

LANDLORD AND TENANT (AMENDMENT) BILL, 1958.

*Schedule of Amendments referred to in Legislative Council's
Message of 27 March, 1958.*

- No. 1—Page 3, clause 2, line 2. *After* “accommodation” *insert* “**or a lease the lessor under which is the employer of the lessee**”
- No. 2—Page 3, clause 2, line 14. *Omit* “that” *insert* “**(not being a residential unit)**”
- No. 3—Page 3, clause 2, line 16. *After* “(i)” *insert* “**that**”
- No. 4—Page 3, clause 2, lines 19 to 27 inclusive. *Omit* paragraph “(ii)” and *insert* in lieu thereof the following new paragraph:—
“(ii) **of which a lessor has obtained vacant possession after that commencement otherwise than by an order for recovery of possession made on any one or more of the grounds specified in paragraph (g), (h), (i), (j), (k), (l), (m), (t) or (v) of subsection five of section sixty-two of this Act;**”
- No. 5—Page 3, clause 2, subparagraph (iii), lines 36 to 41 inclusive. *Omit* subparagraph (iii).
- No. 6—Page 4, clause 2, line 1. *After* “(iii)” *insert* “**that**”
- No. 7—Page 4, clause 2, line 3. *After* “(iv)” *insert* “**that**”
- No. 8—Page 4, clause 2, line 4. *After* “accommodation” *insert* “**or a lease the lessor under which is the employer of the lessee**”
- No. 9—Page 5, clause 2, line 25. *Omit* “that”
- No. 10—Page 5, clause 2, line 26. *After* “(a)” *insert* “**that**”
- No. 11—Pages 5 and 6, clause 2, from line 30 on page 5 to line 4 on page 6, inclusive. *Omit* paragraph “(b)” and *insert* in lieu thereof the following new paragraph:—
“(b) **of which a lessor has obtained vacant possession after the commencement of the Landlord and Tenant (Amendment) Act, 1958, otherwise than by an order for recovery of possession made on any one or more of the grounds specified in paragraph (g), (h), (i), (j), (k), (l), (m), (t) or (v) of subsection five of section sixty-two of this Act;**”
- No. 12—Page 6, clause 2, subparagraph (c), lines 17 to 21 inclusive. *Omit* subparagraph “(c)”.
- No. 13—Page 6, clause 2, line 22. *After* “(c)” *insert* “**that**”
- No. 14—Page 6, clause 2, line 30. *After* “accommodation” *insert* “**or a lease the lessor under which is the employer of the lessee**”
- No. 15—Page 7, clause 2. *After* line 32 *insert* the following new paragraph:—
“(vii) **by inserting in subsection three of the same section after the figures and letter ‘36A,’ the word ‘seventy-seven;’**”

No. 16—Page 8, clause 2. *After* line 38 *insert* the following:—

“(5) This section has effect subject to the operation of sections 70A and 81A of this Act.”

No. 17—Page 9, clause 2. *After* line 10 *add* the following new paragraphs:—

“(iii) by inserting in the same paragraph after the word ‘forty-nine’ the words ‘and before that agreement or arrangement was entered into’;

“(iv) by inserting in the same paragraph after the word ‘date’ the words ‘and whether or not the lease is still subsisting’;”

No. 18—Page 11, clause 3, lines 8 to 19 inclusive. *Omit* all words on these lines. *Insert* **“(c) by omitting section 16A;”**

No. 19—Page 14, clause 3, line 2. *Omit* “nine” *insert* **“eight”**

No. 20—Page 14, clause 3, line 3. *Omit* “six” *insert* **“eight”**

No. 21—Page 21, clause 4. *After* line 19 *insert*—

“(f) by inserting next after section seventy the following new section:—

“70A. (1) Where a lessor institutes proceedings after the commencement of the Landlord and Tenant (Amendment) Act, 1958, for the recovery of possession of any prescribed premises, being a dwelling-house, from any person on any of the grounds specified in paragraphs (g), (i), (l) or (m) of subsection five of section sixty-two of this Act, and an order for the recovery of possession of the dwelling-house cannot be made in those proceedings unless the court is satisfied that the lessor had provided at the date of expiry of the notice to quit, and has immediately available for the occupation of the persons occupying the dwelling-house, reasonably suitable alternative accommodation, the court shall have no jurisdiction in the matter unless there was filed at the time when the information instituting the proceedings was exhibited with the clerk of the court in which the proceedings are instituted a statutory declaration made by the owner of, or other the person having authority to lease, that alternative accommodation declaring that—

“(a) the premises specified in the declaration are the alternative accommodation which the lessor had provided at the date of expiry of the notice to quit and which would be immediately available for occupation as provided in subsection two of section seventy of this Act; and

“(b) he is aware of the provisions of subsection two of this section and understands their effect.

“(2) As on and from the date on which the statutory declaration referred to in subsection one of this section is filed with the clerk of the court in accordance with that subsection the premises specified in the declaration as being the alternative accommodation shall be subject to the provisions of this Act in all respects as though section 5A of this Act had not been enacted.

“This subsection ceases to apply in respect of those premises—

“(a) if the court finds that that alternative accommodation is not reasonably suitable or had not been provided at the date of expiry of the notice to quit or is not immediately available for

New sec. 70A.

Certain dwelling-houses to be subject to this Act notwithstanding section 5A.

occupation as provided in subsection two of section seventy of this Act—from the time when the court makes that finding;

- “(b) if the court finds that that alternative accommodation is reasonably suitable but the lessee of the premises the subject of the proceedings does not accept that alternative accommodation—from the time of that rejection;
- “(c) if the lessee vacates the premises for the recovery of possession of which the proceedings were instituted and does not accept that alternative accommodation—from the time when the lessee vacates those premises;
- “(d) if the lessor discontinues the proceedings and the court orders that this subsection shall cease to apply to that alternative accommodation—from the time when the court makes that order;
- “(e) if that lessee, having accepted that alternative accommodation, vacates that alternative accommodation—from the time of that vacation.

“Nothing in this subsection affects the operation of any order made under section 81A of this Act.

“(3) The clerk of the court with whom is filed any such statutory declaration as is referred to in subsection one of this section shall forward particulars of the alternative accommodation referred to in the statutory declaration to the Rent Controller who shall enter the particulars in a register kept for the purpose.”

No. 22—Page 24, clause 4. *After line 12 insert—*

“(h) (i) by inserting next after subsection three of section eighty-one the following new subsection:—

“(3A) Where the lessor of any prescribed premises, being a dwelling-house, or any agent or servant of the lessor, has been convicted of an offence arising under subsection one of this section, the court before which the lessor, agent or servant, as the case may be, was convicted, if it is of opinion that the acts or omissions constituting the offence were done or omitted with intent that the person who was lessee at the time when those acts or omissions were done or omitted to be done vacate the premises and that person has vacated the premises, may, in addition to the penalty prescribed by this Act for the offence, order the lessor to pay to that person such sum as appears to the court to be sufficient as compensation for damage or loss sustained by that person as the result of his vacating the premises, and the provisions of subsection three of section sixty-one of this Act shall apply, *mutatis mutandis*, to and in respect of any order for the payment of any sum under this subsection.”

No. 23—Pages 25 and 26, clause 4. *Insert new paragraph (i).*

“(i) by inserting next after section eighty-one the following new section:—

“81A. (1) A court for the district in which prescribed premises, being a dwelling-house, that is not exempt by section 5A of this Act from the provisions of Parts II, III, IV and V of this Act to the extent provided by that section, are situated, shall, on application in that behalf made by the lessee of the premises, order that the premises, if vacated by the lessee,

New sec.
81A.

Court may order that certain dwelling-houses remain subject to this Act.

shall remain subject to the provisions of this Act in all respects as though section 5A of this Act had not been enacted, if the court is satisfied that—

- “(a) the lessor has done, or caused to be done, any act, or omitted, or caused to be omitted, any act whereby the ordinary use or enjoyment by the lessee of the premises or of any goods leased therewith, or of any conveniences usually available to the lessee, or of any service supplied to, or provided in connection with, the premises is interfered with or restricted;
- “(b) that the lessor has by his conduct endeavoured to improperly induce the lessee to vacate the premises;
- “(c) that the lessor has unreasonably caused expense and inconvenience to the lessee by requiring him to defend proceedings under this Act for the recovery of the premises from the lessee and that those proceedings were vexatious;
- “(d) the lessor has allowed the premises to fall into a dilapidated or dangerous condition.

“(2) Notwithstanding anything contained in subsection one of this section, the court, although satisfied of any one or more of the matters specified in paragraphs (a), (c) and (d) of subsection one of this section, may refuse to make the order if the lessor satisfies the court that his conduct in relation to that matter or those matters was not intended to induce the lessee to vacate the premises.

“(3) An order under this section—

- “(a) shall remain in force for such period as is specified in the order or until the court otherwise orders; and
- “(b) shall have effect according to its tenor.

“(4) Where an order is made under this section, the clerk of the court shall forthwith forward a copy of the order to the Rent Controller who shall enter particulars of the order in a register kept for the purpose.

“(5) For the purposes of this section, conveniences shall be deemed to be usually available to the lessee where prior to the use of the conveniences having been interfered with or restricted without his consent, he has been allowed, at all times during the tenancy, to use those conveniences as he desired or he has been allowed to use those conveniences at times agreed to by the lessor and lessee or at times equivalent to those times.

“(6) In this section ‘court’ means a court of petty sessions holden before a Stipendiary Magistrate.”

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.

ALLAN PICKERING,
Clerk of the Legislative Assembly.

*Legislative Assembly Chamber,
Sydney, 19 March, 1958.*

The LEGISLATIVE COUNCIL has this day agreed to this Bill with Amendments.

J. R. STEVENSON,
Clerk of the Parliaments.

*Legislative Council Chamber,
Sydney, 27 March, 1958.*

New South Wales



ANNO SEPTIMO

ELIZABETHÆ II REGINÆ

Act No. , 1958.

An Act to amend the law relating to landlord and tenant; for this purpose to amend the Landlord and Tenant (Amendment) Act, 1948, and certain other Acts in certain respects; and for purposes connected therewith.

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

1. (1) This Act may be cited as the "Landlord and Tenant (Amendment) Act, 1958".

16195

148—A

(2)

Short title
and
citation.

NOTE.—The words to be omitted are ruled through; those to be inserted are printed in black letter. RECOM.

Landlord and Tenant (Amendment).

(2) The Landlord and Tenant (Amendment) Act, 1948, as amended by subsequent Acts and by this Act, may be cited as the Landlord and Tenant (Amendment) Act, 1948-1958.

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

Amendment
of Act
No. 25,
1948.

- (a) (i) by inserting in subparagraph (ii) of paragraph (b) of subsection one of section 5A after the word "lease" the words ", other than a prescribed lease,";
- 10 (ii) by inserting in subparagraph (iii) of the same paragraph after the word "lease" the words ", other than a prescribed lease,";
- (iii) by omitting the word "or" appearing at the end of subparagraph (v) of the same paragraph;
- 15 (iv) by inserting at the end of the same subsection the following new paragraphs:—
- (d) any dwelling-house that—
- (i) was in existence on the first day of December, one thousand nine hundred and fifty-seven;
- 20 (ii) has not been, either in whole or in part, the subject of a lease, other than a prescribed lease, at any time between that day and the commencement of the Landlord and Tenant (Amendment) Act, 1958;
- 25 (iii) does not form part of any premises that were the subject of a lease, other than a prescribed lease, between that day and that commencement;
- 30 (iv) is not "special premises" for the purposes of this Act; and
- (v)

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- (v) is the subject of a lease (not being a lease of shared accommodation **or a lease the lessor under which is the employer of the lessee**)—
- 5 (a) that is registered in the office of the Rent Controller;
- (b) the execution of which by the lessee is witnessed by a solicitor instructed and employed independently of the lessor; and
- 10 (c) that is certified by that solicitor as provided in subsection two of this section;
- (e) any dwelling-house ~~that~~ **(not being a residential unit)**—
- 15 (i) **that** was in existence at the commencement of the Landlord and Tenant (Amendment) Act, 1958;
- (ii) ~~has not been, either in whole or in part, the subject of a lease, other than a prescribed lease, at any time during the period of three years immediately preceding the date on which the lease referred to in subparagraph (v) of this paragraph was registered in the office of the Rent Controller;~~
- 20 (ii) **of which a lessor has obtained vacant possession after that commencement otherwise than by an order for recovery of possession made on any one or more of the grounds specified in paragraph (g), (h), (i), (j), (k), (l), (m), (t) or (v) of subsection five of section sixty-two of this Act;**
- 25 (iii) ~~that does not form part of any premises that were the subject of a lease, other than a prescribed lease, at any time during the period referred to in subparagraph (ii) of this paragraph;~~
- 30 (iii) ~~that does not form part of any premises that were the subject of a lease, other than a prescribed lease, at any time during the period referred to in subparagraph (ii) of this paragraph;~~
- 35 (iii) ~~that does not form part of any premises that were the subject of a lease, other than a prescribed lease, at any time during the period referred to in subparagraph (ii) of this paragraph;~~
- 40 (iii) ~~that does not form part of any premises that were the subject of a lease, other than a prescribed lease, at any time during the period referred to in subparagraph (ii) of this paragraph;~~ (iv)

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~~(iv)~~ **(iii) that** is not "special premises" for the purposes of this Act; and

~~(v)~~ **(iv) that** is the subject of a lease (not being a lease of shared accommodation **or a lease the lessor under which is the employer of the lessee**)—

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(a) that is registered in the office of the Rent Controller;

