceedings, may appear in person or may be represented by counsel or a solicitor or by an agent authorised in writing in that behalf, who may examine witnesses and address the Board or Director-General on that person's behalf.
- (1A) A person shall not act, or agree to act, on behalf of another person in any proceedings under this Part if he or she 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.
- (2) A Board or the Director-General may assess the amount of fees payable by any party to any proceedings taken under this Part before the Board or the Director-General, as the case may be, to his or her solicitor or agent in respect of the proceedings and all matters incidental to or associated with the proceedings.
- (3) Where the amount of fees payable to a solicitor or agent has been assessed pursuant to subsection (2), the solicitor or agent shall not demand, receive or accept in respect of any such proceedings and any matters incidental thereto or associated therewith any fee in excess of the amount so assessed. Any sum paid in excess of the amount so assessed shall be recoverable by the party paying the same as a debt in any court of competent jurisdiction.

## **55 Records of rent**

- (1) A lessor shall, by himself or herself or his or her agent, keep or cause to be kept, a record showing the rent received in respect of prescribed premises (and of prescribed premises together with goods) leased by him or her.

Such record shall include details of the names of persons making payments to the lessor, the dates of such payments, the amounts paid, the periods in respect of which such payments are made, and the premises or parts of the premises in respect of which such payments are made.

- (2) The person having the custody of the record or of any previous like record, relating to a period not earlier than the prescribed date, in respect of the prescribed premises shall, when requested by any tenant of the prescribed premises or by an authorised officer so to do, make the record available, within fourteen days after such request, for inspection by that tenant or authorised officer, as the case may be.
- (3) The lessor shall, by himself or herself or his or her agent, produce the records at the hearing of any proceedings under this Part in respect of the prescribed premises and the records shall at the hearing be evidence of the contents thereof.
- (4) A lessor or agent shall not knowingly make, or allow to be retained, in any such record any entry false in a material particular.
- (5) A request under this section may be made orally or in writing.

## **56 Receipts to be given**

The person receiving any payment of rent of prescribed premises (or of any prescribed premises together with goods) shall, at the time of receiving the payment give or cause to be given, to the person making the payment, a receipt for the payment, specifying the date of the payment, the amount paid, the period in respect of which the payment is made the premises in respect of which the payment is made and, where separate parts of any prescribed premises are leased, the part of the premises in respect of which the payment is made.

## **57 Lessor to ascertain fair rent**

- (1) It shall be the duty of the lessor of any prescribed premises (or of any prescribed premises together with goods) to take all reasonable steps to ascertain whether the fair rent thereof is fixed by or under this Part or by an agreement referred to in section 17A and, if so, the amount of the fair rent.
- (1A) Without prejudice to the generality of subsection (1), any person who proposes to lease any prescribed premises (or any prescribed premises together with goods) or to purchase any prescribed premises (or any prescribed premises together with goods) which are leased shall, before leasing or purchasing the premises (or the premises

together with goods), as the case may be, make proper enquiry at the office of the clerk of the Fair Rents Board nearest to the premises or, in the case of shared accommodation situated within, or partly within and partly outside, the Metropolitan Area, at the Department, as to whether the fair rent of the premises proposed to be leased or purchased is fixed by a determination or by an agreement referred to in section 17A and, if the fair rent has been so fixed, as to the amount of the fair rent:

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

(1B) An enquiry under subsection (1A) 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.

(2)-(4) (Repealed)

### **58 Certificate as to fair rent**

- (1) In any proceedings before any court, a certificate by the Director-General or by the clerk of a Fair Rents Board that, in respect of a period specified in the certificate, the fair rent of any prescribed premises was fixed by a determination (whether by the Director-General or a Fair Rents Board) or, in the case of a certificate by the Director-General, by an agreement referred to in section 17A, and specifying the amount thereof, shall be evidence of the matters certified to.
- (2) Judicial notice shall be taken of the signature of the person signing any such certificate and of the fact that he or she is, or has been, the Director-General or clerk of a Fair Rents Board, as the case may be.
- (3) An application for a certificate under subsection (1) 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.

### **59 Service of notices**

- (1) Any notice or other document required or permitted by this Part to be given to, or served upon, any person, may subject to subsection (1A) be given or served:
  - (a) by delivering the notice or other document to him or her personally, or
  - (b) by forwarding the same by post in a prepaid letter addressed to him or her at his or her usual or last-known place of abode or business or at any address notified to the Board or the Director-General as the address at which notices may be given to or served upon him or her.
- (1A) Any notice required by section 24A to be given to any person may be given:

- (a) by delivering the notice to him or her personally, or
  - (b) by forwarding the same by post in a registered letter, or certified mail service, addressed to him or her at his or her usual or last-known place of abode or business or at any address notified to the Director-General or the clerk of the Fair Rents Board as the address at which notices may be given to or served upon him or her.
- (2) Any notice or other document required or permitted by this Part to be given to, or served upon, the Director-General may be given or served by leaving the same at the office of the Director-General with some person apparently employed thereat or by sending the same by post in a prepaid letter addressed to the Director-General.
- (3) Where any notice or other document is required or permitted by this Part to be given to, or served upon, a person whose address is unknown, it may be given or served by publishing it in the Gazette and in a daily newspaper circulating in the district in which the prescribed premises concerned are situated.

#### **60 Service upon agent sufficient**

- (1) Any notice or other document required or permitted by this Part to be given to, or served upon, a lessor under the lease of any prescribed premises shall be deemed to have been duly given or served if it is given to, or served upon, the person to whom the rent payable under the lease is customarily paid.
- (2) Any notice or other document required or permitted by this Part to be given to, or served upon, a lessee under the lease of any prescribed premises shall be deemed to have been duly given or served if it is given to, or served upon, the person by whom the rent payable under the lease is customarily paid.
- (3) If two or more persons are lessors or lessees under any lease of any prescribed premises, it shall be a sufficient compliance with any provision of this Part requiring or permitting any notice or other document to be given to, or served upon, the lessors or lessees if the notice is given to, or served upon, any one of the lessors or lessees.

#### **61 Courts may order refund of amounts overpaid**

- (1) Upon conviction of any person for any offence arising under this Part the court may, in addition to any penalty, order that any amount which has been received by or paid to that person in contravention of this Part be refunded to the person by whom the payment was made.
- (2) Where a court proposes to make an order under this section against a convicted person, the court may hear evidence tending to show that the contravention of which the person has been convicted was part of a course of conduct in contravention of this Part, and evidence to the contrary, and may, if it sees fit, include in the order any amounts which appear to the court to have been received by or paid to the person in

contravention of this Part as part of that course of conduct.

- (3) Where a court has made an order under this section, a certificate under the hand of the clerk or other appropriate officer of the court, specifying the amount ordered to be refunded and the person by whom and the person to whom the amount is payable, may be filed in any court having civil jurisdiction to the extent of that amount, and shall thereupon be enforceable in all respects as a final judgment of that court.

## **Part 3 Recovery of possession of prescribed premises**

### **62 Restriction on eviction**

- (1) Except as provided by this Part, the lessor of any prescribed premises shall not give any notice to terminate the tenancy or take or continue any proceedings to recover possession of the premises from the lessee or for the ejection of the lessee therefrom.
- (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), 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 or her, whether or not he or she has attorned tenant to another of the lessees against whom such an order has been made.
- (1C) Nothing in subsection (1B) 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.

- (2) A notice to quit given in contravention of this section shall not operate so as to terminate the tenancy in respect of which the notice was given.
  - (3) Subject to this Part, a lessor may take proceedings in any court of competent jurisdiction for an order for the recovery by him or her of any prescribed premises (or of any goods leased therewith) if the lessor, before taking the proceedings, has given to the lessee, upon one or more of the prescribed grounds but upon no other ground, notice to quit in writing for a period determined in accordance with section 63, and that period of notice has expired.
  - (4) Service of the notice to quit may, without prejudice to any other mode of service, be effected:
    - (i) by delivering the notice to:
      - (a) some person apparently over the age of sixteen years and apparently residing in or in occupation of the premises, or
      - (b) the person by whom the rent of the premises is customarily paid,
    - (ii) with the leave of the court, by affixing the same to the premises and by sending copies thereof by prepaid post addressed to the lessee at the premises and at his or her address last known to the lessor.
- (4A)
- (a) Where a lessee of prescribed premises has died and probate or letters of administration of his or her estate have not been granted, any notice to quit which might have been given to the legal personal representative of the deceased lessee had probate or letters of administration of his or her estate been granted may be given by affixing the same to the premises and:
    - (i) where any person or persons are apparently residing in or in occupation of the premises—by delivering the notice to any of such persons apparently over the age of sixteen years,
    - (ii) in any other case—by giving notice of the same twice in a daily newspaper circulating in the district in which the premises are situated.
  - (b) Where any proceedings for an order for the recovery of possession of any prescribed premises are taken in reliance on any notice to quit given in the manner provided in paragraph (a), any occupant of the premises or other person claiming an interest therein shall be entitled to be heard in the proceedings. The contesting of any such proceedings shall not of itself be regarded as an act of administration or as intermeddling in the estate of the deceased lessee or as constituting the person so contesting any such proceedings executor de son tort of

the deceased lessee.

(c) Nothing in this subsection shall affect the right of a lessor to give notice to quit otherwise than as provided in this subsection.

