

LANDLORD AND TENANT (WAR SERVICE) AMENDMENT BILL.

*Schedule of the amendment referred to in Legislative Council's Message of
1st July, 1949, a.m.*

Page 15, clause 4, line 34. After "provisions" insert "**of subsections four to nine
inclusive**".

1870

...

This PUBLIC BILL originated in the LEGISLATIVE ASSEMBLY, and, having this day passed, is now ready for presentation to the LEGISLATIVE COUNCIL for its concurrence.

H. ROBBINS,
Clerk of the Legislative Assembly.

*Legislative Assembly Chamber,
Sydney, 30 June, 1949.*

*The LEGISLATIVE COUNCIL has this day agreed to this Bill with
an Amendment.*

W. K. CHARLTON,
Clerk of the Parliaments
*Legislative Council Chamber,
Sydney, 1st July, 1949, a.m.*

New South Wales.



ANNO TERTIO DECIMO

GEORGI VI REGIS.

Act No. , 1949.

An Act to make certain provision in relation to the rights of certain members, former members, and dependants of members of the defence forces in proceedings for the recovery of possession of premises; to confer upon such persons rights in relation to the acquisition of possession of premises; for these purposes to amend the Landlord and Tenant (Amendment) Act, 1948-1949, and certain other Acts; to validate certain matters; and for purposes connected therewith.

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

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

Short
title
and
commence-
ment.

(2) Except where otherwise provided this Act shall
be deemed to have commenced on the sixth day of June,
10 one thousand nine hundred and forty-nine.

2. (1) Any application or other proceeding under the
corresponding Commonwealth Regulations which was
pending immediately before the commencement of this
Act shall be deemed to be an application or proceeding
15 under this Act and may be continued and dealt with under
this Act as if this Act had been in force at the date of the
making of such application or the commencement of such
proceeding, as the case may be.

Savings.

(2) Any warrant granted under the corresponding
20 Commonwealth Regulations and not executed at the
commencement of this Act shall be deemed to have been
granted under this Act and shall have force and effect
in all respects as if this Act had been in force at the
time when such warrant was granted.

3. In this Act, unless the contrary intention appears—

Definitions.

30 "corresponding Commonwealth Regulations" means
the Regulations having the title of the National
Security (War Service Moratorium) Regula-
tions and in the form in which those Regulations
existed immediately before the commencement
of this Act under the Defence (Transitional
Provisions) Act 1946-1948 of the Parliament of
the Commonwealth;

"discharged

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“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—

- 5 (a) has been discharged from the Defence Force, or has ceased to be engaged on war service, for a period not exceeding four years or such extended period as the Governor may, from time to time by
10 proclamation published in the Gazette, appoint; or
- 15 (b) having been discharged from the Defence Force, or having ceased to be engaged on war service, for a period exceeding four years or where an extended period has been appointed under paragraph (a) of this definition exceeding such extended period—
- 20 (i) is receiving a pension from the Commonwealth; or
- 25 (ii) is not receiving such a pension, but is receiving from the Commonwealth medical treatment of such a nature as to prevent him either wholly or partly from engaging in his occupation;

“female dependant of a member” means a female who is wholly or partly dependent for her support upon a member of the Forces;

30 “female dependant of a discharged member” means—

- 35 (a) a female who is wholly or partly dependent for her support upon a person who, having been a member of the Defence Force engaged on war service during

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5 during the present war, has been discharged from the Defence Force, or has ceased to be engaged on war service, for a period not exceeding four years or such extended period as the Governor may, from time to time by proclamation published in the Gazette, appoint;

10 (b) a female who is wholly or partly 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;

15 (c) the wife of a person who, having been a member of the Defence Force engaged on war service during the present war—

(i) has been discharged from the Defence Force; or

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

25 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; and

(d) the widow of a member of the Forces who died while engaged on war service during the present war;

30 “member of the Forces” means a member of the Defence Force engaged on war service, and includes any person who is on active service with the Naval, Military or Air Forces—

35 (a) of the United Kingdom or of any other part of the King’s dominions (other than the Commonwealth);

(b)

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- (b) of any foreign power allied or associated with His Majesty in any war in which His Majesty is engaged; or
- 5 (c) maintained by any foreign authority recognised by His Majesty as competent to maintain Naval, Military or Air Forces for service in association with His Majesty's Forces;
- 10 "parent of a member" means a person who is a parent of, and is wholly or partly dependent for his support upon, a member of the Forces;
- "parent of a discharged member" means—
- 15 (a) a person who is a parent of, and is wholly or partly dependent for his support upon, a person who, having been a member of the Defence Force engaged on war service during the present war, has been discharged from the Defence Force, or has ceased to be engaged on war service, for a period not exceeding 20 four years or such extended period as the Governor may, from time to time by proclamation published in the Gazette, appoint;
- 25 (b) a person who is a parent of, and is wholly or partly dependent for his support upon a pension payable in consequence of the incapacity or death of, a person who has been a member of 30 the Forces;
- (c) a parent of a person who, having been a member of the Defence Force engaged on war service during the present war—
- 35 (i) has been discharged from the Defence Force; or
- (ii)

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

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10

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, 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 partly dependent for his support;

15

20

“pension” means a pension (including a service pension) under the Australian Soldiers’ Repatriation Act 1920-1948 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;

25

“present war” means any war in which His Majesty became engaged on or after the third day of September, one thousand nine hundred and thirty-nine;

30

“protected person” means a member of the Forces, discharged member of the Forces, female dependant of a member, female dependant of a discharged member, parent of a member or parent of a discharged member;

“war service” means—

35

(a) the service of a member of the Citizen Forces when called up for war service under the Defence Act 1903-1941 or during continuous training under that Act, the Naval Defence Act 1910-1934 or the Air Force Act 1923-1941;

(b)

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- (b) the continuous service under any of those Acts of any person who volunteers and is accepted for such service during war;
- 5 (c) the continuous service of a person called upon to serve in the Defence Force in pursuance of any Act or of any regulations under an Act; and
- 10 (d) the service during war of a member of the Permanent Forces.

4. (1) For the purposes of this section, a person shall not be deemed to be a protected person unless such person is— Recovery of possession of premises.

- (a) a member of the Forces who—
- 15 (i) is; or
- (ii) was, for a total period of not less than twelve months during his period of war service,
- 20 required, by reason of his war service, to live in premises other than premises occupied by him, or by a member of the household to which he belongs, as a home;
- (b) a discharged member of the Forces who was—
- (i) immediately prior to his discharge;
- 25 (ii) for a continuous period of not less than three months during the period of six months immediately prior to his discharge; or

(iii)

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(iii) for a total period of not less than twelve months during his period of war service,

so required;

5 (c) a female dependant of a member or a parent of a member and that member—

(i) is; or

10 (ii) was, for a total period of not less than twelve months during his 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—

15 (i) immediately prior to his discharge, ceasing to be engaged on war service or death, as the case may be;

20 (ii) for a continuous period of not less than three months during the period of six months immediately prior to his discharge, ceasing to be engaged on war service or death, as the case may be; or

25 (iii) for a total period of not less than twelve months during his period of war service,

so required.

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(2) For the purposes of this section, unless the contrary intention appears—

“dwelling-house” means premises leased for the purposes of residence, and includes—

- 5 (a) the premises of any lodging house or boarding house; and
- (b) any part of premises which is leased for the purpose of residence, whether forming a complete residence in itself
- 10 or otherwise,

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

“lease” includes every contract for the letting of 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 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 a lease arising under an attornment clause in a mortgage or in an agreement for the sale and 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 a sub-lessee;
- 30 (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;
- 35

(d).

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5 (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; and

(e) where there is more than one lessor or lessee, any one or more of the lessors or lessees;

“premises” means any premises other than—

10 (a) premises licensed for the sale of spirituous or fermented liquors; or

15 (b) premises which are ordinarily occupied by a lessor as a permanent residence but are for the time being occupied by a lessee to whom the premises were leased for a specified term for holiday purposes only, which term has expired,

20 and includes land, any part of any premises and any land or appurtenances leased with any premises.

(3) This section shall not apply in relation to premises of which the Crown in right of the Commonwealth or a State, or the Housing Commission of New South Wales, is the lessor.

25 (4) An order shall not be made for the recovery of possession of premises from a lessee (being a protected person), or for the ejectment from premises of a lessee (being a protected person), unless the court making the order is satisfied—

30 (a) that the lessee has failed to pay the rent in respect of a period of not less than fifty-six days;

35 (b) 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;

(c)

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- (c) that the lessee has failed to take reasonable care of the premises or of any goods leased therewith, or has committed waste;
- 5 (d) that the lessee has been guilty of conduct which is a nuisance or annoyance to adjoining or neighbouring occupiers;
- 10 (e) that the lessee or some other person has been convicted, during the currency of the lease, of an offence arising out of the use of the premises for an 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 premises—
- 15 (i) being a dwelling-house—are reasonably required by the lessor for occupation by himself or by some person who ordinarily resides with, and is wholly or partly dependent upon, him; or
- 20 (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 trade, profession, calling or occupation;
- 25 (g) 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 of a minister of religion (including a person who, although
- 30 not ordained, is performing all the duties of a minister of religion);
- (h) that the lessor is a trustee and the premises are reasonably required by a beneficiary under the trust for his personal occupation or for the occupation of some person who ordinarily resides with, and is wholly or partly dependent upon,
- 35 **him;**
- (i)

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- 5 (i) that the lessor is a person, body or authority carrying on a hospital, 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 (including the accommodation of the staff of the hospital);
- 10 (j) that the premises have been occupied, or are occupied, in consequence of his employment by some person in the employ of the lessor and are reasonably required for the personal occupation in consequence of that employment of some other person employed by, or about to become employed by, the lessor;
- 15 (k) that the lessee became the lessee of the premises by virtue of an assignment or transfer which the lessor has not consented to or approved; or
- (l) that the lessee has sub-let the premises or some part thereof by a sub-lease which has not been consented to or approved by the lessor.
- 20 (5) An order shall not be made on the ground specified in paragraph (k) or (l) of subsection four of this section—
- 25 (a) 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;
- (b) where the lease is for a fixed term—unless that term has expired; or
- 30 (c) where the lease is a periodic lease—unless the period which was current at the date on which the assignment, transfer or sub-lease took effect has expired.
- 35 (6) Where a tenancy has been lawfully determined and a person claiming under the lessee and actually in possession of the premises or any part thereof is a protected person, an order for the ejectment of persons from those

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those premises or for the recovery of possession of those premises shall not be enforced against the protected person unless the court which made the order is satisfied—

- 5 (a) that the protected person has failed to pay the rent in respect of a period of not less than fifty-six days;
- 10 (b) that the protected person has failed to perform or observe some other term or condition of his tenancy and the performance or observance of that other term or condition has not been waived or excused by his landlord;
- 15 (c) that the protected person has failed to take reasonable care of the premises, or of any goods the property of his landlord, or has committed waste;
- 20 (d) that the protected person has been guilty of conduct which is a nuisance or annoyance to adjoining or neighbouring occupiers;
- 25 (e) that the protected person or some other person has been convicted, while the protected person was actually in possession of the premises or part thereof, of an offence arising out of the use of the premises or part thereof for an illegal purpose or that a court has found or declared that the premises or part thereof have, while the protected person was actually in possession of the premises or part thereof, been used for some illegal purpose;
- 30 (f) that the premises—
- 35 (i) being a dwelling-house—are reasonably required by the person in whose favour the order was made for occupation by himself or by some person who ordinarily resides with, and is wholly or partly dependent upon, him; or
- (ii) not being a dwelling-house—are reasonably required for occupation by the person in whose favour the order was made

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made or by a person associated or connected with him in his trade, profession, calling or occupation;

- 5 (g) 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 of a minister of religion (including a person who, although not ordained, is performing all the 10 duties of a minister of religion);
- 15 (h) that the person in whose favour the order was made is a trustee and the premises are reasonably required by a beneficiary under the trust for his personal occupation or for the occupation of some person who ordinarily resides with, and is wholly or partly dependent upon, him; or
- 20 (i) that the person, body or authority in whose favour the order was made is a person, body or authority carrying on a hospital, 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 (including the accommodation of the staff of the hospital),

and gives leave to enforce the order against the protected 25 person.

(7) Except in the case of an order made in circumstances specified in paragraph (a), (b), (c), (d), (e), (j), (k), or (l) of subsection four of this section, an order shall not be made against a protected person unless 30 the court, in addition to being satisfied upon any other ground upon which the court is required to be satisfied, is further satisfied—

- 35 (a) that reasonably suitable alternative accommodation (in this section referred to as “the 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 premises in respect of which the making of an order is sought 40 (in this section referred to as “the premises at present occupied”); or

(b)

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(b) that the protected person (being the lessee) has sublet the premises in respect of which the making of an order is sought and is permanently residing elsewhere.

5 (8) Except in the case of an order made in circumstances specified in paragraph (a), (b), (c), (d), or (e) of subsection six of this section, a court shall not give leave to enforce an order against a protected
10 person, unless the court, in addition to being satisfied upon any other ground upon which the court is required to be satisfied, is satisfied that reasonably suitable alternative accommodation (in this section referred to as "the alternative accommodation") is available for the occupation of the protected person in lieu of the
15 premises in respect of which the giving of leave to enforce an order is sought (in this section referred to as "the premises at present occupied").

(9) For the purposes of subsections seven and eight of this section, accommodation shall not be deemed
20 to be reasonably suitable unless—

- (a) the rent of the alternative accommodation does not exceed the rent of the premises at present occupied;
- 25 (b) the floor area of the alternative accommodation is not less than the floor area of the premises at present occupied;
- (c) in the case of a dwelling-house—the alternative accommodation is not less congenial than the premises at present occupied; and
- 30 (d) the conditions generally appertaining to the alternative accommodation are not inferior to the conditions appertaining to the premises at present occupied.

(10) The provisions of subsections four to nine
35 inclusive of this section shall not apply in relation to premises of which a protected person is the lessor.

(11) Where proceedings have been taken by a lessor who is a protected person to recover possession of premises from a lessee who is not a protected person or
40 for the ejectment from premises of a lessee who is not

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a protected person, any provisions of the law of the State as to the availability or otherwise of alternative accommodation for the lessee shall not be applicable.

(12) Where by any law of the State it is provided
 5 that a person who has become the lessor of a dwelling-house by purchase shall not, within a period longer than six months after the date of the agreement for purchase, give a notice to quit on any ground, a lessor who is a
 10 protected person may give a notice to quit at the expiration of six months from that date.

5. (1) A protected person (being a protected person referred to in subsection one of section four of this Act) may, if he thinks fit, apply in writing to the court of petty sessions for the district in which is situated a
 15 dwelling-house which is unoccupied or about to become unoccupied for a warrant authorising and requiring the delivery of possession of the dwelling-house to the applicant.

Letting of unoccupied houses to protected persons.

(2) An application under subsection one of this
 20 section may be made by the protected person personally or by some person authorised by him in writing to act as his agent for the purposes of this section.

(3) A copy of an application under subsection one of this section together with a notice of hearing, shall
 25 be served on—

(a) the owner of the dwelling-house; or

(b) any person who ordinarily acts as an agent in relation to the dwelling-house or to whom the rent of the dwelling-house is ordinarily paid,

30 either personally, or by registered letter sent to the place of business or abode of the owner or person.