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(b) the execution of which by the lessee is witnessed by a solicitor instructed and employed independently of the lessor; and

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(c) that is certified by that solicitor as provided in subsection two of this section;

(f) any residential unit that—

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(i) came into existence by reason of alterations, or alterations and additions, made after the commencement of the Local Government (Regulation of Flats) Act, 1955, to a dwelling-house that—

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(a) was in existence at the commencement of the Local Government (Regulation of Flats) Act, 1955;

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(b) has not been, either in whole or in part, the subject of a lease, other than a prescribed lease, at any time between the seventh day of December, one thousand nine hundred and forty-one, and the twenty-fourth day of February, one thousand nine hundred and fifty-six;

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(c) does not form part of any premises that were the subject of a lease, other than a prescribed lease, at any time between those days;

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(d)

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- (d) is not "special premises" for the purposes of this Act;
- 5 (ii) is one of two or three, but not more, residential units in that dwelling-house which were provided out of that dwelling-house, by those alterations, or those alterations and additions; and
- (iii) is the subject of a lease (not being a lease of shared accommodation)—
- 10 (a) that is registered in the office of the Rent Controller;
- (b) the execution of which by the lessee is witnessed by a solicitor instructed and employed independently of the lessor; and
- 15 (c) that is certified by that solicitor as provided in subsection two of this section; or
- (g) any residential unit that—
- 20 (i) came into existence by reason of alterations, or alterations and additions, made after the commencement of the Local Government (Regulation of Flats) Act, 1955, to a dwelling-
- 25 house ~~that~~—
- (a) **that** was in existence at the commencement of the Local Government (Regulation of Flats) Act, 1955;
- 30 (b) ~~has not been, either in whole or in part, the subject of a lease, other than a prescribed lease, at any time during the period of three years immediately preceding the date on which the~~
- 35 **lease**

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lease referred to in subparagraph (iii) of this paragraph was registered in the office of the Rent Controller;

5 (b) of which a lessor has obtained vacant possession after the commencement of the Landlord and Tenant (Amendment) Act, 1958, otherwise than by an order for recovery of possession made on any one or more of the grounds specified in paragraph (g), (h), (i), (j), (k), (l), (m), (t) or (v) of subsection five of section sixty-two of this Act;

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20 ~~(e)~~ that does not form part of any premises that were the subject of a lease, other than a prescribed lease, at any time during that period;

~~(d)~~ (c) that is not "special premises" for the purposes of this Act;

25 (ii) is one of two or three, but not more, residential units in that dwelling-house which were provided out of that dwelling-house, by those alterations, or those alterations and additions; and

30 (iii) is the subject of a lease (not being a lease of shared accommodation or a lease the lessor under which is the employer of the lessee)—

(a) that is registered in the office of the Rent Controller;

35 (b) the execution of which by the lessee is witnessed by a solicitor instructed and employed independently of the lessor; and

(c)

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(c) that is certified by that solicitor as provided in subsection two of this section.

5 (v) by inserting next after the same subsection the following new subsection :—

10 (1A) The provisions of Parts II, III, IV and V of this Act do not apply in respect of any premises used for business or commercial purposes the erection of which commenced after the twenty-seventh day of September, one thousand nine hundred and fifty-seven.

(vi) by inserting next after subsection two of the same section the following new subsections :—

15 (2A) Where the lessee under a lease is a company or other corporate body the provisions of this section which, but for this subsection, would require the execution of the lease to be witnessed, and the lease to be certified, in the manner provided in this section shall be deemed to be omitted therefrom.

20 (2B) Premises that comply with the provisions of any one of the paragraphs (namely, paragraphs (a), (b), (c), (d), (e), (f) and (g)) contained in subsection one of this section and would, if that one paragraph were the only paragraph contained in that subsection, be exempt from the provisions of Parts II, III, IV and V of this Act to the extent provided by this section, shall be so exempt notwithstanding that they comply with some, but not all, of the provisions of any one or more of the other such paragraphs.

25 (vii) by inserting in subsection three of the same section after the figures and letter "36A," the word "seventy-seven,"

35 (viii)

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(viii) ~~(vii)~~ by inserting next after subsection three of the same section the following new subsections:—

(4) In this section—

“Prescribed lease” means—

- 5 (a) a lease that was registered in the
office of the Rent Controller and
during any part of the currency
of which the premises the
10 subject of the lease were, to the
extent provided by this section
or by the order under section
six of this Act published in
Gazette No. 19 of the twenty-
fourth day of February, one
15 thousand nine hundred and
fifty-six, excluded by the operation
of this section or that order from
the provisions of Parts II, III,
IV and V of this Act; or
- 20 (b) a lease in respect of which an
application under section eighty-
six of this Act or under Regula-
tion seventy-eight of the Com-
monwealth Regulations was
25 granted by the issue of a
certificate or any extension
thereof pursuant to that section
or regulation, as the case may
be, but does not include a lease
30 as defined in this paragraph of
this definition under which the
lessor and lessee were employer
and employee.

35 “Residential unit” means any part of a
dwelling-house which is or has been
designed for occupation as a residence
independently of any other part of the
dwelling-house.

40 (5) This section has effect subject to the
operation of sections 70A and 81A of this Act.

(b)

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- (b) (i) by omitting from paragraph (a) of subsection three of section 6A the figures "1954" and by inserting in lieu thereof the figures "1958"; Sec. 6A. (Special premises.)
- 5 (ii) by inserting in the same paragraph after the words "that commencement" where firstly occurring the words ", whether or not that agreement or arrangement was entered into in substitution for a lease of such premises or of any part of such premises or of the premises of which such premises form a part,";
- 10 (iii) **by inserting in the same paragraph after the word "forty-nine" the words "and before that agreement or arrangement was entered into";**
- 15 (iv) **by inserting in the same paragraph after the word "date" the words "and whether or not the lease is still subsisting";**
- (v) ~~(iii)~~ by omitting paragraph (d) of the same subsection and by inserting in lieu thereof the following paragraph:—
- 20 (d) In this subsection the expression "agreement or arrangement whether oral or in writing of leave and license for the use thereof" in relation to prescribed premises does not include such an agreement or arrangement under which the licensee of the prescribed premises is a bona-fide boarder.
- 25 In this paragraph "bona-fide boarder" means a licensee who is supplied by the licensor with—
- 30 (i) one meal before midday consisting of at least two courses, one of which comprises cereal or porridge and the other of which comprises cooked meat, eggs or a like dish, together with bread (or toast), butter, jam and tea or coffee; and
- 35 (ii) one meal after midday consisting of at least two courses, one of which comprises fish or meat (other than in sandwich form) and cooked vegetables, if
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if the value of the meals so supplied forms a substantial portion of the whole charge paid by the licensee under the agreement or arrangement.

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

Further amendment of Act No. 25, 1948.

(a) (i) by omitting subsections one and two of section fifteen and by inserting in lieu thereof the following subsection:—

Sec. 15.
(Rent of prescribed premises.)

10 (1) Except in the case of premises which were not in existence or were not leased on the first day of November, one thousand nine hundred and fifty-one, the rent payable by the lessee of any prescribed premises (or of

15 prescribed premises together with goods) shall not, in respect of any period after the commencement of the Landlord and Tenant (Amendment) Act, 1958, and notwithstanding any term or covenant in any lease in force at

20 any time after that commencement, exceed the rent payable in respect of the prescribed premises at the first day of November, one thousand nine hundred and fifty-one (including the rent of any goods then leased therewith

25 and the charge for any service then provided in connection with the lease), or where that rent has been increased or decreased by a determination made before that commencement and in force immediately before that commencement the rent as so increased or

30 decreased.

(ii) by omitting from subsection four of the same section the words "or subsection two" wherever occurring;

35 (iii) by inserting in the same subsection after the words "fair rent" wherever occurring the words "and the rent";

(b)

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- (b) (i) by omitting from subsection one of section sixteen the words "or subsection two";
- (ii) by omitting from the same subsection the words "on the first day of March, one thousand nine hundred and forty-nine, or";
- (iii) by omitting from the same subsection the words "as the case may be.";
- (c) by omitting from section 16A the words "has been sub let by the lessee or is in the occupation of any other person, and if so, the names of the persons to whom the prescribed premises or any part thereof has been so sub let and the rent payable by such persons together with the moneys received from such other persons in occupation" and by inserting in lieu thereof the words "is in the occupation of any other person, and if so, the name of such other person together with the moneys receivable from such other person in respect of that occupation";
- (c) **by omitting section 16A ;**
- (d) by omitting from subsection two of section twenty the word "six" and by inserting in lieu thereof the word "eight";
- (e) by omitting from subsection two of section twenty-two the words "the applicant" and by inserting in lieu thereof the word "applicant";
- (f) by inserting in section twenty-three after the words "be the fair rent" wherever occurring the words "and the rent";
- (g) (i) by omitting from subsection one of section 24A the words "other than shared accommodation which were in existence on the thirty-first day of August, one thousand nine hundred and thirty-nine, and" and by inserting in lieu thereof the words ", other than shared accommodation,";
- (ii) by inserting in paragraph (a) of subsection five of the same section after the words "fair rent" wherever occurring the words "and the rent";
- (h)

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

Sec. 16A.
(Lessee to furnish information as to other persons in occupation.)

Sec. 20.
(Determination of application.)

Sec. 22.
(Date of operation of determination.)

Sec. 23.
(Effect of determination.)

Sec. 24A.
(Determination based on increased outgoings.)

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- (h) by inserting in subsection ten of section 26B after the words "be the fair rent" wherever occurring the words "and the rent"; Sec. 26B. (Determination of rent of shared accommodation.)
- 5 (i) by inserting in subsection nine of section twenty-seven after the words "be the fair rent" wherever occurring the words "and the rent"; Sec. 27. (Determination of rent of shared accommodation.)
- (j) by inserting in subsection four of section thirty-one after the words "be the fair rent" wherever occurring the words "and the rent"; Sec. 31. (Procedure on appeal.)
- 10 (k) (i) by inserting in section 31MA after the words "as the case may be, may," the words "from time to time and"; Sec. 31MA. (Interim determination.)
- (ii) by omitting from the same section the words :—
- 15 "Any interim determination so made shall be deemed to be a determination, and shall remain in force until the application has been finally disposed of by the Board to which the application was made or the Controller, as the case may be, and no longer"
- 20 and by inserting in lieu thereof the words :—
- "Any interim determination so made shall be deemed to be a determination, and shall remain in force until—
- 25 (a) the making of a later interim determination in the proceedings; or
- (b) the application has been finally disposed of by the Board to which the application was made or the Controller, as the case may be,
- 30 whichever first happens, and no longer";
- (iii) by omitting from the same section the words "the interim determination" and by inserting in lieu thereof the words "an interim determination or determinations";
- (l)

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5 (1) (i) by inserting at the end of paragraph (j) of subsection two of section thirty-two the words "or the amount of land tax payable in respect of the premises by the lessor under those Acts has, since the determination, increased or decreased";

10 (ii) by omitting from subsection four of the same section the words "in need of repair" and by inserting in lieu thereof the words "not in fair and tenantable repair";

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

15 (5) (a) Where a party to a determination (not being a determination in which a period is specified within which an application shall not be made to vary the determination) has, during the period commencing with the date of the determination and ending twelve months after that date, made application under subsection two of this section for variation of the determination, he shall not, within the last-mentioned period, make further application to a Fair Rents Board or to the Controller, as the case may be, for variation of the determination unless he has first obtained the leave of the Fair Rents Board or the Controller, as the case may be, to do so.

25 (b) A Fair Rents Board or the Controller, as the case may be, may, for the purposes of this section, grant or refuse leave to apply for a variation of the determination without a formal or oral hearing of the persons interested or their representatives.

30 (m) by inserting next after section thirty-two the following new section:—

35 32A. (1) A lessee of prescribed premises who—
 40 (a) refuses to allow, or fails to take such reasonable steps as are necessary to allow, the lessor of the premises or the lessor's servant or agent to enter and inspect the premises

Sec. 32. (Variation of determination.)

New sec. 32A.

State of repair not to be raised by lessee in certain cases.

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premises at least once a year at any reasonable time between ~~nine~~ **eight** o'clock in the morning and ~~six~~ **eight** o'clock in the evening on any week day after not less than seven days' notice in writing of intention to do so has been given to the lessee ; or

5

10 (b) refuses to allow, or fails to take such reasonable steps as are necessary to allow, the lessor his agents servants workmen or contractors to enter the premises for the purpose of effecting necessary repairs or maintenance after reasonable notice of intention to do so has been given to the lessee,

15 shall not, within a year from the refusal or failure, on any application made to a Fair Rents Board or the Controller, as the case may be, for a determination, or for a variation of a determination, of the fair rent of the prescribed premises, be allowed
20 to raise or put in issue the state of repair of the premises unless he has first obtained the leave of the Fair Rents Board or the Controller, as the case may be, to do so.

25 (2) Subsection one of this section does not apply where a refusal or failure of the kind described in that subsection on the part of the lessee is authorised or permitted, expressly or impliedly, by the terms of the lease.

30 (3) Without prejudice to the generality of the meaning of the expression "reasonable time", that expression in subsection one of this section does not, in the case of a dwelling-house, include any
35 time at which the lessee and the other adult members of his household are ordinarily absent from the dwelling-house in the course or by reason of their respective trades, businesses, occupations or employments.

(n)

Landlord and Tenant (Amendment).