(5) The prescribed grounds shall be:

(a) that the lessee has failed to pay the rent in respect of a period:

(i) where the lessee's period of occupation does not exceed twelve months—of not less than fourteen days, and

(ii) in any other case—of not less than twenty-eight days,

(b)

(i) that the lessee has failed to perform or observe some other term or condition of the lease and the performance or observance of that other term or condition has not been waived or excused by the lessor,

(ii) that the lessee has become the lessee by reason of an assignment or transfer made after the fourteenth day of March, one thousand nine hundred and forty-seven, in breach of a term or condition of the lease and the transfer or assignment has not been consented to or approved by the lessor,

(c) that the lessee has failed to take reasonable care of the premises, or of any goods leased therewith, or has committed waste,

(d) that the lessee has been guilty of conduct which is a nuisance or annoyance to adjoining or neighbouring occupiers,

(d1) that the premises are being used for the purpose of prostitution or of soliciting for prostitution,

(e) that the lessee or any other person has been convicted, during the currency of the lease, of any offence arising out of the use of the premises for any illegal purpose or that a court has found or declared that the premises have, during the currency of the lease, been used for some illegal purpose,

(f) that the lessee has given notice in writing of his or her intention to vacate the premises and, in consequence of that notice, the lessor has agreed to sell or let the premises or has taken any other steps as a result of which he or she would be seriously prejudiced if he or she could not obtain possession,

(g) that the premises:

(i) being a dwelling-house—are reasonably required by the lessor for personal occupation as a residence by himself or herself or by some person who ordinarily resides with, and is wholly or partly dependent upon, him or her, or

- (ii) not being a dwelling-house—are reasonably required for occupation by the lessor or by a person associated or connected with the lessor in his or her trade, profession, calling or occupation,
- (h) that the premises are used as, or have been acquired for use as, a parsonage, vicarage, presbytery or other like premises and are reasonably required for the personal occupation as a residence of a minister of religion (including a person who, although not ordained, is performing all the duties of a minister of religion),
- (i) that the lessor is a trustee and the premises are reasonably required by a beneficiary under the trust for his or her personal occupation as a residence or for the occupation as a residence of some person who ordinarily resides with, and is wholly or partly dependent upon, him or her,
- (j) that the lessor is a person, body or authority carrying on a hospital or nursing service, or a trustee for such a person, body or authority, and the use of the premises is reasonably required for the purposes of the hospital or nursing service (including the accommodation of the staff of the hospital or nursing service),
- (k) that the premises have been occupied, or are occupied, in consequence of his or her employment by some person in the employ of the lessor and are reasonably required for the personal occupation as a residence in consequence of that employment of some other person employed by, or about to become employed by, the lessor,
- (l) that the lessor has agreed to sell the premises by an agreement which requires the purchaser to pay not less than one-fourth of the whole purchase money within twelve months from the date thereof and by which the purchaser is entitled to vacant possession of the premises and the premises:
  - (i) being a dwelling-house—are reasonably required by the purchaser for personal occupation as a residence by himself or herself or by some person who ordinarily resides with, and is wholly or partly dependent upon, him or her, or
  - (ii) not being a dwelling-house—are reasonably required for occupation by the purchaser or by a person associated or connected with the purchaser in his or her trade, profession, calling or occupation,
- (m) that the premises are reasonably required by the lessor for reconstruction or demolition,
- (n) that the lessee has become the lessee of the premises being a dwelling-house by virtue of an assignment or transfer which the lessor has not consented to or approved,
- (o) that the lessee has sub-let the premises being a dwelling-house or some part of the dwelling-house by a sub-lease which has not been consented to or approved



by the lessor, or

(p)

(i) that the lessee has parted with the possession of premises being a dwelling-house without the consent or approval of the lessor, or

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

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

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

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

(t) that the premises, being a dwelling-house, are owned by the lessor who, being a male, is of or over the age of sixty-five years or, being a female, is of or over the age of sixty years, that not more than two other dwelling-houses (exclusive of the dwelling-house in which he or she resides) are owned by the lessor if he or she is living alone or, if the lessor is living with his or her spouse, not more than two other dwelling-houses (exclusive of the dwelling-house in which they reside) are owned by them, that the income of the lessor if he or she is living alone, or, if the lessor is living with his or her spouse, his or her income together with that of his or her spouse, does not exceed the Sydney basic wage, and that the premises are required for sale with vacant possession,

(u) that, where the premises are a dwelling-house, the lessee has reasonably suitable alternative accommodation available for his or her occupation for residential purposes and has an estate in the land on which that accommodation is situated,

(v) that the premises, being shared accommodation, are required by the lessor, being a person of or over the age of sixty-five years, and that at the date on which the notice to quit was given and during the three years immediately preceding that date only one lease of shared accommodation in the dwelling-house of which the

shared accommodation forms part was in force at any one time,

- (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 (1) of section 31MAA, of the lessee or a lodger who is not such a relative) are such that it is reasonable that the lessee or the lessee and any such person 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, constitutes 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.
- (6)
- (a) In subsection (5), unless the contrary intention appears, **lessor** includes, where there is more than one lessor, any one or more of the lessors, and **lessee** includes, where there is more than one lessee, any one or more of the lessees.
  - (b) In paragraphs (g) and (l) of subsection (5), **dwelling-house** does not include any premises referred to in subparagraph (i) or (ii) of paragraph (b) of subsection (1B) of section 8 that is a dwelling-house for the purposes of the definition of **prescribed premises** in subsection (1) 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 (5) where the assignment, transfer, sub-letting 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.

- (c) In paragraph (t) of subsection (5), **Sydney basic wage** means the basic wage for adult males in force within the meaning of Part 5 of the *Industrial Arbitration Act 1940*, as amended by subsequent Acts, immediately before the notice to quit concerned was given.
- (d) For the purposes of paragraph (t) of subsection (5) if the lessor resides with his or her spouse a dwelling-house owned by them jointly or by either of them severally shall be taken to be owned by them.
- (7) Notice to quit on a ground specified in paragraph (n) or paragraph (o) of subsection (5):
- (a) shall not be given:
- (i) where the lessee became the lessee by virtue of an assignment or transfer made before the fourteenth day of March, one thousand nine hundred and forty-seven, or the sub-lease was granted before that date,
- (ii) where the lease is for a fixed term—unless that term has expired, or
- (iii) in the case of a periodic lease—unless the period which was current at the date on which the assignment, transfer or sub-lease took effect has expired, and
- (b) may be given only where the lease contains no covenant, whether absolute or conditional, against assigning, transferring or sub-letting by the lessee.
- (8) Notice to quit on the ground specified in subparagraph (i) of paragraph (p) of subsection (5) shall not be given:
- (a) where the lessee parted with the possession of the premises before the twenty-first day of July, one thousand nine hundred and forty-eight,
- (b) where the lease is for a fixed term—unless that term has expired,
- (c) in the case of a periodic lease—unless the period which was current at the date on which the parting with possession took place has expired, or
- (d) (Repealed)
- Any such notice may be given only where the lease contains no covenant, whether absolute or conditional, against parting with possession by the lessee.
- (8A) Notice to quit on the ground specified in subparagraph (ii) of paragraph (p) of subsection (5) shall not be given:
- (a) where the lessee ceased to be a bona fide occupant of the premises before the commencement of the *Landlord and Tenant (Amendment) Act 1952*,

- (b) where the lease is for a fixed term—unless that term has expired, or
- (c) in the case of a periodic lease—unless the period which was current at the date on which the lessee ceased to be a bona fide occupant of the premises has expired.

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

- (9) Notice to quit on the ground specified in paragraph (q) of subsection (5):
  - (a) may be given whether or not the sub-letting, parting with possession or permission to use was in breach of any covenant, and
  - (b) shall not be given:
    - (i) where the lease is for a fixed term—unless that term has expired,
    - (ii) in the case of a periodic lease—unless the period which was current at the date on which the sub-letting took effect or the parting with possession took place or the permission to use was given has expired.
    - (iii) (Repealed)
- (9A) (Repealed)
- (10) Nothing in subsection (7), (8) (8A) or (9) shall prejudice the right of a lessor to give notice to quit on the ground specified in paragraph (b) of subsection (5).
- (11) Where notice to quit is given on the ground specified in paragraph (m) of subsection (5), 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) For the purposes of paragraph (u) of subsection (5) reasonably suitable alternative accommodation shall be deemed to be available for the lessee's occupation for residential purposes where he or she is the lessor of reasonably suitable alternative accommodation that is not subject to Parts 2, 3, 4 and 5 and he or she could, within a reasonable time, obtain vacant possession thereof.

**62A Court may bar lessor's right to take proceedings where refusal of consent to assignment etc unreasonable**

- (1) The Local Court may, in relation to prescribed premises (not being premises used solely as a dwelling-house):
  - (a) on application in that behalf made by the lessee who has become the lessee of the premises by virtue of a transfer or assignment, order that a notice to quit upon

the ground specified in paragraph (b), or paragraph (n) of subsection (5) of section 62 shall not be given in relation to the transfer or assignment and also, if any such notice to quit has been given in relation to the transfer or assignment before the making of the order, that the notice to quit so given shall be void and of no effect,

- (b) on application in that behalf made by the lessee of the premises, who has sub-let the premises, order that a notice to quit on the ground specified in paragraph (b) or paragraph (o) of the said subsection shall not be given in relation to the sub-lease and also, if any such notice to quit has been given in relation to the sub-lease before the making of the order, that the notice to quit so given shall be void and of no effect,
- (c) on application in that behalf made by the lessee of the premises who proposes to sub-let the premises or to transfer or assign the lease of the premises, order that a notice to quit on the ground specified in paragraph (b), paragraph (n) or paragraph (o) of the said subsection shall not, if the proposed sub-lease, transfer or assignment is subsequently made or effected, be given in relation to the sub-lease, transfer or assignment,

if the court is satisfied:

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

- (1A) In any proceedings by a lessee before the Local Court pursuant to paragraph (c) of subsection (1), the Court may, in addition to granting the order referred to in that paragraph, order that any notice to quit given before the making of the order to the lessee in relation to the premises concerned in the proceedings shall be void and of no effect, if the Court is not satisfied that the ground specified in the notice is true in fact.
- (1B) Where an order has been granted under paragraph (c) of subsection (1) the lessor of the premises the subject of the order shall not give to the lessee any notice to quit within one month after the making of the order.

Nothing in this subsection affects the operation of paragraph (a) of subsection (3).

(2)

- (a) Any party to any proceedings in the Local Court under subsection (1) may appeal to the District Court against the decision of the Local Court given in those proceedings granting or refusing an order of the nature referred to in that

subsection.

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

(3)

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

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

(4) In this section the expression “premises used solely as a dwelling-house” does not include premises which are sub-let in whole or in part by the lessee, with the express or implied consent of the lessor, in the course of the lessee’s business of sub-letting for residential purposes.

#### **62B Power to assign certain tenancies at will**

(1)

(a) The Local Court may, in relation to prescribed premises (not being premises used solely as a dwelling-house), on application in that behalf made by a person who is, and has been since the commencement of the *Landlord and Tenant (Amendment) Act 1952*, a lessee at will of the premises, authorise the applicant to transfer his or her lease at will to a person named in the application, if the court is satisfied:

(i) that the lessee has offered to surrender his or her lease at will on the condition that the lessor grant a lease of the premises on reasonable terms and conditions to the person named in the application and that the lessor has unreasonably refused to grant such a lease, and

(ii) that the lessor has not offered to pay to the lessee a fair and reasonable price for his or her lease (including the goodwill of any business carried on by the lessee upon the premises).

