

New South Wales.



ANNO TERTIO DECIMO

GEORGII VI REGIS.

Act No. 21, 1949.

An Act to amend the Landlord and Tenant (Amendment) Act, 1948, in certain respects; and for purposes connected therewith. [Assented to, 30th June, 1949.]

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

1. (1) This Act may be cited as the "Landlord and Tenant (Amendment) Act, 1949."

Short title
and
citation.

Landlord and Tenant (Amendment).

(2) The Landlord and Tenant (Amendment) Act, 1948, as amended by this Act, may be cited as the Landlord and Tenant (Amendment) Act, 1948-1949.

Amendment
of Act No.
25, 1948.

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

Sec. 8.
(Defini-
tions.)

(a) by inserting in subsection one of section eight immediately before the definition of "Part" the following new definition:—

"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.

Sec. 18.
(Application
to have
fair rent
fixed.)

(b) (i) by omitting from section eighteen the words "the Controller" where firstly and secondly occurring and by inserting in lieu thereof the words "a Fair Rents Board";

(ii) by omitting from the same section the words "the Controller" where thirdly occurring and by inserting in lieu thereof the words "the Board";

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

(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.

Subst.
sec. 19.

(c) by omitting section nineteen and by inserting in lieu thereof the following section:—

Notice of
application.

19. (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

Landlord and Tenant (Amendment).

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 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 two of this section or under this subsection is himself a lessee, mesne lessee or sub-lessee, he shall forthwith give notice in writing of the time, date and place fixed for the determination of the application to his 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 one, two or three of this section.

(d)

(d)

Landlord and Tenant (Amendment).

Sec. 20.

(Determination of application.)

- (d) (i) by omitting from section twenty the word "Controller" wherever occurring and by inserting in lieu thereof the words "Fair Rents Board";
- (ii) by omitting from subsection one of the same section the word "he" and by inserting in lieu thereof the word "it";

Sec. 21.

(Matters to be considered.)

- (e) by omitting from section twenty-one the words "the Controller" and by inserting in lieu thereof the words "a Fair Rents Board";

Sec. 22.

(Date of operation of determination.)

- (f) (i) by omitting from subsection one of section twenty-two the words "the Controller" where firstly occurring and by inserting in lieu thereof the words "a Fair Rents Board";
- (ii) by omitting from the same subsection the word "Controller" where secondly occurring and by inserting in lieu thereof the word "Board";
- (iii) by omitting subsection two of the same section and by inserting in lieu thereof the following subsection:—

(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 lessor and lessee and to any other person to whom it has been established in the proceedings that notice has been given under section nineteen or section twenty-four of this Act.

Sec. 23.

(Effect of determination.)

- (g) by omitting from section twenty-three the words "the Controller" and by inserting in lieu thereof the words "a Fair Rents Board";

(h)

Landlord and Tenant (Amendment).

- (h) (i) by omitting from subsection one of section twenty-four the words "The Controller may, of his own motion" and by inserting in lieu thereof the words "A Fair Rents Board may, of its own motion";

Sec. 24.
(Controller may determine fair rent of his own motion.)

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

(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 nineteen of this Act, 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.

- (iii) (a) by omitting from subsection three of the same section the word "Controller" wherever occurring and by inserting in lieu thereof the words "Fair Rents Board";

- (b) by omitting from the same subsection the word "he" and by inserting in lieu thereof the word "it";

- (i) (i) by omitting from subsection two of section twenty-five the words "the Controller" and by inserting in lieu thereof the words "a Fair Rents Board";

Sec. 25.
(Lease of prescribed premises together with goods.)

- (ii) by omitting from the same subsection the word "his" and by inserting in lieu thereof the word "its";

- (j) by omitting from section twenty-six the words "The Controller may, if he thinks fit" and by inserting in lieu thereof the words "A Fair Rents Board may, if it thinks fit";

Sec. 26.
(Inspection of prescribed premises.)

(k)

Landlord and Tenant (Amendment).

New Division 3A.

(k) by inserting next after section twenty-six the following new Division:—

DIVISION 3A.—*Rent of Shared Accommodation outside the Metropolitan Area.*

Application of Division.

26A. The provisions of this Division shall apply to and in respect of shared accommodation situated wholly outside the Metropolitan Area.

Determination of rent of shared accommodation.

26B. (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 application, 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 owner of any such shared accommodation which is vacant, 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 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.

(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

Landlord and Tenant (Amendment).

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.

(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, the Board may determine the fair rent of the shared accommodation.

(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 by the Board or, in any case in which the Board causes any shared accommodation to be inspected pursuant to subsection four of this section, 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 twenty-one of this Act.

(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 lessor and the lessee concerned.

(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 and until varied in pursuance of

Landlord and Tenant (Amendment).

of this Part, be the rent of the shared accommodation, or of the shared accommodation together with the goods leased therewith, in respect of which it is fixed.

Variation
in arrange-
ment of
shared
accommoda-
tion to be
notified.

26c. 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)

Landlord and Tenant (Amendment).

- (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. (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.

Rent of shared accommodation and 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.

- (l) by inserting at the end of the heading “*DIVISION 4.—Rent of Shared Accommodation*” the words “*within the Metropolitan Area*”;

Division 4. (Heading.)

- (m) by inserting immediately before section twenty-seven the following new section:—

New sec. 26E.

26E. 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.

Application of Division.

(n)

Landlord and Tenant (Amendment).

Division 5.
(Heading.)

- (n) by omitting the heading "DIVISION 5.—General" appearing before section thirty;

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

- (o) (i) by omitting from subsection one of section thirty the words "prescribed premises, including";
 (ii) by omitting from the same subsection the words "under this Act" and by inserting in lieu thereof the words "under this Division";
 (iii) by omitting from the same subsection the words "in subsection two of section twenty-two or";
 (iv) by omitting from the same subsection the words "as the case may be";
 (v) by omitting from subsection two of the same section the words "give notice" and by inserting in lieu thereof the words "cause notice to be given";
 (vi) by omitting from the same subsection the words "and to any other persons to whom notices have been given by the Controller in pursuance of section nineteen or section twenty-four of this Act, as the case may be";

Sec. 31.
(Procedure
on appeal.)