- (n) by inserting in subparagraph (iv) of paragraph (b) of subsection one of section thirty-six after the word "available" where firstly occurring the words "or represented to be available"; Sec. 36.
(Certain payments prohibited.)
- 5 (o) (i) by omitting from subsection two of section fifty-seven the words "first day of March, one thousand nine hundred and forty-nine" wherever occurring and by inserting in lieu thereof the words "first day of November, one thousand
10 nine hundred and fifty-one"; Sec. 57.
(Lessor to ascertain fair rent.)
- (ii) by omitting subsection three of the same section;
- (p) by inserting in paragraph (b) of subsection (1A) of section fifty-nine after the word "letter" the words
15 ", or certified mail service,;" Sec. 59.
(Service of notices.)

4. The Landlord and Tenant (Amendment) Act, 1948, as amended by subsequent Acts, is further amended— Further amendment of Act No. 25, 1948.

- (a) (i) by omitting from the end of paragraph (r) of subsection five of section sixty-two the word
20 "or"; Sec. 62.
(Restriction on eviction.)
- (ii) by inserting at the end of the same subsection the following new paragraphs :—
 - (t) that the premises, being a dwelling-house, are owned by the lessor who, being a male, is of or over the age of
25 sixty-five years or, being a female, is of or over the age of sixty years, that not more than two other dwelling-houses (exclusive of the dwelling-house in which he resides) are owned
30 by the lessor if he is living alone or, if the lessor is living with his spouse,
not

Landlord and Tenant (Amendment).

- 5 not more than two other dwelling-
houses (exclusive of the dwelling-
house in which they reside) are owned
by them, that the premises were pur-
10 chased or acquired by the lessor or
the deceased spouse of the lessor
before the twenty-first day of July,
one thousand nine hundred and forty-
eight, that the income of the lessor if
15 he is living alone, or, if the lessor is
living with his spouse, his income
together with that of his spouse, does
not exceed the Sydney basic wage, and
that the premises are required for sale
with vacant possession ;
- (u) that, where the premises are a
dwelling-house, the lessee has
reasonably suitable alternative accom-
20 modation available for his occupation
for residential purposes ; or
- (v) that the premises, being shared
accommodation, are required by the
lessor, being a person of or over the
25 age of sixty-five years, and that at the
date on which the notice to quit was
given and during the three years
immediately preceding that date only
one lease of shared accommodation in
30 the dwelling-house of which the shared
accommodation forms part was in
force at any one time.
- (iii) by inserting at the end of subsection six of the
same section the following new paragraphs:—
- 35 (c) In paragraph (t) of subsection five of
this section, "Sydney basic wage" means the
basic wage for adult males assessed and cal-
culated in accordance with the provisions of
paragraph (a) of subsection two of section
61K

Landlord and Tenant (Amendment).

5 61K of the Industrial Arbitration Act, 1940, as amended by subsequent Acts, and as last adjusted in accordance with the provisions of section 61M of that Act, as so amended, before the notice to quit concerned was given.

10 (d) For the purposes of paragraph (t) of subsection five of this section if the lessor resides with his spouse a dwelling-house owned by them jointly or by either of them severally shall be taken to be owned by them.

(iv) by inserting next after subsection nine of the same section the following new subsection:—

15 (9A) (a) Where a lessor has given notice to quit on the ground specified in paragraph (t) of subsection five of this section and the dwelling-house in respect of which the notice was given has been vacated in accordance with the notice or an order for the recovery of possession of that dwelling-house has been made on
20 that ground, a notice to quit on that ground shall not be given in respect of another dwelling-house by the lessor or his spouse within a period of five years immediately succeeding the date on which the dwelling-house first-
25 mentioned in this subsection was vacated or possession thereof was recovered.

30 (b) Where a notice to quit has been given on the ground specified in paragraph (t) of subsection five of this section and the dwelling-house in respect of which the notice was given has been vacated within a period of six months after the giving of the notice, the dwelling-house shall, unless the contrary is proved or an order for the recovery of possession of the dwelling-house has been made
35 within that period, be deemed for the purposes of this subsection to have been vacated in accordance with the notice.

Landlord and Tenant (Amendment).

- (b) by inserting at the end of section 62A the following new subsection:—
- (4) In this section the expression “premises used solely as a dwelling-house” does not include premises which are sub-let in whole or in part by the lessee, with the express or implied consent of the lessor, in the course of the lessee’s business of sub-letting for residential purposes.
- (c) by inserting at the end of section 62B the following new subsection:—
- (3) In this section the expression “premises used solely as a dwelling-house” does not include premises which are sub-let in whole or in part by the lessee, with the express or implied consent of the lessor, in the course of the lessee’s business of sub-letting for residential purposes.
- (d) (i) by inserting in subsection one of section sixty-five after the words “any person claiming under or through such lessor” wherever occurring the words “otherwise than by virtue of a concurrent lease granted after the commencement of the Landlord and Tenant (Amendment) Act, 1958, by such lessor to the person so claiming”;
- (ii) by omitting from the same subsection the words “June, one thousand nine hundred and fifty-eight” and by inserting in lieu thereof the words “January, one thousand nine hundred and sixty-one”;
- (iii) by inserting next after subsection one of the same section the following new subsection :—
- (1A) A person who has become the lessor of prescribed premises, being a dwelling-house or part of a dwelling-house, by virtue of the assignment
- Sec. 62A.
(Judge may bar lessor’s right to take proceedings where refusal of consent to assignment, &c., unreasonable.)
- Sec. 62B.
(Power to assign certain tenancies at will.)
- Sec. 65.
(Notice to quit where dwelling-house sold.)

Landlord and Tenant (Amendment).

5 assignment or transfer to him, after the commencement of the Landlord and Tenant (Amendment) Act, 1958, of a lease of the prescribed premises or the granting to him, after that commencement, of a concurrent lease of the prescribed premises or any person claiming under or through such lessor shall not, within a period of six months after the date of the assignment or transfer of the lease or the grant of the concurrent lease, as the case may be, give a notice to quit on the ground specified in paragraph (g) of subsection five of section sixty-two of this Act to any person who was a lessee of the prescribed premises at the date of the assignment or transfer of the lease or the grant of the concurrent lease, as the case may be :

20 Provided that in respect of any person who has, before the first day of January, one thousand nine hundred and sixty-one, become the lessor of prescribed premises, being a dwelling-house or part of a dwelling-house, by virtue of the assignment or transfer to him, after the commencement of the Landlord and Tenant (Amendment) Act, 1958, of a lease of the prescribed premises or the granting to him, after that commencement, of a concurrent lease of the prescribed premises or any person claiming under or through such lessor, the foregoing provisions of this subsection shall be read and construed as if—

- 30
- (a) the words “six months” were omitted therefrom and the words “two years” were inserted in lieu thereof; and
 - 35 (b) the words “unless, after that date, he has given to the lessee at least eighteen months’ notice in writing of his intention to give such notice to quit” were inserted after the words “as the case may be” where secondly occurring.
- 40 (e)

Landlord and Tenant (Amendment).

- (e) (i) by omitting from paragraph (c) of subsection Sec. 70.
 one of section seventy the word, symbols and (Court to
 letter "and (s)" and by inserting in lieu thereof consider
 the word, symbols and letters ", (s), (t) and hardship.)
 (v)";
- 5
- (ii) by omitting subparagraph (iii) of paragraph
 (d) of the first proviso to subsection two of the
 same section and by inserting in lieu thereof the
 following subparagraph:—
- 10 (iii) the lessor does not own and has not,
 since the twenty-first day of July, one
 thousand nine hundred and forty-eight,
 owned any other dwelling-house, or,
 if the dwelling-house is one of a pair
 15 of semi-detached dwelling-houses that
 are owned by the lessor, the only other
 dwelling-house that the lessor owns or
 has, since the twenty-first day of July,
 one thousand nine hundred and forty-
 20 eight, owned is the other one of that
 pair of semi-detached dwelling-houses;
- (iii) by inserting at the end of the second proviso to
 the same subsection the words "or the Austra-
 25 lian Soldiers' Repatriation Act 1920 (as
 amended by subsequent Acts) of the Parliament
 of the Commonwealth";
- (iv) by omitting from the same subsection the words
 "June, one thousand nine hundred and fifty-
 30 eight" and by inserting in lieu thereof the words
 "January, one thousand nine hundred and sixty-
 one";
- (v) by inserting next after subsection four of the
 same section the following new subsection:—
- 35 (4A) Notwithstanding anything contained in
 this section, an order for the recovery of posses-
 sion of any prescribed premises from any per-
 son on the ground specified in paragraph (t) of
 subsection

Landlord and Tenant (Amendment).

subsection five of section sixty-two of this Act shall not be made unless the court is satisfied that the premises have been offered for sale to the tenant upon terms and conditions which, having regard to all relevant circumstances, are fair and reasonable.

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

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

(f) by inserting next after section seventy the following new section:—

70A. (1) Where a lessor institutes proceedings after the commencement of the Landlord and Tenant (Amendment) Act, 1958, for the recovery of possession of any prescribed premises, being a dwelling-house, from any person on any of the grounds specified in paragraphs (g), (i), (l) or (m) of subsection five of section sixty-two of this Act, and an order for the recovery of possession of the dwelling-house cannot be made in those proceedings unless the court is satisfied that the lessor had provided at the date of expiry of the notice to quit, and has immediately available for the occupation of the persons occupying the dwelling-house, reasonably suitable alternative accommodation, the court shall have no jurisdiction in the matter unless there was filed, at the time when the information instituting the proceedings was exhibited, with the clerk of the court in which the proceedings are instituted a statutory

Certain dwelling-houses to be subject to this Act notwithstanding section 5A.

Landlord and Tenant (Amendment).

statutory declaration made by the owner of, or other the person having authority to lease, that alternative accommodation declaring that—

- 5
- (a) the premises specified in the declaration are the alternative accommodation which the lessor had provided at the date of expiry of the notice to quit and which would be immediately available for occupation as provided in subsection two of section 10 seventy of this Act ; and
- (b) he is aware of the provisions of subsection two of this section and understands their effect.

15

(2) As on and from the date on which the statutory declaration referred to in subsection one of this section is filed with the clerk of the court in accordance with that subsection the premises specified in the declaration as being the alternative accommodation shall be subject to the provisions of 20 this Act in all respects as though section 5A of this Act had not been enacted.

This subsection ceases to apply in respect of those premises—

- 25
- (a) if the court finds that that alternative accommodation is not reasonably suitable or had not been provided at the date of expiry of the notice to quit or is not immediately available for occupation as provided in subsection two of section seventy of this 30 Act—from the time when the court makes that finding ;
- (b) if the court finds that that alternative accommodation is reasonably suitable but the lessee of the premises the subject of the proceedings does not accept that alternative accommodation—from the time of 35 that rejection ;

(c)

Landlord and Tenant (Amendment).

- 5 (c) if the lessee vacates the premises for the recovery of possession of which the proceedings were instituted and does not accept that alternative accommodation—
from the time when the lessee vacates those premises ;
- 10 (d) if the lessor discontinues the proceedings and the court orders that this subsection shall cease to apply to that alternative accommodation—from the time when the court makes that order ;
- 15 (e) if that lessee, having accepted that alternative accommodation, vacates that alternative accommodation—from the time of that vacation.

Nothing in this subsection affects the operation of any order made under section 81A of this Act.

- 20 (3) The clerk of the court with whom is filed any such statutory declaration as is referred to in subsection one of this section shall forward particulars of the alternative accommodation referred to in the statutory declaration to the Rent Controller who shall enter the particulars in a register kept for the purpose.

- 25 ~~(f)~~ (g) (i) by inserting in paragraphs (a), (b) and (c) of subsection one of section seventy-seven after the word "leased" wherever occurring the words "or made the subject of an agreement or arrangement whether oral or in writing of leave and license for the use thereof"; Sec. 77. (Premises not to be sold or re-let in certain cases.)
- 30 (ii) by inserting in paragraph (a) of subsection two of the same section after the word "letting" the words ", or the entering into of an agreement or arrangement whether oral or in writing of leave and license for the use,";
- 35 (iii) by inserting in the same paragraph after the word "let" the words "or the subject of that agreement or arrangement";
- (iv)

Landlord and Tenant (Amendment).

(iv) by inserting at the end of the same subsection the words :—

5 In this subsection "rent", in relation to an agreement or arrangement whether oral or in writing of leave and license for the use of the prescribed premises or portion thereof, means any payment or consideration in respect of any leave and license for the use of the premises or portion, as the case may be, and for any services provided for or supplied to any person using the premises or portion, as the case may be, under leave and license.

(h) (i) by inserting next after subsection three of section eighty-one the following new subsection :—

15 **(3A) Where the lessor of any prescribed premises, being a dwelling-house, or any agent or servant of the lessor, has been convicted of an offence arising under subsection one of this section, the court before which the lessor, agent or servant, as the case may be, was convicted, if it is of opinion that the acts or omissions constituting the offence were done or omitted with intent that the person who was lessee at the time when those acts or omissions were done or omitted to be done vacate the premises and that person has vacated the premises, may, in addition to the penalty prescribed by this Act for the offence, order the lessor to pay to that person such sum as appears to the court to be sufficient as compensation for damage or loss sustained by that person as the result of his vacating the premises, and the provisions of subsection three of section sixty-one of this Act shall apply, mutatis mutandis, to and in respect of any order for the payment of any sum under this subsection.**

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

35
~~(g)~~ (ii) by inserting in paragraph (b) of subsection four of section eighty-one after the words "power of the lessor" the words "to restore the service or to have the service restored or"; (i)

Landlord and Tenant (Amendment).

(i) by inserting next after section eighty-one the following new section :— New sec. 81A.