(4) After service of the copy of the application and notice of hearing, and until the application has been heard and determined, or, if the court grants the
 35 application, until the warrant issued pursuant thereto has been executed, the owner of the dwelling-house shall not, whether personally or by his agent, permit any person to enter into occupation of the dwelling-house or himself enter into occupation of the dwelling-house.

(5)

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(5) The jurisdiction of a court of petty sessions under this section shall not be exercised except by a stipendiary magistrate.

6. (1) For the purposes of section five of this Act a dwelling-house shall be deemed to be unoccupied notwithstanding that the owner has permitted a person to enter into occupation of the dwelling-house in contravention of subsection four of that section or the corresponding Commonwealth Regulation, and, in any such case, the court may grant the application notwithstanding that the person in occupation of the dwelling-house is not before the court on the hearing of the application.

Dwelling-house is to be deemed to be unoccupied in certain cases.

(2) For the purposes of section five of this Act a dwelling-house shall be deemed to be unoccupied notwithstanding that the owner has entered into occupation of the dwelling-house in contravention of subsection four of that section or in contravention of the corresponding Commonwealth Regulation.

(3) For the purposes of section five of this Act a dwelling-house shall not be deemed to be occupied by reason only of the fact that it is furnished.

7. (1) Upon the hearing of an application under section five of this Act the court shall take into consideration in addition to all other relevant matters—

Hearing of application.

- (a) any hardship which would be caused to the owner or to any other person (not being a person who has entered into occupation of the dwelling-house in contravention of subsection four of section five of this Act or the corresponding Commonwealth Regulation) by the granting of the application; and
- (b) any hardship which would be caused to the applicant or to any other person by the refusal to grant the application,

and, unless the court is satisfied that there is reasonable cause why the application should not be granted, the court shall grant the application.

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(2) An averment in an application under section five of this Act that a dwelling-house is unoccupied shall be prima facie evidence of the fact so averred.

(3) If the dwelling-house is about to become un-
5 occupied, the court may postpone the execution of the warrant until such time as it thinks fit.

(4) The fact that the dwelling-house is ordinarily leased for holiday purposes only shall not be a ground for refusing to grant the application.

10 (5) An application shall not be granted under this section—

(a) if the owner of the dwelling-house is a protected person and reasonably requires the dwelling-
15 house for his own occupation or for the occupation of some person who resides with him or is wholly or partly dependent on him for his support;

(b) if the dwelling-house was erected or acquired for the accommodation of a particular person or class of persons and the dwelling-house is
20 reasonably required for the occupation of that person or a person of that class;

(c) if the dwelling-house has not previously been occupied and is reasonably required for the oc-
25 cupation of the owner of the dwelling-house; or

(d) if the dwelling-house is a newly erected dwelling-house which—

(i) was erected by the owner for the purposes of sale; and

30 (ii) has been unoccupied for a period not exceeding two months.

(6) The court shall specify in the warrant the person or persons by whom it may be executed.

35 8. (1) Where more than one application is made under section five of this Act in respect of the same dwelling-house, the person on whom the applications were served shall forthwith notify each other applicant of the other application or applications, together with the name and address

Provisions where several applications made in respect of same dwelling-house.

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address of the other applicant or applicants, and the court shall hear and determine all the applications at the same time and for that purpose may adjourn the hearing of any application or applications.

- 5 (2) Where two or more applications are heard at the same time, the court shall take into consideration the degree of hardship which would be caused to each applicant or to any other person by the refusal to grant the application and, where the degree of hardship is the
10 same in the case of two or more applicants or other persons, may take into consideration the priority of service of the applications under section five of this Act.

9. A warrant granted by a court under section seven of this Act may be enforced in the same manner as a
15 warrant of possession granted by that court may be enforced. Enforcement of warrants.

10. (1) Upon delivery of possession of a dwelling-
house to a protected person under a warrant granted under section seven of this Act, the protected person shall
20 be deemed to be a tenant of the owner of the dwelling-house. Rent of dwelling-house.

- (2) A protected person into whose possession a dwelling-house has been delivered prior to the commencement of this Act under a warrant granted under the corresponding Commonwealth Regulation and who is in
25 occupation of the dwelling-house at the date upon which His Majesty's assent to this Act is signified shall be deemed as from such delivery to be a tenant of the owner of the dwelling-house.

- 30 (3) The rent to be paid for any dwelling-house of which possession has been so obtained shall be—

- (a) where the rent is, as at the commencement of the tenancy, fixed or determined by or under any law of the State—such rent (not exceeding the rent so fixed or determined) as is agreed
35 upon between the owner and the tenant or as, in default of agreement, is fixed by the court which granted the application; or

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(b) in any other case—such rent as is agreed upon between the owner and the tenant or, in default of agreement, as is fixed by the court which granted the application,

5 but nothing in this subsection shall be deemed to prevent the subsequent alteration subject to the said law of any rent so agreed upon or fixed.

(4) The court granting an application under section five of this Act shall at the time of such grant
10 fix terms and conditions to be implied in the tenancy and such terms and conditions shall apply and have effect in like manner as if the same had been agreed to in writing by the protected person and the owner.

(5) Where delivery of possession of a dwelling-
15 house has been made to a protected person under a warrant granted under the corresponding Commonwealth Regulation, the court which granted the application for such warrant may, on application by either the owner or the protected person (notice of such application hav-
20 ing been given to the protected person or owner, as the case may be), fix terms and conditions to be implied in the tenancy and such terms and conditions shall apply and have effect in like manner as if the same had been agreed to in writing by the protected person and the
25 owner.

11. Sections five to ten of this Act shall not bind the Crown in right of the Commonwealth or of the State, and shall not apply in relation to any dwelling-house of which the Housing Commission of New South Wales is
30 the owner.

Sections
five to ten
not to bind
the Crown.

12. For the purposes of sections five to eleven both inclusive of this Act the expression “owner” in relation to a dwelling-house which is the subject of a lease or sub-lease, means—

Interpreta-
tion.

35 (a) where the dwelling-house is unoccupied—the lessee or sub-lessee immediately entitled to possession of the dwelling-house; and

(b) where the dwelling-house is about to become unoccupied—the person immediately entitled to
40 possession of the dwelling-house upon its becoming unoccupied.

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13. (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, any law of the State) 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:

Rental of farms by members of the Forces, etc.

Provided that—

- 10 (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)
- 15 an increase of rent at a rate not exceeding eight pounds per centum per annum on the amount so expended shall not be deemed to be an increase for the purposes of this section;
- 20 (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;
- 25 (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
- 30
- 35

(d)

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5 (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
10 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
15 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—

20 "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—

25 (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—

30 (a) where the rent payable does not
exceed seventy pounds per annum—a
court of petty sessions constituted by a
stipendiary magistrate sitting alone;

35 (b) where the rent payable exceeds seventy
pounds per annum—a District Court.

(4) This section shall bind the Crown.

Landlord and Tenant (War Service) Amendment.

14. (1) Where a soldier's dependant is in occupation of a dwelling-house which was occupied by a member of the Forces by virtue of his 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—

Prohibition of eviction of dependants of members of the Forces in certain cases.

- 10 (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.

15 (2) The court, in considering any application for leave under subsection one of this section, 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.

20 (3) This section shall bind—

- (a) the Crown;
- (b) the Housing Commission of New South Wales.

(4) In this section—

25 "soldier's dependant" means parent of a member of the Forces or female dependant of a member of the Forces;

30 "the court", in relation to any application under this section means the court of petty sessions constituted by a stipendiary magistrate sitting alone for the district in which the dwelling-house is situated.

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

35 15. (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

This Act not to apply in certain cases.

Landlord and Tenant (War Service) Amendment.

10 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
5 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 Act.

10 (2) A notice under subsection one of this section
shall be served personally or by registered letter sent to
the respondent's last place of abode known to the
claimant.

15 (3) If, within the period specified in subsection
one of this section, 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 Act is not furnished to the
claimant, then, notwithstanding that the respondent is, or
20 at any subsequent time becomes, a protected person, this
Act 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 one of this
section, provided the claimant commences to do, or to
25 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 three of this
section, where the doing of any act is dependent on the
30 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
35 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
40 complete the doing of, any act; or

(b)

Landlord and Tenant (War Service) Amendment.

(b) cannot be found and that the claimant has made reasonable efforts to ascertain his whereabouts, and that the claimant is not aware that the respondent is a protected person,

5 the officer may issue to the claimant a certificate to that effect and thereupon this Act 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
10 pursuance of subsection five of this section shall, in the absence of proof to the contrary, be deemed to have been duly issued.

16. (1) Any person who contravenes or fails to
15 comply with any provision of this Act shall be guilty of an offence against this Act: Offences and penalties.

Provided that any person who after the commencement of this Act and before the date upon which the assent of His Majesty to this Act is signified contravenes or fails to comply with the provisions of subsection four of
20 section five of this Act shall not 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.

25 (3) All proceedings for offences against this Act shall be disposed of in a summary manner before a court of petty sessions holden before a stipendiary magistrate sitting alone.

(4) Any person who is guilty of an offence against
30 this Act shall be liable to a penalty not exceeding one hundred pounds, or to imprisonment for a term not exceeding six months, or to both such penalty and imprisonment.

17.

Landlord and Tenant (War Service) Amendment.

17. (1) The Landlord and Tenant (Amendment) Act, 1948-1949, is amended—

Amendment
of Act
No. 25,
1948.

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

Sec. 70.
(Court to
consider
hardship.)

10 (a) the lessor is a protected person for the purposes of section four of the Landlord and Tenant (War Service) Amendment Act, 1949, and the lessee is not a protected person for the purposes of that section; or

(b) by omitting from the same subsection the words:—

15 “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
20 thousand nine hundred and forty-nine, under the Defence (Transitional Provisions) Act 1946-1948 of the Parliament of the Commonwealth.”

25 (2) This section shall commence on the day upon which the assent of His Majesty to this Act is signified.

This PUBLIC BILL originated in the LEGISLATIVE ASSEMBLY, and, having this day passed, is now ready for presentation to the LEGISLATIVE COUNCIL for its concurrence.

H. ROBBINS,
Clerk of the Legislative Assembly.

*Legislative Assembly Chamber,
Sydney, 30 June, 1949.*

*The LEGISLATIVE COUNCIL has this day agreed to this Bill with
an Amendment.*

*Legislative Council Chamber,
Sydney, 1949.*

Clerk of the Parliaments.

New South Wales.



ANNO TERTIO DECIMO

GEORGII VI REGIS.

Act No. , 1949.

An Act to make certain provision in relation to the rights of certain members, former members, and dependants of members of the defence forces in proceedings for the recovery of possession of premises; to confer upon such persons rights in relation to the acquisition of possession of premises; for these purposes to amend the Landlord and Tenant (Amendment) Act, 1948-1949, and certain other Acts; to validate certain matters; and for purposes connected therewith.

Landlord and Tenant (War Service) Amendment.

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 (War Service) Amendment Act, 1949."

Short title and commencement.

(2) Except where otherwise provided this Act shall be deemed to have commenced on the sixth day of June, one thousand nine hundred and forty-nine.

2. (1) Any application or other proceeding under the corresponding Commonwealth Regulations which was pending immediately before the commencement of this Act shall be deemed to be an application or proceeding under this Act and may be continued and dealt with under this Act as if this Act had been in force at the date of the making of such application or the commencement of such proceeding, as the case may be.

Savings.

(2) Any warrant granted under the corresponding Commonwealth Regulations and not executed at the commencement of this Act shall be deemed to have been granted under this Act and shall have force and effect in all respects as if this Act had been in force at the time when such warrant was granted.

3. In this Act, unless the contrary intention appears—

Definitions.

"corresponding Commonwealth Regulations" means the Regulations having the title of the National Security (War Service Moratorium) Regulations and in the form in which those Regulations existed immediately before the commencement of this Act under the Defence (Transitional Provisions) Act 1946-1948 of the Parliament of the Commonwealth;

"discharged

Landlord and Tenant (War Service) Amendment.

“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—

- 5 (a) has been discharged from the Defence Force, or has ceased to be engaged on war service, for a period not exceeding four years or such extended period as the Governor may, from time to time by
10 proclamation published in the Gazette, appoint; or
- 15 (b) having been discharged from the Defence Force, or having ceased to be engaged on war service, for a period exceeding four years or where an extended period has been appointed under paragraph (a) of this definition exceeding such extended period—
- 20 (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 either wholly or partly from en-
25 gaging in his occupation;

“female dependant of a member” means a female who is wholly or partly dependent for her support upon a member of the Forces;

30 “female dependant of a discharged member” means—

- 35 (a) a female who is wholly or partly dependent for her support upon a person who, having been a member of the Defence Force engaged on war service during

Landlord and Tenant (War Service) Amendment.

- 5 during the present war, has been discharged from the Defence Force, or has ceased to be engaged on war service, for a period not exceeding four years or such extended period as the Governor may, from time to time by proclamation published in the Gazette, appoint;
- 10 (b) a female who is wholly or partly 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;
- 15 (c) the wife of a person who, having been a member of the Defence Force engaged on war service during the present war—
- (i) has been discharged from the Defence Force; or
- 20 (ii) has ceased to be engaged on war service,
- 25 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; and
- (d) the widow of a member of the Forces who died while engaged on war service during the present war;
- 30 “member of the Forces” means a member of the Defence Force engaged on war service, and includes any person who is on active service with the Naval, Military or Air Forces—
- 35 (a) of the United Kingdom or of any other part of the King’s dominions (other than the Commonwealth);
- (b)

Landlord and Tenant (War Service) Amendment.

- (b) of any foreign power allied or associated with His Majesty in any war in which His Majesty is engaged; or
- 5 (c) maintained by any foreign authority recognised by His Majesty as competent to maintain Naval, Military or Air Forces for service in association with His Majesty's Forces;
- 10 "parent of a member" means a person who is a parent of, and is wholly or partly dependent for his support upon, a member of the Forces;
- "parent of a discharged member" means—
- 15 (a) a person who is a parent of, and is wholly or partly dependent for his support upon, a person who, having been a member of the Defence Force engaged on war service during the present war, has been discharged from the Defence Force, or has ceased to be engaged on
- 20 war service, for a period not exceeding four years or such extended period as the Governor may, from time to time by proclamation published in the Gazette, appoint;
- 25 (b) a person who is a parent of, and is wholly or partly dependent for his support upon a pension payable in consequence of the incapacity or death of, a person who has been a member of
- 30 the Forces;
- (c) a parent of a person who, having been a member of the Defence Force engaged on war service during the present war—
- 35 (i) has been discharged from the Defence Force; or
- (ii)

Landlord and Tenant (War Service) Amendment.

(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, 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 partly dependent for his support;

“pension” means a pension (including a service pension) under the Australian Soldiers’ Repatriation Act 1920-1948 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;

“present war” means any war in which His Majesty became engaged on or after the third day of September, one thousand nine hundred and thirty-nine;

“protected person” means a member of the Forces, discharged member of the Forces, female dependant of a member, female dependant of a discharged member, parent of a member or parent of a discharged member;

“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 or during continuous training under that Act, the Naval Defence Act 1910-1934 or the Air Force Act 1923-1941;

(b)

Landlord and Tenant (War Service) Amendment.