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

(2)

- (a) Any party to any proceedings in the Local Court under subsection (1) may appeal to the District Court against the decision of the Local Court given in those proceedings granting or refusing an authority of the nature referred to in that subsection.
  - (b) The appeal shall be by way of rehearing and shall be made in accordance with rules of court.
- (3) In this section the expression “premises used solely as a dwelling-house” does not include premises which are sub-let in whole or in part by the lessee, with the express or implied consent of the lessor, in the course of the lessee’s business of sub-letting for residential purposes.

### **63 Period of notice to quit**

- (1) The period for which notice to quit shall be given shall be not less than a period of seven days, together with an additional seven days for each completed period of six months of occupation.
- (2) Nothing in subsection (1) shall:
  - (a) require the giving of notice to quit for:
    - (i) a period exceeding fourteen days if the notice is given on any ground specified in paragraph (c), (d), (e) or (f) of subsection (5) of section 62 and not on any other ground,
    - (ii) a period exceeding thirty days if the notice is given on any other ground,
    - (iii) in the case of shared accommodation—a period exceeding fourteen days, or
    - (iv) a period exceeding seven days if the notice is given on the ground specified in section 62 (5) (d1), or
  - (b) allow the giving of notice to quit for a period shorter than the period which, but for this section, would be required.

### **64 Notice to quit not to be given within six months after determination**

A lessor shall not, after the lessee has made an application to a Board or to the Director-General for a determination and notice of that application has been served on the lessor or the lessor has become aware that the application has been made, or after he or she has received notice of the intention of a Board or the Director-General to determine the fair rent of the premises of its or his or her own motion, except with the consent of the Board or the Director-General, as the case may be, give a notice to quit on any ground specified in paragraph (f), (g), (h), (i), (j), (k), (l), (s) or (w) of subsection (5) of section 62 until after the expiration of six months after the making of a determination on the application or in pursuance of the notice, but if a determination has not been made within

a period of six months after the date of the application, or (if no application has been made) within a period of six months after receipt of the notice of intention, as the case may be, such a notice to quit may be given after the expiration of that period.

## **65 Notice to quit where dwelling-house sold**

- (1) A person who has, either before or after the commencement of this Act, become the lessor of prescribed premises being a dwelling-house or part of a dwelling-house, by purchase thereof or any person claiming under or through such lessor otherwise than by virtue of a concurrent lease granted after the commencement of the *Landlord and Tenant (Amendment) Act 1958* by such lessor to the person so claiming (whether such claim arises before or after the commencement of the *Landlord and Tenant (Amendment) Act 1951*), shall not, within a period of twelve months after the date of the agreement for the purchase, give a notice to quit on the ground specified in paragraph (g) or (m) of subsection (5) of section 62 to any person who was a lessee of the prescribed premises at the date of the agreement for the purchase unless in the case of a notice to quit given on the ground specified in the said paragraph (m) he or she has first obtained the leave of a court having jurisdiction under this Part so to do.
- (1A) A person who has become the lessor of prescribed premises, being a dwelling-house or part of a dwelling-house, by virtue of the assignment or transfer to him or her, after the commencement of the *Landlord and Tenant (Amendment) Act 1958*, of a lease of the prescribed premises or the granting to him or her, after that commencement, of a concurrent lease of the prescribed premises or any person claiming under or through such lessor shall not, within a period of twelve months after the date of the assignment or transfer of the lease or the grant of the concurrent lease, as the case may be, give a notice to quit on the ground specified in paragraph (g) or (m) of subsection (5) of section 62 to any person who was a lessee of the prescribed premises at the date of the assignment or transfer of the lease or the grant of the concurrent lease, as the case may be, unless in the case of a notice to quit given on the ground specified in the said paragraph (m) he or she has first obtained the leave of a court having jurisdiction under this Part so to do.
- (2) A lessor of prescribed premises, being a dwelling-house or part thereof, shall not give a notice to quit on the ground specified in paragraph (l) of subsection (5) of section 62 to any person who was a lessee of the prescribed premises at the date of the agreement referred to in that paragraph within a period of six months after the date of the agreement.

## **66 Notice to specify grounds**

A notice to quit shall specify the ground relied upon and shall give the particulars thereof and, in the proceedings, the lessor shall not except by leave of court be entitled to rely upon any ground not so specified or upon any matter particulars of which have not been given.



### **67 Notice to quit to terminate lease**

A notice to quit given in accordance with the provisions of section 62 shall, if the tenancy in respect of which the notice was given has not otherwise terminated, operate so as to terminate the tenancy of the premises at the expiration of the period specified in the notice, but nothing in this section shall operate so as to determine any tenancy before the date on which it would have terminated if this section had not been enacted.

### **68 Notice to quit after failure of eviction proceedings**

- (1) Where a lessor has taken proceedings in any court to recover possession of any prescribed premises from the lessee and the court has (whether before or after the commencement of this Act) refused to make an order in favour of the lessor, the lessor shall not give to the lessee any notice to quit (whether on the same ground as a previous notice to quit or on some other ground) within twelve months after the decision of the court unless he or she has first obtained the leave of a court having jurisdiction under this Part so to do.
- (2) Where a court refuses to make an order in favour of a lessor it may, at the same time, grant leave for the purposes of this section.

### **69 Competent courts**

- (1) For the purposes of section 62, only the Local Court is a court of competent jurisdiction.
- (2) (Repealed)
- (3) The provisions of sections 26 and 27 of the *Landlord and Tenant Act of 1899* shall not apply in any case where an order for the recovery of possession of any prescribed premises has been made under this Part.

### **69A (Repealed)**

### **70 Court to consider hardship**

- (1) On the hearing of any proceedings by a lessor for an order for the recovery of possession of any prescribed premises, the court shall take into consideration, in addition to all other relevant matters:
  - (a) any hardship which would be caused to the lessee or any other person by the making of the order,
  - (b) any hardship which would be caused to the lessor or any other person by the refusal of the court to make the order, and
  - (c) where the application is made on any one or more of the grounds specified in paragraphs (g), (h), (i), (j), (l), (m), (s), (t) and (v) of subsection (5) of section

62—whether reasonably suitable alternative accommodation in lieu of the prescribed premises is, or has been since the date upon which notice to quit was given, available for the occupation of the person occupying the prescribed premises or for the occupation of the lessor or other person by whom the prescribed premises would be occupied if the order were made,

and may, in its discretion, make the order or may, on such conditions (if any) as it thinks fit, refuse to make the order notwithstanding that one or more of the prescribed grounds has been established.

(2) (Repealed)

(2A) Notwithstanding anything contained in this section, an order for the recovery of possession of any prescribed premises, being a dwelling-house, on the ground specified in paragraph (m) of subsection (5) of section 62 shall not be made unless the court is satisfied:

(a) (Repealed)

(b) that, where it is necessary to obtain the approval under any Act of any body to the carrying out of the work referred to in the notice to quit, that approval has been obtained, and

(c) that the work referred to in the notice to quit cannot reasonably be carried out without unduly interfering with the lessee's use and occupation of the premises:

Provided that this subsection shall not apply in any case where:

(d) the court is satisfied that the lessor is required by law to reconstruct or demolish the dwelling-house and possession thereof is sought by him or her for that purpose, or

(e) the court is satisfied that the lessee has sub-let or has parted with the possession of the dwelling-house and that he or she was not, at the date of the service of the notice to quit, a bona fide occupant of the dwelling-house or any part thereof.

(2B)-(3) (Repealed)

(4) On the hearing of an application made on a ground specified in subparagraph (ii) of paragraph (b), or paragraph (n), (o), (p) or (q), of subsection (5) of section 62 any assignee, sub-lessee or person in occupation of the prescribed premises or any part thereof shall be entitled to be heard.

(4A) Notwithstanding anything contained in this section, an order for the recovery of possession of any prescribed premises from any person on the ground specified in paragraph (t) or (x) of subsection (5) of section 62 shall not be made unless the court is satisfied that the premises have been offered for sale to the tenant upon terms and

conditions which, having regard to all relevant circumstances, are fair and reasonable.

(5) (Repealed)

(6) In determining for the purposes of this Act whether alternative accommodation which is available for the occupation of persons who are occupying the prescribed premises for the recovery of possession of which the proceedings have been taken is reasonably suitable, the court shall have regard to the terms and conditions of any proposed lease of the alternative accommodation and to the ability of the lessee of the prescribed premises to pay the rent reserved by that proposed lease.

**70A (Repealed)**

**71 Power to stay proceedings or orders**

(1) In respect of any proceedings referred to in section 70, the court may:

(a) from time to time, subject to such conditions (if any), and for such period as it thinks fit:

(i) adjourn the proceedings,

(ii) stay or suspend the execution of any order which has been made or given in the proceedings, or

(iii) postpone the date for recovery of possession specified in any such order, or

(b) subject to such conditions (if any) as it thinks fit, vary, discharge or rescind any such order, or

(c) where a warrant of execution has been issued, and whether the warrant has expired or not, from time to time extend the period stated in the warrant for the execution thereof:

(i) if the court is satisfied that, because of the illness of the lessee or for other sufficient cause, it is or has been impracticable for the officer to whom the warrant is directed to execute the warrant within the period stated therein—for such period as it thinks fit, or

(ii) if the court is not so satisfied—for a period not exceeding seven days from the date on which the extension is granted.

(2) In this section:

(a) a reference to an order shall include a reference to an order made or purporting to have been made before the commencement of this Act under Regulation sixty-three of the Commonwealth Regulations,

(b) a reference to a warrant shall include a reference to a warrant issued or

purporting to have been issued before the commencement of this Act under the Commonwealth Regulations for the execution of an order made or purporting to have been made under Regulation sixty-three of those Regulations.

## **72 Certain applications to operate as stay of execution**

- (1) An application to stay or suspend the execution of, or to vary, discharge or rescind, any order referred to in section 71, or to postpone the date for recovery of possession specified in any such order, shall, when filed with the proper officer of the court, stay the execution of any warrant and operate to postpone the date for recovery of possession of the prescribed premises until the court has heard the application.
- (2) Notwithstanding anything contained in paragraph (c) of section 71, the court may, on the hearing of any such application, extend for such period as it thinks fit the period stated in any warrant for the execution thereof (whether the warrant has expired or not).
- (3) Where, in respect of any proceedings referred to in section 70, the court has refused to grant an application of any of the kinds referred to in subsection (1), no further application of any of those kinds shall be made in respect of those proceedings except with the leave of the court.