5 **81A. (1) A court for the district in which pre-**
scribed premises, being a dwelling-house that is not
exempt by section 5A of this Act from the provisions
of Parts II, III, IV and V of this Act to the extent
provided by that section, are situated, shall, on
application in that behalf made by the lessee of the
premises, order that the premises, if vacated by the
lessee, shall remain subject to the provisions of this
Act in all respects as though section 5A of this Act
had not been enacted, if the court is satisfied that—

Court may
order that
certain
dwelling-
houses
remain subject
to this Act.

15 (a) the lessor has done, or caused to be done,
any act, or omitted, or caused to be
omitted, any act whereby the ordinary use
or enjoyment by the lessee of the premises
or of any goods leased therewith, or of any
conveniences usually available to the lessee,
20 or of any service supplied to, or provided
in connection with, the premises is inter-
fered with or restricted ;

(b) that the lessor has by his conduct endea-
voured to improperly induce the lessee to
vacate the premises ;

25 (c) that the lessor has unreasonably caused
expense and inconvenience to the lessee by
requiring him to defend proceedings under
this Act for the recovery of the premises
30 from the lessee and that those proceedings
were vexatious ;

(d) the lessor has allowed the premises to fall
into a dilapidated or dangerous condition.

35 (2) Notwithstanding anything contained in
subsection one of this section, the court, although
satisfied of any one or more of the matters specified
in paragraphs (a), (c) and (d) of subsection one of
this section, may refuse to make the order if the lessor
satisfies the court that his conduct in relation to that
matter or those matters was not intended to induce
40 the lessee to vacate the premises. (3)

Landlord and Tenant (Amendment).

(3) An order under this section—

(a) shall remain in force for such period as is specified in the order or until the court otherwise orders ; and

5 **(b) shall have effect according to its tenor.**

(4) Where an order is made under this section, the clerk of the court shall forthwith forward a copy of the order to the Rent Controller who shall enter particulars of the order in a register kept for the purpose.

10

(5) For the purposes of this section, conveniences shall be deemed to be usually available to the lessee where prior to the use of the conveniences having been interfered with or restricted without his consent, he has been allowed, at all times during the tenancy, to use those conveniences as he desired or he has been allowed to use those conveniences at times agreed to by the lessor and lessee or at times equivalent to those times.

15

20 **(6) In this section "court" means a court of petty sessions holden before a Stipendiary Magistrate.**

~~(h)~~ **(j)** by inserting in section 85B after the word "eighty-six," the figures and letter "86A,"; Sec. 85B.
(Application by solicitor or agent.)

25 ~~(i)~~ **(k)** by inserting next after section eighty-six the following new section: — New sec. 86A.

30 **86A. (1) The owner of any prescribed premises who wishes to make the premises available for leasing to his employees (whether or not the premises are then let to one of his employees) may make application in writing to the Controller to exclude the premises from the operation of this Part and Part V of this Act.** Exclusion of premises from operation of Part III and Part V where lessor and lessee are employer and employee.

(2)

Landlord and Tenant (Amendment).

(2) The applicant shall furnish such information in relation to the application as the Controller requires.

5 (3) (a) The Controller may, in his discretion, issue a certificate under this section excluding the premises from the operation of this Part and Part V of this Act during—

10 (i) any period during which the premises are let to any person who is an employee of the applicant; and

15 (ii) where any such person ceases to be an employee of the applicant while the premises are let to that person, the period of two months immediately succeeding the date on which that person so ceases to be an employee,

and the premises shall be excluded accordingly.

20 (b) Nothing in subparagraph (ii) of paragraph (a) of this subsection shall be construed as affecting or limiting the operation of subparagraph (i) of that paragraph.

(4) The Controller may at any time revoke or vary any certificate issued under subsection three of this section.

25 ~~(j)~~ (I) (i) by omitting subsections three and (3A) of section eighty-seven and by inserting in lieu thereof the following subsection:—

Sec. 87.
(Exclusion of certain subdivided premises, &c., from operation of Part III and Part V.)

(3) The Controller may—

30 (a) grant the application and issue the certificate, either unconditionally or subject to such conditions as he thinks fit and for such period as he thinks fit; or

(b) refuse the application.

(ii)

Landlord and Tenant (Amendment).

5 (ii) by inserting at the end of subsection four of the same section the words "unless immediately prior to that date a prior certificate issued under this section had force or effect in respect of that person as such lessee";

(k) (m) by inserting in section 87A after the words "this Part" the words "and Part V".

Sec. 87A.
(Part III not to apply to a dwelling-house let on behalf of an insane patient.)

10 5. The Landlord and Tenant (Amendment) Act, 1948, as amended by subsequent Acts, is further amended by inserting next after section eighty-eight the following new section:—

Further amendment of Act No. 25, 1948.
New sec. 88A.

15 88A. (1) A person shall not sell or agree to sell any prescribed premises, being a dwelling-house which is occupied by a lessee and being the only premises comprised in the sale or agreement for sale, to any person other than the lessee unless—

Dwelling-house not to be sold unless tenant given opportunity to purchase.

(a) the premises are sold at an auction sale of which not less than fourteen days' notice in writing has been given to the lessee; or

cf. Vict. Act No. 6098, s. 72.

20 (b) the vendor has first offered in writing to sell the premises to the lessee at a price not greater than the price at which the premises are actually sold or agreed to be sold and upon terms as to payment and otherwise not less favourable to the lessee than the terms upon which the premises are actually sold or agreed to be sold and the lessee has not accepted that offer within
25 fourteen days after the receipt thereof by him:

30 Provided that nothing in this subsection shall be construed as prohibiting the vendor from entering into and giving effect to a contract to sell the premises to any person

Landlord and Tenant (Amendment).

person conditionally upon the lessee's rejection of an offer of sale of the premises made in accordance with paragraph (b) of this subsection.

5 (2) Any person who contravenes or fails to comply with any provision of this section shall be guilty of an offence against this Act.

(3) Any contravention of or failure to comply with any provision of this section shall not invalidate any contract or agreement.

10 This subsection shall have effect notwithstanding anything contained in section eighty-nine of this Act.

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

15 (a) by omitting from section one hundred the word, symbols and letter "or (r)" and by inserting in lieu thereof the word, symbols and letters " (r), (t), (u) or (v)";

20 (b) by omitting from subsection two of section one hundred and one the word, symbols and letter "or (r)" and by inserting in lieu thereof the word, symbols and letters " (r), (t), (u) or (v)".

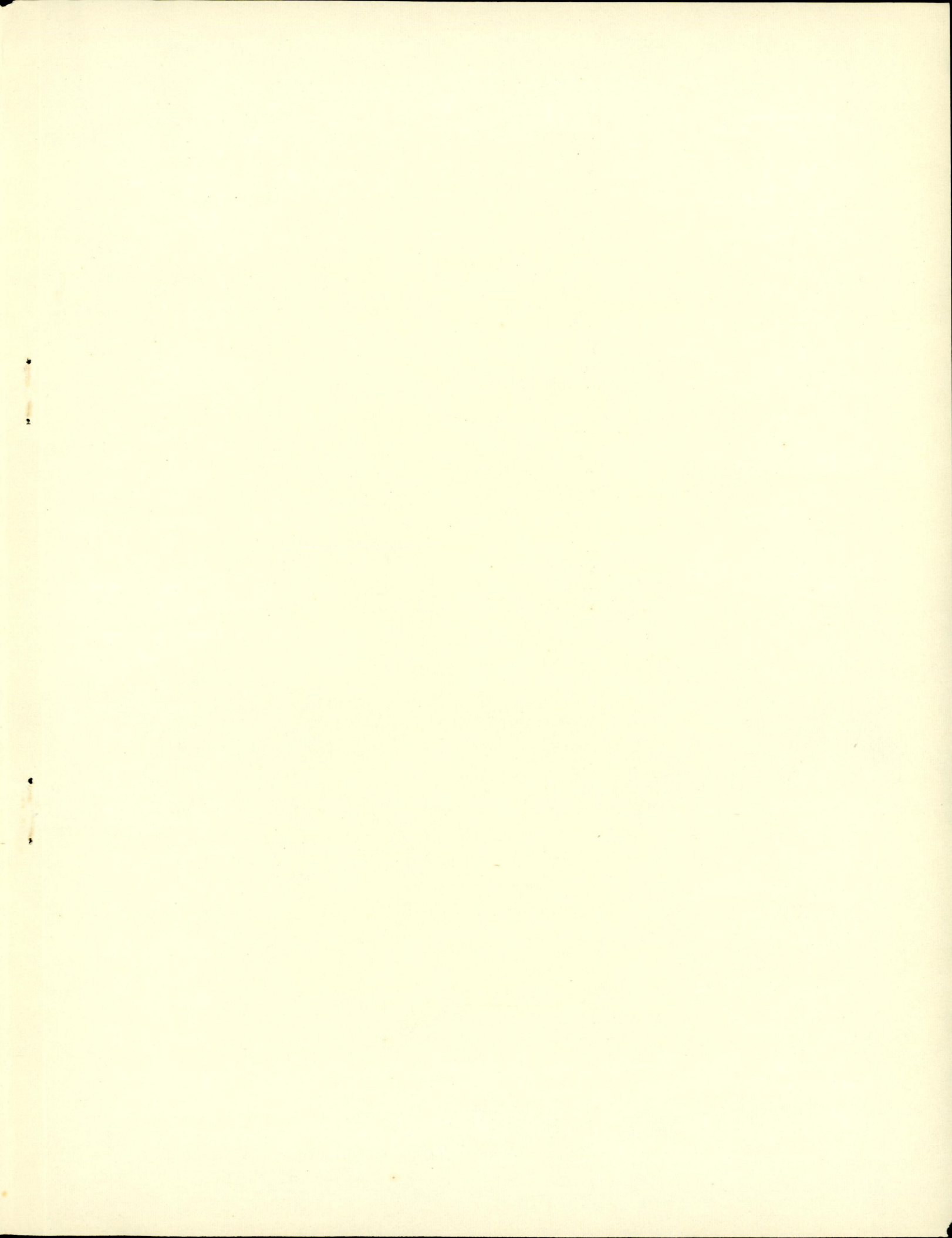
7. Any determination of the fair rent of prescribed premises purporting to have been made before the commencement of this Act pursuant to subsection three of section 6A of the
25 Landlord and Tenant (Amendment) Act, 1948, as amended from time to time, which would have been valid, and would have been in force immediately before that commencement, had the amendments made by subparagraph (ii), (iii) and (iv) of paragraph (b) of section two of this Act been in force at,
30 and since, the time when the determination was made shall, as from that commencement, be the fair rent and the rent of the prescribed premises until it is varied in pursuance of Part II of the Landlord and Tenant (Amendment) Act, 1948-1958.

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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.

ALLAN PICKERING,
Clerk of the Legislative Assembly.

*Legislative Assembly Chamber,
Sydney, 19 March, 1958.*

The LEGISLATIVE COUNCIL has this day agreed to this Bill with Amendments.

Clerk of the Parliaments.

*Legislative Council Chamber,
Sydney, March, 1958.*

New South Wales



ANNO SEPTIMO

ELIZABETHÆ II REGINÆ

Act No. , 1958.

An Act to amend the law relating to landlord and tenant; for this purpose to amend the Landlord and Tenant (Amendment) Act, 1948, and certain other Acts in certain respects; and for purposes connected therewith.

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

5 1. (1) This Act may be cited as the "Landlord and Tenant (Amendment) Act, 1958".

Short title and citation.

16195

148—A

(2)

NOTE.—The words to be omitted are ruled through; those to be inserted are printed in black letter. RECOM.

Landlord and Tenant (Amendment).

(2) The Landlord and Tenant (Amendment) Act, 1948, as amended by subsequent Acts and by this Act, may be cited as the Landlord and Tenant (Amendment) Act, 1948-1958.

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

Amendment
of Act
No. 25,
1948.

(a) (i) by inserting in subparagraph (ii) of paragraph (b) of subsection one of section 5A after the word "lease" the words ", other than a prescribed lease,";

Sec. 5A.
(Certain
premises
excluded
from opera-
tion of Act.)

10 (ii) by inserting in subparagraph (iii) of the same paragraph after the word "lease" the words ", other than a prescribed lease,";

(iii) by omitting the word "or" appearing at the end of subparagraph (v) of the same paragraph;

15 (iv) by inserting at the end of the same subsection the following new paragraphs:—

(d) any dwelling-house that—

20 (i) was in existence on the first day of December, one thousand nine hundred and fifty-seven;

25 (ii) has not been, either in whole or in part, the subject of a lease, other than a prescribed lease, at any time between that day and the commencement of the Landlord and Tenant (Amendment) Act, 1958;

30 (iii) does not form part of any premises that were the subject of a lease, other than a prescribed lease, between that day and that commencement;

(iv) is not "special premises" for the purposes of this Act; and

(v)

Landlord and Tenant (Amendment).

- (v) is the subject of a lease (not being a lease of shared accommodation **or a lease the lessor under which is the employer of the lessee**)—
- 5 (a) that is registered in the office of the Rent Controller;
- (b) the execution of which by the lessee is witnessed by a solicitor instructed and employed independently of the lessor; and
- 10 (c) that is certified by that solicitor as provided in subsection two of this section;
- (e) any dwelling-house ~~that~~ **(not being a residential unit)**—
- 15 (i) **that** was in existence at the commencement of the Landlord and Tenant (Amendment) Act, 1958;
- (ii) ~~has not been, either in whole or in part, the subject of a lease, other than a prescribed lease, at any time during the period of three years immediately preceding the date on which the lease referred to in subparagraph (v) of this paragraph was registered in the office of the Rent Controller;~~
- 20
- 25 (ii) **of which a lessor has obtained vacant possession after that commencement otherwise than by an order for recovery of possession made on any one or more of the grounds specified in paragraph (g), (h), (i), (j), (k), (l), (m), (t) or (v) of subsection five of section sixty-two of this Act;**
- 30
- 35 (iii) ~~that does not form part of any premises that were the subject of a lease, other than a prescribed lease, at any time during the period referred to in subparagraph (ii) of this paragraph;~~
- 40 (b) (iv)

Landlord and Tenant (Amendment).