- (b) the continuous service under any of those Acts of any person who volunteers and is accepted for such service during war;
- 5 (c) the continuous service of a person called upon to serve in the Defence Force in pursuance of any Act or of any regulations under an Act; and
- 10 (d) the service during war of a member of the Permanent Forces.

4. (1) For the purposes of this section, a person shall not be deemed to be a protected person unless such person is— Recovery of possession of premises.

- (a) a member of the Forces who—
- 15 (i) is; or
- (ii) was, for a total period of not less than twelve months during his period of war service,
- 20 required, by reason of his war service, to live in premises other than premises occupied by him, or by a member of the household to which he belongs, as a home;
- (b) a discharged member of the Forces who was—
- (i) immediately prior to his discharge;
- 25 (ii) for a continuous period of not less than three months during the period of six months immediately prior to his discharge; or
- (iii)

Landlord and Tenant (War Service) Amendment.

(iii) for a total period of not less than twelve months during his period of war service,

so required;

5 (c) a female dependant of a member or a parent of a member and that member—

(i) is; or

10 (ii) was, for a total period of not less than twelve months during his 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—

15 (i) immediately prior to his discharge, ceasing to be engaged on war service or death, as the case may be;

20 (ii) for a continuous period of not less than three months during the period of six months immediately prior to his discharge, ceasing to be engaged on war service or death, as the case may be; or

25 (iii) for a total period of not less than twelve months during his period of war service,

so required.

(2)

Landlord and Tenant (War Service) Amendment.

(2) For the purposes of this section, unless the contrary intention appears—

“dwelling-house” means premises leased for the purposes of residence, and includes—

- 5 (a) the premises of any lodging house or boarding house; and
- (b) any part of premises which is leased for the purpose of residence, whether forming a complete residence in itself
- 10 or otherwise,

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

“lease” includes every contract for the letting of 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 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 a lease arising under an attornment clause in a mortgage or in an agreement for the sale and purchase of land;

15

20

“lessor” and “lessee” mean the parties to a lease, or their respective successors in title, and include respectively—

25

- (a) a mesne lessor and a mesne lessee;
- (b) a sub-lessor and a sub-lessee;
- 30 (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;
- 35

(d).

Landlord and Tenant (War Service) Amendment.

5 (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; and

(e) where there is more than one lessor or lessee, any one or more of the lessors or lessees;

“premises” means any premises other than—

10 (a) premises licensed for the sale of spirituous or fermented liquors; or

15 (b) premises which are ordinarily occupied by a lessor as a permanent residence but are for the time being occupied by a lessee to whom the premises were leased for a specified term for holiday purposes only, which term has expired,

20 and includes land, any part of any premises and any land or appurtenances leased with any premises.

(3) This section shall not apply in relation to premises of which the Crown in right of the Commonwealth or a State, or the Housing Commission of New South Wales, is the lessor.

25 (4) An order shall not be made for the recovery of possession of premises from a lessee (being a protected person), or for the ejectment from premises of a lessee (being a protected person), unless the court making the order is satisfied—

30 (a) that the lessee has failed to pay the rent in respect of a period of not less than fifty-six days;

35 (b) 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;

(c).

Landlord and Tenant (War Service) Amendment.

- (c) that the lessee has failed to take reasonable care of the premises or of any goods leased therewith, or has committed waste;
- 5 (d) that the lessee has been guilty of conduct which is a nuisance or annoyance to adjoining or neighbouring occupiers;
- 10 (e) that the lessee or some other person has been convicted, during the currency of the lease, of an offence arising out of the use of the premises for an 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 premises—
- 15 (i) being a dwelling-house—are reasonably required by the lessor for occupation by himself or by some person who ordinarily resides with, and is wholly or partly dependent upon, him; or
- 20 (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 trade, profession, calling or occupation;
- 25 (g) 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 of a minister of religion (including a person who, although
- 30 not ordained, is performing all the duties of a minister of religion);
- (h) that the lessor is a trustee and the premises are reasonably required by a beneficiary under the trust for his personal occupation or for the occupation of some person who ordinarily resides with, and is wholly or partly dependent upon,
- 35 **him;**
- (i)

Landlord and Tenant (War Service) Amendment.

- 5 (i) that the lessor is a person, body or authority carrying on a hospital, 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 (including the accommodation of the staff of the hospital);
- 10 (j) that the premises have been occupied, or are occupied, in consequence of his employment by some person in the employ of the lessor and are reasonably required for the personal occupation in consequence of that employment of some other person employed by, or about to become employed by, the lessor;
- 15 (k) that the lessee became the lessee of the premises by virtue of an assignment or transfer which the lessor has not consented to or approved; or
- (l) that the lessee has sub-let the premises or some part thereof by a sub-lease which has not been consented to or approved by the lessor.
- 20 (5) An order shall not be made on the ground specified in paragraph (k) or (l) of subsection four of this section—
- 25 (a) 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;
- (b) where the lease is for a fixed term—unless that term has expired; or
- 30 (c) where the lease is a periodic lease—unless the period which was current at the date on which the assignment, transfer or sub-lease took effect has expired.
- 35 (6) Where a tenancy has been lawfully determined and a person claiming under the lessee and actually in possession of the premises or any part thereof is a protected person, an order for the ejectment of persons from those

Landlord and Tenant (War Service) Amendment.

those premises or for the recovery of possession of those premises shall not be enforced against the protected person unless the court which made the order is satisfied—

- 5 (a) that the protected person has failed to pay the rent in respect of a period of not less than fifty-six days;
- 10 (b) that the protected person has failed to perform or observe some other term or condition of his tenancy and the performance or observance of that other term or condition has not been waived or excused by his landlord;
- 15 (c) that the protected person has failed to take reasonable care of the premises, or of any goods the property of his landlord, or has committed waste;
- 20 (d) that the protected person has been guilty of conduct which is a nuisance or annoyance to adjoining or neighbouring occupiers;
- 25 (e) that the protected person or some other person has been convicted, while the protected person was actually in possession of the premises or part thereof, of an offence arising out of the use of the premises or part thereof for an illegal purpose or that a court has found or declared that the premises or part thereof have, while the protected person was actually in possession of the premises or part thereof, been used for some illegal purpose;
- 30 (f) that the premises—
- 35 (i) being a dwelling-house—are reasonably required by the person in whose favour the order was made for occupation by himself or by some person who ordinarily resides with, and is wholly or partly dependent upon, him; or
- (ii) not being a dwelling-house—are reasonably required for occupation by the person in whose favour the order was made

Landlord and Tenant (War Service) Amendment.

made or by a person associated or connected with him in his trade, profession, calling or occupation;

- 5 (g) 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 of a minister of religion (including a person who, although not ordained, is performing all the
10 duties of a minister of religion);
- (h) that the person in whose favour the order was made is a trustee and the premises are reasonably required by a beneficiary under the trust for his personal occupation or for the occupa-
15 tion of some person who ordinarily resides with, and is wholly or partly dependent upon, him; or
- (i) that the person, body or authority in whose favour the order was made is a person, body or authority carrying on a hospital, 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 (including the
20 accommodation of the staff of the hospital),

and gives leave to enforce the order against the protected
25 person.

(7) Except in the case of an order made in circumstances specified in paragraph (a), (b), (c), (d), (e), (j), (k), or (l) of subsection four of this section, an
30 order 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 (in this section referred to as “the
35 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 premises in respect of which the making of an order is sought
40 (in this section referred to as “the premises at present occupied”); or

(b)]

Landlord and Tenant (War Service) Amendment.

(b) that the protected person (being the lessee) has sublet the premises in respect of which the making of an order is sought and is permanently residing elsewhere.

5 (8) Except in the case of an order made in circumstances specified in paragraph (a), (b), (c), (d), or (e) of subsection six of this section, a court shall not give leave to enforce an order against a protected
10 person, unless the court, in addition to being satisfied upon any other ground upon which the court is required to be satisfied, is satisfied that reasonably suitable alternative accommodation (in this section referred to as "the alternative accommodation") is available for
15 the occupation of the protected person in lieu of the premises in respect of which the giving of leave to enforce an order is sought (in this section referred to as "the premises at present occupied").

(9) For the purposes of subsections seven and eight of this section, accommodation shall not be deemed
20 to be reasonably suitable unless—

- (a) the rent of the alternative accommodation does not exceed the rent of the premises at present occupied;
- (b) the floor area of the alternative accommodation
25 is not less than the floor area of the premises at present occupied;
- (c) in the case of a dwelling-house—the alternative accommodation is not less congenial than the premises at present occupied; and
- (d) the conditions generally appertaining to the
30 alternative accommodation are not inferior to the conditions appertaining to the premises at present occupied.

(10) The provisions of subsections four to nine
35 inclusive of this section shall not apply in relation to premises of which a protected person is the lessor.

(11) Where proceedings have been taken by a lessor who is a protected person to recover possession of premises from a lessee who is not a protected person or
40 for the ejectment from premises of a lessee who is not

Landlord and Tenant (War Service) Amendment.

a protected person, any provisions of the law of the State as to the availability or otherwise of alternative accommodation for the lessee shall not be applicable.

(12) Where by any law of the State it is provided
 5 that a person who has become the lessor of a dwelling-
 house by purchase shall not, within a period longer than
 six months after the date of the agreement for purchase,
 give a notice to quit on any ground, a lessor who is a
 protected person may give a notice to quit at the expira-
 10 tion of six months from that date.

5. (1) A protected person (being a protected person referred to in subsection one of section four of this Act) may, if he thinks fit, apply in writing to the court of petty sessions for the district in which is situated a
 15 dwelling-house which is unoccupied or about to become unoccupied for a warrant authorising and requiring the delivery of possession of the dwelling-house to the applicant.

Letting of
 unoccupied
 houses to
 protected
 persons.

(2) An application under subsection one of this
 20 section may be made by the protected person personally or by some person authorised by him in writing to act as his agent for the purposes of this section.

(3) A copy of an application under subsection one of this section together with a notice of hearing, shall
 25 be served on—

- (a) the owner of the dwelling-house; or
- (b) any person who ordinarily acts as an agent in relation to the dwelling-house or to whom the rent of the dwelling-house is ordinarily paid,

30 either personally, or by registered letter sent to the place of business or abode of the owner or person.

(4) After service of the copy of the application and notice of hearing, and until the application has been heard and determined, or, if the court grants the
 35 application, until the warrant issued pursuant thereto has been executed, the owner of the dwelling-house shall not, whether personally or by his agent, permit any person to enter into occupation of the dwelling-house or himself enter into occupation of the dwelling-house.

(5)

Landlord and Tenant (War Service) Amendment.

(5) The jurisdiction of a court of petty sessions under this section shall not be exercised except by a stipendiary magistrate.

5 **6.** (1) For the purposes of section five of this Act a dwelling-house shall be deemed to be unoccupied notwithstanding that the owner has permitted a person to enter into occupation of the dwelling-house in contravention of subsection four of that section or the corresponding Commonwealth Regulation, and, in any
10 such case, the court may grant the application notwithstanding that the person in occupation of the dwelling-house is not before the court on the hearing of the application.

Dwelling-house is to be deemed to be unoccupied in certain cases.

15 (2) For the purposes of section five of this Act a dwelling-house shall be deemed to be unoccupied notwithstanding that the owner has entered into occupation of the dwelling-house in contravention of subsection four of that section or in contravention of the corresponding Commonwealth Regulation.

20 (3) For the purposes of section five of this Act a dwelling-house shall not be deemed to be occupied by reason only of the fact that it is furnished.

25 **7.** (1) Upon the hearing of an application under section five of this Act the court shall take into consideration in addition to all other relevant matters—

Hearing of application.

30 (a) any hardship which would be caused to the owner or to any other person (not being a person who has entered into occupation of the dwelling-house in contravention of subsection four of section five of this Act or the corresponding Commonwealth Regulation) by the granting of the application; and

35 (b) any hardship which would be caused to the applicant or to any other person by the refusal to grant the application,

and, unless the court is satisfied that there is reasonable cause why the application should not be granted, the court shall grant the application.

Landlord and Tenant (War Service) Amendment.

(2) An averment in an application under section five of this Act that a dwelling-house is unoccupied shall be prima facie evidence of the fact so averred.

5 (3) If the dwelling-house is about to become unoccupied, the court may postpone the execution of the warrant until such time as it thinks fit.

(4) The fact that the dwelling-house is ordinarily leased for holiday purposes only shall not be a ground for refusing to grant the application.

10 (5) An application shall not be granted under this section—

15 (a) if the owner of the dwelling-house is a protected person and reasonably requires the dwelling-house for his own occupation or for the occupation of some person who resides with him or is wholly or partly dependent on him for his support;

20 (b) if the dwelling-house was erected or acquired for the accommodation of a particular person or class of persons and the dwelling-house is reasonably required for the occupation of that person or a person of that class;

25 (c) if the dwelling-house has not previously been occupied and is reasonably required for the occupation of the owner of the dwelling-house; or

(d) if the dwelling-house is a newly erected dwelling-house which—

(i) was erected by the owner for the purposes of sale; and

30 (ii) has been unoccupied for a period not exceeding two months.

(6) The court shall specify in the warrant the person or persons by whom it may be executed.

35 8. (1) Where more than one application is made under section five of this Act in respect of the same dwelling-house, the person on whom the applications were served shall forthwith notify each other applicant of the other application or applications, together with the name and address

Provisions where several applications made in respect of same dwelling-house.

Landlord and Tenant (War Service) Amendment.

address of the other applicant or applicants, and the court shall hear and determine all the applications at the same time and for that purpose may adjourn the hearing of any application or applications.

- 5 (2) Where two or more applications are heard at the same time, the court shall take into consideration the degree of hardship which would be caused to each applicant or to any other person by the refusal to grant the application and, where the degree of hardship is the
10 same in the case of two or more applicants or other persons, may take into consideration the priority of service of the applications under section five of this Act.

9. A warrant granted by a court under section seven of this Act may be enforced in the same manner as a
15 warrant of possession granted by that court may be enforced. Enforcement of warrants.

10. (1) Upon delivery of possession of a dwelling-
house to a protected person under a warrant granted under section seven of this Act, the protected person shall
20 be deemed to be a tenant of the owner of the dwelling-house. Rent of dwelling-house.

- (2) A protected person into whose possession a dwelling-house has been delivered prior to the commencement of this Act under a warrant granted under the corresponding Commonwealth Regulation and who is in
25 occupation of the dwelling-house at the date upon which His Majesty's assent to this Act is signified shall be deemed as from such delivery to be a tenant of the owner of the dwelling-house.

- 30 (3) The rent to be paid for any dwelling-house of which possession has been so obtained shall be—

- (a) where the rent is, as at the commencement of the tenancy, fixed or determined by or under any law of the State—such rent (not exceeding the rent so fixed or determined) as is agreed
35 upon between the owner and the tenant or as, in default of agreement, is fixed by the court which granted the application; or

Landlord and Tenant (War Service) Amendment.

(b) in any other case—such rent as is agreed upon between the owner and the tenant or, in default of agreement, as is fixed by the court which granted the application,

5 but nothing in this subsection shall be deemed to prevent the subsequent alteration subject to the said law of any rent so agreed upon or fixed.

(4) The court granting an application under section five of this Act shall at the time of such grant
10 fix terms and conditions to be implied in the tenancy and such terms and conditions shall apply and have effect in like manner as if the same had been agreed to in writing by the protected person and the owner.