- (p) by omitting subsection three of section thirty-one and by inserting in lieu thereof the following subsection:—

(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 by the Controller or, in any case in which the Controller has caused any shared accommodation to be inspected pursuant to subsection three of section twenty-seven of this Act, not be earlier than the date of such inspection;

(q)

Landlord and Tenant (Amendment).

- (q) by inserting immediately before section thirty-two the following new heading:—
- DIVISION 5.—*General.*
- (r) (i) by omitting from paragraph (a) of subsection one of section thirty-two the words “to the Controller”;
- New heading.
Division 5.
- (ii) by omitting paragraph (b) of the same subsection and by inserting in lieu thereof the following paragraph—
- (b) by a Fair Rents Board of its own motion, or by the Controller of his own motion, as the case may be;
- (iii) by omitting from subsection two of the same section the words “nor shall the Controller vary a determination of his own motion” and by inserting in lieu thereof the words “nor shall a Board of its own motion, nor the Controller of his own motion, vary a determination”;
- (iv) by inserting next after the same subsection the following new subsection:—
- (2A) For the purpose of this section, any reference in section nineteen, section twenty-four or section 26B of this Act 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.
- (v) by omitting from subsection three of the same section the words “section nineteen, section twenty-four or”;
- (s) (i) by omitting from subsection one of section thirty-four the words “Where the fair rent of any prescribed premises or shared accommodation has been determined, the lessor shall give notice in writing to the Controller of” and by inserting in lieu thereof
- Sec. 32.
(Variation of determination.)
- Sec. 34.
(Lessor to notify change in services supplied or in nature of occupancy.)

Landlord and Tenant (Amendment).

thereof the words "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";

(ii) by omitting from paragraph (b) of the same subsection the words "or the shared accommodation ceases";

(iii) by omitting from the same paragraph the words "or becomes";

Sec. 43.
(Controller
not bound
to conduct
oral hear-
ing.)

(t) by inserting in section forty-three immediately before the words "the Controller" wherever occurring the words "a Fair Rents Board or";

Sec. 52.
(Informa-
tion as to
fair rent.)

(u) (i) by omitting from section fifty-two the words "prescribed premises, or of any prescribed premises together with goods leased therewith" and by inserting in lieu thereof the words "shared accommodation (or shared accommodation together with goods leased therewith) situated within, or partly within and partly outside, the Metropolitan Area";

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

(2) The clerk of the Fair Rents Board nearest to any premises shall, on application, 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

Landlord and Tenant (Amendment).

outside, the Metropolitan Area) together with goods leased therewith, fixed by a Board or by the Controller.

- (v) (i) by inserting in subsection one of section fifty-eight after the word "Controller" where firstly occurring the words "or by the clerk of a Fair Rents Board";

Sec. 58.
(Certificate as to fair rent.)

- (ii) by inserting at the end of subsection two of the same section the words "or clerk of a Fair Rents Board, as the case may be";

- (w) by omitting from section three the words and figure—

Sec. 3.
(Division into Parts.)

DIVISION 4.—Rent of Shared Accommodation.

and by inserting in lieu thereof the words and figures—

DIVISION 3A.—Rent of Shared Accommodation outside the Metropolitan Area.

DIVISION 4.—Rent of Shared Accommodation within the Metropolitan Area.

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

Further Amendment of Act No. 25, 1948.

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

New sec. 6A.

6A. (1) The Governor may, by order published in the Gazette, declare that any prescribed premises shall be "special premises" for the purposes of this Act.

Special premises.

(2) In the application of this Act to or in respect of "special premises"—

- (a) "lease" includes any leave and license for the use of any prescribed premises whether such leave and license is granted

Landlord and Tenant (Amendment).

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 license for the use of any prescribed premises and for any services provided for or supplied to any person using any such premises under leave and license;

(c) subsection five of section sixty-two 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

(ii) that the premises are reasonably required by the lessor for occupation by himself or by some person who ordinarily resides with him;

(d) sections sixty-three and seventy-two shall be deemed to be omitted therefrom.

Sec. 7.
(Holiday
premises.)

(b) by omitting from subsection one of section seven the words “such premises are not ordinarily, regularly and primarily leased for holiday purposes only” and by inserting in lieu thereof the words “they have at some time
subsequent

Landlord and Tenant (Amendment).

subsequent to the first day of March, one thousand nine hundred and forty-five, been leased to or occupied by a lessee for a continuous period exceeding three months”;

- (c) by omitting from subsection one of section eight the definition of “holiday premises” and by inserting in lieu thereof the following definition:—
- Sec. 8.
(Defini-
tions.)

“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 at any time after that date—

- (d) are or were leased for purposes other than holiday purposes; or
- (e) are or were leased to or occupied by any lessee for a continuous period exceeding three months.

Landlord and Tenant (Amendment).

Further
amendment
of Act
No. 25, 1948.

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

Sec. 10.
(Procedure
of Fair
Rents
Boards.)

(a) by omitting subsection two of section ten;

Subst.
sec. 13.

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

Clerk of
Fair Rents
Board.

13. (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) Where no such appointment is made,
the clerk of petty sessions or the person for the
time being acting as clerk of petty sessions at
any place at which a Fair Rents Board is
constituted shall ex officio be clerk of the Fair
Rents Board at that place.

Sec. 15.
(Rent of
prescribed
premises.)

(c) (i) by inserting next after subsection two of
section fifteen the following new sub-
section:—

(2A) The rent payable by the lessee of
any prescribed premises which were not in
existence, or were not leased, on the
prescribed date or on the first day of March,
one thousand nine hundred and forty-five,
but were leased on the first day of March,
one thousand nine hundred and forty-nine,
or by the lessee of any such premises
together with goods leased therewith, shall
not, in respect of any period after the
commencement of the Landlord and Tenant
(Amendment) Act, 1949, and notwith-
standing any term or covenant in any lease
in

Landlord and Tenant (Amendment).