- ~~(iv)~~ **(iii) that** is not "special premises" for the purposes of this Act; and
- ~~(v)~~ **(iv) that** is the subject of a lease (not being a lease of shared accommodation or a lease the lessor under which is the employer of the lessee)—
 - (a) that is registered in the office of the Rent Controller;
 - (b) the execution of which by the lessee is witnessed by a solicitor instructed and employed independently of the lessor; and
 - (c) that is certified by that solicitor as provided in subsection two of this section;
 - (f) any residential unit that—
 - (i) came into existence by reason of alterations, or alterations and additions, made after the commencement of the Local Government (Regulation of Flats) Act, 1955, to a dwelling-house that—
 - (a) was in existence at the commencement of the Local Government (Regulation of Flats) Act, 1955;
 - (b) has not been, either in whole or in part, the subject of a lease, other than a prescribed lease, at any time between the seventh day of December, one thousand nine hundred and forty-one, and the twenty-fourth day of February, one thousand nine hundred and fifty-six;
 - (c) does not form part of any premises that were the subject of a lease, other than a prescribed lease, at any time between those days;
 - (d)

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Landlord and Tenant (Amendment).

- (d) is not "special premises" for the purposes of this Act;
- 5 (ii) is one of two or three, but not more, residential units in that dwelling-house which were provided out of that dwelling-house, by those alterations, or those alterations and additions; and
- (iii) is the subject of a lease (not being a lease of shared accommodation)—
- 10 (a) that is registered in the office of the Rent Controller;
- (b) the execution of which by the lessee is witnessed by a solicitor instructed and employed independently of the lessor; and
- 15 (c) that is certified by that solicitor as provided in subsection two of this section; or
- (g) any residential unit that—
- 20 (i) came into existence by reason of alterations, or alterations and additions, made after the commencement of the Local Government (Regulation of Flats) Act, 1955, to a dwelling-
- 25 house that—
- (a) **that** was in existence at the commencement of the Local Government (Regulation of Flats) Act, 1955;
- 30 ~~(b) has not been, either in whole or in part, the subject of a lease, other than a prescribed lease, at any time during the period of three years immediately preceding the date on which the~~
- 35 ~~lease~~

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lease referred to in subparagraph (iii) of this paragraph was registered in the office of the Rent Controller;

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(b) of which a lessor has obtained vacant possession after the commencement of the Landlord and Tenant (Amendment) Act, 1958, otherwise than by an order for recovery of possession made on any one or more of the grounds specified in paragraph (g), (h), (i), (j), (k), (l), (m), (t) or (v) of subsection five of section sixty-two of this Act;

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~~(e)~~ that does not form part of any premises that were the subject of a lease, other than a prescribed lease, at any time during that period;

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~~(d)~~ (c) that is not "special premises" for the purposes of this Act;

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(ii) is one of two or three, but not more, residential units in that dwelling-house which were provided out of that dwelling-house, by those alterations, or those alterations and additions; and

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(iii) is the subject of a lease (not being a lease of shared accommodation or a lease the lessor under which is the employer of the lessee)—

(a) that is registered in the office of the Rent Controller;

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(b) the execution of which by the lessee is witnessed by a solicitor instructed and employed independently of the lessor; and

(c)

Landlord and Tenant (Amendment).

(c) that is certified by that solicitor as provided in subsection two of this section.

5 (v) by inserting next after the same subsection the following new subsection : —

10 (1A) The provisions of Parts II, III, IV and V of this Act do not apply in respect of any premises used for business or commercial purposes the erection of which commenced after the twenty-seventh day of September, one thousand nine hundred and fifty-seven.

(vi) by inserting next after subsection two of the same section the following new subsections : —

15 (2A) Where the lessee under a lease is a company or other corporate body the provisions of this section which, but for this subsection, would require the execution of the lease to be witnessed, and the lease to be certified, in the manner provided in this section shall be deemed to be omitted therefrom.

20 (2B) Premises that comply with the provisions of any one of the paragraphs (namely, paragraphs (a), (b), (c), (d), (e), (f) and (g)) contained in subsection one of this section and would, if that one paragraph were the only paragraph contained in that subsection, be exempt from the provisions of Parts II, III, IV and V of this Act to the extent provided by this section, shall be so exempt notwithstanding that they comply with some, but not all, of the provisions of any one or more of the other such paragraphs.

25 (vii) by inserting in subsection three of the same section after the figures and letter "36A," the word "seventy-seven,";

30 (viii)

Landlord and Tenant (Amendment).

(viii) ~~(vii)~~ by inserting next after subsection three of the same section the following new subsections :—

(4) In this section—

“Prescribed lease” means—

5 (a) a lease that was registered in the office of the Rent Controller and during any part of the currency of which the premises the subject of the lease were, to the extent provided by this section or by the order under section six of this Act published in Gazette No. 19 of the twenty-fourth day of February, one thousand nine hundred and

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20 (b) a lease in respect of which an application under section eighty-six of this Act or under Regulation seventy-eight of the Commonwealth Regulations was granted by the issue of a certificate or any extension thereof pursuant to that section or regulation, as the case may be, but does not include a lease

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35 “Residential unit” means any part of a dwelling-house which is or has been designed for occupation as a residence independently of any other part of the dwelling-house.

40 (5) This section has effect subject to the operation of sections 70A and 81A of this Act.
(b)

Landlord and Tenant (Amendment).

(b) (i) by omitting from paragraph (a) of subsection Sec. 6A.
 three of section 6A the figures "1954" and by (Special
 inserting in lieu thereof the figures "1958"; premises.)

5 (ii) by inserting in the same paragraph after the
 words "that commencement" where firstly
 occurring the words ", whether or not that
 agreement or arrangement was entered into in
 substitution for a lease of such premises or of
 10 any part of such premises or of the premises
 of which such premises form a part,";

(iii) by inserting in the same paragraph after the
 word "forty-nine" the words "and before that
 agreement or arrangement was entered into";

15 (iv) by inserting in the same paragraph after the
 word "date" the words "and whether or not the
 lease is still subsisting";

(v) ~~(iii)~~ by omitting paragraph (d) of the same sub-
 section and by inserting in lieu thereof the
 following paragraph:—

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

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

30 (i) one meal before midday consisting of
 at least two courses, one of which
 comprises cereal or porridge and the
 other of which comprises cooked
 35 meat, eggs or a like dish, together
 with bread (or toast), butter, jam
 and tea or coffee; and

(ii) one meal after midday consisting of
 at least two courses, one of which
 comprises fish or meat (other than in
 40 sandwich form) and cooked vege-
 tables, if

Landlord and Tenant (Amendment).

if the value of the meals so supplied forms a substantial portion of the whole charge paid by the licensee under the agreement or arrangement.

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

Further amendment of Act No. 25, 1948.

(a) (i) by omitting subsections one and two of section fifteen and by inserting in lieu thereof the following subsection: —

Sec. 15.
(Rent of prescribed premises.)

10 (1) Except in the case of premises which were not in existence or were not leased on the first day of November, one thousand nine hundred and fifty-one, the rent payable by the lessee of any prescribed premises (or of

15 prescribed premises together with goods) shall not, in respect of any period after the commencement of the Landlord and Tenant (Amendment) Act, 1958, and notwithstanding any term or covenant in any lease in force at any time after that commencement, exceed the rent payable in respect of the prescribed premises at the first day of November, one thousand nine hundred and fifty-one (including

20 the rent of any goods then leased therewith and the charge for any service then provided in connection with the lease), or where that rent has been increased or decreased by a determination made before that commencement and in force immediately before that commencement the rent as so increased or

25 decreased.

(ii) by omitting from subsection four of the same section the words "or subsection two" wherever occurring;

35 (iii) by inserting in the same subsection after the words "fair rent" wherever occurring the words "and the rent";

(b)

Landlord and Tenant (Amendment).

- (b) (i) by omitting from subsection one of section sixteen the words "or subsection two";
- (ii) by omitting from the same subsection the words "on the first day of March, one thousand nine hundred and forty-nine, or";
- (iii) by omitting from the same subsection the words "as the case may be,";
- (c) by omitting from section 16A the words "has been sub let by the lessee or is in the occupation of any other person, and if so, the names of the persons to whom the prescribed premises or any part thereof has been so sub let and the rent payable by such persons together with the moneys received from such other persons in occupation" and by inserting in lieu thereof the words "is in the occupation of any other person, and if so, the name of such other person together with the moneys receivable from such other person in respect of that occupation";
- (c) by omitting section 16A ;
- (d) by omitting from subsection two of section twenty the word "six" and by inserting in lieu thereof the word "eight";
- (e) by omitting from subsection two of section twenty-two the words "the applicant" and by inserting in lieu thereof the word "applicant";
- (f) by inserting in section twenty-three after the words "be the fair rent" wherever occurring the words "and the rent";
- (g) (i) by omitting from subsection one of section 24A the words "other than shared accommodation which were in existence on the thirty-first day of August, one thousand nine hundred and thirty-nine, and" and by inserting in lieu thereof the words ", other than shared accommodation,";
- (ii) by inserting in paragraph (a) of subsection five of the same section after the words "fair rent" wherever occurring the words "and the rent";
- (h)

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

Sec. 16A.
(Lessee to furnish information as to other persons in occupation.)

Sec. 20.
(Determination of application.)

Sec. 22.
(Date of operation of determination.)

Sec. 23.
(Effect of determination.)

Sec. 24A.
(Determination based on increased outgoings.)

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- (h) by inserting in subsection ten of section 26B after the words "be the fair rent" wherever occurring the words "and the rent"; Sec. 26B.
(Determination of rent of shared accommodation.)
- 5 (i) by inserting in subsection nine of section twenty-seven after the words "be the fair rent" wherever occurring the words "and the rent"; Sec. 27.
(Determination of rent of shared accommodation.)
- (j) by inserting in subsection four of section thirty-one after the words "be the fair rent" wherever occurring the words "and the rent"; Sec. 31.
(Procedure on appeal.)
- 10 (k) (i) by inserting in section 31MA after the words "as the case may be, may," the words "from time to time and"; Sec. 31MA.
(Interim determination.)
- (ii) by omitting from the same section the words :—
- 15 "Any interim determination so made shall be deemed to be a determination, and shall remain in force until the application has been finally disposed of by the Board to which the application was made or the Controller, as the case may be, and no longer"
- 20 and by inserting in lieu thereof the words :—
- "Any interim determination so made shall be deemed to be a determination, and shall remain in force until—
- 25 (a) the making of a later interim determination in the proceedings; or
- (b) the application has been finally disposed of by the Board to which the application was made or the Controller, as the case may be,
- 30 whichever first happens, and no longer";
- (iii) by omitting from the same section the words "the interim determination" and by inserting in lieu thereof the words "an interim determination or determinations";

(l)

Landlord and Tenant (Amendment).

- (l) (i) by inserting at the end of paragraph (j) of subsection two of section thirty-two the words "or the amount of land tax payable in respect of the premises by the lessor under those Acts has, since the determination, increased or decreased"; Sec. 32. (Variation of determination.)
- 5
- (ii) by omitting from subsection four of the same section the words "in need of repair" and by inserting in lieu thereof the words "not in fair and tenantable repair";
- 10
- (iii) by inserting at the end of the same section the following new subsection :—
- (5) (a) Where a party to a determination (not being a determination in which a period is specified within which an application shall not be made to vary the determination) has, during the period commencing with the date of the determination and ending twelve months after that date, made application under subsection two of this section for variation of the determination, he shall not, within the last-mentioned period, make further application to a Fair Rents Board or to the Controller, as the case may be, for variation of the determination unless he has first obtained the leave of the Fair Rents Board or the Controller, as the case may be, to do so.
- 15
- (b) A Fair Rents Board or the Controller, as the case may be, may, for the purposes of this section, grant or refuse leave to apply for a variation of the determination without a formal or oral hearing of the persons interested or their representatives.
- 20
- (m) by inserting next after section thirty-two the following new section:— New sec. 32A.
- 25
- 32A. (1) A lessee of prescribed premises who—
- (a) refuses to allow, or fails to take such reasonable steps as are necessary to allow, the lessor of the premises or the lessor's servant or agent to enter and inspect the premises State of repair not to be raised by lessee in certain cases.
- 30
- 40

Landlord and Tenant (Amendment).

5 premises at least once a year at any reasonable time between ~~nine~~ **eight** o'clock in the morning and ~~six~~ **eight** o'clock in the evening on any week day after not less than seven days' notice in writing of intention to do so has been given to the lessee ; or

10 (b) refuses to allow, or fails to take such reasonable steps as are necessary to allow, the lessor his agents servants workmen or contractors to enter the premises for the purpose of effecting necessary repairs or maintenance after reasonable notice of intention to do so has been given to the lessee,

15 shall not, within a year from the refusal or failure, on any application made to a Fair Rents Board or the Controller, as the case may be, for a determination, or for a variation of a determination, of the fair rent of the prescribed premises, be allowed
20 to raise or put in issue the state of repair of the premises unless he has first obtained the leave of the Fair Rents Board or the Controller, as the case may be, to do so.

25 (2) Subsection one of this section does not apply where a refusal or failure of the kind described in that subsection on the part of the lessee is authorised or permitted, expressly or impliedly, by the terms of the lease.