## **73 Hearing in chambers**

Proceedings for the recovery of possession of prescribed premises may, with the consent of all parties, be disposed of in chambers but nothing in this section shall affect the power of any court to dispose of any such proceedings in chambers otherwise than under this section.

## **74 Appeals**

- (1) Except as provided in this section, there shall be no appeal in proceedings under this Part, from an order of a court of competent jurisdiction referred to in section 69.
- (2) There shall be an appeal, as to questions of law only, to the Supreme Court from any order of such a court in proceedings under this Part.

## **75 Ejectment orders not enforceable unless made under this Act**

No order (other than an order made under this Part or made or purporting to be made under the Commonwealth Regulations) made or purporting to have been made by any court for the recovery by the lessor of possession of any prescribed premises (or of any prescribed premises together with goods leased therewith) or for the ejectment of the lessee shall be enforceable.

## **76 Court may order compensation for misrepresentation**

- (1) Where a lessor has obtained an order for the recovery of possession of any prescribed

premises and it is subsequently proved that the order was obtained by a fraudulent representation or the concealment of material facts, the court which made the order may order the lessor to pay to the former lessee such sum as appears to the court to be sufficient as compensation for damage or loss sustained by the lessee as the result of the order, and the provisions of subsection (3) of section 61, shall apply, mutatis mutandis, to and in respect of any order for the payment of any sum under this section.

- (2) The costs of any proceedings under this section shall be in the discretion of the court.
- (3) The court, when allowing any costs to any party in proceedings under this section, may assess the amount thereof, and the provisions of subsection (3) of section 61 shall apply, mutatis mutandis, to and in respect of any order allowing costs under this section.

## **77 Premises not to be sold or re-let in certain cases**

(1)

- (a) If a notice to quit has been given on the ground specified in paragraph (h), (i), (j), (k) or (s) of subsection (5) of section 62 and the premises in respect of which the notice 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 any 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 writing of leave and licence for the use thereof or sold or otherwise disposed of (except by will or on intestacy) or agreed to be leased or made the subject of an agreement or arrangement whether oral or in writing of leave and licence for the use thereof or sold or otherwise disposed of (except by will or on intestacy), until after the expiration of the period of twelve months immediately succeeding the date on which the premises were vacated or possession of the premises was recovered.
- (a1) If a notice to quit has been given on the ground specified in paragraph (t) or (x) of subsection (5) of section 62, 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 writing of leave and licence 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 licence 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.
- (b) If a notice to quit has been given on the ground specified in paragraph (g) of subsection (5) of section 62, and the premises in respect of which the notice 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 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 writing of leave and licence for the use thereof or sold or otherwise disposed of (except by will or on intestacy) or agreed to be leased or made the subject of an agreement or arrangement whether oral or in writing of leave and licence for the use thereof or sold or otherwise disposed of (except by will or on intestacy), until after the expiration of the period of three years immediately succeeding the date on which the premises were vacated or possession of the premises was recovered.

- (c) If a notice to quit has been given on the ground specified in paragraph (m) of subsection (5) of section 62, and the premises in respect of which the notice was given have been vacated in accordance with the notice, or if an order for recovery of possession of the premises has been made on 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 writing of leave and licence for the use thereof or sold or otherwise disposed of (except by will or on intestacy) or agreed to be leased or made the subject of an agreement or arrangement whether oral or in writing of leave and licence for the use thereof or sold or otherwise disposed of (except by will or on intestacy), until the reconstruction or demolition referred to in the said paragraph (m) has been carried out.
- (c1) Where a notice to quit has been given and the premises in respect of which the notice was given have been vacated within a period of six months after the giving of the notice, the premises shall, unless the contrary is proved or an order for the recovery of possession of the premises has been made within that period, be deemed for the purposes of this section to have been vacated in accordance with the notice.
- (d) In this subsection, except paragraph (a1):
- (i) a reference to a notice to quit shall include a reference to a notice to quit given before the commencement of this Act,
  - (ii) a reference to a vacation of premises shall include a reference to a vacation of premises before the commencement of this Act, and
  - (iii) a reference to an order for the recovery of possession of premises shall include a reference to any such order made under the Commonwealth Regulations before the commencement of this Act.
- (e) In paragraph (a1):
- (i) a reference to a notice to quit given on the ground specified in paragraph (t) of subsection (5) of section 62 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.
- (2) Nothing in subsection (1) shall prevent, where notice to quit has been given on the ground specified in paragraph (h), (i), (j), (k) or (s) of subsection (5) of section 62, 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 or her 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.
- (3) A transaction entered into in contravention of subsection (1) shall not thereby be invalidated, but nothing in this subsection shall affect the liability of any person to any penalty in respect of any contravention of that subsection.
- (4) If subsection (1) 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 licence 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 not prevent the Governor from exercising his or her powers under subsection (1) of section 6, or under section 6A, in respect of those premises or a class of premises that includes those premises.
- (6) The fact that the Governor has exercised his or her powers under subsection (1) of

section 6, or under section 6A, 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.

### **78 Application to limited class of premises**

Where an order is in force declaring that it is desirable that the powers and functions of the Director-General and of Fair Rents Boards shall be exercisable with respect to certain prescribed premises only, or with respect to a limited class of prescribed premises only, the provisions of this Part shall apply only with respect to the prescribed premises, or limited class of prescribed premises, referred to in the order.

### **79 Enforcement of orders**

An order for the recovery of possession of any prescribed premises (or of any prescribed premises together with goods leased therewith) made by a court under this Act may be enforced in the same manner as a like order if made by that court otherwise than under this Act, might be enforced.

### **80 Acceptance of rent not to waive notice to quit**

Where notice to quit any prescribed premises has been given, whether before or after the commencement of this Act:

- (a) any demand by the lessor for payment of rent, or of any sum of money as rent, in respect of any period within six months after the giving of the notice,
- (b) the commencement of proceedings by the lessor to recover rent, or any sum of money as rent, in respect of any such period, or
- (c) the acceptance of rent, or of any sum of money as rent, by the lessor in respect of any such period,

shall not of itself constitute evidence of a new tenancy or operate as a waiver of the notice.

### **81 Persons not to interfere with use or enjoyment of premises**

- (1) A person shall not, whether as principal or agent or in any other capacity, without the consent of the lessee of prescribed premises, or without reasonable cause (proof whereof shall lie upon the defendant), do, or cause to be done, any act, or omit, or cause to be omitted, any act whereby the ordinary use or enjoyment by the lessee of the premises or of any goods leased therewith, or of any conveniences usually available to the lessee, or of any service supplied to, or provided in connection with, the premises is interfered with or restricted.
- (2) Where the lessor, or any agent or servant of the lessor, has been convicted of an



offence arising under subsection (1), the court may order the lessor to do such things as are necessary to enable the lessee to resume the ordinary use or enjoyment of the premises, goods, conveniences or service, and the lessor shall comply with the provisions of the order.

Where the lessor fails to comply with the provisions of the order he or she shall be guilty of an offence against this Act and in addition to any other penalty prescribed by this Act he or she shall be liable to a penalty not exceeding 0.1 penalty unit for each day during which such non-compliance continues.

- (3) For the purposes of this section, conveniences shall be deemed to be usually available to the lessee where prior to the use of the conveniences having been interfered with or restricted without his or her consent, he or she has been allowed, at all times during the tenancy to use those conveniences as he or she desired or he or she has been allowed to use those conveniences at times agreed to by the lessor and lessee or at times equivalent to those times.
- (3A) Where the lessor of any prescribed premises, being a dwelling-house, or any agent or servant of the lessor, has been convicted of an offence arising under subsection (1), the court before which the lessor, agent or servant, as the case may be, was convicted, if it is of opinion that the acts or omissions constituting the offence were done or omitted with intent that the person who was lessee at the time when those acts or omissions were done or omitted to be done vacate the premises and that person has vacated the premises, may, in addition to the penalty prescribed by this Act for the offence, order the lessor to pay to that person such sum as appears to the court to be sufficient as compensation for damage or loss sustained by that person as the result of his or her vacating the premises, and the provisions of subsection (3) of section 61 shall apply, *mutatis mutandis*, to and in respect of any order for the payment of any sum under this subsection.
- (4)
- (a) Where any service in connection with prescribed premises charged for and supplied or provided by some person other than the lessor of such premises has before the commencement of the *Landlord and Tenant (Amendment) Act 1949* ceased to be supplied or provided or after such commencement ceases to be supplied or provided, then unless that service or a service corresponding thereto and no less beneficial to the lessee is supplied or provided within fourteen days after the lessee has served upon the lessor a written requisition therefor, the fair rent of the premises or of the premises together with goods leased therewith may be reduced on the lessee's application made in accordance with the provisions of Part 2, notwithstanding the provisions of sections 20, 21 and 32, by such amount not exceeding one-half thereof as a Fair Rents Board or the Director-General in its or his or her discretion, as the case may be, thinks fit.

- (b) A reduction of the fair rent of prescribed premises, or of prescribed premises together with goods leased therewith, shall not be made pursuant to the provisions of paragraph (a) in any case where the Fair Rents Board or the Director-General, as the case may be, is satisfied that the lessor or any person or body of persons corporate or unincorporate under the control or influence of the lessor is not in any way responsible for the cessation of the service and that it is not within the power of the lessor to restore the service or to have the service restored or to supply or provide, or to have supplied or provided, a corresponding and no less beneficial service.

**81A Court may order that certain dwelling-houses remain subject to this Act**

- (1) A court for the district in which prescribed premises, being a dwelling-house that is not exempt by section 5AA or 5A from the provisions of Parts 2, 3, 4 and 5 to the extent provided by that section, are situated, shall, on application in that behalf made by the lessee of the premises, order that the premises, if vacated by the lessee, shall remain subject to the provisions of this Act in all respects as though section 5AA or 5A, as the case may be, had not been enacted, if the court is satisfied that:
  - (a) the lessor has done, or caused to be done, any act, or omitted, or caused to be omitted, any act whereby the ordinary use or enjoyment by the lessee of the premises or of any goods leased therewith, or of any conveniences usually available to the lessee, or of any service supplied to, or provided in connection with, the premises is interfered with or restricted,
  - (b) that the lessor has by his or her conduct endeavoured to improperly induce the lessee to vacate the premises,
  - (c) that the lessor has unreasonably caused expense and inconvenience to the lessee by requiring him or her to defend proceedings under this Act for the recovery of the premises from the lessee and that those proceedings were vexatious,
  - (d) the lessor has allowed the premises to fall into a dilapidated or dangerous condition.
- (2) Notwithstanding anything contained in subsection (1), the court, although satisfied of any one or more of the matters specified in paragraphs (a), (c) and (d) of subsection (1), may refuse to make the order if the lessor satisfies the court that his or her conduct in relation to that matter or those matters was not intended to induce the lessee to vacate the premises.
- (3) An order under this section:
  - (a) shall remain in force for such period as is specified in the order or until the court otherwise orders, and
  - (b) shall have effect according to its tenor.