(5) Where delivery of possession of a dwelling-
15 house has been made to a protected person under a warrant granted under the corresponding Commonwealth Regulation, the court which granted the application for such warrant may, on application by either the owner or the protected person (notice of such application hav-
20 ing been given to the protected person or owner, as the case may be), fix terms and conditions to be implied in the tenancy and such terms and conditions shall apply and have effect in like manner as if the same had been agreed to in writing by the protected person and the
25 owner.

11. Sections five to ten of this Act shall not bind the Crown in right of the Commonwealth or of the State, and shall not apply in relation to any dwelling-house of which the Housing Commission of New South Wales is
30 the owner.

Sections
five to ten
not to bind
the Crown.

12. For the purposes of sections five to eleven both inclusive of this Act the expression "owner" in relation to a dwelling-house which is the subject of a lease or sub-lease, means—

Interpreta-
tion.

35 (a) where the dwelling-house is unoccupied—the lessee or sub-lessee immediately entitled to possession of the dwelling-house; and

(b) where the dwelling-house is about to become unoccupied—the person immediately entitled to
40 possession of the dwelling-house upon its becoming unoccupied.

Landlord and Tenant (War Service) Amendment.

13. (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, any law of the State) shall not, ⁵ 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:

Rental of farms by members of the Forces, etc.

Provided that—

- 10 (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 pounds per centum per annum on the amount so expended shall not be deemed to be an increase for the purposes of this section;
- 15
- 20 (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;
- 25
- 30 (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
- 35

(d)

Landlord and Tenant (War Service) Amendment.

5 (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
10 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
15 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—
20 "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—

25 (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—

30 (a) where the rent payable does not
exceed seventy pounds per annum—a
court of petty sessions constituted by a
stipendiary magistrate sitting alone;

35 (b) where the rent payable exceeds seventy
pounds per annum—a District Court.

(4) This section shall bind the Crown.

Landlord and Tenant (War Service) Amendment.

14. (1) Where a soldier's dependant is in occupation of a dwelling-house which was occupied by a member of the Forces by virtue of his 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—

Prohibition of eviction of dependants of members of the Forces in certain cases.

(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 one of this section, 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 bind—

(a) the Crown;

(b) the Housing Commission of New South Wales.

(4) In this section—

“soldier's dependant” means parent of a member of the Forces or female dependant of a member of the Forces;

“the court”, in relation to any application under this section means the court of petty sessions constituted by a stipendiary magistrate sitting alone for the district in which the dwelling-house is situated.

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

15. (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

This Act not to apply in certain cases.

Landlord and Tenant (War Service) Amendment.

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
5 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 Act.

10 (2) A notice under subsection one of this section 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
15 one of this section, 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 Act is not furnished to the claimant, then, notwithstanding that the respondent is, or
20 at any subsequent time becomes, a protected person, this Act 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 one of this section, provided the claimant commences to do, or to
25 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 three of this section, where the doing of any act is dependent on the
30 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
35 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
40 the claimant desires to do, or to continue or complete the doing of, any act; or

(b)

Landlord and Tenant (War Service) Amendment.

(b) cannot be found and that the claimant has made reasonable efforts to ascertain his whereabouts, and that the claimant is not aware that the respondent is a protected person,

5 the officer may issue to the claimant a certificate to that effect and thereupon this Act 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
10 pursuance of subsection five of this section shall, in the absence of proof to the contrary, be deemed to have been duly issued.

16. (1) Any person who contravenes or fails to
15 comply with any provision of this Act shall be guilty of an offence against this Act: Offences and penalties.

Provided that any person who after the commencement of this Act and before the date upon which the assent of His Majesty to this Act is signified contravenes or fails to comply with the provisions of subsection four of
20 section five of this Act shall not 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.

25 (3) All proceedings for offences against this Act shall be disposed of in a summary manner before a court of petty sessions holden before a stipendiary magistrate sitting alone.

(4) Any person who is guilty of an offence against
30 this Act shall be liable to a penalty not exceeding one hundred pounds, or to imprisonment for a term not exceeding six months, or to both such penalty and imprisonment.

Landlord and Tenant (War Service) Amendment.

17. (1) The Landlord and Tenant (Amendment) Act, 1948-1949, is amended—

Amendment
of Act
No. 25,
1948.

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

Sec. 70.
(Court to
consider
hardship.)

(a) the lessor is a protected person for the purposes of section four of the Landlord and Tenant (War Service) Amendment Act, 1949, and the lessee is not a protected person for the purposes of that section; or

(b) by omitting from the same subsection the words:—

“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.”

(2) This section shall commence on the day upon which the assent of His Majesty to this Act is signified.

No. , 1949.

A BILL

To make certain provision in relation to the rights of certain members, former members, and dependants of members of the defence forces in proceedings for the recovery of possession of premises; to confer upon such persons rights in relation to the acquisition of possession of premises; for these purposes to amend the Landlord and Tenant (Amendment) Act, 1948-1949, and certain other Acts; to validate certain matters; and for purposes connected therewith.

[Mr. C. E. MARTIN;—22 *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
5 the same, as follows :—

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

13027 396—A

(2) Short title and commencement.

Landlord and Tenant (War Service) Amendment.

(2) Except where otherwise provided this Act shall be deemed to have commenced on the sixth day of June, one thousand nine hundred and forty-nine.

2. All applications and other proceedings under the ^{Savings.} corresponding Commonwealth Regulations which are pending immediately before the commencement of this Act may be continued and determined under this Act as if they had been commenced thereunder.

3. In this Act, unless the contrary intention appears— ^{Definitions.}

10 “corresponding Commonwealth Regulations” means
the Regulations having the title of the National
Security (War Service Moratorium) Regula-
tions and in the form in which those Regulations
15 existed immediately before the commencement
of this Act under the Defence (Transitional
Provisions) Act 1946-1948 of the Parliament of
the Commonwealth;

20 “discharged member of the Forces” means a per-
son who, having been a member of the Defence
Force engaged on war service during the
present war—

25 (a) has been discharged from the Defence
Force, or has ceased to be engaged on
war service, for a period not exceeding
four years or such extended period as
the Governor may, from time to time by
proclamation published in the Gazette,
appoint; or

30 (b) having been discharged from the
Defence Force, or having ceased to be
engaged on war service, for a period
exceeding four years or where an
extended period has been appointed
under paragraph (a) of this definition
35 exceeding such extended period—

(i) is receiving a pension from the
Commonwealth; or

(ii)

Landlord and Tenant (War Service) Amendment.

5 (ii) is not receiving such a pension,
but is receiving from the Commonwealth medical treatment of
such a nature as to prevent him
either wholly or partly from en-
gaging in his occupation;

“female dependant of a member” means a female
who is wholly or partly dependent for her support
upon a member of the Forces;

10 “female dependant of a discharged member”
means—

15 (a) a female who is wholly or partly
dependent for her support upon a per-
son who, having been a member of the
Defence Force engaged on war service
during the present war, has been dis-
charged from the Defence Force, or has
ceased to be engaged on war service,
for a period not exceeding four years
or such extended period as the Gov-
ernor may, from time to time by pro-
clamation published in the Gazette,
appoint;

25 (b) a female who is wholly or partly de-
pendent for her support upon a pension
payable in consequence of the incapa-
city or the death of a person who has
been a member of the Forces;

30 (c) the wife of a person who, having been
a member of the Defence Force en-
gaged on war service during the
present war—

(i) has been discharged from the
Defence Force; or

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

and, although not receiving a pension,
is receiving from the Commonwealth
medical

Landlord and Tenant (War Service) Amendment.

medical treatment of such a nature as to prevent him, either wholly or partly, from engaging in his occupation; and

- 5 (d) the widow of a member of the Forces who died while engaged on war service during the present war;

10 “member of the Forces” means a member of the Defence Force engaged on war service, and includes any person who is on active service with the Naval, Military or Air Forces—

- (a) of the United Kingdom or of any other part of the King’s dominions (other than the Commonwealth);
- 15 (b) of any foreign power allied or associated with His Majesty in any war in which His Majesty is engaged; or
- (c) maintained by any foreign authority recognised by His Majesty as competent to maintain Naval, Military or Air Forces for service in association with His Majesty’s Forces;
- 20

“parent of a member” means a person who is a parent of, and is wholly or partly dependent for his support upon, a member of the Forces;

25 “parent of a discharged member” means—

- (a) a person who is a parent of, and is wholly or partly dependent for his support upon, a person who, having been a member of the Defence Force engaged on war service during the present war, has been discharged from the Defence Force, or has ceased to be engaged on war service, for a period not exceeding four years or such extended period as the Governor may, from time to time by proclamation published in the Gazette, appoint;
- 30
- 35

(b)

Landlord and Tenant (War Service) Amendment.

5 (b) a person who is a parent of, and is wholly or partly dependent for his support upon a pension payable in consequence of the incapacity or death of, a person who has been a member of the Forces;

10 (c) a parent of a person who, having been a member of the Defence Force engaged on war service during the present war—

(i) has been discharged from the Defence Force; or

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

15 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, and
20 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 partly dependent
25 for his support;

30 “pension” means a pension (including a service pension) under the Australian Soldiers’ Repatriation Act 1920-1948 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;

35 “present war” means any war in which His Majesty became engaged on or after the third day of September, one thousand nine hundred and thirty-nine;

“protected

Landlord and Tenant (War Service) Amendment.

5 “protected person” means a member of the Forces,
discharged member of the Forces, female dependant of a member, female dependant of a
discharged member, parent of a member or
parent of a discharged member;

“war service” means—

10 (a) the service of a member of the Citizen
Forces when called up for war service
under the Defence Act 1903-1941 or
during continuous training under that
Act, the Naval Defence Act 1910-1934
or the Air Force Act 1923-1941;

15 (b) the continuous service under any of
those Acts of any person who
volunteers and is accepted for such
service during war;

20 (c) the continuous service of a person
called upon to serve in the Defence
Force in pursuance of any Act or of
any regulations under an Act; and

(d) the service during war of a member
of the Permanent Forces.

25 **4.** (1) For the purposes of this section, a person shall not be deemed to be a protected person unless such person is—

Recovery of
possession
of premises.

(a) a member of the Forces who—

(i) is; or

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

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

(b)

Landlord and Tenant (War Service) Amendment.

- (b) a discharged member of the Forces who was—
- (i) immediately prior to his discharge;
 - (ii) for a continuous period of not less than three months during the period of six months immediately prior to his discharge; or
 - (iii) for a total period of not less than twelve months during his 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 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 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 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 period of war service,
- so required.

Landlord and Tenant (War Service) Amendment.

(2) For the purposes of this section, unless the contrary intention appears—

“dwelling-house” means premises leased for the purposes of residence, and includes—

- 5 (a) the premises of any lodging house or boarding house; and
- (b) any part of premises which is leased for the purpose of residence, whether forming a complete residence in itself
- 10 or otherwise,

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

“lease” includes every contract for the letting of 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 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 a lease arising under an attornment clause in a mortgage or in an agreement for the sale and purchase of land;

15

20

“lessor” and “lessee” mean the parties to a lease, or their respective successors in title, and include respectively—

25

- (a) a mesne lessor and a mesne lessee;
- (b) a sub-lessor and a 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;
- 30
- 35

(d)

Landlord and Tenant (War Service) Amendment.

5 (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; and

(e) where there is more than one lessor or lessee, any one or more of the lessors or lessees;

“premises” means any premises other than—

10 (a) premises licensed for the sale of spirituous or fermented liquors; or

(b) premises which are ordinarily occupied by a lessor as a permanent residence but are for the time being occupied by a lessee to whom the premises were leased for a specified term for holiday purposes only, which term has expired,

15 and includes land, any part of any premises and any land or appurtenances leased with any premises.

20 (3) This section shall not apply in relation to premises of which the Crown in right of the Commonwealth or a State, or the Housing Commission of New South Wales, is the lessor.

25 (4) An order shall not be made for the recovery of possession of premises from a lessee (being a protected person), or for the ejection from premises of a lessee (being a protected person), unless the court making the order is satisfied—

30 (a) that the lessee has failed to pay the rent in respect of a period of not less than fifty-six days;

35 (b) 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;

(c)

Landlord and Tenant (War Service) Amendment.

- (c) that the lessee has failed to take reasonable care of the premises or of any goods leased therewith, or has committed waste;
- 5 (d) that the lessee has been guilty of conduct which is a nuisance or annoyance to adjoining or neighbouring occupiers;
- (e) that the lessee or some other person has been convicted, during the currency of the lease, of an offence arising out of the use of the premises for an 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;
- 10 (f) that the premises—
- 15 (i) being a dwelling-house—are reasonably required by the lessor for occupation by himself or by some person who ordinarily resides with, and is wholly or partly dependent upon, him; or
- 20 (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 trade, profession, calling or occupation;
- 25 (g) 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 of a minister of religion (including a person who, although not ordained, is performing all the duties of a minister of religion);
- 30 (h) that the lessor is a trustee and the premises are reasonably required by a beneficiary under the trust for his personal occupation or for the occupation of some person who ordinarily resides with, and is wholly or partly dependent upon, him;
- 35 (i)

Landlord and Tenant (War Service) Amendment.

- 5 (i) that the lessor is a person, body or authority carrying on a hospital, 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 (including the accommodation of the staff of the hospital);
- 10 (j) that the premises have been occupied, or are occupied, in consequence of his employment by some person in the employ of the lessor and are reasonably required for the personal occupation in consequence of that employment of some other person employed by, or about to become employed by, the lessor;
- 15 (k) that the lessee became the lessee of the premises by virtue of an assignment or transfer which the lessor has not consented to or approved; or
- (l) that the lessee has sub-let the premises or some part thereof by a sub-lease which has not been consented to or approved by the lessor.
- 20 (5) An order shall not be made on the ground specified in paragraph (k) or (l) of subsection four of this section—
- 25 (a) 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;
- (b) where the lease is for a fixed term—unless that term has expired; or
- 30 (c) where the lease is a periodic lease—unless the period which was current at the date on which the assignment, transfer or sub-lease took effect has expired.
- 35 (6) Where a tenancy has been lawfully determined and a person claiming under the lessee and actually in possession of the premises or any part thereof is a protected person, an order for the ejection of persons from those

Landlord and Tenant (War Service) Amendment.

those premises or for the recovery of possession of those premises shall not be enforced against the protected person unless the court which made the order is satisfied—

- 5 (a) that the protected person has failed to pay the rent in respect of a period of not less than fifty-six days;
- 10 (b) that the protected person has failed to perform or observe some other term or condition of his tenancy and the performance or observance of that other term or condition has not been waived or excused by his landlord;
- 15 (c) that the protected person has failed to take reasonable care of the premises, or of any goods the property of his landlord, or has committed waste;
- (d) that the protected person has been guilty of conduct which is a nuisance or annoyance to adjoining or neighbouring occupiers;
- 20 (e) that the protected person or some other person has been convicted, while the protected person was actually in possession of the premises or part thereof, of an offence arising out of the use of the premises or part thereof for an illegal purpose or that a court has found or declared
- 25 that the premises or part thereof have, while the protected person was actually in possession of the premises or part thereof, been used for some illegal purpose;
- (f) that the premises—
- 30 (i) being a dwelling-house—are reasonably required by the person in whose favour the order was made for occupation by himself or by some person who ordinarily resides with, and is wholly or
- 35 partly dependent upon, him; or
- (ii) not being a dwelling-house—are reasonably required for occupation by the person in whose favour the order was made
- made

Landlord and Tenant (War Service) Amendment.

made or by a person associated or connected with him in his trade, profession, calling or occupation;

- 5 (g) 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 of a minister of religion (including a person who, although not ordained, is performing all the
10 duties of a minister of religion);
- (h) that the person in whose favour the order was made is a trustee and the premises are reasonably required by a beneficiary under the trust for his personal occupation or for the occupa-
15 tion of some person who ordinarily resides with, and is wholly or partly dependent upon, him; or
- (i) that the person, body or authority in whose favour the order was made is a person, body or authority carrying on a hospital, or a trustee
20 for such a person, body or authority, and the use of the premises is reasonably required for the purposes of the hospital (including the accommodation of the staff of the hospital),

and gives leave to enforce the order against the protected
25 person.