- in force at any time after such commencement, exceed the rent payable in respect of the prescribed premises at the first day of March, one thousand nine hundred and forty-nine (including the rent of any goods then leased therewith and the charge for any service then provided in connection with the lease), or where that rent has been increased or decreased by determination made before such commencement and in force immediately before such commencement the rent as so increased or decreased.
- (ii) by inserting in subsection four of the same section after the words "subsection two" the words and symbols "or subsection (2A)";
- (d) (i) by inserting in subsection one of section sixteen after the words "subsection two" the words and symbols "or subsection (2A)"; Sec. 16.
(Lessors may be required to furnish statutory declarations as to rent.)
- (ii) by inserting in the same subsection after the words "one thousand nine hundred and forty-five" the words "or on the first day of March, one thousand nine hundred and forty-nine";
- (e) (i) by omitting from paragraph (b) of section twenty-eight the word "or" where secondly occurring; Sec. 28.
(Variation in arrangement of shared accommodation to be notified.)
- (ii) by inserting next after paragraph (c) of the same section the following new paragraphs:—
- (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)

Landlord and Tenant (Amendment).

- (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.
- (iii) by inserting in the same section after the words "the lessor shall" the symbols "(i)";
- (iv) by inserting at the end of the same section the following words:—
- "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."
- (f) by inserting at the end of section twenty-nine the following new subsections:—
- (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.

Sec. 29.
(Rent of
shared
accommoda-
tion and
goods
leased
therewith.)

(4) The Controller or an authorized officer, if, in his 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 thinks

fit

Landlord and Tenant (Amendment).

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 Controller, or an authorized officer, may, at any time, by notice in writing, require the lessor or person in charge of any such premises to furnish him 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.

(g) by inserting at the end of subsection one of section thirty-four the following word and new paragraphs:—

“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 enters into occupation of any part of the prescribed premises.”

(h) by omitting paragraph (a) of subsection one of section thirty-six and by inserting in lieu thereof the following paragraph:—

(a) require, give 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 require the purchase or exchange of 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)

Sec. 34.
(Lessor to
notify
change in
services
supplied
or in
nature of
occupancy.)

Sec. 36.
(Certain
payments
prohibited.)

Landlord and Tenant (Amendment).

- (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 Controller 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 business as such estate agent.

Provided

Landlord and Tenant (Amendment).

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 Controller 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 it appears reasonable, by way of fee or commission. No person shall receive or pay any amount in respect of fee or commission in excess of the fee or commission allowed by the Controller or the Board, as the case may be.

- (i) by inserting at the end of subsection one of section fifty-five the following words:—

Sec. 55.
(Records of
rent.)

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.

- (j) (i) by omitting from section fifty-six the word “and”;

Sec. 56.
(Receipts
to be
given.)

- (ii) by inserting at the end of the same section the words “and, where separate parts of any prescribed premises are leased, the part of the premises in respect of which the payment is made”;

(k)

Landlord and Tenant (Amendment).

Sec. 57.
(Lessor to
ascertain
fair rent.)

- (k) by inserting at the end of section fifty-seven the following new subsection:—

(4) Where any prescribed premises were not in existence, or were not leased, on the prescribed date or on the first day of March, one thousand nine hundred and forty-five, but were leased on the first day of March, one thousand nine hundred and forty-nine, the lessor at the first day of March, one thousand nine hundred and forty-nine, shall, on demand in writing by the lessor at the time the demand is made, furnish to him, within twenty-eight days after the receipt of the demand, a statutory declaration as to the rent of the premises (or of the premises together with goods) at the first day of March, one thousand nine hundred and forty-nine.

Further
amendment
of Act No.
25, 1948.

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

Sec. 62.
(Restriction on
eviction.)

- (a) (i) by omitting from subsection four of section sixty-two the words “be effected by delivering the notice to” and by inserting in lieu thereof the words and symbols “be effected—

(i) by delivering the notice to—”;

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

(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 address last known to the lessor.

(iii)

Landlord and Tenant (Amendment).

- (iii) by inserting at the end of subsection five of the same section the following word and new paragraph:

“or

- (q) that the lessee by sub-letting the premises or any part thereof is making a profit which having regard to the rent paid by the lessee is inequitable.”

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

- (b) may be given only where the lease contains no covenant, whether absolute or conditional, against assigning, transferring or sub-letting by the lessee.

- (v) (a) by omitting paragraph (d) of subsection eight of the same section;

- (b) by inserting at the end of the same subsection the words “Any such notice may be given only where the lease contains no covenant, whether absolute or conditional, against parting with possession by the lessee”;

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

(9) Notice to quit on the ground specified in paragraph (q) of subsection five of this section may be given whether or not the sub-letting was in breach of any covenant.

(10) Nothing in subsection seven, eight or nine of this section shall prejudice the right of a lessor to give notice to quit on the ground specified in paragraph (b) of subsection five of this section.

(b)

(b)

Landlord and Tenant (Amendment).

Sec. 64.

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

- (b) (i) by omitting from section sixty-four the words "for a determination, or after he has received from the Controller notice of his intention to determine the fair rent, except with the consent of the Controller" and by inserting in lieu thereof the words "to a Board or to the Controller 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 has received notice of the intention of a Board or the Controller to determine the fair rent of the premises of its or his own motion, except with the consent of the Board or the Controller, as the case may be";
- (ii) by omitting from the same section all words after the words "that period";

Sec. 65.

(Notice to quit where dwelling-house sold.)

- (c) by inserting at the end of subsection one of section sixty-five the following proviso:—

Provided that in respect of any person who has, before the first day of January, one thousand nine hundred and fifty-two, become the lessor of prescribed premises being a dwelling-house or part of a dwelling-house, by purchase thereof after the commencement of the Landlord and Tenant (Amendment) Act, 1949, the foregoing provisions of this subsection shall be read and construed as if—

- (a) the words "six months" were omitted therefrom and the words "two years" were inserted in lieu thereof; and
- (b) the words "unless, after the date of such agreement, he has given the lessee at least eighteen months' notice in writing of his intention to give such notice to quit" were inserted after the word "purchase" where thirdly occurring.