- (4) Where an order is made under this section, the registrar of the court shall forthwith forward a copy of the order to the Director-General who shall enter particulars of the order in a register kept for the purpose.
- (5) For the purposes of this section, conveniences shall be deemed to be usually available to the lessee where prior to the use of the conveniences having been interfered with or restricted without his or her consent, he or she has been allowed, at all times during the tenancy, to use those conveniences as he or she desired or he or she has been allowed to use those conveniences at times agreed to by the lessor and lessee or at times equivalent to those times.
- (6) In this section **court** means the Local Court.

## **82 Protection of sub-lessees**

### (1) Where:

- (a) a lessor has either before or after the commencement of this Act consented to or approved a sub-lease of any prescribed premises or any part thereof by the lessee, or a lessee has either before or after such commencement sub-let any prescribed premises or any part thereof in the course of a business of sub-letting carried on by the lessee, and
- (b) the lessee has ceased, either before or after such commencement, to be in possession of the premises, following upon:
  - (i) the obtaining of an order by the lessor for the recovery of possession of the premises from the lessee on any of the grounds specified in paragraphs (a) to (f) of subsection (5) of section 62, or
  - (ii) the surrender of his or her lease by the lessee,

the sub-lessee shall (if he or she is in possession of the whole or portion of the prescribed premises sub-let to him or her) be deemed to have become the lessee thereof from the lessor upon the same terms and conditions as the terms and conditions of the sub-lease, as in force immediately prior to:

- (c) the date on which the lessor gave notice to quit to the lessee, or
- (d) the date on which the lessee notified the lessor of his or her intention to surrender the lease (or, if he or she did not so notify the lessor, the date on which the lessee surrendered the lease),

as the case may be.

- (2) In a case to which subparagraph (i) of paragraph (b) of subsection (1) applies, the order shall not be enforced against the sub-lessee.

- (3) Where, prior to the lessor of any prescribed premises giving notice to quit to the lessee upon any of the grounds specified in subsection (5) of section 62, the lessee of the prescribed premises has sub-let the whole or any part thereof:
- (a) the lessee shall, upon service of the notice to quit, forthwith notify the lessor in writing of the name and address of each person to whom he or she has so sub-let and who is a sub-lessee of the prescribed premises or any part thereof at the date of service of the notice to quit,
  - (b) the lessor shall, upon taking proceedings for the recovery of possession of the prescribed premises, file the notice given to him or her under this section with the Local Court, and
  - (c) the relevant registrar of the Local Court is to give notice by registered post to each person specified in the notice, at the address so specified, of the date of hearing of the proceedings by the Court.
- (4) On the hearing of any proceedings by a lessor for an order for the recovery of possession of any prescribed premises, every person who is a sub-lessee of such premises or any part thereof shall be entitled to be heard.
- (5) Where a lessor obtains an order for the recovery of possession of any prescribed premises from a lessee on the ground specified in paragraph (n), (o), (p) or (q) of subsection (5) of section 62:
- (a) the order shall not be enforced against
    - (i) any sub-lessee, or
    - (ii) (Repealed)
  - (b) any sub-lessee actually in possession and occupation of the whole or portion of the premises shall, as from the date of the order, be deemed to have become the lessee thereof from the lessor upon the same terms and conditions as the terms and conditions of the sub-lease as in force immediately prior to the date on which the lessor gave notice to quit to the lessee,
  - (c) (Repealed)

### **83 Protection of certain persons in possession of premises**

- (1) Where:
- (a) the tenancy of any prescribed premises is terminated by virtue of the provisions of this Act or of the Commonwealth Regulations,
  - (b) the person who was the lessee immediately prior to the termination of the tenancy (in this section referred to as **the former lessee**) dies after the

termination of the tenancy, and

(c) immediately before the death of the lessee:

- (i) the spouse of the lessee resided with the lessee and is actually in possession of the premises immediately after the death of the lessee,
- (ii) where the spouse of the lessee was not so residing or is not so in possession or the lessee did not have a spouse at the date of his or her death, a child of the lessee (being a child of or over the age of twenty-one years 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) so resided and is so in possession, or
- (iii) where no person referred to in subparagraph (i) or (ii) was so residing or is so in possession, the father or mother of the lessee so resided and is so in possession,
- (iv) (Repealed)

the spouse, or such child, or the father or mother, as the case may be, shall have the like right to continue in possession of the premises as the former lessee would have if he or she had not died, but proceedings may be taken against the person having the right under this subsection to continue in possession of the premises for the recovery of possession of the premises from that person in accordance with the provisions of this Act as if he or she were a lessee of the premises.

- (2) Where but for this subsection more than one person would, under subparagraph (ii) or (iii) of paragraph (c) of subsection (1), have had a right to continue in possession of any premises, the elder or eldest of the persons so entitled under such subparagraph shall have that right to the exclusion of any other of those persons.

### **83A Protection of member of the family of deceased lessee**

(1) Where a lessee of prescribed premises dies, and:

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

(c) where no person referred to in paragraph (a) or (b) was so residing or is so in possession, the father or mother of the lessee so resided and is so in possession,

(d) (Repealed)

the spouse, or such child, or the father or mother as the case may be, shall, subject to subsection (2) and until probate or letters of administration of the estate of the deceased lessee are granted, have the like right to continue in possession of the premises as the deceased lessee would have had if he or she had not died.

(1A) Where but for this subsection more than one person would, under paragraph (b) or (c), of subsection (1), have had a right to continue in possession of any premises, the elder or eldest of the persons so entitled under such paragraph shall have that right to the exclusion of any other of those persons.

(2) Proceedings may be taken against the person having the right under subsection (1) to continue in possession of the premises for the recovery of possession of the premises from him or her in accordance with the provisions of this Act as if he or she were a lessee of the premises.

(3) Nothing in this section affects any right which the person having the right under subsection (1) to continue in possession of the premises may have upon the grant of probate or letters of administration to continue in possession of the premises.

### **83B NSW Trustee and Guardian's title not a defence to recovery of possession of prescribed premises after death of lessee in certain cases**

Where a lessee of prescribed premises dies and during the period after his or her death and before probate or letters of administration of the estate of the deceased lessee are granted, a person is actually in possession of the premises, and an action of ejectment is during that period brought against such person in the Supreme Court or a District Court, or proceedings are during that period commenced under section 17 or 23 of the *Landlord and Tenant Act of 1899*, as amended by subsequent Acts, for the recovery of the premises, such person shall not be entitled to raise as a defence to that action or those proceedings the fact that the deceased lessee's interest in the premises is deemed by section 61 of the *Probate and Administration Act 1898*, as amended by subsequent Acts, to be vested in the NSW Trustee and Guardian.

### **83C Periodic leases may not be disposed of by will or pass on intestacy**

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 61 of the *Probate and Administration Act 1898*, as subsequently amended.

#### **84 Costs to be allowed**

In any proceedings in relation to which this Part applies, not being proceedings in respect of an offence arising under this Part, the court may in its discretion order payment by the lessor to the lessee of such sum as it deems proper to meet his or her reasonable costs and the provisions of subsection (3) of section 61 shall apply mutatis mutandis to and in respect of any order allowing costs under this section.

#### **85 Intervention of Minister**

The Minister may, at any stage of any proceedings in relation to which this Part applies, intervene by counsel, solicitor or agent and may examine witnesses and address the court.

#### **85A Application of certain sections in Part 2**

The provisions of sections 44 to 49, both inclusive, and section 51 shall apply to and in respect of any matter coming before a Fair Rents Board or the Director-General under this Part.

#### **85B Application by solicitor or agent**

Any application to the Director-General under section 86, 86A, 87 or 87B may be made by the lessor, proposed lessor, owner or lessee, as the case may be, or by his or her solicitor, or by his or her agent thereunto authorised in writing.

#### **86 Exclusion of premises from operation of Part 3 and Part 5**

- (1) The lessor under a lease, or the proposed lessor under a proposed lease, of any prescribed premises for a fixed term may, at any time during the currency of the lease while the lessee is in occupation of the premises, or prior to the commencement of the term of the proposed lease, make application in writing to the Director-General to exclude the premises from the operation of this Part and Part 5.
- (2) The applicant shall furnish such information in relation to the application as the Director-General requires.
- (3) The Director-General may, in his or her discretion, issue a certificate excluding the premises, for such period as is specified in the certificate, from the operation of the provisions of this Part and Part 5 and the premises shall be excluded accordingly.

The period specified in the certificate shall not exceed seven years unless the lessor and lessee or proposed lessor and proposed lessee under the lease or proposed lease are employer and employee.

(4)

- (a) The Director-General may at any time revoke or vary any certificate issued under subsection (3).

(b) The Director-General may grant one or more extensions of any certificate issued under subsection (3) excluding the premises from the operation of the provisions of this Part and Part 5 for a further period or periods but the aggregate of:

(a) the period of the original exemption, and

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

shall not exceed seven years, unless the lessor and lessee are employer and employee.

(5) Where any certificate:

(a) is issued under this section for a period in excess of seven years, or

(b) is extended so that the aggregate of:

(i) the period of the original exemption, and

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

is in excess of seven years,

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

(6) Where the fair rent of any prescribed premises is fixed or determined by or under Part 2 in respect of those premises without goods and no determination has been made either before or after the commencement of the *Landlord and Tenant (Amendment) Act 1954* in respect of those premises together with goods, the Director-General may in any certificate issued under this section excluding those premises from the operation of this Part and Part 5 specify the rent to be paid for those premises together with goods.

The rent so specified shall:

(a) be deemed to have been determined by a determination made under and in accordance with Part 2, and

(b) as on and from a date to be specified in the certificate (which date shall be not earlier than the date upon which the application for the exclusion of the premises from this Part and Part 5 was received in the office of the Director-General) and notwithstanding anything contained in Part 2, be the fair rent of those premises together with goods until it is varied under and in accordance with that Part.