30 (3) Without prejudice to the generality of the meaning of the expression "reasonable time", that expression in subsection one of this section does not, in the case of a dwelling-house, include any
35 time at which the lessee and the other adult members of his household are ordinarily absent from the dwelling-house in the course or by reason of their respective trades, businesses, occupations or employments.

(n)

Landlord and Tenant (Amendment).

- (n) by inserting in subparagraph (iv) of paragraph (b) of subsection one of section thirty-six after the word "available" where firstly occurring the words "or represented to be available"; Sec. 36. (Certain payments prohibited.)
- 5 (o) (i) by omitting from subsection two of section fifty-seven the words "first day of March, one thousand nine hundred and forty-nine" where- Sec. 57. (Lessor to ascertain fair rent.)
 ever occurring and by inserting in lieu thereof the words "first day of November, one thousand
 10 nine hundred and fifty-one";
- (ii) by omitting subsection three of the same section;
- (p) by inserting in paragraph (b) of subsection (1A) of section fifty-nine after the word "letter" the words Sec. 59. (Service of notices.)
 15 ", or certified mail service,";
4. The Landlord and Tenant (Amendment) Act, 1948, as amended by subsequent Acts, is further amended— Further amendment of Act No. 25, 1948.
- (a) (i) by omitting from the end of paragraph (r) of subsection five of section sixty-two the word Sec. 62. (Restriction on eviction.)
 20 "or";
- (ii) by inserting at the end of the same subsection the following new paragraphs :—
- (t) that the premises, being a dwelling-
 25 house, are owned by the lessor who, being a male, is of or over the age of sixty-five years or, being a female, is of or over the age of sixty years, that not more than two other dwelling-
 30 houses (exclusive of the dwelling-house in which he resides) are owned by the lessor if he is living alone or, if the lessor is living with his spouse,
 not

Landlord and Tenant (Amendment).

5 not more than two other dwelling-
houses (exclusive of the dwelling-
house in which they reside) are owned
by them, that the premises were pur-
chased or acquired by the lessor or
the deceased spouse of the lessor
before the twenty-first day of July,
one thousand nine hundred and forty-
eight, that the income of the lessor if
10 he is living alone, or, if the lessor is
living with his spouse, his income
together with that of his spouse, does
not exceed the Sydney basic wage, and
that the premises are required for sale
with vacant possession;

15 (u) that, where the premises are a
dwelling-house, the lessee has
reasonably suitable alternative accom-
modation available for his occupation
for residential purposes; or

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

(iii) by inserting at the end of subsection six of the
same section the following new paragraphs:--

35 (c) In paragraph (t) of subsection five of
this section, "Sydney basic wage" means the
basic wage for adult males assessed and cal-
culated in accordance with the provisions of
paragraph (a) of subsection two of section

Landlord and Tenant (Amendment).

5 61K of the Industrial Arbitration Act, 1940, as amended by subsequent Acts, and as last adjusted in accordance with the provisions of section 61M of that Act, as so amended, before the notice to quit concerned was given.

10 (d) For the purposes of paragraph (t) of subsection five of this section if the lessor resides with his spouse a dwelling-house owned by them jointly or by either of them severally shall be taken to be owned by them.

(iv) by inserting next after subsection nine of the same section the following new subsection:—

15 (9A) (a) Where a lessor has given notice to quit on the ground specified in paragraph (t) of subsection five of this section and the dwelling-house in respect of which the notice was given has been vacated in accordance with the notice or an order for the recovery of possession of that dwelling-house has been made on
20 that ground, a notice to quit on that ground shall not be given in respect of another dwelling-house by the lessor or his spouse within a period of five years immediately succeeding the date on which the dwelling-house first-
25 mentioned in this subsection was vacated or possession thereof was recovered.

30 (b) Where a notice to quit has been given on the ground specified in paragraph (t) of subsection five of this section and the dwelling-house in respect of which the notice was given has been vacated within a period of six months after the giving of the notice, the dwelling-house shall, unless the contrary is
35 proved or an order for the recovery of possession of the dwelling-house has been made within that period, be deemed for the purposes of this subsection to have been vacated in accordance with the notice.

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(b) by inserting at the end of section 62A the following new subsection:—

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

Sec. 62A.
(Judge may bar lessor's right to take proceedings where refusal of consent to assignment, &c., unreasonable.)

(c) by inserting at the end of section 62B the following new subsection:—

10 15 (3) In this section the expression "premises used solely as a dwelling-house" does not include premises which are sub-let in whole or in part by the lessee, with the express or implied consent of the lessor, in the course of the lessee's business of sub-letting for residential purposes.

Sec. 62B.
(Power to assign certain tenancies at will.)

(d) (i) by inserting in subsection one of section sixty-five after the words "any person claiming under or through such lessor" wherever occurring the words "otherwise than by virtue of a concurrent lease granted after the commencement of the Landlord and Tenant (Amendment) Act, 1958, by such lessor to the person so claiming";

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

25 (ii) by omitting from the same subsection the words "June, one thousand nine hundred and fifty-eight" and by inserting in lieu thereof the words "January, one thousand nine hundred and sixty-one";

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

(1A) A person who has become the lessor of prescribed premises, being a dwelling-house or part of a dwelling-house, by virtue of the assignment

Landlord and Tenant (Amendment).

5 assignment or transfer to him, after the commencement of the Landlord and Tenant (Amendment) Act, 1958, of a lease of the prescribed premises or the granting to him, after that commencement, of a concurrent lease of the prescribed premises or any person claiming under or through such lessor shall not, within a period of six months after the date of the assignment or transfer of the lease or the grant of the concurrent lease, as the case may be, give a notice to quit on the ground specified in paragraph (g) of subsection five of section sixty-two of this Act to any person who was a lessee of the prescribed premises at the date of the assignment or transfer of the lease or the grant of the concurrent lease, as the case may be :

20 Provided that in respect of any person who has, before the first day of January, one thousand nine hundred and sixty-one, become the lessor of prescribed premises, being a dwelling-house or part of a dwelling-house, by virtue of the assignment or transfer to him, after the commencement of the Landlord and Tenant (Amendment) Act, 1958, of a lease of the prescribed premises or the granting to him, after that commencement, of a concurrent lease of the prescribed premises or any person claiming under or through such lessor, the foregoing provisions of this subsection shall be read and construed as if—

- 30 (a) the words "six months" were omitted therefrom and the words "two years" were inserted in lieu thereof; and
- 35 (b) the words "unless, after that date, he has given to the lessee at least eighteen months' notice in writing of his intention to give such notice to quit" were inserted after the words "as the case may be" where secondly occurring.
- 40 (e)

Landlord and Tenant (Amendment).

- (e) (i) by omitting from paragraph (c) of subsection Sec. 70.
one of section seventy the word, symbols and (Court to
letter "and (s)" and by inserting in lieu thereof consider
the word, symbols and letters ", (s), (t) and hardship.)
(v)";
- 5
- (ii) by omitting subparagraph (iii) of paragraph
(d) of the first proviso to subsection two of the
same section and by inserting in lieu thereof the
following subparagraph:—
- 10
- (iii) the lessor does not own and has not,
since the twenty-first day of July, one
thousand nine hundred and forty-eight,
owned any other dwelling-house, or,
if the dwelling-house is one of a pair
15 of semi-detached dwelling-houses that
are owned by the lessor, the only other
dwelling-house that the lessor owns or
has, since the twenty-first day of July,
one thousand nine hundred and forty-
20 eight, owned is the other one of that
pair of semi-detached dwelling-houses;
- (iii) by inserting at the end of the second proviso to
the same subsection the words "or the Austra-
lian Soldiers' Repatriation Act 1920 (as
25 amended by subsequent Acts) of the Parliament
of the Commonwealth";
- (iv) by omitting from the same subsection the words
"June, one thousand nine hundred and fifty-
eight" and by inserting in lieu thereof the words
30 "January, one thousand nine hundred and sixty-
one";
- (v) by inserting next after subsection four of the
same section the following new subsection:—
- 35 (4A) Notwithstanding anything contained in
this section, an order for the recovery of posses-
sion of any prescribed premises from any per-
son on the ground specified in paragraph (t) of
subsection

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5 subsection five of section sixty-two of this Act shall not be made unless the court is satisfied that the premises have been offered for sale to the tenant upon terms and conditions which, having regard to all relevant circumstances, are fair and reasonable.

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

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

20 (f) by inserting next after section seventy the following New sec. 70A. new section :—

25 **70A. (1) Where a lessor institutes proceedings after the commencement of the Landlord and Tenant (Amendment) Act, 1958, for the recovery of possession of any prescribed premises, being a dwelling-house, from any person on any of the grounds specified in paragraphs (g), (i), (l) or (m) of subsection five of section sixty-two of this Act, and an order for the recovery of possession of the dwelling-house cannot be made in those proceedings unless the court is satisfied that the lessor had provided at the date of expiry of the notice to quit, and has immediately available for the occupation of the persons occupying the dwelling-house, reasonably suitable alternative accommodation, the court shall have no jurisdiction in the matter unless there was filed, at the time when the information instituting the proceedings was exhibited, with the clerk of the court in which the proceedings are instituted a**
statutory

Certain dwelling-houses to be subject to this Act notwithstanding section 5A.

Landlord and Tenant (Amendment).

statutory declaration made by the owner of, or other the person having authority to lease, that alternative accommodation declaring that—

5

(a) the premises specified in the declaration are the alternative accommodation which the lessor had provided at the date of expiry of the notice to quit and which would be immediately available for occupation as provided in subsection two of section seventy of this Act ; and

10

(b) he is aware of the provisions of subsection two of this section and understands their effect.

15

(2) As on and from the date on which the statutory declaration referred to in subsection one of this section is filed with the clerk of the court in accordance with that subsection the premises specified in the declaration as being the alternative accommodation shall be subject to the provisions of this Act in all respects as though section 5A of this Act had not been enacted.

20

This subsection ceases to apply in respect of those premises—

25

(a) if the court finds that that alternative accommodation is not reasonably suitable or had not been provided at the date of expiry of the notice to quit or is not immediately available for occupation as provided in subsection two of section seventy of this Act—from the time when the court makes that finding ;

30

(b) if the court finds that that alternative accommodation is reasonably suitable but the lessee of the premises the subject of the proceedings does not accept that alternative accommodation—from the time of that rejection ;

35

(c)

Landlord and Tenant (Amendment).

5 (c) if the lessee vacates the premises for the recovery of possession of which the proceedings were instituted and does not accept that alternative accommodation—
from the time when the lessee vacates those premises ;

10 (d) if the lessor discontinues the proceedings and the court orders that this subsection shall cease to apply to that alternative accommodation—from the time when the court makes that order ;

15 (e) if that lessee, having accepted that alternative accommodation, vacates that alternative accommodation—from the time of that vacation.

Nothing in this subsection affects the operation of any order made under section 81A of this Act.

20 (3) The clerk of the court with whom is filed any such statutory declaration as is referred to in subsection one of this section shall forward particulars of the alternative accommodation referred to in the statutory declaration to the Rent Controller who shall enter the particulars in a register kept for the purpose.

25 ~~(f)~~ (g) (i) by inserting in paragraphs (a), (b) and (c) of subsection one of section seventy-seven after the word "leased" wherever occurring the words "or made the subject of an agreement or arrangement whether oral or in writing of leave and license for the use thereof"; Sec. 77. (Premises not to be sold or re-let in certain cases.)

30 (ii) by inserting in paragraph (a) of subsection two of the same section after the word "letting" the words " ; or the entering into of an agreement or arrangement whether oral or in writing of leave and license for the use," ;

35 (iii) by inserting in the same paragraph after the word "let" the words "or the subject of that agreement or arrangement" ;

(iv)

Landlord and Tenant (Amendment).

(iv) by inserting at the end of the same subsection the words :—

In this subsection "rent", in relation to an agreement or arrangement whether oral or in writing of leave and license for the use of the prescribed premises or portion thereof, means any payment or consideration in respect of any leave and license for the use of the premises or portion, as the case may be, and for any services provided for or supplied to any person using the premises or portion, as the case may be, under leave and license.

(h) (i) by inserting next after subsection three of section eighty-one the following new subsection :—

(3A) Where the lessor of any prescribed premises, being a dwelling-house, or any agent or servant of the lessor, has been convicted of an offence arising under subsection one of this section, the court before which the lessor, agent or servant, as the case may be, was convicted, if it is of opinion that the acts or omissions constituting the offence were done or omitted with intent that the person who was lessee at the time when those acts or omissions were done or omitted to be done vacate the premises and that person has vacated the premises, may, in addition to the penalty prescribed by this Act for the offence, order the lessor to pay to that person such sum as appears to the court to be sufficient as compensation for damage or loss sustained by that person as the result of his vacating the premises, and the provisions of subsection three of section sixty-one of this Act shall apply, mutatis mutandis, to and in respect of any order for the payment of any sum under this subsection.

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

(g) (ii) by inserting in paragraph (b) of subsection four of section eighty-one after the words "power of the lessor" the words "to restore the service or to have the service restored or";

(i)

Landlord and Tenant (Amendment).

(i) by inserting next after section eighty-one the following new section :— New sec. 81A.

5 81A. (1) A court for the district in which pre-
 scribed premises, being a dwelling-house that is not
 exempt by section 5A of this Act from the provisions
 of Parts II, III, IV and V of this Act to the extent
 provided by that section, are situated, shall, on
 application in that behalf made by the lessee of the
 premises, order that the premises, if vacated by the
10 lessee, shall remain subject to the provisions of this
 Act in all respects as though section 5A of this Act
 had not been enacted, if the court is satisfied that—

Court may
order that
certain
dwelling-
houses
remain subject
to this Act.