(7) Except in the case of an order made in circumstances specified in paragraph (a), (b), (c), (d), (e), (j), (k), or (l) of subsection four of this section, an order shall not be made against a protected person unless
30 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 (in this section referred to as “the
35 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 premises in respect of which the making of an order is sought
40 (in this section referred to as “the premises at present occupied”); or

(b)

Landlord and Tenant (War Service) Amendment.

(b) that the protected person (being the lessee) has sublet the premises in respect of which the making of an order is sought and is permanently residing elsewhere.

5 (8) Except in the case of an order made in circumstances specified in paragraph (a), (b), (c), (d), or (e) of subsection six of this section, a court shall not give leave to enforce an order against a protected person, unless the court, in addition to being satisfied
10 upon any other ground upon which the court is required to be satisfied, is satisfied that reasonably suitable alternative accommodation (in this section referred to as "the alternative accommodation") is available for the occupation of the protected person in lieu of the
15 premises in respect of which the giving of leave to enforce an order is sought (in this section referred to as "the premises at present occupied").

(9) For the purposes of subsections seven and eight of this section, accommodation shall not be deemed
20 to be reasonably suitable unless—

- (a) the rent of the alternative accommodation does not exceed the rent of the premises at present occupied;
- 25 (b) the floor area of the alternative accommodation is not less than the floor area of the premises at present occupied;
- (c) in the case of a dwelling-house—the alternative accommodation is not less congenial than the premises at present occupied; and
- 30 (d) the conditions generally appertaining to the alternative accommodation are not inferior to the conditions appertaining to the premises at present occupied.

(10) The provisions of this section shall not apply
35 in relation to premises of which a protected person is the lessor.

(11) Where proceedings have been taken by a lessor who is a protected person to recover possession of premises from a lessee who is not a protected person or
40 for the ejectment from premises of a lessee who is not

Landlord and Tenant (War Service) Amendment.

a protected person, any provisions of the law of the State as to the availability or otherwise of alternative accommodation for the lessee shall not be applicable.

(12) Where by any law of the State it is provided
 5 that a person who has become the lessor of a dwelling-house by purchase shall not, within a period longer than six months after the date of the agreement for purchase, give a notice to quit on any ground, a lessor who is a
 10 protected person may give a notice to quit at the expiration of six months from that date.

5. (1) A protected person (being a protected person referred to in subsection one of section four of this Act) may, if he thinks fit, apply in writing to the court of petty sessions for the district in which is situated a
 15 dwelling-house which is unoccupied or about to become unoccupied for a warrant authorising and requiring the delivery of possession of the dwelling-house to the applicant.

Letting of unoccupied houses to protected persons.

(2) An application under subsection one of this
 20 section may be made by the protected person personally or by some person authorised by him in writing to act as his agent for the purposes of this section.

(3) A copy of an application under subsection one of this section together with a notice of hearing, shall
 25 be served on—

- (a) the owner of the dwelling-house; or
- (b) any person who ordinarily acts as an agent in relation to the dwelling-house or to whom the rent of the dwelling-house is ordinarily paid,

30 either personally, or by registered letter sent to the place of business or abode of the owner or person.

(4) After service of the copy of the application and notice of hearing under subsection three of this section, and until the application has been heard and determined,
 35 or, if the court grants a warrant or a warrant has been granted under the corresponding Commonwealth Regulation, until the warrant has been executed, the owner of the dwelling-house shall not, whether personally or by his agent, permit any person to enter into
 40 occupation of the dwelling-house or himself enter into occupation of the dwelling-house.

(5)

Landlord and Tenant (War Service) Amendment.

(5) The jurisdiction of a court of petty sessions under this section shall not be exercised except by a stipendiary magistrate.

6. (1) For the purposes of section five of this Act a dwelling-house shall be deemed to be unoccupied notwithstanding that the owner has permitted a person to enter into occupation of the dwelling-house in contravention of subsection four of that section or the corresponding Commonwealth Regulation, and, in any such case, the court may grant the application notwithstanding that the person in occupation of the dwelling-house is not before the court on the hearing of the application.

Dwelling-house is to be deemed to be unoccupied in certain cases.

(2) For the purposes of section five of this Act a dwelling-house shall be deemed to be unoccupied notwithstanding that the owner has entered into occupation of the dwelling-house in contravention of subsection four of that section or in contravention of the corresponding Commonwealth Regulation.

(3) For the purposes of section five of this Act a dwelling-house shall not be deemed to be occupied by reason only of the fact that it is furnished.

7. (1) Upon the hearing of an application under section five of this Act the court shall take into consideration in addition to all other relevant matters—

Hearing of application.

- (a) any hardship which would be caused to the owner or to any other person (not being a person who has entered into occupation of the dwelling-house in contravention of subsection four of section five of this Act or the corresponding Commonwealth Regulation) by the granting of the application; and
- (b) any hardship which would be caused to the applicant or to any other person by the refusal to grant the application,

and, unless the court is satisfied that there is reasonable cause why the application should not be granted, the court shall grant the application.

(2)

Landlord and Tenant (War Service) Amendment.

(2) An averment in an application under section five of this Act that a dwelling-house is unoccupied shall be prima facie evidence of the fact so averred.

(3) If the dwelling-house is about to become un-
5 occupied, the court may postpone the execution of the warrant until such time as it thinks fit.

(4) The fact that the dwelling-house is ordinarily leased for holiday purposes only shall not be a ground for refusing to grant the application.

10 (5) An application shall not be granted under this section—

(a) if the owner of the dwelling-house is a protected person and reasonably requires the dwelling-
15 house for his own occupation or for the occupation of some person who resides with him or is wholly or partly dependent on him for his support;

(b) if the dwelling-house was erected or acquired for the accommodation of a particular person or class of persons and the dwelling-house is
20 reasonably required for the occupation of that person or a person of that class;

(c) if the dwelling-house has not previously been occupied and is reasonably required for the oc-
25 cupation of the owner of the dwelling-house; or

(d) if the dwelling-house is a newly erected dwelling-house which—

(i) was erected by the owner for the purposes of sale; and

30 (ii) has been unoccupied for a period not exceeding two months.

(6) The court shall specify in the warrant the person or persons by whom it may be executed.

35 **8. (1)** Where more than one application is made under section five of this Act in respect of the same dwelling-house, the person on whom the applications were served shall forthwith notify each other applicant of the other application or applications, together with the name and address

Provisions where several applications made in respect of same dwelling-house.

Landlord and Tenant (War Service) Amendment.

address of the other applicant or applicants, and the court shall hear and determine all the applications at the same time and for that purpose may adjourn the hearing of any application or applications.

- 5 (2) Where two or more applications are heard at the same time, the court shall take into consideration the degree of hardship which would be caused to each applicant or to any other person by the refusal to grant the application and, where the degree of hardship is the
10 same in the case of two or more applicants or other persons, may take into consideration the priority of service of the applications under section five of this Act.

9. A warrant granted by a court under section seven of this Act (including a warrant so granted under the
15 corresponding Commonwealth Regulation) may be enforced in the same manner as a warrant of possession granted by that court may be enforced.

Enforcement of warrants.

10. (1) Upon delivery of possession of a dwelling-house under section seven of this Act or under the corresponding
20 Commonwealth Regulation, the protected person shall be deemed to be a tenant of the owner of the dwelling-house.

Rent of dwelling-house.

- (2) A protected person into whose possession a
25 dwelling-house has been delivered prior to the commencement of this Act under a warrant granted under the corresponding Commonwealth Regulation and who is in occupation of the dwelling-house at such commencement shall be deemed as from such delivery to be a tenant of
30 the owner of the dwelling-house.

(3) The rent to be paid for any dwelling-house of which possession has been so obtained shall be—

- (a) where the rent is, as at the commencement of the tenancy, fixed or determined by or under
35 any law of the State—such rent (not exceeding the rent so fixed or determined) as is agreed upon between the owner and the tenant or as, in default of agreement, is fixed by the court which granted the application; or

(b)

Landlord and Tenant (War Service) Amendment.

(b) in any other case—such rent as is agreed upon between the owner and the tenant or, in default of agreement, as is fixed by the court which granted the application,

5 but nothing in this subsection shall be deemed to prevent the subsequent alteration subject to the said law of any rent so agreed upon or fixed.

(4) The court granting an application under section five of this Act shall at the time of such grant
10 fix terms and conditions to be implied in the tenancy and such terms and conditions shall apply and have effect in like manner as if the same had been agreed to in writing by the protected person and the owner.

(5) Where delivery of possession of a dwelling-
15 house has been made to a protected person under a warrant granted under the corresponding Commonwealth Regulation, the court which granted the application for such warrant may, on application by either the owner or the protected person (notice of such application hav-
20 ing been given to the protected person or owner, as the case may be), fix terms and conditions to be implied in the tenancy and such terms and conditions shall apply and have effect in like manner as if the same had been agreed to in writing by the protected person and the
25 owner.

11. Sections five to ten of this Act shall not bind the Crown in right of the Commonwealth or of the State, and shall not apply in relation to any dwelling-house of which the Housing Commission of New South Wales is
30 the owner.

Sections five to ten not to bind the Crown.

12. For the purposes of sections five to eleven both inclusive of this Act the expression "owner" in relation to a dwelling-house which is the subject of a lease or sub-lease, means—

Interpretation.

35 (a) where the dwelling-house is unoccupied—the lessee or sub-lessee immediately entitled to possession of the dwelling-house; and

(b) where the dwelling-house is about to become unoccupied—the person immediately entitled to possession of the dwelling-house upon its be-
40 coming unoccupied.

Landlord and Tenant (War Service) Amendment.

13. (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, any law of the State) shall not, 5 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:

Rental of farms by members of the Forces, etc.

Provided that—

- 10 (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) 15 an increase of rent at a rate not exceeding eight pounds per centum per annum on the amount so expended shall not be deemed to be an increase for the purposes of this section;
- 20 (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 25 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 30 payable by way of rent is increased;
- 35 (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)

Landlord and Tenant (War Service) Amendment.

(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 seventy pounds per annum—a court of petty sessions constituted by a stipendiary magistrate sitting alone;

(b) where the rent payable exceeds seventy pounds per annum—a District Court.

(4) This section shall bind the Crown.

Landlord and Tenant (War Service) Amendment.

14. (1) Where a soldier's dependant is in occupation of a dwelling-house which was occupied by a member of the Forces by virtue of his 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—

Prohibition of eviction of dependants of members of the Forces in certain cases.

(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 one of this section, 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 bind—

(a) the Crown;

(b) the Housing Commission of New South Wales.

(4) In this section—

“soldier's dependant” means parent of a member of the Forces or female dependant of a member of the Forces;

“the court”, in relation to any application under this section means the court of petty sessions constituted by a stipendiary magistrate sitting alone for the district in which the dwelling-house is situated.

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

15. (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

This Act not to apply in certain cases.

Landlord and Tenant (War Service) Amendment.

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
5 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 Act.

10 (2) A notice under subsection one of this section 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
15 one of this section, 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 Act is not furnished to the claimant, then, notwithstanding that the respondent is, or
20 at any subsequent time becomes, a protected person, this Act 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 one of this section, provided the claimant commences to do, or to
25 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 three of this section, where the doing of any act is dependent on the
30 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
35 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
40 complete the doing of, any act; or

(b)

Landlord and Tenant (War Service) Amendment.

(b) cannot be found and that the claimant has made reasonable efforts to ascertain his whereabouts, and that the claimant is not aware that the respondent is a protected person,

5 the officer may issue to the claimant a certificate to that effect and thereupon this Act 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.

10 (6) A certificate purporting to be issued in pursuance of subsection five of this section shall, in the absence of proof to the contrary, be deemed to have been duly issued.

16. (1) The Landlord and Tenant (Amendment) Act, 1948-1949, is amended—

Amendment
of Act
No. 25,
1948.

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

Sec. 70.
(Court to
consider
hardship.)

20 (a) the lessor is a protected person for the purposes of section four of the Landlord and Tenant (War Service) Amendment Act, 1949, and the lessee is not a protected person for the purposes of that section; or

25 (b) by omitting from the same subsection the words:—

30 “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.”

35 (2) This section shall commence on the day upon which the assent of His Majesty to this Act is signified.

New South Wales.



ANNO TERTIO DECIMO

GEORGII VI REGIS.

Act No. 22, 1949.

An Act to make certain provision in relation to the rights of certain members, former members, and dependants of members of the defence forces in proceedings for the recovery of possession of premises; to confer upon such persons rights in relation to the acquisition of possession of premises; for these purposes to amend the Landlord and Tenant (Amendment) Act, 1948-1949, and certain other Acts; to validate certain matters; and for purposes connected therewith. [Assented to, 11th July, 1949.]

Landlord and Tenant (War Service) Amendment.

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 :—

Short
title
and
commence-
ment.

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

(2) Except where otherwise provided this Act shall be deemed to have commenced on the sixth day of June, one thousand nine hundred and forty-nine.

Savings.

2. (1) Any application or other proceeding under the corresponding Commonwealth Regulations which was pending immediately before the commencement of this Act shall be deemed to be an application or proceeding under this Act and may be continued and dealt with under this Act as if this Act had been in force at the date of the making of such application or the commencement of such proceeding, as the case may be.

(2) Any warrant granted under the corresponding Commonwealth Regulations and not executed at the commencement of this Act shall be deemed to have been granted under this Act and shall have force and effect in all respects as if this Act had been in force at the time when such warrant was granted.

Definitions.

3. In this Act, unless the contrary intention appears—

"corresponding Commonwealth Regulations" means the Regulations having the title of the National Security (War Service Moratorium) Regulations and in the form in which those Regulations existed immediately before the commencement of this Act under the Defence (Transitional Provisions) Act 1946-1948 of the Parliament of the Commonwealth;

"discharged

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“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—

- (a) has been discharged from the Defence Force, or has ceased to be engaged on war service, for a period not exceeding four years or such extended period as the Governor may, from time to time by proclamation published in the Gazette, appoint; or
- (b) having been discharged from the Defence Force, or having ceased to be engaged on war service, for a period exceeding four years or where an extended period has been appointed under paragraph (a) of this definition exceeding such extended 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 either wholly or partly from engaging in his occupation;

“female dependant of a member” means a female who is wholly or partly dependent for her support upon a member of the Forces;

“female dependant of a discharged member” means—

- (a) a female who is wholly or partly dependent for her support upon a person who, having been a member of the Defence Force engaged on war service during

Landlord and Tenant (War Service) Amendment.

during the present war, has been discharged from the Defence Force, or has ceased to be engaged on war service, for a period not exceeding four years or such extended period as the Governor may, from time to time by proclamation published in the Gazette, appoint;

- (b) a female who is wholly or partly 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;
- (c) the wife of a person who, having been a member of the Defence Force engaged on war service during the present war—
 - (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; and

- (d) the widow of a member of the Forces who died while engaged on war service during the present war;

“member of the Forces” means a member of the Defence Force engaged on war service, and includes any person who is on active service with the Naval, Military or Air Forces—

- (a) of the United Kingdom or of any other part of the King’s dominions (other than the Commonwealth);

(b)

Landlord and Tenant (War Service) Amendment.