Application to vary the rent so specified may, notwithstanding the provisions of subsection (2) of section 32, be made at any



time after the issue of the certificate:

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

**86A Exclusion of premises from operation of Part 3 and Part 5 where lessor and lessee are employer and employee**

- (1) The owner of any prescribed premises who wishes to make the premises available for leasing to his or her employees (whether or not the premises are then let to one of his or her employees) may make application in writing to the Director-General to exclude the premises from the operation of this Part and Part 5.
- (2) The applicant shall furnish such information in relation to the application as the Director-General requires.
- (3)
  - (a) The Director-General may, in his or her discretion, issue a certificate under this section excluding the premises from the operation of this Part and Part 5 during:
    - (i) any period during which the premises are let to any person who is an employee of the applicant, and
    - (ii) where any such person ceases to be an employee of the applicant while the premises are let to that person, the period of two months immediately succeeding the date on which that person so ceases to be an employee,and the premises shall be excluded accordingly.
  - (b) Nothing in subparagraph (ii) of paragraph (a) shall be construed as affecting or limiting the operation of subparagraph (i) of that paragraph.
- (4) The Director-General may at any time revoke or vary any certificate issued under subsection (3).

**87 Exclusion of certain subdivided premises etc from operation of Part 3 and Part 5**

- (1)
  - (a) The provisions of this Part and Part 5 shall not apply to or in relation to any prescribed premises in respect of which a certificate under this section is in force.
  - (b) (Repealed)
- (2) Where the owner of any prescribed premises is desirous of making the whole or any part of those premises available for accommodation, he or she may apply to the

Director-General for a certificate that the premises are premises to which this Part and Part 5 do not apply.

(3) The Director-General may:

- (a) grant the application and issue the certificate, either unconditionally or subject to such conditions as he or she thinks fit and for such period as he or she thinks fit, or
- (b) refuse the application.

(3A) (Repealed)

(4) A certificate issued under this section in respect of prescribed premises being any part of a dwelling-house or of a residential unit in any building shall not have any force or effect in respect of any person who immediately prior to the date of receipt in the office of the Director-General of the application for the certificate was the lessee of the dwelling-house or of any part of the dwelling-house or of the residential unit or of any other residential unit in the building unless immediately prior to that date a prior certificate issued under this section had force or effect in respect of that person as such lessee.

(5) A certificate shall not issue under this section in respect of any prescribed premises comprising the whole of any building.

(6) This section shall apply only in relation to prescribed premises being:

- (a) a dwelling-house which is not in whole or in part leased to any person,
- (b) a dwelling-house which the owner or lessee has converted, or intends to convert, into two or three, but not more, residential units,
- (c) a dwelling-house or part of a dwelling-house which is leased to any person and which is about to become vacant,
- (d) a part of a dwelling-house which has been leased by the owner but is not for the time being leased to any person, or
- (e) a residential unit in a building which the owner of the building proposes to lease or to permit to be leased for residential purposes separately from the remainder of the building and which has not previously been so separately leased,

but shall not apply in relation to any building containing more than three residential units or in relation to any residential unit in any such building.

(7) In this section, **residential unit** means any part of a building which is or has been designed, whether originally or otherwise, for occupation as a residence independently of any other part of the building.

**87A Part 3 not to apply to a dwelling-house let on behalf of an insane patient**

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

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

the provisions of this Part and Part 5 shall not, in respect of that lease, apply to the dwelling-house.

**87B Exclusion of certain premises from operation of Part 3 and Part 5**

- (1) While a certificate under this section is in force in relation to part of any prescribed premises, the provisions of this Part and Part 5 shall not, as between the person upon whose application the certificate was granted and any sub-lessee of that part under a sub-lease granted by that person after the date of receipt in the office of the Director-General of the application for the certificate, apply to or in relation to that part.
- (2) Where the lessee of any prescribed premises being a dwelling-house is desirous of sub-letting part of those premises to one sub-lessee only and he or she has not sub-let any other part of those premises he or she may, with the consent in writing of the lessor of those premises, apply to the Director-General for a certificate that the part of the premises to be so sub-let is premises to which this Part and Part 5 do not apply.
- (3) The Director-General may:
  - (a) grant the application and issue the certificate, either unconditionally or subject to such conditions as he or she thinks fit and for such period not exceeding seven years as he or she thinks fit, or
  - (b) refuse the application.
- (4) The Director-General may grant one or more extensions of any certificate issued under subsection (3) excluding the premises so sub-let or to be so sub-let from the operation of the provisions of this Part and Part 5 for a further period or periods but the aggregate of:
  - (a) the period of the original exemption, and
  - (b) the period of any extension so granted or, where more than one extension is granted, the total of the periods of extension so granted,shall not exceed seven years.
- (5) A certificate issued under this section in respect of part of any prescribed premises

shall become void and of no effect if more than one sub-lease granted by the person to whom the certificate was issued is in force in respect of those premises at any one time.

- (6) Notice to quit on the ground specified in paragraph (q) of subsection (5) of section 62 shall not be given to the person to whom a certificate is issued under this section in respect of rents received by him or her from the sub-lessee of that part of any prescribed premises which is the subject of that certificate.
- (7) Where a certificate has been issued under this section excluding part of prescribed premises from the operation of this Part and Part 5, any person who after the date of receipt in the office of the Director-General of the application for the certificate became a sub-lessee of that part from the person (hereinafter in this sub-section referred to as the **lessee**) upon whose application the certificate was issued shall not have, as against the lessor of the lessee, any right under this Act or otherwise to possession or to remain in possession of that part after the lease of the prescribed premises to the lessee has been terminated whether by surrender or otherwise and, in such circumstances, proceedings to recover possession of that part from the sub-lessee or for the ejection of the sub-lessee therefrom may be taken by the lessor as if this Part and Part 5 had not been enacted.

## **Part 4 Miscellaneous**

### **88 Threats and boycotts prohibited**

- (1) A person shall not, by any threat, or in any other manner, endeavour to dissuade or prevent a lessor or lessee from making or prosecuting any application under this Act, or taking or continuing any proceedings in relation to which this Act applies.
- (2) The owner of any prescribed premises, and the agent of any such owner, shall not refuse, or procure any person to refuse, to lease the premises to any other person who desires to lease the same if the reason for that refusal was the fact that that other person had made an application to a Board or the Director-General under this Act or the Commonwealth Regulations.
- (3) In any prosecution for an offence arising under subsection (2), where all the facts and circumstances constituting the contravention, other than the reason for the refusal, are proved, it shall lie upon the defendant to prove that the reason for the refusal was not the reason alleged in the charge.
- (4) A person shall not do, or procure to be done, any act or thing for the purpose of imposing any detriment or disadvantage upon a lessor or lessee because the lessor or lessee has made an application under this Act or the Commonwealth Regulations or has taken any proceedings in relation to which this Act applies or the Commonwealth Regulations applied.

**88A Dwelling-house not to be sold unless tenant given opportunity to purchase**

- (1) A person shall not sell or agree to sell any prescribed premises, being a dwelling-house which is occupied by a lessee and being the only premises comprised in the sale or agreement for sale, to any person other than the lessee unless:
  - (a) (Repealed)
  - (b) the vendor has first offered in writing to sell the premises to the lessee at a price not greater than the price at which the premises are actually sold or agreed to be sold and upon terms as to payment and otherwise not less favourable to the lessee than the terms upon which the premises are actually sold or agreed to be sold and the lessee has not accepted that offer within fourteen days after the receipt thereof by him or her and, in addition, where the premises are sold at an auction sale, the vendor has given to the lessee not less than twenty-one days' notice in writing of the proposed auction sale:

Provided that nothing in this subsection shall be construed as prohibiting the vendor from entering into and giving effect to a contract to sell the premises to any person conditionally upon the lessee's rejection of an offer of sale of the premises made in accordance with paragraph (b).

- (2) Any person who contravenes or fails to comply with any provision of this section shall be guilty of an offence against this Act and a prosecution for the offence may be commenced at any time within six months after the completion of the sale.
- (3) Any contravention of or failure to comply with any provision of this section shall not invalidate any contract or agreement.

This subsection shall have effect notwithstanding anything contained in section 89.

**88B Premises not to be sold in certain circumstances**

Where:

- (a) a lessee of prescribed premises who is in receipt of a pension under the *Social Services Consolidation Act 1947* (as amended by subsequent Acts) of the Parliament of the Commonwealth vacates those premises, otherwise than by reason of an order made under Part 3,
- (b) that lessee is, by reason of his or her vacating the prescribed premises, granted a lease by the Housing Commission of New South Wales of premises provided by that Commission, and
- (c) that Commission notifies, in writing, the lessor of the prescribed premises that it has so granted such a lease,

the lessor of the prescribed premises shall not, within a period of three years after the

lessee vacates the prescribed premises, sell those premises unless, on an application made to the Local Court, the Court has consented to the sale.

**88C Penalty for publishing certain statements**

- (1) A person shall not, whether as principal or agent or in any other capacity, publish or cause, permit or authorise to be published a statement:
  - (a) stating, suggesting, or implying, in any way, that he or she 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 she 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 her 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 Implied powers in lessor**

- (1) In every lease of prescribed premises there shall be implied the following covenants by the lessee:
  - (a) that the lessor or his or her agents may, twice in every year at a reasonable time of the day between eight o'clock in the morning and 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 or her 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 (1) does not include

any time at which the lessee and the other adult members of his or her household are ordinarily absent from the prescribed premises in the course or by reason of their respective trades, businesses, occupations or employments.

- (3) Section 85 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 (1) has effect subject to any provision of the lease of the premises.

### **89 Contracting out prohibited**

No covenant or agreement (whether entered into before or after the commencement of this Act) shall have any force or effect to deprive any lessee of any right, power, privilege or benefit provided for by this Act.

Nothing in this section shall apply to an agreement referred to in subsection (1) of section 17A.

### **90 Contracts to evade Act prohibited**

A person shall not enter into or make any contract or arrangement, whether orally or in writing, for the purpose of, or which has the effect of, in any way, and whether directly or indirectly, defeating, evading, or preventing the operation of, this Act in any respect.

Nothing in this section shall operate to prohibit a person entering into or making an agreement referred to in subsection (1) of section 17A.

### **90A Certain contracts to be void**

- (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:
  - (a) that in consideration of any person acting for or on behalf of, representing or advising another person in proceedings under Part 2 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 (1) 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 or she has, before that commencement, performed all of

his or her obligations under the contract or agreement.