(d)

Landlord and Tenant (Amendment).

- (d) (i) by omitting subsection two of section seventy and by inserting in lieu thereof the following subsection:—

Sec. 70.
(Court to consider hardship.)

(2) Notwithstanding anything contained in this section, an order for the recovery of possession of any prescribed premises, being a dwelling-house, from any person on any of the grounds specified in paragraphs (g), (i), (l) or (m) of subsection five of section sixty-two of this Act shall not be made unless the court is satisfied that the lessor had provided at the date of expiry of the notice to quit, and has immediately available for the occupation of the persons occupying such dwelling-house reasonably suitable alternative accommodation:

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

- (a) the lessor is a protected person within the meaning of Regulation thirty of the National Security (War Service Moratorium) Regulations and the lessee is not a protected person within the meaning of those Regulations; or
- (b) 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 for that purpose; or
- (c) the court is satisfied that the lessee has sub-let or has parted with the possession of the dwelling-house, and that he 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:

Provided further that this subsection shall not apply in the case of proceedings for the recovery of possession of prescribed premises

Landlord and Tenant (Amendment).

premises, being a dwelling-house, where the proceedings are taken on the ground specified in paragraph (g) of subsection five of section sixty-two of this Act and the court is satisfied that the refusal to make an order would prejudice any claim or proposed claim by the lessor for pension under the Social Services Consolidation Act 1947-1948 of the Parliament of the Commonwealth.

In this subsection "National Security (War Service Moratorium) Regulations" means the Regulations having that title as in force immediately before the sixth day of June, one thousand nine hundred and forty-nine under the Defence (Transitional Provisions) Act 1946-1948 of the Parliament of the Commonwealth.

This subsection shall cease to have effect upon the first day of January, one thousand nine hundred and fifty-two.

- (ii) by omitting from subsection three of the same section the word "either" and by inserting in lieu thereof the word "any";
- (iii) by omitting from the same subsection the letters, word and symbols "(n) and (o)" and by inserting in lieu thereof the letters, word and symbols "(n), (o) and (q)";

Sec. 75.

(Ejectment orders not enforceable unless made under this Act.)

- (e) by inserting in section seventy-five before the words "goods leased therewith" the words "prescribed premises together with";

Sec. 77.

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

- (f) by omitting from paragraph (b) of subsection one of section seventy-seven the words "twelve months" and by inserting in lieu thereof the words "three years";

(g)

Landlord and Tenant (Amendment).

- (g) (i) by inserting at the end of subsection two of section eighty-one the words—

Sec. 81.
(Persons not to interfere with use or enjoyment of premises.)

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

- (ii) by inserting at the end of the same section the following new 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 II of this Act, notwithstanding the provisions of sections twenty-one and thirty-two of this Act, by such amount not exceeding one half thereof as a Fair Rents Board or the Controller in its or his 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

Landlord and Tenant (Amendment).

shall not be made pursuant to the provisions of paragraph (a) of this subsection in any case where the Fair Rents Board or the Controller, 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 supply or provide, or to have supplied or provided, a corresponding and no less beneficial service.

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

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

(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 (q) of subsection five of section sixty-two of this Act—

(a) the order shall not be enforced against—

(i) any sub-lessee; or

(ii) the lessee in respect of any part of the premises actually in his possession at the date of service of the notice to quit and occupied by him at that date;

(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)

Landlord and Tenant (Amendment).

- (c) the lessee shall be deemed to be tenant of the lessor in respect of the part of the premises referred to in subparagraph (ii) of paragraph (a) of this subsection on such terms and conditions as the court making the order may determine.
- (i) (i) by omitting from subsection one of section eighty-six the words "six months" and by inserting in lieu thereof the words "one year"; Sec. 86.
(Exclusion of premises let for a short term from operation of Part III.)
- (ii) by inserting in subsection three of the same section after the word "period" the words "not exceeding one year";
- (iii) by omitting paragraph (b) of subsection four of the same section and by inserting in lieu thereof the following paragraph:—
- (b) The Controller may grant one extension of any certificate issued under subsection three of this section excluding the premises from the operation of the provisions of this Part for a further period not exceeding six months.
- (j) (i) by inserting in paragraph (a) of subsection three of section eighty-seven after the word "period" the words "not exceeding two years"; Sec. 87.
(Exclusion of certain subdivided premises, etc., from operation of Part III.)
- (ii) by omitting subsection five of the same section and by inserting in lieu thereof the following subsection:—
- (5) A certificate shall not issue under this section in respect of any prescribed premises comprising the whole of any building.

Landlord and Tenant (Amendment).

Further
amendment
of Act No.
25, 1948.
Sec. 95.
(Offences
and
penalties.)

6. The Landlord and Tenant (Amendment) Act, 1948,
is further amended—

- (a) (i) by omitting from paragraph (a) of sub-section three of section ninety-five the words “two hundred” and by inserting in lieu thereof the words “five hundred”;
- (ii) by omitting from paragraph (b) of the same subsection the words “one hundred” and by inserting in lieu thereof the words “two hundred and fifty”;

Sec. 99.
(Expiration
of Act.)

- (b) by omitting section ninety-nine.

By Authority:

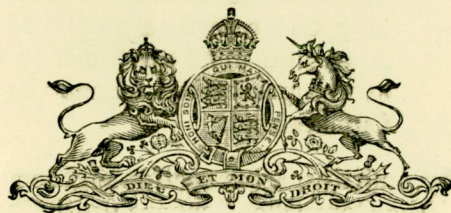
ALFRED HENRY PETTIFER, Government Printer, Sydney, 1949.

[1s.]

I certify that this PUBLIC BILL, which originated in the LEGISLATIVE ASSEMBLY, has finally passed the LEGISLATIVE COUNCIL and the LEGISLATIVE ASSEMBLY of NEW SOUTH WALES.