15 (a) the lessor has done, or caused to be done,
 any act, or omitted, or caused to be
 omitted, any act whereby the ordinary use
 or enjoyment by the lessee of the premises
 or of any goods leased therewith, or of any
 conveniences usually available to the lessee,
 or of any service supplied to, or provided
20 in connection with, the premises is inter-
 fered with or restricted ;

 (b) that the lessor has by his conduct endea-
 voured to improperly induce the lessee to
 vacate the premises ;

25 (c) that the lessor has unreasonably caused
 expense and inconvenience to the lessee by
 requiring him to defend proceedings under
 this Act for the recovery of the premises
 from the lessee and that those proceedings
30 were vexatious ;

 (d) the lessor has allowed the premises to fall
 into a dilapidated or dangerous condition.

35 (2) Notwithstanding anything contained in
 subsection one of this section, the court, although
 satisfied of any one or more of the matters specified
 in paragraphs (a), (c) and (d) of subsection one of
 this section, may refuse to make the order if the lessor
 satisfies the court that his conduct in relation to that
 matter or those matters was not intended to induce
40 the lessee to vacate the premises. (3)

Landlord and Tenant (Amendment).

(3) An order under this section—

(a) shall remain in force for such period as is specified in the order or until the court otherwise orders; and

5 **(b) shall have effect according to its tenor.**

(4) Where an order is made under this section, the clerk of the court shall forthwith forward a copy of the order to the Rent Controller who shall enter particulars of the order in a register kept for the purpose.

10

(5) For the purposes of this section, conveniences shall be deemed to be usually available to the lessee where prior to the use of the conveniences having been interfered with or restricted without his consent, he has been allowed, at all times during the tenancy, to use those conveniences as he desired or he has been allowed to use those conveniences at times agreed to by the lessor and lessee or at times equivalent to those times.

15

(6) In this section "court" means a court of petty sessions holden before a Stipendiary Magistrate.

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~~(h)~~ **(j)** by inserting in section 85B after the word "eighty-six," the figures and letter "86A,";

Sec. 85B.
(Application by solicitor or agent.)

25 ~~(i)~~ **(k)** by inserting next after section eighty-six the following new section:—

New sec. 86A.

86A. (1) The owner of any prescribed premises who wishes to make the premises available for leasing to his employees (whether or not the premises are then let to one of his employees) may make application in writing to the Controller to exclude the premises from the operation of this Part and Part V of this Act.

Exclusion of premises from operation of Part III and Part V where lessor and lessee are employer and employee.

30

(2)

Landlord and Tenant (Amendment).

(2) The applicant shall furnish such information in relation to the application as the Controller requires.

5 (3) (a) The Controller may, in his discretion, issue a certificate under this section excluding the premises from the operation of this Part and Part V of this Act during—

10 (i) any period during which the premises are let to any person who is an employee of the applicant; and

15 (ii) where any such person ceases to be an employee of the applicant while the premises are let to that person, the period of two months immediately succeeding the date on which that person so ceases to be an employee,

and the premises shall be excluded accordingly.

20 (b) Nothing in subparagraph (ii) of paragraph (a) of this subsection shall be construed as affecting or limiting the operation of subparagraph (i) of that paragraph.

(4) The Controller may at any time revoke or vary any certificate issued under subsection three of this section.

25 ~~(j)~~ (I) (i) by omitting subsections three and (3A) of section eighty-seven and by inserting in lieu thereof the following subsection:—

Sec. 87.
(Exclusion of certain subdivided premises, &c., from operation of Part III and Part V.)

30 (3) The Controller may—
(a) grant the application and issue the certificate, either unconditionally or subject to such conditions as he thinks fit and for such period as he thinks fit; or

(b) refuse the application.

(ii)

Landlord and Tenant (Amendment).

5 (ii) by inserting at the end of subsection four of the same section the words "unless immediately prior to that date a prior certificate issued under this section had force or effect in respect of that person as such lessee";

(~~k~~) (m) by inserting in section 87A after the words "this Part" the words "and Part V".

Sec. 87A.
(Part III not to apply to a dwelling-house let on behalf of an insane patient.)

5. The Landlord and Tenant (Amendment) Act, 1948, as amended by subsequent Acts, is further amended by inserting 10 next after section eighty-eight the following new section:—

Further amendment of Act No. 25, 1948.
New sec. 88A.

15 88A. (1) A person shall not sell or agree to sell any prescribed premises, being a dwelling-house which is occupied by a lessee and being the only premises comprised in the sale or agreement for sale, to any person other than the lessee unless—

Dwelling-house not to be sold unless tenant given opportunity to purchase.
cf. Vict. Act No. 6098, s. 72.

(a) the premises are sold at an auction sale of which not less than fourteen days' notice in writing has been given to the lessee; or

20 (b) the vendor has first offered in writing to sell the premises to the lessee at a price not greater than the price at which the premises are actually sold or agreed to be sold and upon terms as to payment and otherwise not less favourable to the lessee than the terms upon which the premises are actually sold or agreed to be sold

25 and the lessee has not accepted that offer within fourteen days after the receipt thereof by him:

30 Provided that nothing in this subsection shall be construed as prohibiting the vendor from entering into and giving effect to a contract to sell the premises to any person

Landlord and Tenant (Amendment).

person conditionally upon the lessee's rejection of an offer of sale of the premises made in accordance with paragraph (b) of this subsection.

5 (2) Any person who contravenes or fails to comply with any provision of this section shall be guilty of an offence against this Act.

(3) Any contravention of or failure to comply with any provision of this section shall not invalidate any contract or agreement.

10 This subsection shall have effect notwithstanding anything contained in section eighty-nine of this Act.

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

15 (a) by omitting from section one hundred the word, symbols and letter "or (r)" and by inserting in lieu thereof the word, symbols and letters " , (r), (t), (u) or (v)";

20 (b) by omitting from subsection two of section one hundred and one the word, symbols and letter "or (r)" and by inserting in lieu thereof the word, symbols and letters " , (r), (t), (u) or (v)".

7. Any determination of the fair rent of prescribed premises purporting to have been made before the commencement of this Act pursuant to subsection three of section 6A of the Landlord and Tenant (Amendment) Act, 1948, as amended from time to time, which would have been valid, and would have been in force immediately before that commencement, had the amendments made by subparagraph (ii), (iii) and (iv) of paragraph (b) of section two of this Act been in force at, and since, the time when the determination was made shall, as from that commencement, be the fair rent and the rent of the prescribed premises until it is varied in pursuance of Part II of the Landlord and Tenant (Amendment) Act, 1948-1958.

Further amendment of Act No. 25, 1948.

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

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

Effect of certain determinations.

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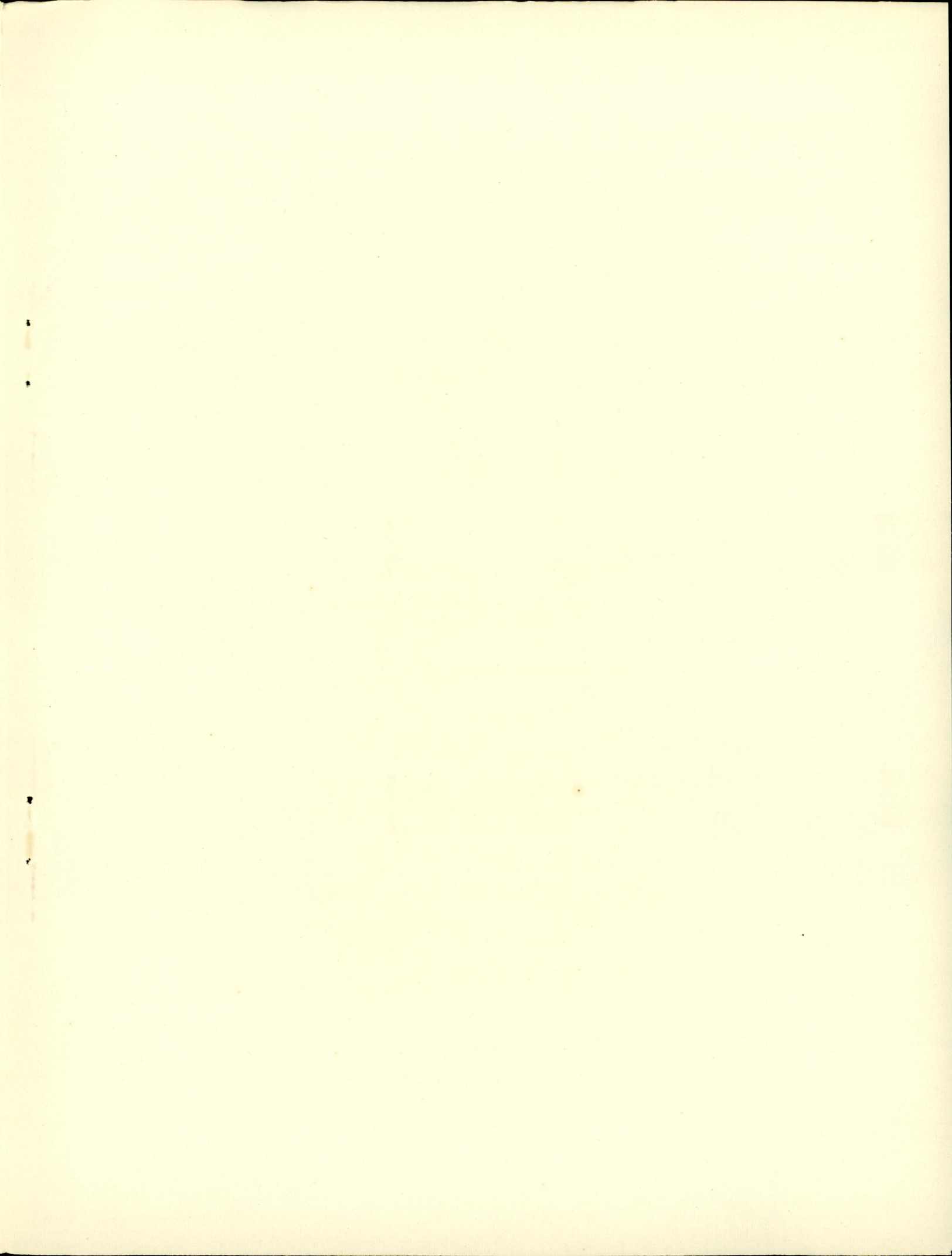
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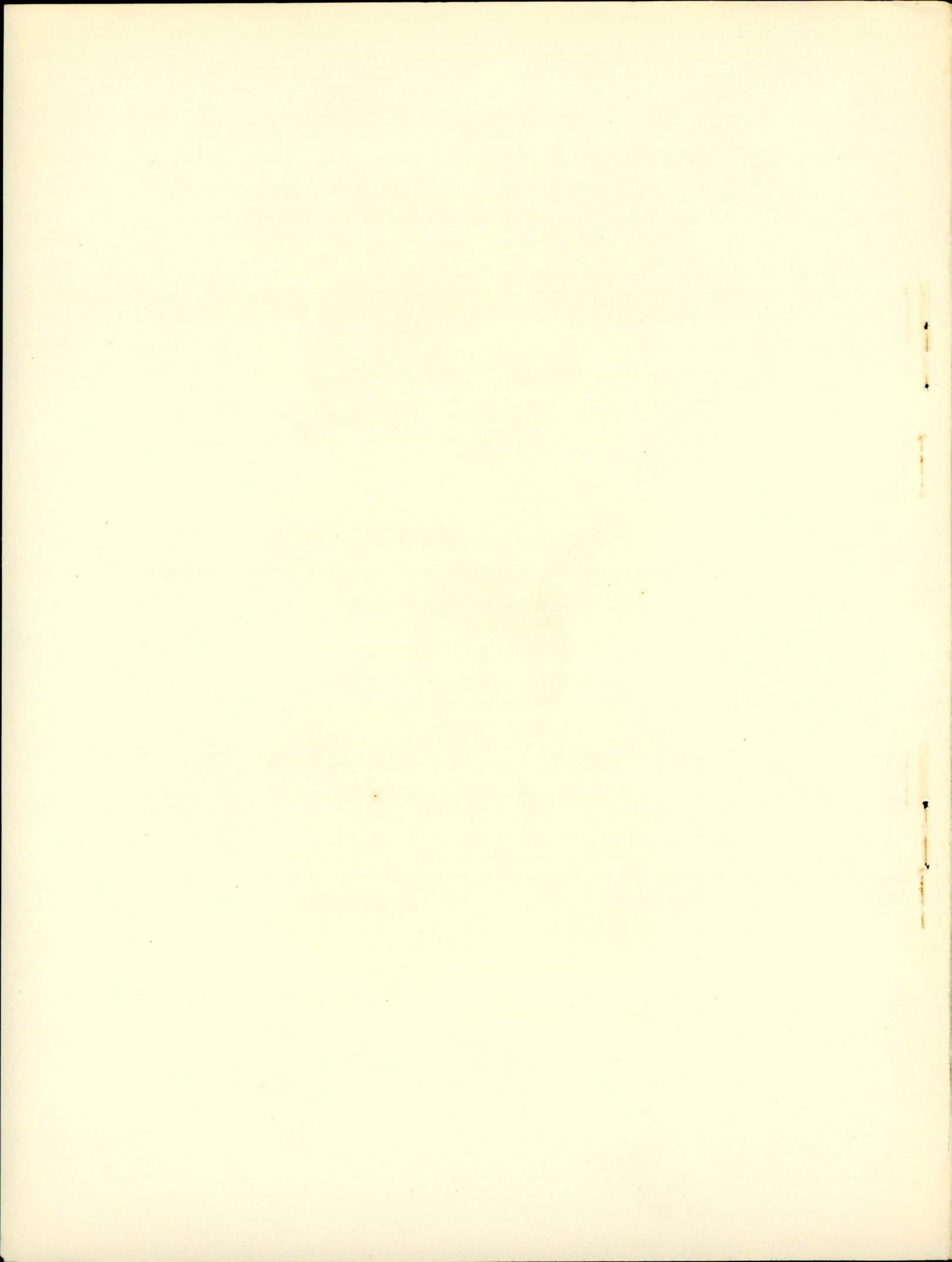
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This PUBLIC BILL originated in the LEGISLATIVE ASSEMBLY, and, having this day passed, is now ready for presentation to the LEGISLATIVE COUNCIL for its concurrence.