**91 Transactions not invalidated**

- (1) Where any transaction is entered into in contravention of this Act, the transaction shall not thereby be invalidated, and the rights, powers and remedies of any person thereunder shall, except where otherwise expressly provided in this Act, be the same as if this Act had not been enacted.
- (2) Nothing in this section shall affect the operation of section 89 or the liability of any person to any penalty in respect of any contravention of this Act.

**92 Information to be furnished on request**

- (1) The Director-General or an authorised officer may require a person:
  - (a) to furnish to the person making the requirement such information as that person requires,
  - (b) to answer any question put to him or her by that person, or
  - (c) to produce any books, documents or writings in his or her custody or control, in relation to any matter arising under this Act.
- (2) A person shall not, when so required:
  - (a) refuse or fail to furnish the information or to answer the question or to produce the books, documents or writings, or
  - (b) give any information or make any answer which is false in any particular.
- (3) A person shall not be obliged to furnish any information or to answer any question or to produce any books, documents or writings under this section unless he or she has first been informed by the person making the requirement that he or she is required and is obliged, by virtue of this section, to furnish the information or to answer the question or to produce the books, documents or writings.
- (4) A person shall be deemed to have failed to furnish information, or to produce books, documents or writings, required of him or her under this section if he or she does not furnish the information or produce the books, documents or writings:
  - (a) in the case of a requirement in writing—within fourteen days after receipt by him or her of the requirement, or
  - (b) in the case of an oral requirement—within fourteen days after the day upon which the requirement is made.
- (5) A requirement under this section may be served by post on the person on whom it is



made at his or her last-known place of abode or business.

### **93 Powers of entry and inspection**

- (1) The Director-General or an authorised officer may, for the purposes of this Act, enter on and inspect any land or premises.
- (2) Any person who:
  - (a) refuses to allow the Director-General or an authorised officer to enter or inspect at a reasonable time of the day and after reasonable notice has been given any land or premises,
  - (b) wilfully obstructs or aids in obstructing or solicits any other person to obstruct or aid in obstructing the Director-General or an authorised officer in the exercise of the power conferred on him or her by subsection (1),

shall be guilty of an offence against this Act.

### **94 Proof of instruments**

- (1) Every document purporting to be a certificate or other instrument made or issued by the Director-General in pursuance, or for the purposes, of any provision of this Act and to be signed by the Director-General shall be received in evidence and shall, until the contrary is proved, be deemed to be a certificate or other instrument (as the case may be) made or issued by the Director-General.
- (2) A certificate purporting to be a certificate given by the clerk of a Fair Rents Board or by the Director-General and to be signed by such clerk or by the Director-General certifying:
  - (a) that in a period specified therein no application has been made to the Fair Rents Board of which he or she is clerk, or to the Director-General, as the case may be, for a determination of the fair rent of prescribed premises described therein, or
  - (b) that any such determination has been made and as to amount and date of operation thereof,shall be received in evidence and shall, until the contrary is proved, be accepted as evidence of the matters therein set out.
- (3) A document purporting to be a certificate made or issued by the Director-General or his or her delegate appointed under subsection (2) of section 11 and to be signed by the Director-General or any such delegate certifying to the effect that:
  - (a) the premises described in the certificate are or are not at the date of the certificate or were or were not at any time or, during any period specified in the certificate, premises, or premises included in any class of premises, to which an

order made under subsection (1) or (2) of section 6 applies or applied or to which a declaration continued in force and effect by subsection (3) of that section applies or applied,

- (b) the premises, or part of any premises, described in the certificate are or are not, or is or is not, at the date of the certificate or were or were not, or was or was not, at any time or during any period specified in the certificate premises to which an order made under subsection (1) of section 6A applies or applied,
- (c) the premises are or are not at the date of the certificate, or were or were not at any time or during any period specified in the certificate, premises of a class to which an order made under paragraph (b) of subsection (3) of section 6A applies or applied,
- (d) (Repealed)
- (e) the premises described in the certificate are or are not at the date of the certificate, or were or were not at any time or during any period specified in the certificate, premises in respect of which a certificate under section 6A, 7, 86, 86A, 87 or 87B is or was in force,

shall be admissible in evidence in any proceedings and shall, until the contrary is proved, be accepted as evidence of the matters therein certified to.

- (4) An application for a certificate under this section or under section 6A, 7, 86, 86A, 87 or 87B shall be accompanied by a fee of two dollars or, where another fee has been prescribed in lieu thereof, by that other fee.

## **95 Offences and penalties**

- (1) Any person who contravenes or fails to comply with any provision of this Act shall be guilty of an offence against this Act.
- (2) No prosecution for an offence against this Act shall be instituted without the written consent of the Minister.
- (3) Any person who is guilty of an offence against this Act shall be liable:
  - (a) if a body corporate—to a penalty not exceeding 10 penalty units,
  - (b) if any other person—to a penalty not exceeding 5 penalty units, or to imprisonment for a term not exceeding six months, or to both such penalty and imprisonment.
- (4) Where a person convicted of an offence against this Act is a body corporate, every person who at the time of the commission of the offence, was a director or officer of the body corporate shall be deemed to have committed the like offence, and be liable to the pecuniary penalty or imprisonment or both provided by this section in the case

of such an offence by a person other than a body corporate accordingly, unless he or she proves that the offence was committed without his or her knowledge, or that he or she used all due diligence to prevent the commission of the offence.

- (5) Any person who is guilty of an offence against this Act arising under section 77:
- (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 1 penalty unit 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 (3), be liable:
    - (i) if a body corporate—to a penalty not exceeding 20 penalty units, or
    - (ii) if any other person—to a penalty not exceeding 10 penalty units, or to imprisonment for a term not exceeding twelve months, or to both such penalty and imprisonment.

## **96 Regulations**

- (1) The Governor may make regulations not inconsistent with this Act prescribing all matters which are required or permitted by this Act to be prescribed or which are necessary or convenient to be prescribed for the purpose of carrying out or giving effect to this Act.
- (2) The regulations may impose a penalty not exceeding 2 penalty units for any breach thereof.
- (3) (Repealed)

## **97 Regulations may transfer powers of Director-General to Fair Rents Board**

- (1) In addition to the powers conferred by section 96, the Governor may from time to time by regulations, declare that on a date specified in the regulations, the powers authorities duties and functions conferred and imposed on the Director-General by this Act shall be transferred to and shall thereafter be exercised and discharged by Fair Rents Boards as prescribed in the regulations.
- (2) Regulations made under this section may:
  - (a) apply generally to all powers authorities duties and functions of the Director-General, or particularly to such powers authorities duties and functions of the Director-General as are prescribed in the regulations,

- (b) apply generally to all premises in respect of which he or she is authorised by this Act to exercise and discharge any of his or her powers authorities duties and functions, or particularly to any class of such premises as may be specified in the regulations,
  - (c) apply generally throughout the State, or particularly within such parts of the State as are specified in the regulations.
- (3) Regulations made under this section may include provisions for modifying and adapting the provisions of this Act in such manner and to such extent as may be necessary or convenient to give effect to any transfer to Fair Rents Boards of the powers authorities duties and functions of the Director-General effected by the regulations and to enable Fair Rents Boards to exercise and discharge the same.
- (4) Every determination made by a Fair Rents Board in the exercise of powers transferred to it by regulations made under this section shall be final and without appeal, and no writ of prohibition or certiorari shall lie in respect thereof.
- (5) (Repealed)

## **98 Proceedings for offences**

All proceedings for offences against this Act or the regulations shall be disposed of in a summary manner before the Local Court.

### **98A Premises to be deemed prescribed premises etc unless the contrary is shown**

In any proceedings, civil or criminal, arising out of or taken under, or purporting to arise out of or to be taken under, the provisions of this Act in respect of any premises:

- (a) the premises shall be deemed to be prescribed premises, and
- (b) the provisions of section 8 of Part 1, Part 2, Part 3 (other than sections 85B to 87B, both inclusive) and Part 4 shall be deemed to apply in respect of the premises,

unless the contrary is shown.

## **Part 5 Protected persons**

### **99 Definitions**

- (1) In this Part, unless the contrary intention appears:

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

- (a) has been discharged from the Defence Force, or has ceased to be engaged on war

service, for a period not exceeding the prescribed period, or

- (b) having been discharged from the Defence Force, or having ceased to be engaged on war service, for a period exceeding the prescribed period:
  - (i) is receiving a pension from the Commonwealth, or
  - (ii) is not receiving such a pension, but is receiving from the Commonwealth medical treatment of such a nature as to prevent him or her either wholly or partly from engaging in his or her occupation.

**female dependant of a member** means a female who is wholly or substantially dependent for her support upon a member of the Forces or a member of the United Nations Forces.

**female dependant of a discharged member** means:

- (a) a female who is wholly or substantially dependent for her support upon a person who, having been a member of the Defence Force engaged on war service during the present war or in connection with any naval, military or air operations conducted by or on behalf of the United Nations Organisation, has been discharged from the Defence Force, or has ceased to be engaged on war service, for a period not exceeding the prescribed period,
- (b) a female who is wholly or substantially dependent for her support upon a pension payable in consequence of the incapacity or the death of a person who has been a member of the Forces or a member of the United Nations Forces,
- (c) the wife of a person who, having been a member of the Defence Force engaged on war service during the present war or in connection with any naval, military or air operations conducted by or on behalf of the United Nations Organisation:
  - (i) has been discharged from the Defence Force, or
  - (ii) has ceased to be engaged on war service,and although not receiving a pension, is receiving from the Commonwealth medical treatment of such a nature as to prevent him either wholly or partly from engaging in his occupation,
- (d) the widow of a member of the Forces or of a member of the United Nations Forces who died while engaged on war service during the present war or in connection with any naval, military or air operations conducted by or on behalf of the United Nations Organisation.

**member of the Forces** means a member of the Defence Force engaged on war service (otherwise than in connection with any naval, military or air operations conducted by or on behalf of the United Nations Organisation), and includes any

person who is on active service (otherwise than in connection with any such naval, military or air operations) with the Naval, Military or Air Forces:

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

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

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

**parent of a member** means a person who is a parent of, and is wholly or substantially dependent for his or her support upon, a member of the Forces or a member of the United Nations Forces.