H. ROBBINS,
Clerk of the Legislative Assembly.
Legislative Assembly Chamber,
Sydney, 23 June, 1949.

New South Wales.



ANNO TERTIO DECIMO

GEORGII VI REGIS.

Act No. 21, 1949.

An Act to amend the Landlord and Tenant (Amendment) Act, 1948, in certain respects; and for purposes connected therewith. [Assented to, 30th June, 1949.]

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

1. (1) This Act may be cited as the "Landlord and Tenant (Amendment) Act, 1949."

Short title
and
citation.

(2)

I have examined this Bill, and find it to correspond in all respects with the Bill as finally passed by both Houses.

G. BOOTH,
Chairman of Committees of the Legislative Assembly.

Landlord and Tenant (Amendment).

(2) The Landlord and Tenant (Amendment) Act, 1948, as amended by this Act, may be cited as the Landlord and Tenant (Amendment) Act, 1948-1949.

Amendment
of Act No.
25, 1948.

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

Sec. 8.
(Defini-
tions.)

(a) by inserting in subsection one of section eight immediately before the definition of "Part" the following new definition:—

"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.

Sec. 18.
(Application
to have
fair rent
fixed.)

(b) (i) by omitting from section eighteen the words "the Controller" where firstly and secondly occurring and by inserting in lieu thereof the words "a Fair Rents Board";

(ii) by omitting from the same section the words "the Controller" where thirdly occurring and by inserting in lieu thereof the words "the Board";

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

(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.

Subst.
sec. 19.

(c) by omitting section nineteen and by inserting in lieu thereof the following section:—

Notice of
application.

19. (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

Landlord and Tenant (Amendment).

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 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 two of this section or under this subsection is himself a lessee, mesne lessee or sub-lessee, he shall forthwith give notice in writing of the time, date and place fixed for the determination of the application to his 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 one, two or three of this section.

(d)

Landlord and Tenant (Amendment).

Sec. 20.
(Determina-
tion of
application.)

(d) (i) by omitting from section twenty the word "Controller" wherever occurring and by inserting in lieu thereof the words "Fair Rents Board";

(ii) by omitting from subsection one of the same section the word "he" and by inserting in lieu thereof the word "it";

Sec. 21.
(Matters
to be
considered.)

(e) by omitting from section twenty-one the words "the Controller" and by inserting in lieu thereof the words "a Fair Rents Board";

Sec. 22.
(Date of
operation
of deter-
mination.)

(f) (i) by omitting from subsection one of section twenty-two the words "the Controller" where firstly occurring and by inserting in lieu thereof the words "a Fair Rents Board";

(ii) by omitting from the same subsection the word "Controller" where secondly occurring and by inserting in lieu thereof the word "Board";

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

(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 lessor and lessee and to any other person to whom it has been established in the proceedings that notice has been given under section nineteen or section twenty-four of this Act.

Sec. 23.
(Effect of
determina-
tion.)

(g) by omitting from section twenty-three the words "the Controller" and by inserting in lieu thereof the words "a Fair Rents Board";

(h)

Landlord and Tenant (Amendment).

- (h) (i) by omitting from subsection one of section twenty-four the words "The Controller may, of his own motion" and by inserting in lieu thereof the words "A Fair Rents Board may, of its own motion"; Sec. 24.
(Controller may determine fair rent of his own motion.)
- (ii) by omitting subsection two of the same section and by inserting in lieu thereof the following subsection:—
- (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 nineteen of this Act, 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.
- (iii) (a) by omitting from subsection three of the same section the word "Controller" wherever occurring and by inserting in lieu thereof the words "Fair Rents Board";
- (b) by omitting from the same subsection the word "he" and by inserting in lieu thereof the word "it";
- (i) (i) by omitting from subsection two of section twenty-five the words "the Controller" and by inserting in lieu thereof the words "a Fair Rents Board"; Sec. 25.
(Lease of prescribed premises together with goods.)
- (ii) by omitting from the same subsection the word "his" and by inserting in lieu thereof the word "its";
- (j) by omitting from section twenty-six the words "The Controller may, if he thinks fit" and by inserting in lieu thereof the words "A Fair Rents Board may, if it thinks fit"; Sec. 26.
(Inspection of prescribed premises.)
- (k)

Landlord and Tenant (Amendment).

New Division 3A.

(k) by inserting next after section twenty-six the following new Division:—

DIVISION 3A.—*Rent of Shared Accommodation outside the Metropolitan Area.*

Application of Division.

26A. The provisions of this Division shall apply to and in respect of shared accommodation situated wholly outside the Metropolitan Area.

Determination of rent of shared accommodation.

26B. (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 application, 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 owner of any such shared accommodation which is vacant, 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 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.

(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

Landlord and Tenant (Amendment).

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.

(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, the Board may determine the fair rent of the shared accommodation.

(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 by the Board or, in any case in which the Board causes any shared accommodation to be inspected pursuant to subsection four of this section, 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 twenty-one of this Act.

(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 lessor and the lessee concerned.

(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 and until varied in pursuance
of

Landlord and Tenant (Amendment).

of this Part, be the rent of the shared accommodation, or of the shared accommodation together with the goods leased therewith, in respect of which it is fixed.

Variation
in arrange-
ment of
shared
accommoda-
tion to be
notified.

26c. 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)

Landlord and Tenant (Amendment).

- (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. (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.

Rent of shared accommodation and 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.

- (l) by inserting at the end of the heading "DIVISION 4.—*Rent of Shared Accommodation*" the words "within the Metropolitan Area";

Division 4. (Heading.)

- (m) by inserting immediately before section twenty-seven the following new section:—

New sec. 26E.

26E. 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.

Application of Division.

(n)

Landlord and Tenant (Amendment).

Division 5.
(Heading.) (n) by omitting the heading "DIVISION 5.—General" appearing before section thirty;

Sec. 30.

(Appeal
from
determina-
tion.)