- (b) of any foreign power allied or associated with His Majesty in any war in which His Majesty is engaged; or
- (c) maintained by any foreign authority recognised by His Majesty as competent to maintain Naval, Military or Air Forces for service in association with His Majesty's Forces;

“parent of a member” means a person who is a parent of, and is wholly or partly dependent for his support upon, a member of the Forces;

“parent of a discharged member” means—

- (a) a person who is a parent of, and is wholly or partly dependent for his support upon, a person who, having been a member of the Defence Force engaged on war service during the present war, has been discharged from the Defence Force, or has ceased to be engaged on war service, for a period not exceeding four years or such extended period as the Governor may, from time to time by proclamation published in the Gazette, appoint;
- (b) a person who is a parent of, and is wholly or partly dependent for his support upon a pension payable in consequence of the incapacity or death of, a person who has been a member of the Forces;
- (c) a parent of a person who, having been a member of the Defence Force engaged on war service during the present war—

- (i) has been discharged from the Defence Force; or

- (ii)

Landlord and Tenant (War Service) Amendment.

(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, 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 partly dependent for his support;

“pension” means a pension (including a service pension) under the Australian Soldiers’ Repatriation Act 1920-1948 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;

“present war” means any war in which His Majesty became engaged on or after the third day of September, one thousand nine hundred and thirty-nine;

“protected person” means a member of the Forces, discharged member of the Forces, female dependant of a member, female dependant of a discharged member, parent of a member or parent of a discharged member;

“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 or during continuous training under that Act, the Naval Defence Act 1910-1934 or the Air Force Act 1923-1941;

(b)

Landlord and Tenant (War Service) Amendment.

- (b) the continuous service under any of those Acts of any person who volunteers and is accepted for such service during war;
- (c) the continuous service of a person called upon to serve in the Defence Force in pursuance of any Act or of any regulations under an Act; and
- (d) the service during war of a member of the Permanent Forces.

4. (1) For the purposes of this section, a person shall not be deemed to be a protected person unless such person is— Recovery of possession of premises.

(a) a member of the Forces who—

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

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

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

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

(iii)

Landlord and Tenant (War Service) Amendment.

- (iii) for a total period of not less than twelve months during his 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 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 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 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 period of war service,

so required.

Landlord and Tenant (War Service) Amendment.

(2) For the purposes of this section, unless the contrary intention appears—

“dwelling-house” means premises leased for the purposes of residence, and includes—

- (a) the premises of any lodging house or boarding house; and
- (b) any part of premises which is leased for the purpose of residence, whether forming a complete residence in itself or otherwise,

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

“lease” includes every contract for the letting of 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 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 a lease arising under an attornment clause in a mortgage or in an agreement for the sale and 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 a 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;

(d)

Landlord and Tenant (War Service) Amendment.

- (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; and
- (e) where there is more than one lessor or lessee, any one or more of the lessors or lessees;

“premises” means any premises other than—

- (a) premises licensed for the sale of spirituous or fermented liquors; or
- (b) premises which are ordinarily occupied by a lessor as a permanent residence but are for the time being occupied by a lessee to whom the premises were leased for a specified term for holiday purposes only, which term has expired,

and includes land, any part of any premises and any land or appurtenances leased with any premises.

(3) This section shall not apply in relation to premises of which the Crown in right of the Commonwealth or a State, or the Housing Commission of New South Wales, is the lessor.

(4) An order shall not be made for the recovery of possession of premises from a lessee (being a protected person), or for the ejection from premises of a lessee (being a protected person), unless the court making the order is satisfied—

- (a) that the lessee has failed to pay the rent in respect of a period of not less than fifty-six days;
- (b) 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;

(c)

Landlord and Tenant (War Service) Amendment.

- (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;
- (e) that the lessee or some other person has been convicted, during the currency of the lease, of an offence arising out of the use of the premises for an 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 premises—
 - (i) being a dwelling-house—are reasonably required by the lessor for occupation by himself or by some person who ordinarily resides with, and is wholly or partly dependent upon, him; 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 trade, profession, calling or occupation;
- (g) 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 of a minister of religion (including a person who, although not ordained, is performing all the duties of a minister of religion);
- (h) that the lessor is a trustee and the premises are reasonably required by a beneficiary under the trust for his personal occupation or for the occupation of some person who ordinarily resides with, and is wholly or partly dependent upon, him;

(i)

Landlord and Tenant (War Service) Amendment.

- (i) that the lessor is a person, body or authority carrying on a hospital, 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 (including the accommodation of the staff of the hospital);
- (j) that the premises have been occupied, or are occupied, in consequence of his employment by some person in the employ of the lessor and are reasonably required for the personal occupation in consequence of that employment of some other person employed by, or about to become employed by, the lessor;
- (k) that the lessee became the lessee of the premises by virtue of an assignment or transfer which the lessor has not consented to or approved; or
- (l) that the lessee has sub-let the premises or some part thereof by a sub-lease which has not been consented to or approved by the lessor.

(5) An order shall not be made on the ground specified in paragraph (k) or (l) of subsection four of this section—

- (a) 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;
- (b) where the lease is for a fixed term—unless that term has expired; or
- (c) where the lease is a periodic lease—unless the period which was current at the date on which the assignment, transfer or sub-lease took effect has expired.

(6) Where a tenancy has been lawfully determined and a person claiming under the lessee and actually in possession of the premises or any part thereof is a protected person, an order for the ejectment of persons from those

Landlord and Tenant (War Service) Amendment.

those premises or for the recovery of possession of those premises shall not be enforced against the protected person unless the court which made the order is satisfied—

- (a) that the protected person has failed to pay the rent in respect of a period of not less than fifty-six days;
- (b) that the protected person has failed to perform or observe some other term or condition of his tenancy and the performance or observance of that other term or condition has not been waived or excused by his landlord;
- (c) that the protected person has failed to take reasonable care of the premises, or of any goods the property of his landlord, or has committed waste;
- (d) that the protected person has been guilty of conduct which is a nuisance or annoyance to adjoining or neighbouring occupiers;
- (e) that the protected person or some other person has been convicted, while the protected person was actually in possession of the premises or part thereof, of an offence arising out of the use of the premises or part thereof for an illegal purpose or that a court has found or declared that the premises or part thereof have, while the protected person was actually in possession of the premises or part thereof, been used for some illegal purpose;
- (f) that the premises—
 - (i) being a dwelling-house—are reasonably required by the person in whose favour the order was made for occupation by himself or by some person who ordinarily resides with, and is wholly or partly dependent upon, him; or
 - (ii) not being a dwelling-house—are reasonably required for occupation by the person in whose favour the order was

made

Landlord and Tenant (War Service) Amendment.

made or by a person associated or connected with him in his trade, profession, calling or occupation;

- (g) 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 of a minister of religion (including a person who, although not ordained, is performing all the duties of a minister of religion);
- (h) that the person in whose favour the order was made is a trustee and the premises are reasonably required by a beneficiary under the trust for his personal occupation or for the occupation of some person who ordinarily resides with, and is wholly or partly dependent upon, him; or
- (i) that the person, body or authority in whose favour the order was made is a person, body or authority carrying on a hospital, 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 (including the accommodation of the staff of the hospital),

and gives leave to enforce the order against the protected person.

(7) Except in the case of an order made in circumstances specified in paragraph (a), (b), (c), (d), (e), (j), (k), or (l) of subsection four of this section, an order 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 (in this section referred to as “the 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 premises in respect of which the making of an order is sought (in this section referred to as “the premises at present occupied”); or

(b)

Landlord and Tenant (War Service) Amendment.

- (b) that the protected person (being the lessee) has sublet the premises in respect of which the making of an order is sought and is permanently residing elsewhere.

(8) Except in the case of an order made in circumstances specified in paragraph (a), (b), (c), (d), or (e) of subsection six of this section, a court shall not give leave to enforce an order 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 satisfied that reasonably suitable alternative accommodation (in this section referred to as "the alternative accommodation") is available for the occupation of the protected person in lieu of the premises in respect of which the giving of leave to enforce an order is sought (in this section referred to as "the premises at present occupied").

(9) For the purposes of subsections seven and eight of this section, accommodation shall not be deemed to be reasonably suitable unless—

- (a) the rent of the alternative accommodation does not exceed the rent of the premises at present occupied;
- (b) the floor area of the alternative accommodation is not less than the floor area of the premises at present occupied;
- (c) in the case of a dwelling-house—the alternative accommodation is not less congenial than the premises at present occupied; and
- (d) the conditions generally appertaining to the alternative accommodation are not inferior to the conditions appertaining to the premises at present occupied.

(10) The provisions of subsections four to nine inclusive of this section shall not apply in relation to premises of which a protected person is the lessor.

(11) Where proceedings have been taken by a lessor who is a protected person to recover possession of premises from a lessee who is not a protected person or for the ejectment from premises of a lessee who is not

Landlord and Tenant (War Service) Amendment.

a protected person, any provisions of the law of the State as to the availability or otherwise of alternative accommodation for the lessee shall not be applicable.

(12) Where by any law of the State it is provided that a person who has become the lessor of a dwelling-house by purchase shall not, within a period longer than six months after the date of the agreement for purchase, give a notice to quit on any ground, a lessor who is a protected person may give a notice to quit at the expiration of six months from that date.

Letting of unoccupied houses to protected persons.

5. (1) A protected person (being a protected person referred to in subsection one of section four of this Act) may, if he thinks fit, apply in writing to the court of petty sessions for the district in which is situated a dwelling-house which is unoccupied or about to become unoccupied for a warrant authorising and requiring the delivery of possession of the dwelling-house to the applicant.

(2) An application under subsection one of this section may be made by the protected person personally or by some person authorised by him in writing to act as his agent for the purposes of this section.

(3) A copy of an application under subsection one of this section together with a notice of hearing, shall be served on—

(a) the owner of the dwelling-house; or

(b) any person who ordinarily acts as an agent in relation to the dwelling-house or to whom the rent of the dwelling-house is ordinarily paid,

either personally, or by registered letter sent to the place of business or abode of the owner or person.

(4) After service of the copy of the application and notice of hearing, and until the application has been heard and determined, or, if the court grants the application, until the warrant issued pursuant thereto has been executed, the owner of the dwelling-house shall not, whether personally or by his agent, permit any person to enter into occupation of the dwelling-house or himself enter into occupation of the dwelling-house.

(5).

Landlord and Tenant (War Service) Amendment.

(5) The jurisdiction of a court of petty sessions under this section shall not be exercised except by a stipendiary magistrate.

6. (1) For the purposes of section five of this Act a dwelling-house shall be deemed to be unoccupied notwithstanding that the owner has permitted a person to enter into occupation of the dwelling-house in contravention of subsection four of that section or the corresponding Commonwealth Regulation, and, in any such case, the court may grant the application notwithstanding that the person in occupation of the dwelling-house is not before the court on the hearing of the application.

Dwelling-house is to be deemed to be unoccupied in certain cases.

(2) For the purposes of section five of this Act a dwelling-house shall be deemed to be unoccupied notwithstanding that the owner has entered into occupation of the dwelling-house in contravention of subsection four of that section or in contravention of the corresponding Commonwealth Regulation.

(3) For the purposes of section five of this Act a dwelling-house shall not be deemed to be occupied by reason only of the fact that it is furnished.

7. (1) Upon the hearing of an application under section five of this Act the court shall take into consideration in addition to all other relevant matters—

Hearing of application.

(a) any hardship which would be caused to the owner or to any other person (not being a person who has entered into occupation of the dwelling-house in contravention of subsection four of section five of this Act or the corresponding Commonwealth Regulation) by the granting of the application; and

(b) any hardship which would be caused to the applicant or to any other person by the refusal to grant the application,

and, unless the court is satisfied that there is reasonable cause why the application should not be granted, the court shall grant the application.

Landlord and Tenant (War Service) Amendment.

(2) An averment in an application under section five of this Act that a dwelling-house is unoccupied shall be prima facie evidence of the fact so averred.

(3) If the dwelling-house is about to become unoccupied, the court may postpone the execution of the warrant until such time as it thinks fit.

(4) The fact that the dwelling-house is ordinarily leased for holiday purposes only shall not be a ground for refusing to grant the application.

(5) An application shall not be granted under this section—

(a) if the owner of the dwelling-house is a protected person and reasonably requires the dwelling-house for his own occupation or for the occupation of some person who resides with him or is wholly or partly dependent on him for his support;

(b) if the dwelling-house was erected or acquired for the accommodation of a particular person or class of persons and the dwelling-house is reasonably required for the occupation of that person or a person of that class;

(c) if the dwelling-house has not previously been occupied and is reasonably required for the occupation of the owner of the dwelling-house; or

(d) if the dwelling-house is a newly erected dwelling-house which—

(i) was erected by the owner for the purposes of sale; and

(ii) has been unoccupied for a period not exceeding two months.

(6) The court shall specify in the warrant the person or persons by whom it may be executed.

8. (1) Where more than one application is made under section five of this Act in respect of the same dwelling-house, the person on whom the applications were served shall forthwith notify each other applicant of the other application or applications, together with the name and address

Provisions where several applications made in respect of same dwelling-house.

Landlord and Tenant (War Service) Amendment.

address of the other applicant or applicants, and the court shall hear and determine all the applications at the same time and for that purpose may adjourn the hearing of any application or applications.

(2) Where two or more applications are heard at the same time, the court shall take into consideration the degree of hardship which would be caused to each applicant or to any other person by the refusal to grant the application and, where the degree of hardship is the same in the case of two or more applicants or other persons, may take into consideration the priority of service of the applications under section five of this Act.

9. A warrant granted by a court under section seven of this Act may be enforced in the same manner as a warrant of possession granted by that court may be enforced.

Enforcement of warrants.

10. (1) Upon delivery of possession of a dwelling-house to a protected person under a warrant granted under section seven of this Act, the protected person shall be deemed to be a tenant of the owner of the dwelling-house.

Rent of dwelling-house.

(2) A protected person into whose possession a dwelling-house has been delivered prior to the commencement of this Act under a warrant granted under the corresponding Commonwealth Regulation and who is in occupation of the dwelling-house at the date upon which His Majesty's assent to this Act is signified shall be deemed as from such delivery to be a tenant of the owner of the dwelling-house.

(3) The rent to be paid for any dwelling-house of which possession has been so obtained shall be—

(a) where the rent is, as at the commencement of the tenancy, fixed or determined by or under any law of the State—such rent (not exceeding the rent so fixed or determined) as is agreed upon between the owner and the tenant or as, in default of agreement, is fixed by the court which granted the application; or

(b)

Landlord and Tenant (War Service) Amendment.