**parent of a discharged member** means:

- (a) a person who is a parent of, and is wholly or substantially dependent for his or her support upon, a person who, having been a member of the Defence Force engaged on war service during the present war or in connection with any naval, military or air operations conducted by or on behalf of the United Nations Organisation, has been discharged from the Defence Force, or has ceased to be engaged on war service, for a period not exceeding the prescribed period,
- (b) a person who is a parent of, and is wholly or substantially dependent for his or her support upon a pension payable in consequence of the incapacity or death of, a person who has been a member of the Forces or a member of the United Nations Forces,
- (c) a parent of a person who, having been a member of the Defence Force engaged on war service during the present war or in connection with any naval, military or air operations conducted by or on behalf of the United Nations Organisation:
  - (i) has been discharged from the Defence Force, or

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

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

**pension** means a pension (including a service pension) under the [Repatriation Act 1920-1951](#) of the Parliament of the Commonwealth, and includes a pension payable under any law of a country outside the Commonwealth providing for payment of pensions to members, or former members of the Naval, Military or Air Forces of that country.

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

**Editorial note—**

See proclamation published in Gazette No 120 of 6.8.1954, p 2344.

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

**Editorial note—**

See Regulation published in Gazette No 144 of 14.8.1953, p 2599.

**protected person** means:

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

(i) is, or

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

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

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

(i) immediately prior to his or her discharge,

(ii) for a continuous period of not less than three months during the period of six months immediately prior to his or her discharge, or

- (iii) for a total period of not less than twelve months during his or her period of war service,  
so required,
- (c) a female dependant of a member or a parent of a member and that member:
  - (i) is, or
  - (ii) was, for a total period of not less than twelve months during his or her period of war service,  
so required, or
- (d) a female dependant of a discharged member or a parent of a discharged member and that member was:
  - (i) immediately prior to his or her discharge, ceasing to be engaged on war service, or death, as the case may be,
  - (ii) for a continuous period of not less than three months during the period of six months immediately prior to his or her discharge, ceasing to be engaged on war service, or death, as the case may be, or
  - (iii) for a total period of not less than twelve months during his or her period of war service,  
so required.

**war service** means:

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



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

**100 Limitation on power of court to make order for recovery of possession**

Except in the case of an order made upon any one or more of the grounds set out in paragraph (a), (b), (c), (d), (e), (f), (k), (m), (n), (o), (p), (q), (r), (t), (u), (v), (w), (x) or (y) of subsection (5) of section 62, an order for the recovery of possession of any prescribed premises shall not be made against a protected person unless the court, in addition to being satisfied upon any other ground upon which the court is required to be satisfied, is further satisfied:

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

**101 Protection of protected person claiming under lessee where tenancy determined**

- (1) Where a tenancy of prescribed premises has been lawfully determined and a person claiming under the lessee pursuant to some arrangement or agreement made or entered into before the commencement of the [Landlord and Tenant \(Amendment\) Act 1952](#) and actually in possession of the prescribed premises or any part thereof was a protected person, or had ceased to be a protected person for a period not exceeding two years, at the date on which an order for recovery of possession of those premises was made, that order shall not be enforced against that person unless the court which made the order:
- (a) is satisfied that, had that person been in fact the lessee of those premises from the person in whose favour the order was made, the person in whose favour the order was made could establish any one or more of the grounds set out in subsection (5) of section 62 (other than the ground set out in subparagraph (ii) of paragraph (b) or in paragraph (n) of that subsection), and
  - (b) gives leave to enforce the order against that person.
- (2) Except in the case where under subsection (1) the court is satisfied that the person in

whose favour an order was made could establish any one or more of the grounds set out in paragraph (a) or subparagraph (i) of paragraph (b) or paragraph (c), (d), (e), (f), (k), (m), (n), (o), (p), (q), (r), (t), (u), (v), (w), (x) or (y) of subsection (5) of section 62, a court shall not give leave to enforce an order against a person who was a protected person, or had ceased to be a protected person for a period not exceeding two years, at the date on which the order was made, unless the court, in addition to being satisfied upon any other matter upon which the court is required to be satisfied, is satisfied that reasonably suitable alternative accommodation is available for the occupation of that person in lieu of the premises in respect of which the giving of leave to enforce an order is sought.

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

- (1) The provisions of sections 100 and 101 shall not apply in relation to prescribed premises of which the lessor is:
  - (a) a protected person, or
  - (b) a person in receipt of age pension under the *Social Services Consolidation Act 1947* (as amended by subsequent Acts) of the Parliament of the Commonwealth.
- (2) The provisions of section 100 shall not apply in the case of proceedings for the recovery of possession of prescribed premises where the court in which the proceedings are taken is satisfied that the refusal to make an order would prejudice any claim or proposed claim by the lessor for age pension under the *Social Services Consolidation Act 1947* (as amended by subsequent Acts) of the Parliament of the Commonwealth.
- (3) Where pursuant to section 101 the leave of the court which made an order for the recovery of possession of prescribed premises is sought to enforce that order, the court, notwithstanding that it may not be satisfied upon any of the matters upon which it is required to be satisfied by that section, shall not refuse to give that leave if it is satisfied that refusal to give that leave would prejudice any claim or proposed claim by the lessor for age pension under the *Social Services Consolidation Act 1947* (as amended by subsequent Acts) of the Parliament of the Commonwealth.

**103-110 (Repealed)**

**111 Rental of farms by members of the Forces etc**

- (1) The owner of any land to which this section applies (not being land the fair rent of which is fixed or determined by or under, or may be fixed or determined by or under, this Act) shall not, without the leave of the appropriate court, increase the rent thereof, and any increase made in contravention of this section shall, notwithstanding any agreement to the contrary, be irrecoverable:

Provided that:

- (a) where the owner incurs expenditure on the improvement of the land, or the structural alteration of any building erected on the land (not including expenditure on decoration or repairs) an increase of rent at a rate not exceeding eight per centum per annum on the amount so expended shall not be deemed to be an increase for the purposes of this section,
  - (b) any transfer to a tenant of any burden or liability previously borne by the owner shall for the purposes of this section be treated as an alteration of rent, and where as the result of such a transfer the terms on which the land is held are on the whole less favourable to the tenant than the previous terms the rent shall be deemed to be increased whether or not the sum periodically payable by way of rent is increased,
  - (c) any increase of rent in respect of any transfer to the owner of any burden or liability previously borne by the tenant where as the result of the transfer the terms on which the land is held are on the whole more favourable to the tenant than the previous terms shall be deemed not to be an increase of rent for the purposes of this section, and
  - (d) where the owner pays the rates payable by the occupier of any land an increase of the rent of the land payable for any period shall not be deemed to be an increase for the purposes of this section if the amount of the increase does not exceed the increase in the amount payable by the owner in respect of the rates during the same period and for the purposes of this paragraph the expression "rates" includes water rates and charges.
- (2) A person shall not, in consideration of the grant, renewal, or continuance of a tenancy of any land to which this section applies, require from any protected person the payment of any fine, premium or other like sum in addition to the rent.
- (3) In this section:

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

**land to which this section applies** means land occupied by a protected person and used:

- (a) for the purposes of carrying on farming or dairying pursuits, or
- (b) for such other purposes as the Minister, by order published in the Gazette, specifies.

**the appropriate court** means:

- (a) where the rent payable does not exceed one hundred and forty dollars per

annum—the Local Court,

(b) where the rent payable exceeds one hundred and forty dollars per annum—a District Court.

(4) This section shall, notwithstanding section 5, bind the Crown.

### **112 Prohibition of eviction of dependants of members of the Forces in certain cases**

(1) Where a soldier's dependant is in occupation of a dwelling-house which was occupied by a member of the Forces or a member of the United Nations Forces by virtue of his or her employment, whether on terms of payment of rent or the provision of any other consideration or otherwise, it shall not be lawful for any person to evict the soldier's dependant from the dwelling-house unless:

(a) the soldier's dependant has failed to comply with the terms and conditions (if any) on which the soldier's dependant was permitted to occupy the dwelling-house, and

(b) the person seeking to evict the soldier's dependant has obtained the leave of the court.

(2) The court, in considering any application for leave under subsection (1), shall take into consideration all the circumstances of the case, and in particular, shall have regard to any provision made by the person seeking the leave for other accommodation for the soldier's dependant.

(3) This section shall, notwithstanding section 5, bind:

(a) the Crown,

(b) the Housing Commission of New South Wales.

(4) In this section:

***soldier's dependant*** means

(a) parent of a member of the Forces or of a member of the United Nations Forces, or

(b) female dependant of a member of the Forces or of a member of the United Nations Forces.

***the court***, in relation to any application under this section, means the Local Court.

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

### **113 This Part not to apply in certain cases**

(1) Any person (in this section referred to as ***the claimant***) who desires to do, or to continue or complete the doing of, any act against any person (in this section referred

to as **the respondent**) in respect of the rental or possession of any premises may, if the respondent is resident in Australia and is not, to the knowledge of the claimant, a protected person, serve on the respondent, in the manner provided by this section, a notice requiring the respondent to inform the claimant, within fourteen days after the receipt of the notice, whether or not the respondent is a protected person within the meaning of this Part.

- (2) A notice under subsection (1) shall be served personally or by registered letter sent to the respondent's last place of abode known to the claimant.
- (3) If, within the period specified in subsection (1), a statutory declaration by the respondent or by some person having knowledge of the facts stating that the respondent is a protected person within the meaning of this Part is not furnished to the claimant, then, notwithstanding that the respondent is, or at any subsequent time becomes, a protected person, this Part shall not apply in respect of the doing, or in respect of the continuance or completion of the doing, of an act of the kind referred to in subsection (1), provided the claimant commences to do, or to continue or complete the doing of, the act within three weeks after the expiration of the period specified in that subsection.
- (4) For the purposes of subsection (3), where the doing of any act is dependent on the completion of any preliminary act, the commencement of the doing, or the continuance or completion of the doing, of the preliminary act shall be deemed to be the commencement of the doing of the first-mentioned act.
- (5) If the claimant produces evidence (supported by statutory declaration) to the satisfaction of an officer thereto authorised in writing by the Minister, that the respondent:
  - (a) has abandoned the property in respect of which the claimant desires to do, or to continue or complete the doing of, any act, or
  - (b) cannot be found and that the claimant has made reasonable efforts to ascertain his or her whereabouts, and that the claimant is not aware that the respondent is a protected person,the officer may issue to the claimant a certificate to that effect and thereupon this Part shall not apply in respect of the doing, or in respect of the continuance or completion of the doing, of the act by the claimant.
- (6) A certificate purporting to be issued in pursuance of subsection (5) shall, in the absence of proof to the contrary, be deemed to have been duly issued.