(o) (i) by omitting from subsection one of section thirty the words "prescribed premises, including";

(ii) by omitting from the same subsection the words "under this Act" and by inserting in lieu thereof the words "under this Division";

(iii) by omitting from the same subsection the words "in subsection two of section twenty-two or";

(iv) by omitting from the same subsection the words "as the case may be";

(v) by omitting from subsection two of the same section the words "give notice" and by inserting in lieu thereof the words "cause notice to be given";

(vi) by omitting from the same subsection the words "and to any other persons to whom notices have been given by the Controller in pursuance of section nineteen or section twenty-four of this Act, as the case may be";

Sec. 31.

(Procedure
on appeal.)

(p) by omitting subsection three of section thirty-one and by inserting in lieu thereof the following subsection:—

(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 by the Controller or, in any case in which the Controller has caused any shared accommodation to be inspected pursuant to subsection three of section twenty-seven of this Act, not be earlier than the date of such inspection;

(q)

Landlord and Tenant (Amendment).

- (q) by inserting immediately before section thirty-two the following new heading:—

New heading.
Division 5.

DIVISION 5.—*General.*

- (r) (i) by omitting from paragraph (a) of subsection one of section thirty-two the words “to the Controller”;

Sec. 32.
(Variation of determination.)

- (ii) by omitting paragraph (b) of the same subsection and by inserting in lieu thereof the following paragraph—

(b) by a Fair Rents Board of its own motion, or by the Controller of his own motion, as the case may be;

- (iii) by omitting from subsection two of the same section the words “nor shall the Controller vary a determination of his own motion” and by inserting in lieu thereof the words “nor shall a Board of its own motion, nor the Controller of his own motion, vary a determination”;

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

(2A) For the purpose of this section, any reference in section nineteen, section twenty-four or section 26B of this Act 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.

- (v) by omitting from subsection three of the same section the words “section nineteen, section twenty-four or”;

- (s) (i) by omitting from subsection one of section thirty-four the words “Where the fair rent of any prescribed premises or shared accommodation has been determined, the lessor shall give notice in writing to the Controller of” and by inserting in lieu thereof

Sec. 34.
(Lessor to notify change in services supplied or in nature of occupancy.)

Landlord and Tenant (Amendment).

thereof the words "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";

(ii) by omitting from paragraph (b) of the same subsection the words "or the shared accommodation ceases";

(iii) by omitting from the same paragraph the words "or becomes";

Sec. 43.
(Controller
not bound
to conduct
oral hear-
ing.)

(t) by inserting in section forty-three immediately before the words "the Controller" wherever occurring the words "a Fair Rents Board or";

Sec. 52.
(Informa-
tion as to
fair rent.)

(u) (i) by omitting from section fifty-two the words "prescribed premises, or of any prescribed premises together with goods leased therewith" and by inserting in lieu thereof the words "shared accommodation (or shared accommodation together with goods leased therewith) situated within, or partly within and partly outside, the Metropolitan Area";

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

(2) The clerk of the Fair Rents Board nearest to any premises shall, on application, 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

Landlord and Tenant (Amendment).

outside, the Metropolitan Area) together with goods leased therewith, fixed by a Board or by the Controller.

- (v) (i) by inserting in subsection one of section fifty-eight after the word "Controller" where firstly occurring the words "or by the clerk of a Fair Rents Board"; Sec. 58.
(Certificate as to fair rent.)
- (ii) by inserting at the end of subsection two of the same section the words "or clerk of a Fair Rents Board, as the case may be";

- (w) by omitting from section three the words and figure— Sec. 3.
(Division into Parts.)

DIVISION 4.—*Rent of Shared Accommodation.*

and by inserting in lieu thereof the words and figures—

DIVISION 3A.—*Rent of Shared Accommodation outside the Metropolitan Area.*

DIVISION 4.—*Rent of Shared Accommodation within the Metropolitan Area.*

3. The Landlord and Tenant (Amendment) Act, 1948, is further amended— Further Amendment of Act No. 25, 1948.

- (a) by inserting next after section six the following new section:— New sec. 6A.

6A. (1) The Governor may, by order published in the Gazette, declare that any prescribed premises shall be "special premises" for the purposes of this Act. Special premises.

(2) In the application of this Act to or in respect of "special premises"—

- (a) "lease" includes any leave and license for the use of any prescribed premises whether such leave and license is granted

Landlord and Tenant (Amendment).

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 license for the use of any prescribed premises and for any services provided for or supplied to any person using any such premises under leave and license;

(c) subsection five of section sixty-two 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

(ii) that the premises are reasonably required by the lessor for occupation by himself or by some person who ordinarily resides with him;

(d) sections sixty-three and seventy-two shall be deemed to be omitted therefrom.

Sec. 7.
(Holiday
premises.)

(b) by omitting from subsection one of section seven the words "such premises are not ordinarily, regularly and primarily leased for holiday purposes only" and by inserting in lieu thereof the words "they have at some time subsequent

Landlord and Tenant (Amendment).

subsequent to the first day of March, one thousand nine hundred and forty-five, been leased to or occupied by a lessee for a continuous period exceeding three months”;

- (c) by omitting from subsection one of section eight the definition of “holiday premises” and by inserting in lieu thereof the following definition:—

Sec. 8.
(Definitions.)

“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 at any time after that date—

- (d) are or were leased for purposes other than holiday purposes; or
- (e) are or were leased to or occupied by any lessee for a continuous period exceeding three months.

Landlord and Tenant (Amendment).

Further
amendment
of Act
No. 25, 1948.

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

Sec. 10.
(Procedure
of Fair
Rents
Boards.)

(a) by omitting subsection two of section ten;

Subst.
sec. 13.

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

Clerk of
Fair Rents
Board.

13. (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) Where no such appointment is made,
the clerk of petty sessions or the person for the
time being acting as clerk of petty sessions at
any place at which a Fair Rents Board is
constituted shall ex officio be clerk of the Fair
Rents Board at that place.

Sec. 15.
(Rent of
prescribed
premises.)