(b) in any other case—such rent as is agreed upon between the owner and the tenant or, in default of agreement, as is fixed by the court which granted the application, but nothing in this subsection shall be deemed to prevent the subsequent alteration subject to the said law of any rent so agreed upon or fixed.

(4) The court granting an application under section five of this Act shall at the time of such grant fix terms and conditions to be implied in the tenancy and such terms and conditions shall apply and have effect in like manner as if the same had been agreed to in writing by the protected person and the owner.

(5) Where delivery of possession of a dwelling-house has been made to a protected person under a warrant granted under the corresponding Commonwealth Regulation, the court which granted the application for such warrant may, on application by either the owner or the protected person (notice of such application having been given to the protected person or owner, as the case may be), fix terms and conditions to be implied in the tenancy and such terms and conditions shall apply and have effect in like manner as if the same had been agreed to in writing by the protected person and the owner.

Sections
five to ten
not to bind
the Crown.

11. Sections five to ten of this Act shall not bind the Crown in right of the Commonwealth or of the State, and shall not apply in relation to any dwelling-house of which the Housing Commission of New South Wales is the owner.

Interpreta-
tion.

12. For the purposes of sections five to eleven both inclusive of this Act the expression “owner” in relation to a dwelling-house which is the subject of a lease or sub-lease, means—

- (a) where the dwelling-house is unoccupied—the lessee or sub-lessee immediately entitled to possession of the dwelling-house; and
- (b) where the dwelling-house is about to become unoccupied—the person immediately entitled to possession of the dwelling-house upon its becoming unoccupied.

13.

Landlord and Tenant (War Service) Amendment.

13. (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, any law of the State) 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:

Rental of farms by members of the Forces, etc.

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 pounds 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)

Landlord and Tenant (War Service) Amendment.

(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 seventy pounds per annum—a court of petty sessions constituted by a stipendiary magistrate sitting alone;

(b) where the rent payable exceeds seventy pounds per annum—a District Court.

(4) This section shall bind the Crown.

Landlord and Tenant (War Service) Amendment.

14. (1) Where a soldier's dependant is in occupation of a dwelling-house which was occupied by a member of the Forces by virtue of his 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—

Prohibition of eviction of dependants of members of the Forces in certain cases.

- (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 one of this section, 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 bind—

- (a) the Crown;
- (b) the Housing Commission of New South Wales.

(4) In this section—

“soldier's dependant” means parent of a member of the Forces or female dependant of a member of the Forces;

“the court”, in relation to any application under this section means the court of petty sessions constituted by a stipendiary magistrate sitting alone for the district in which the dwelling-house is situated.

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

15. (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

This Act not to apply in certain cases.

Landlord and Tenant (War Service) Amendment.

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 Act.

(2) A notice under subsection one of this section 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 one of this section, 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 Act is not furnished to the claimant, then, notwithstanding that the respondent is, or at any subsequent time becomes, a protected person, this Act 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 one of this section, 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 three of this section, 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)

Landlord and Tenant (War Service) Amendment.

- (b) cannot be found and that the claimant has made reasonable efforts to ascertain his 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 Act 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 five of this section shall, in the absence of proof to the contrary, be deemed to have been duly issued.

16. (1) Any person who contravenes or fails to comply with any provision of this Act shall be guilty of an offence against this Act: Offences
and
penalties.

Provided that any person who after the commencement of this Act and before the date upon which the assent of His Majesty to this Act is signified contravenes or fails to comply with the provisions of subsection four of section five of this Act shall not 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) All proceedings for offences against this Act shall be disposed of in a summary manner before a court of petty sessions holden before a stipendiary magistrate sitting alone.

(4) Any person who is guilty of an offence against this Act shall be liable to a penalty not exceeding one hundred pounds, or to imprisonment for a term not exceeding six months, or to both such penalty and imprisonment.

Landlord and Tenant (War Service) Amendment.

Amendment
of Act
No. 25,
1948.

Sec. 70.
(Court to
consider
hardship.)

17. (1) The Landlord and Tenant (Amendment) Act, 1948-1949, is amended—

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

(a) the lessor is a protected person for the purposes of section four of the Landlord and Tenant (War Service) Amendment Act, 1949, and the lessee is not a protected person for the purposes of that section; or

(b) by omitting from the same subsection the words:—

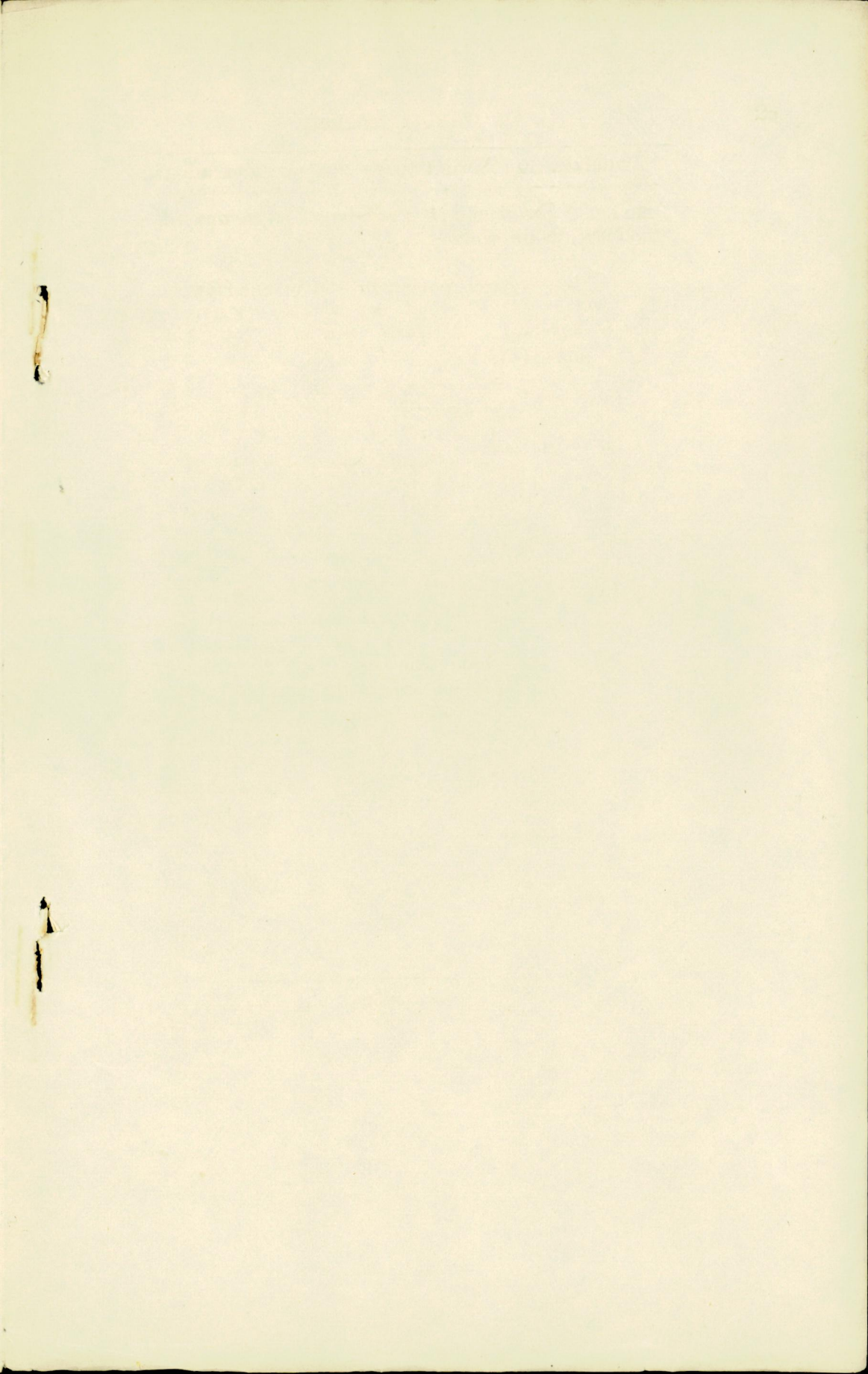
“In this subsection ‘National Security (War Service Moratorium) Regulations’ means the Regulations having that title as in force immediately before the sixth day of June, one thousand nine hundred and forty-nine, under the Defence (Transitional Provisions) Act 1946-1948 of the Parliament of the Commonwealth.”

(2) This section shall commence on the day upon which the assent of His Majesty to this Act is signified.

By Authority:

ALFRED HENRY PETTIFER, Government Printer, Sydney, 1949.

[1s.]



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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, 6 July, 1949.*

New South Wales.



ANNO TERTIO DECIMO

GEORGI VI REGIS.

Act No. 22, 1949.

An Act to make certain provision in relation to the rights of certain members, former members, and dependants of members of the defence forces in proceedings for the recovery of possession of premises; to confer upon such persons rights in relation to the acquisition of possession of premises; for these purposes to amend the Landlord and Tenant (Amendment) Act, 1948-1949, and certain other Acts; to validate certain matters; and for purposes connected therewith. [Assented to, 11th July, 1949.]

BE

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 (War Service) Amendment.

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 :—

Short
title
and
commence-
ment.

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

(2) Except where otherwise provided this Act shall be deemed to have commenced on the sixth day of June, one thousand nine hundred and forty-nine.

Savings.

2. (1) Any application or other proceeding under the corresponding Commonwealth Regulations which was pending immediately before the commencement of this Act shall be deemed to be an application or proceeding under this Act and may be continued and dealt with under this Act as if this Act had been in force at the date of the making of such application or the commencement of such proceeding, as the case may be.

(2) Any warrant granted under the corresponding Commonwealth Regulations and not executed at the commencement of this Act shall be deemed to have been granted under this Act and shall have force and effect in all respects as if this Act had been in force at the time when such warrant was granted.

Definitions.

3. In this Act, unless the contrary intention appears—

"corresponding Commonwealth Regulations" means the Regulations having the title of the National Security (War Service Moratorium) Regulations and in the form in which those Regulations existed immediately before the commencement of this Act under the Defence (Transitional Provisions) Act 1946-1948 of the Parliament of the Commonwealth;

"discharged

Landlord and Tenant (War Service) Amendment.

“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—

- (a) has been discharged from the Defence Force, or has ceased to be engaged on war service, for a period not exceeding four years or such extended period as the Governor may, from time to time by proclamation published in the Gazette, appoint; or
- (b) having been discharged from the Defence Force, or having ceased to be engaged on war service, for a period exceeding four years or where an extended period has been appointed under paragraph (a) of this definition exceeding such extended 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 either wholly or partly from engaging in his occupation;

“female dependant of a member” means a female who is wholly or partly dependent for her support upon a member of the Forces;

“female dependant of a discharged member” means—

- (a) a female who is wholly or partly dependent for her support upon a person who, having been a member of the Defence Force engaged on war service during

Landlord and Tenant (War Service) Amendment.

during the present war, has been discharged from the Defence Force, or has ceased to be engaged on war service, for a period not exceeding four years or such extended period as the Governor may, from time to time by proclamation published in the Gazette, appoint;

- (b) a female who is wholly or partly 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;
- (c) the wife of a person who, having been a member of the Defence Force engaged on war service during the present war—
 - (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; and

- (d) the widow of a member of the Forces who died while engaged on war service during the present war;

“member of the Forces” means a member of the Defence Force engaged on war service, and includes any person who is on active service with the Naval, Military or Air Forces—

- (a) of the United Kingdom or of any other part of the King's dominions (other than the Commonwealth);
- (b)

Landlord and Tenant (War Service) Amendment.

- (b) of any foreign power allied or associated with His Majesty in any war in which His Majesty is engaged; or
- (c) maintained by any foreign authority recognised by His Majesty as competent to maintain Naval, Military or Air Forces for service in association with His Majesty's Forces;

“parent of a member” means a person who is a parent of, and is wholly or partly dependent for his support upon, a member of the Forces;

“parent of a discharged member” means—

- (a) a person who is a parent of, and is wholly or partly dependent for his support upon, a person who, having been a member of the Defence Force engaged on war service during the present war, has been discharged from the Defence Force, or has ceased to be engaged on war service, for a period not exceeding four years or such extended period as the Governor may, from time to time by proclamation published in the Gazette, appoint;
- (b) a person who is a parent of, and is wholly or partly dependent for his support upon a pension payable in consequence of the incapacity or death of, a person who has been a member of the Forces;
- (c) a parent of a person who, having been a member of the Defence Force engaged on war service during the present war—
 - (i) has been discharged from the Defence Force; or

(ii)

Landlord and Tenant (War Service) Amendment.

(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, 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 partly dependent for his support;

“pension” means a pension (including a service pension) under the Australian Soldiers’ Repatriation Act 1920-1948 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;

“present war” means any war in which His Majesty became engaged on or after the third day of September, one thousand nine hundred and thirty-nine;

“protected person” means a member of the Forces, discharged member of the Forces, female dependant of a member, female dependant of a discharged member, parent of a member or parent of a discharged member;

“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 or during continuous training under that Act, the Naval Defence Act 1910-1934 or the Air Force Act 1923-1941;

(b)

Landlord and Tenant (War Service) Amendment.

- (b) the continuous service under any of those Acts of any person who volunteers and is accepted for such service during war;
- (c) the continuous service of a person called upon to serve in the Defence Force in pursuance of any Act or of any regulations under an Act; and
- (d) the service during war of a member of the Permanent Forces.

4. (1) For the purposes of this section, a person shall not be deemed to be a protected person unless such person is— Recovery of possession of premises.

(a) a member of the Forces who—

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

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

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

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

(iii)

Landlord and Tenant (War Service) Amendment.

- (iii) for a total period of not less than twelve months during his 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 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 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 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 period of war service,

so required.

Landlord and Tenant (War Service) Amendment.

(2) For the purposes of this section, unless the contrary intention appears—

“dwelling-house” means premises leased for the purposes of residence, and includes—

- (a) the premises of any lodging house or boarding house; and
- (b) any part of premises which is leased for the purpose of residence, whether forming a complete residence in itself or otherwise,

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

“lease” includes every contract for the letting of 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 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 a lease arising under an attornment clause in a mortgage or in an agreement for the sale and 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 a 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;

(d)

Landlord and Tenant (War Service) Amendment.

- (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; and
- (e) where there is more than one lessor or lessee, any one or more of the lessors or lessees;

“premises” means any premises other than—

- (a) premises licensed for the sale of spirituous or fermented liquors; or
- (b) premises which are ordinarily occupied by a lessor as a permanent residence but are for the time being occupied by a lessee to whom the premises were leased for a specified term for holiday purposes only, which term has expired,

and includes land, any part of any premises and any land or appurtenances leased with any premises.

(3) This section shall not apply in relation to premises of which the Crown in right of the Commonwealth or a State, or the Housing Commission of New South Wales, is the lessor.

(4) An order shall not be made for the recovery of possession of premises from a lessee (being a protected person), or for the ejectment from premises of a lessee (being a protected person), unless the court making the order is satisfied—

- (a) that the lessee has failed to pay the rent in respect of a period of not less than fifty-six days;
- (b) 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;

(c)

Landlord and Tenant (War Service) Amendment.