(c) (i) by inserting next after subsection two of
section fifteen the following new sub-
section:—

(2A) The rent payable by the lessee of
any prescribed premises which were not in
existence, or were not leased, on the
prescribed date or on the first day of March,
one thousand nine hundred and forty-five,
but were leased on the first day of March,
one thousand nine hundred and forty-nine,
or by the lessee of any such premises
together with goods leased therewith, shall
not, in respect of any period after the
commencement of the Landlord and Tenant
(Amendment) Act, 1949, and notwith-
standing any term or covenant in any lease
in

Landlord and Tenant (Amendment).

in force at any time after such commencement, exceed the rent payable in respect of the prescribed premises at the first day of March, one thousand nine hundred and forty-nine (including the rent of any goods then leased therewith and the charge for any service then provided in connection with the lease), or where that rent has been increased or decreased by determination made before such commencement and in force immediately before such commencement the rent as so increased or decreased.

- (ii) by inserting in subsection four of the same section after the words "subsection two" the words and symbols "or subsection (2A)";

- (d) (i) by inserting in subsection one of section sixteen after the words "subsection two" the words and symbols "or subsection (2A)";
- (ii) by inserting in the same subsection after the words "one thousand nine hundred and forty-five" the words "or on the first day of March, one thousand nine hundred and forty-nine";

Sec. 16.
(Lessors may be required to furnish statutory declarations as to rent.)

- (e) (i) by omitting from paragraph (b) of section twenty-eight the word "or" where secondly occurring;
- (ii) by inserting next after paragraph (c) of the same section the following new paragraphs:—

Sec. 28.
(Variation in arrangement of shared accommodation to be notified.)

(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)

Landlord and Tenant (Amendment).

- (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.
- (iii) by inserting in the same section after the words "the lessor shall" the symbols "(i)";

- (iv) by inserting at the end of the same section the following words:—

"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."

Sec. 29.
(Rent of
shared
accommoda-
tion and
goods
leased
therewith.)

- (f) by inserting at the end of section twenty-nine the following new subsections:—

(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 Controller or an authorized officer, if, in his 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 thinks
fit

Landlord and Tenant (Amendment).

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 Controller, or an authorized officer, may, at any time, by notice in writing, require the lessor or person in charge of any such premises to furnish him 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.

(g) by inserting at the end of subsection one of section thirty-four the following word and new paragraphs:—

“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 enters into occupation of any part of the prescribed premises.”

(h) by omitting paragraph (a) of subsection one of section thirty-six and by inserting in lieu thereof the following paragraph:—

(a) require, give 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 require the purchase or exchange of 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)

Sec. 34.
(Lessor to notify change in services supplied or in nature of occupancy.)

Sec. 36.
(Certain payments prohibited.)

Landlord and Tenant (Amendment).

- (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 Controller 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 business as such estate agent.

Provided

Landlord and Tenant (Amendment).

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 Controller 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 it appears reasonable, by way of fee or commission. No person shall receive or pay any amount in respect of fee or commission in excess of the fee or commission allowed by the Controller or the Board, as the case may be.

- (i) by inserting at the end of subsection one of section fifty-five the following words:—

Sec. 55.
(Records of
rent.)

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.

- (j) (i) by omitting from section fifty-six the word “and”;

Sec. 56.
(Receipts
to be
given.)

- (ii) by inserting at the end of the same section the words “and, where separate parts of any prescribed premises are leased, the part of the premises in respect of which the payment is made”;

(k)

Landlord and Tenant (Amendment).

Sec. 57.
(Lessor to
ascertain
fair rent.)

- (k) by inserting at the end of section fifty-seven the following new subsection:—

(4) Where any prescribed premises were not in existence, or were not leased, on the prescribed date or on the first day of March, one thousand nine hundred and forty-five, but were leased on the first day of March, one thousand nine hundred and forty-nine, the lessor at the first day of March, one thousand nine hundred and forty-nine, shall, on demand in writing by the lessor at the time the demand is made, furnish to him, within twenty-eight days after the receipt of the demand, a statutory declaration as to the rent of the premises (or of the premises together with goods) at the first day of March, one thousand nine hundred and forty-nine.

Further
amendment
of Act No.
25, 1948.

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

Sec. 62.
(Restriction on
eviction.)

- (a) (i) by omitting from subsection four of section sixty-two the words “be effected by delivering the notice to” and by inserting in lieu thereof the words and symbols “be effected—

(i) by delivering the notice to—”;

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

(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 address last known to the lessor.

(iii)

Landlord and Tenant (Amendment).

- (iii) by inserting at the end of subsection five of the same section the following word and new paragraph:

“or

- (q) that the lessee by sub-letting the premises or any part thereof is making a profit which having regard to the rent paid by the lessee is inequitable.”

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

(b) may be given only where the lease contains no covenant, whether absolute or conditional, against assigning, transferring or sub-letting by the lessee.

- (v) (a) by omitting paragraph (d) of subsection eight of the same section;

- (b) by inserting at the end of the same subsection the words “Any such notice may be given only where the lease contains no covenant, whether absolute or conditional, against parting with possession by the lessee”;

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

(9) Notice to quit on the ground specified in paragraph (q) of subsection five of this section may be given whether or not the sub-letting was in breach of any covenant.

(10) Nothing in subsection seven, eight or nine of this section shall prejudice the right of a lessor to give notice to quit on the ground specified in paragraph (b) of subsection five of this section.

(b)

Landlord and Tenant (Amendment).

Sec. 64.
(Notice to
quit not to
be given
within six
months
after deter-
mination.)

- (b) (i) by omitting from section sixty-four the words "for a determination, or after he has received from the Controller notice of his intention to determine the fair rent, except with the consent of the Controller" and by inserting in lieu thereof the words "to a Board or to the Controller 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 has received notice of the intention of a Board or the Controller to determine the fair rent of the premises of its or his own motion, except with the consent of the Board or the Controller, as the case may be";
- (ii) by omitting from the same section all words after the words "that period";

Sec. 65.
(Notice to
quit where
dwelling-
house sold.)