- (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;
- (e) that the lessee or some other person has been convicted, during the currency of the lease, of an offence arising out of the use of the premises for an 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 premises—
 - (i) being a dwelling-house—are reasonably required by the lessor for occupation by himself or by some person who ordinarily resides with, and is wholly or partly dependent upon, him; 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 trade, profession, calling or occupation;
- (g) 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 of a minister of religion (including a person who, although not ordained, is performing all the duties of a minister of religion);
- (h) that the lessor is a trustee and the premises are reasonably required by a beneficiary under the trust for his personal occupation or for the occupation of some person who ordinarily resides with, and is wholly or partly dependent upon, him;

(i)

Landlord and Tenant (War Service) Amendment.

- (i) that the lessor is a person, body or authority carrying on a hospital, 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 (including the accommodation of the staff of the hospital);
- (j) that the premises have been occupied, or are occupied, in consequence of his employment by some person in the employ of the lessor and are reasonably required for the personal occupation in consequence of that employment of some other person employed by, or about to become employed by, the lessor;
- (k) that the lessee became the lessee of the premises by virtue of an assignment or transfer which the lessor has not consented to or approved; or
- (l) that the lessee has sub-let the premises or some part thereof by a sub-lease which has not been consented to or approved by the lessor.

(5) An order shall not be made on the ground specified in paragraph (k) or (l) of subsection four of this section—

- (a) 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;
- (b) where the lease is for a fixed term—unless that term has expired; or
- (c) where the lease is a periodic lease—unless the period which was current at the date on which the assignment, transfer or sub-lease took effect has expired.

(6) Where a tenancy has been lawfully determined and a person claiming under the lessee and actually in possession of the premises or any part thereof is a protected person, an order for the ejection of persons from
those

Landlord and Tenant (War Service) Amendment.

those premises or for the recovery of possession of those premises shall not be enforced against the protected person unless the court which made the order is satisfied—

- (a) that the protected person has failed to pay the rent in respect of a period of not less than fifty-six days;
- (b) that the protected person has failed to perform or observe some other term or condition of his tenancy and the performance or observance of that other term or condition has not been waived or excused by his landlord;
- (c) that the protected person has failed to take reasonable care of the premises, or of any goods the property of his landlord, or has committed waste;
- (d) that the protected person has been guilty of conduct which is a nuisance or annoyance to adjoining or neighbouring occupiers;
- (e) that the protected person or some other person has been convicted, while the protected person was actually in possession of the premises or part thereof, of an offence arising out of the use of the premises or part thereof for an illegal purpose or that a court has found or declared that the premises or part thereof have, while the protected person was actually in possession of the premises or part thereof, been used for some illegal purpose;
- (f) that the premises—
 - (i) being a dwelling-house—are reasonably required by the person in whose favour the order was made for occupation by himself or by some person who ordinarily resides with, and is wholly or partly dependent upon, him; or
 - (ii) not being a dwelling-house—are reasonably required for occupation by the person in whose favour the order was
made

Landlord and Tenant (War Service) Amendment.

made or by a person associated or connected with him in his trade, profession, calling or occupation;

- (g) 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 of a minister of religion (including a person who, although not ordained, is performing all the duties of a minister of religion);
- (h) that the person in whose favour the order was made is a trustee and the premises are reasonably required by a beneficiary under the trust for his personal occupation or for the occupation of some person who ordinarily resides with, and is wholly or partly dependent upon, him; or
- (i) that the person, body or authority in whose favour the order was made is a person, body or authority carrying on a hospital, 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 (including the accommodation of the staff of the hospital),

and gives leave to enforce the order against the protected person.

(7) Except in the case of an order made in circumstances specified in paragraph (a), (b), (c), (d), (e), (j), (k), or (l) of subsection four of this section, an order 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 (in this section referred to as “the 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 premises in respect of which the making of an order is sought (in this section referred to as “the premises at present occupied”); or

(b)

Landlord and Tenant (War Service) Amendment.

(b) that the protected person (being the lessee) has sublet the premises in respect of which the making of an order is sought and is permanently residing elsewhere.

(8) Except in the case of an order made in circumstances specified in paragraph (a), (b), (c), (d), or (e) of subsection six of this section, a court shall not give leave to enforce an order 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 satisfied that reasonably suitable alternative accommodation (in this section referred to as "the alternative accommodation") is available for the occupation of the protected person in lieu of the premises in respect of which the giving of leave to enforce an order is sought (in this section referred to as "the premises at present occupied").

(9) For the purposes of subsections seven and eight of this section, accommodation shall not be deemed to be reasonably suitable unless—

- (a) the rent of the alternative accommodation does not exceed the rent of the premises at present occupied;
- (b) the floor area of the alternative accommodation is not less than the floor area of the premises at present occupied;
- (c) in the case of a dwelling-house—the alternative accommodation is not less congenial than the premises at present occupied; and
- (d) the conditions generally appertaining to the alternative accommodation are not inferior to the conditions appertaining to the premises at present occupied.

(10) The provisions of subsections four to nine inclusive of this section shall not apply in relation to premises of which a protected person is the lessor.

(11) Where proceedings have been taken by a lessor who is a protected person to recover possession of premises from a lessee who is not a protected person or for the ejectment from premises of a lessee who is not

Landlord and Tenant (War Service) Amendment.

a protected person, any provisions of the law of the State as to the availability or otherwise of alternative accommodation for the lessee shall not be applicable.

(12) Where by any law of the State it is provided that a person who has become the lessor of a dwelling-house by purchase shall not, within a period longer than six months after the date of the agreement for purchase, give a notice to quit on any ground, a lessor who is a protected person may give a notice to quit at the expiration of six months from that date.

Letting of
unoccupied
houses to
protected
persons.

5. (1) A protected person (being a protected person referred to in subsection one of section four of this Act) may, if he thinks fit, apply in writing to the court of petty sessions for the district in which is situated a dwelling-house which is unoccupied or about to become unoccupied for a warrant authorising and requiring the delivery of possession of the dwelling-house to the applicant.

(2) An application under subsection one of this section may be made by the protected person personally or by some person authorised by him in writing to act as his agent for the purposes of this section.

(3) A copy of an application under subsection one of this section together with a notice of hearing, shall be served on—

(a) the owner of the dwelling-house; or

(b) any person who ordinarily acts as an agent in relation to the dwelling-house or to whom the rent of the dwelling-house is ordinarily paid,

either personally, or by registered letter sent to the place of business or abode of the owner or person.

(4) After service of the copy of the application and notice of hearing, and until the application has been heard and determined, or, if the court grants the application, until the warrant issued pursuant thereto has been executed, the owner of the dwelling-house shall not, whether personally or by his agent, permit any person to enter into occupation of the dwelling-house or himself enter into occupation of the dwelling-house.

(5)

Landlord and Tenant (War Service) Amendment.

(5) The jurisdiction of a court of petty sessions under this section shall not be exercised except by a stipendiary magistrate.

6. (1) For the purposes of section five of this Act a dwelling-house shall be deemed to be unoccupied notwithstanding that the owner has permitted a person to enter into occupation of the dwelling-house in contravention of subsection four of that section or the corresponding Commonwealth Regulation, and, in any such case, the court may grant the application notwithstanding that the person in occupation of the dwelling-house is not before the court on the hearing of the application.

Dwelling-house is to be deemed to be unoccupied in certain cases.

(2) For the purposes of section five of this Act a dwelling-house shall be deemed to be unoccupied notwithstanding that the owner has entered into occupation of the dwelling-house in contravention of subsection four of that section or in contravention of the corresponding Commonwealth Regulation.

(3) For the purposes of section five of this Act a dwelling-house shall not be deemed to be occupied by reason only of the fact that it is furnished.

7. (1) Upon the hearing of an application under section five of this Act the court shall take into consideration in addition to all other relevant matters—

Hearing of application.

- (a) any hardship which would be caused to the owner or to any other person (not being a person who has entered into occupation of the dwelling-house in contravention of subsection four of section five of this Act or the corresponding Commonwealth Regulation) by the granting of the application; and
- (b) any hardship which would be caused to the applicant or to any other person by the refusal to grant the application,

and, unless the court is satisfied that there is reasonable cause why the application should not be granted, the court shall grant the application.

(2)

Landlord and Tenant (War Service) Amendment.

(2) An averment in an application under section five of this Act that a dwelling-house is unoccupied shall be prima facie evidence of the fact so averred.

(3) If the dwelling-house is about to become unoccupied, the court may postpone the execution of the warrant until such time as it thinks fit.

(4) The fact that the dwelling-house is ordinarily leased for holiday purposes only shall not be a ground for refusing to grant the application.

(5) An application shall not be granted under this section—

- (a) if the owner of the dwelling-house is a protected person and reasonably requires the dwelling-house for his own occupation or for the occupation of some person who resides with him or is wholly or partly dependent on him for his support;
- (b) if the dwelling-house was erected or acquired for the accommodation of a particular person or class of persons and the dwelling-house is reasonably required for the occupation of that person or a person of that class;
- (c) if the dwelling-house has not previously been occupied and is reasonably required for the occupation of the owner of the dwelling-house; or
- (d) if the dwelling-house is a newly erected dwelling-house which—
 - (i) was erected by the owner for the purposes of sale; and
 - (ii) has been unoccupied for a period not exceeding two months.

(6) The court shall specify in the warrant the person or persons by whom it may be executed.

Provisions
where
several
applications
made in
respect of
same
dwelling-
house.

S. (1) Where more than one application is made under section five of this Act in respect of the same dwelling-house, the person on whom the applications were served shall forthwith notify each other applicant of the other application or applications, together with the name and address

Landlord and Tenant (War Service) Amendment.

address of the other applicant or applicants, and the court shall hear and determine all the applications at the same time and for that purpose may adjourn the hearing of any application or applications.

(2) Where two or more applications are heard at the same time, the court shall take into consideration the degree of hardship which would be caused to each applicant or to any other person by the refusal to grant the application and, where the degree of hardship is the same in the case of two or more applicants or other persons, may take into consideration the priority of service of the applications under section five of this Act.

9. A warrant granted by a court under section seven of this Act may be enforced in the same manner as a warrant of possession granted by that court may be enforced. Enforcement of warrants.

10. (1) Upon delivery of possession of a dwelling-house to a protected person under a warrant granted under section seven of this Act, the protected person shall be deemed to be a tenant of the owner of the dwelling-house. Rent of dwelling-house.

(2) A protected person into whose possession a dwelling-house has been delivered prior to the commencement of this Act under a warrant granted under the corresponding Commonwealth Regulation and who is in occupation of the dwelling-house at the date upon which His Majesty's assent to this Act is signified shall be deemed as from such delivery to be a tenant of the owner of the dwelling-house.

(3) The rent to be paid for any dwelling-house of which possession has been so obtained shall be—

- (a) where the rent is, as at the commencement of the tenancy, fixed or determined by or under any law of the State—such rent (not exceeding the rent so fixed or determined) as is agreed upon between the owner and the tenant or as, in default of agreement, is fixed by the court which granted the application; or

(b)

Landlord and Tenant (War Service) Amendment.

(b) in any other case—such rent as is agreed upon between the owner and the tenant or, in default of agreement, as is fixed by the court which granted the application, but nothing in this subsection shall be deemed to prevent the subsequent alteration subject to the said law of any rent so agreed upon or fixed.

(4) The court granting an application under section five of this Act shall at the time of such grant fix terms and conditions to be implied in the tenancy and such terms and conditions shall apply and have effect in like manner as if the same had been agreed to in writing by the protected person and the owner.

(5) Where delivery of possession of a dwelling-house has been made to a protected person under a warrant granted under the corresponding Commonwealth Regulation, the court which granted the application for such warrant may, on application by either the owner or the protected person (notice of such application having been given to the protected person or owner, as the case may be), fix terms and conditions to be implied in the tenancy and such terms and conditions shall apply and have effect in like manner as if the same had been agreed to in writing by the protected person and the owner.

Sections
five to ten
not to bind
the Crown.

11. Sections five to ten of this Act shall not bind the Crown in right of the Commonwealth or of the State, and shall not apply in relation to any dwelling-house of which the Housing Commission of New South Wales is the owner.

Interpreta-
tion.

12. For the purposes of sections five to eleven both inclusive of this Act the expression "owner" in relation to a dwelling-house which is the subject of a lease or sub-lease, means—

- (a) where the dwelling-house is unoccupied—the lessee or sub-lessee immediately entitled to possession of the dwelling-house; and
- (b) where the dwelling-house is about to become unoccupied—the person immediately entitled to possession of the dwelling-house upon its becoming unoccupied.

13.

Landlord and Tenant (War Service) Amendment.

13. (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, any law of the State) 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:

Rental of farms by members of the Forces, etc.

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 pounds 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)

Landlord and Tenant (War Service) Amendment.

(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 seventy pounds per annum—a court of petty sessions constituted by a stipendiary magistrate sitting alone;

(b) where the rent payable exceeds seventy pounds per annum—a District Court.

(4) This section shall bind the Crown.

Landlord and Tenant (War Service) Amendment.

14. (1) Where a soldier's dependant is in occupation of a dwelling-house which was occupied by a member of the Forces by virtue of his 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—

Prohibition of eviction of dependants of members of the Forces in certain cases.

- (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 one of this section, 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 bind—

- (a) the Crown;
- (b) the Housing Commission of New South Wales.

(4) In this section—

“soldier's dependant” means parent of a member of the Forces or female dependant of a member of the Forces;

“the court”, in relation to any application under this section means the court of petty sessions constituted by a stipendiary magistrate sitting alone for the district in which the dwelling-house is situated.

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

15. (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

This Act not to apply in certain cases.

Landlord and Tenant (War Service) Amendment.

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 Act.

(2) A notice under subsection one of this section 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 one of this section, 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 Act is not furnished to the claimant, then, notwithstanding that the respondent is, or at any subsequent time becomes, a protected person, this Act 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 one of this section, 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 three of this section, 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)

Landlord and Tenant (War Service) Amendment.

- (b) cannot be found and that the claimant has made reasonable efforts to ascertain his 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 Act 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 five of this section shall, in the absence of proof to the contrary, be deemed to have been duly issued.

16. (1) Any person who contravenes or fails to comply with any provision of this Act shall be guilty of an offence against this Act: **Offences and penalties.**

Provided that any person who after the commencement of this Act and before the date upon which the assent of His Majesty to this Act is signified contravenes or fails to comply with the provisions of subsection four of section five of this Act shall not 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) All proceedings for offences against this Act shall be disposed of in a summary manner before a court of petty sessions holden before a stipendiary magistrate sitting alone.

(4) Any person who is guilty of an offence against this Act shall be liable to a penalty not exceeding one hundred pounds, or to imprisonment for a term not exceeding six months, or to both such penalty and imprisonment.

17.

Landlord and Tenant (War Service) Amendment.

Amendment
of Act
No. 25,
1948.

Sec. 70.
(Court to
consider
hardship.)

17. (1) The Landlord and Tenant (Amendment) Act, 1948-1949, is amended—

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

(a) the lessor is a protected person for the purposes of section four of the Landlord and Tenant (War Service) Amendment Act, 1949, and the lessee is not a protected person for the purposes of that section; or

(b) by omitting from the same subsection the words:—

“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.”

(2) This section shall commence on the day upon which the assent of His Majesty to this Act is signified.

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

J. NORTHCOTT,
Governor.

*Government House,
Sydney, 11th July, 1949.*