- (c) by inserting at the end of subsection one of section sixty-five the following proviso:—

Provided that in respect of any person who has, before the first day of January, one thousand nine hundred and fifty-two, become the lessor of prescribed premises being a dwelling-house or part of a dwelling-house, by purchase thereof after the commencement of the Landlord and Tenant (Amendment) Act, 1949, the foregoing provisions of this subsection shall be read and construed as if—

- (a) the words "six months" were omitted therefrom and the words "two years" were inserted in lieu thereof; and
- (b) the words "unless, after the date of such agreement, he has given the lessee at least eighteen months' notice in writing of his intention to give such notice to quit" were inserted after the word "purchase" where thirdly occurring.

(d)

Landlord and Tenant (Amendment).

(d) (i) by omitting subsection two of section seventy and by inserting in lieu thereof the following subsection:—

Sec. 70.
(Court to consider hardship.)

(2) Notwithstanding anything contained in this section, an order for the recovery of possession of any prescribed premises, being a dwelling-house, from any person on any of the grounds specified in paragraphs (g), (i), (l) or (m) of subsection five of section sixty-two of this Act shall not be made unless the court is satisfied that the lessor had provided at the date of expiry of the notice to quit, and has immediately available for the occupation of the persons occupying such dwelling-house reasonably suitable alternative accommodation:

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

- (a) the lessor is a protected person within the meaning of Regulation thirty of the National Security (War Service Moratorium) Regulations and the lessee is not a protected person within the meaning of those Regulations; or
- (b) 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 for that purpose; or
- (c) the court is satisfied that the lessee has sub-let or has parted with the possession of the dwelling-house, and that he 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:

Provided further that this subsection shall not apply in the case of proceedings for the recovery of possession of prescribed premises

Landlord and Tenant (Amendment).

premises, being a dwelling-house, where the proceedings are taken on the ground specified in paragraph (g) of subsection five of section sixty-two of this Act and the court is satisfied that the refusal to make an order would prejudice any claim or proposed claim by the lessor for pension under the Social Services Consolidation Act 1947-1948 of the Parliament of the Commonwealth.

In this subsection "National Security (War Service Moratorium) Regulations" means the Regulations having that title as in force immediately before the sixth day of June, one thousand nine hundred and forty-nine under the Defence (Transitional Provisions) Act 1946-1948 of the Parliament of the Commonwealth.

This subsection shall cease to have effect upon the first day of January, one thousand nine hundred and fifty-two.

- (ii) by omitting from subsection three of the same section the word "either" and by inserting in lieu thereof the word "any";
- (iii) by omitting from the same subsection the letters, word and symbols "(n) and (o)" and by inserting in lieu thereof the letters, word and symbols "(n), (o) and (q)";

Sec. 75.
(Ejectment
orders not
enforceable
unless made
under this
Act.)

- (e) by inserting in section seventy-five before the words "goods leased therewith" the words "prescribed premises together with";

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

- (f) by omitting from paragraph (b) of subsection one of section seventy-seven the words "twelve months" and by inserting in lieu thereof the words "three years";

(g)

Landlord and Tenant (Amendment).

- (g) (i) by inserting at the end of subsection two of section eighty-one the words—

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

Sec. 81.
(Persons
not to
interfere
with use or
enjoyment
of premises.)

- (ii) by inserting at the end of the same section the following new 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 II of this Act, notwithstanding the provisions of sections twenty-one and thirty-two of this Act, by such amount not exceeding one half thereof as a Fair Rents Board or the Controller in its or his 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

Landlord and Tenant (Amendment).

shall not be made pursuant to the provisions of paragraph (a) of this subsection in any case where the Fair Rents Board or the Controller, 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 supply or provide, or to have supplied or provided, a corresponding and no less beneficial service.

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

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

(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 (q) of subsection five of section sixty-two of this Act—

(a) the order shall not be enforced against—

(i) any sub-lessee; or

(ii) the lessee in respect of any part of the premises actually in his possession at the date of service of the notice to quit and occupied by him at that date;

(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)

Landlord and Tenant (Amendment).

- (c) the lessee shall be deemed to be tenant of the lessor in respect of the part of the premises referred to in subparagraph (ii) of paragraph (a) of this subsection on such terms and conditions as the court making the order may determine.
- (i) (i) by omitting from subsection one of section eighty-six the words "six months" and by inserting in lieu thereof the words "one year"; Sec. 86.
(Exclusion of premises let for a short term from operation of Part III.)
- (ii) by inserting in subsection three of the same section after the word "period" the words "not exceeding one year";
- (iii) by omitting paragraph (b) of subsection four of the same section and by inserting in lieu thereof the following paragraph:—
- (b) The Controller may grant one extension of any certificate issued under subsection three of this section excluding the premises from the operation of the provisions of this Part for a further period not exceeding six months.
- (j) (i) by inserting in paragraph (a) of subsection three of section eighty-seven after the word "period" the words "not exceeding two years"; Sec. 87.
(Exclusion of certain subdivided premises, etc., from operation of Part III.)
- (ii) by omitting subsection five of the same section and by inserting in lieu thereof the following subsection:—
- (5) A certificate shall not issue under this section in respect of any prescribed premises comprising the whole of any building.

Landlord and Tenant (Amendment).

Further
amendment
of Act No.
25, 1948.

Sec. 95.
(Offences
and
penalties.)

6. The Landlord and Tenant (Amendment) Act, 1948,
is further amended—

(a) (i) by omitting from paragraph (a) of sub-
section three of section ninety-five the words
“two hundred” and by inserting in lieu
thereof the words “five hundred”;

(ii) by omitting from paragraph (b) of the same
subsection the words “one hundred” and by
inserting in lieu thereof the words “two
hundred and fifty”;

Sec. 99.
(Expiration
of Act.)

(b) by omitting section ninety-nine.

*In the name and on behalf of His Majesty I assent to
this Act.*

J. NORTHCOTT,
Governor.

*Government House,
Sydney, 30th June, 1949.*