ALLAN PICKERING,
Clerk of the Legislative Assembly.

*Legislative Assembly Chamber,
Sydney, 19 March, 1958.*

The LEGISLATIVE COUNCIL has this day agreed to this Bill with Amendments.

Clerk of the Parliaments.

*Legislative Council Chamber,
Sydney, March, 1958.*

New South Wales



ANNO SEPTIMO

ELIZABETHÆ II REGINÆ

Act No. , 1958.

An Act to amend the law relating to landlord and tenant; for this purpose to amend the Landlord and Tenant (Amendment) Act, 1948, and certain other Acts in certain respects; and for purposes connected therewith.

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

- 5 1. (1) This Act may be cited as the "Landlord and Tenant (Amendment) Act, 1958".
- 16195 148—A (2)
- Short title and citation.

NOTE.—The words to be omitted are ruled through; those to be inserted are printed in black letter.

Landlord and Tenant (Amendment).

(2) The Landlord and Tenant (Amendment) Act, 1948, as amended by subsequent Acts and by this Act, may be cited as the Landlord and Tenant (Amendment) Act, 1948-1958.

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

Amendment of Act No. 25, 1948.

(a) (i) by inserting in subparagraph (ii) of paragraph (b) of subsection one of section 5A after the word "lease" the words ", other than a prescribed lease,";

Sec. 5A. (Certain premises excluded from operation of Act.)

10 (ii) by inserting in subparagraph (iii) of the same paragraph after the word "lease" the words ", other than a prescribed lease,";

(iii) by omitting the word "or" appearing at the end of subparagraph (v) of the same paragraph;

15 (iv) by inserting at the end of the same subsection the following new paragraphs:—

(d) any dwelling-house that—

20 (i) was in existence on the first day of December, one thousand nine hundred and fifty-seven;

25 (ii) has not been, either in whole or in part, the subject of a lease, other than a prescribed lease, at any time between that day and the commencement of the Landlord and Tenant (Amendment) Act, 1958;

30 (iii) does not form part of any premises that were the subject of a lease, other than a prescribed lease, between that day and that commencement;

(iv) is not "special premises" for the purposes of this Act; and

(v)

Landlord and Tenant (Amendment).

- (v) is the subject of a lease (not being a lease of shared accommodation **or a lease the lessor under which is the employer of the lessee**)—
- 5 (a) that is registered in the office of the Rent Controller;
- (b) the execution of which by the lessee is witnessed by a solicitor instructed and employed independently of the lessor; and
- 10 (c) that is certified by that solicitor as provided in subsection two of this section;
- (e) any dwelling-house ~~that~~ **(not being a residential unit)**—
- 15 (i) **that** was in existence at the commencement of the Landlord and Tenant (Amendment) Act, 1958;
- (ii) ~~has not been, either in whole or in part, the subject of a lease, other than a prescribed lease, at any time during the period of three years immediately preceding the date on which the lease referred to in subparagraph (v) of this paragraph was registered in the office of the Rent Controller;~~
- 20 (ii) **of which a lessor has obtained vacant possession after that commencement otherwise than by an order for recovery of possession made on any one or more of the grounds specified in paragraph (g), (h), (i), (j), (k), (l), (m), (t) or (v) of subsection five of section sixty-two of this Act;**
- 25 (iii) **that** does not form part of any premises that were the subject of a lease, other than a prescribed lease, at any time during the period referred to in subparagraph (ii) of this paragraph;
- 30 (iv)
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- 40

Landlord and Tenant (Amendment).

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- (iv) **that** is not “special premises” for the purposes of this Act; and
- (v) **that** is the subject of a lease (not being a lease of shared accommodation **or a lease the lessor under which is the employer of the lessee**)—
 - (a) that is registered in the office of the Rent Controller;
 - (b) the execution of which by the lessee is witnessed by a solicitor instructed and employed independently of the lessor; and
 - (c) that is certified by that solicitor as provided in subsection two of this section;
- (f) any residential unit that—
 - (i) came into existence by reason of alterations, or alterations and additions, made after the commencement of the Local Government (Regulation of Flats) Act, 1955, to a dwelling-house that—
 - (a) was in existence at the commencement of the Local Government (Regulation of Flats) Act, 1955;
 - (b) has not been, either in whole or in part, the subject of a lease, other than a prescribed lease, at any time between the seventh day of December, one thousand nine hundred and forty-one, and the twenty-fourth day of February, one thousand nine hundred and fifty-six;
 - (c) does not form part of any premises that were the subject of a lease, other than a prescribed lease, at any time between those days;

Landlord and Tenant (Amendment).

- (d) is not "special premises" for the purposes of this Act;
- 5 (ii) is one of two or three, but not more, residential units in that dwelling-house which were provided out of that dwelling-house, by those alterations, or those alterations and additions; and
- (iii) is the subject of a lease (not being a lease of shared accommodation)—
- 10 (a) that is registered in the office of the Rent Controller;
- (b) the execution of which by the lessee is witnessed by a solicitor instructed and employed independently of the lessor; and
- 15 (c) that is certified by that solicitor as provided in subsection two of this section; or
- (g) any residential unit that—
- 20 (i) came into existence by reason of alterations, or alterations and additions, made after the commencement of the Local Government (Regulation of Flats) Act, 1955, to a dwelling-
- 25 house ~~that~~
- (a) **that** was in existence at the commencement of the Local Government (Regulation of Flats) Act, 1955;
- 30 (b) ~~has not been, either in whole or in part, the subject of a lease, other than a prescribed lease, at any time during the period of three years immediately preceding the date on which the~~
- 35 **lease**

Landlord and Tenant (Amendment).

lease referred to in subpara-
graph (iii) of this para-
graph was registered in the
office of the Rent Controller;

5

(b) of which a lessor has obtained vacant possession after the commencement of the Landlord and Tenant (Amendment) Act, 1958, otherwise than by an order for recovery of possession made on any one or more of the grounds specified in paragraph (g), (h), (i), (j), (k), (l), (m), (t) or (v) of subsection five of section sixty-two of this Act;

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(c) **that** does not form part of any premises that were the subject of a lease, other than a prescribed lease, at any time during that period;

(d) **that** is not "special premises" for the purposes of this Act;

25

(ii) is one of two or three, but not more, residential units in that dwelling-house which were provided out of that dwelling-house, by those alterations, or those alterations and additions; and

30

(iii) is the subject of a lease (not being a lease of shared accommodation **or a lease the lessor under which is the employer of the lessee**)—

35

(a) that is registered in the office of the Rent Controller;

(b) the execution of which by the lessee is witnessed by a solicitor instructed and employed independently of the lessor; and

(c)

Landlord and Tenant (Amendment).

(c) that is certified by that solicitor as provided in subsection two of this section.

5 (v) by inserting next after the same subsection the following new subsection :—

10 (1A) The provisions of Parts II, III, IV and V of this Act do not apply in respect of any premises used for business or commercial purposes after the erection of which commenced after the twenty-seventh day of September, one thousand nine hundred and fifty-seven.

(vi) by inserting next after subsection two of the same section the following new subsections :—

15 (2A) Where the lessee under a lease is a company or other corporate body the provisions of this section which, but for this subsection, would require the execution of the lease to be witnessed, and the lease to be certified, in the manner provided in this section shall be deemed to be omitted therefrom.

20 (2B) Premises that comply with the provisions of any one of the paragraphs (namely, paragraphs (a), (b), (c), (d), (e), (f) and (g)) contained in subsection one of this section and would, if that one paragraph were the only paragraph contained in that subsection, be exempt from the provisions of Parts II, III, IV and V of this Act to the extent provided by this section, shall be so exempt notwithstanding that they comply with some, but not all, of the provisions of any one or more of the other such paragraphs.

25 (vii) by inserting in subsection three of the same section after the figures and letter "36A," the word "seventy-seven,";

30

(viii)

Landlord and Tenant (Amendment).

(viii) ~~(vii)~~ by inserting next after subsection three of the same section the following new subsections:—

(4) In this section—

“Prescribed lease” means—

5 (a) a lease that was registered in the office of the Rent Controller and during any part of the currency of which the premises the subject of the lease were, to the extent provided by this section or by the order under section 10 six of this Act published in Gazette No. 19 of the twenty-fourth day of February, one thousand nine hundred and 15 fifty-six, excluded by the operation of this section or that order from the provisions of Parts II, III, IV and V of this Act; or

20 (b) a lease in respect of which an application under section eighty-six of this Act or under Regulation 25 seventy-eight of the Commonwealth Regulations was granted by the issue of a certificate or any extension thereof pursuant to that section or regulation, as the case may be, but does not include a lease 30 as defined in this paragraph of this definition under which the lessor and lessee were employer and employee.

35 “Residential unit” means any part of a dwelling-house which is or has been designed for occupation as a residence independently of any other part of the dwelling-house.

40 (5) This section has effect subject to the operation of sections 70A and 81A of this Act.

(b)

Landlord and Tenant (Amendment).

- (b) (i) by omitting from paragraph (a) of subsection three of section 6A the figures "1954" and by inserting in lieu thereof the figures "1958";
- (ii) by inserting in the same paragraph after the words "that commencement" where firstly occurring the words ", whether or not that agreement or arrangement was entered into in substitution for a lease of such premises or of any part of such premises or of the premises of which such premises form a part,";
- (iii) by inserting in the same paragraph after the word "forty-nine" the words "and before that agreement or arrangement was entered into";
- (iv) by inserting in the same paragraph after the word "date" the words "and whether or not the lease is still subsisting";
- (v), ~~(iii)~~ by omitting paragraph (d) of the same subsection and by inserting in lieu thereof the following paragraph:—

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

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

- (i) one meal before midday consisting of at least two courses, one of which comprises cereal or porridge and the other of which comprises cooked meat, eggs or a like dish, together with bread (or toast), butter, jam and tea or coffee; and
- (ii) one meal after midday consisting of at least two courses, one of which comprises fish or meat (other than in sandwich form) and cooked vegetables,

if

Landlord and Tenant (Amendment).

if the value of the meals so supplied forms a substantial portion of the whole charge paid by the licensee under the agreement or arrangement.

5 3. The Landlord and Tenant (Amendment) Act, 1948, as amended by subsequent Acts, is further amended— Further amendment of Act No. 25, 1948.

(a) (i) by omitting subsections one and two of section fifteen and by inserting in lieu thereof the following subsection:— Sec. 15. (Rent of prescribed premises.)

10 (1) Except in the case of premises which were not in existence or were not leased on the first day of November, one thousand nine hundred and fifty-one, the rent payable by the lessee of any prescribed premises (or of prescribed premises together with goods) shall not, in respect of any period after the commencement of the Landlord and Tenant (Amendment) Act, 1958, and notwithstanding any term or covenant in any lease in force at any time after that commencement, exceed the rent payable in respect of the prescribed premises at the first day of November, one thousand nine hundred and fifty-one (including the rent of any goods then leased therewith and the charge for any service then provided in connection with the lease), or where that rent has been increased or decreased by a determination made before that commencement and in force immediately before that commencement the rent as so increased or decreased.

(ii) by omitting from subsection four of the same section the words "or subsection two" wherever occurring;

35 (iii) by inserting in the same subsection after the words "fair rent" wherever occurring the words "and the rent"; (b)

Landlord and Tenant (Amendment).

- (b) (i) by omitting from subsection one of section sixteen the words "or subsection two"; Sec. 16.
(Lessors may be required to furnish statutory declaration as to rent.)
- 5 (ii) by omitting from the same subsection the words "on the first day of March, one thousand nine hundred and forty-nine, or";
- (iii) by omitting from the same subsection the words "as the case may be,";
- (c) by omitting from section 16A the words "has been sub-let by the lessee or is in the occupation of any other person, and if so, the names of the persons to whom the prescribed premises or any part thereof has been so sub-let and the rent payable by such persons together with the moneys received from such other persons in occupation" and by inserting in lieu thereof the words "is in the occupation of any other person, and if so, the name of such other person together with the moneys receivable from such other person in respect of that occupation"; Sec. 16A.
(Lessee to furnish information as to other persons in occupation.)
- 10
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- (d) by omitting from subsection two of section twenty the word "six" and by inserting in lieu thereof the word "eight"; Sec. 20.
(Determination of application.)
- 20
- (e) by omitting from subsection two of section twenty-two the words "the applicant" and by inserting in lieu thereof the word "applicant"; Sec. 22.
(Date of operation of determination.)
- 25
- (f) by inserting in section twenty-three after the words "be the fair rent" wherever occurring the words "and the rent"; Sec. 23.
(Effect of determination.)
- (g) (i) by omitting from subsection one of section 24A the words "other than shared accommodation which were in existence on the thirty-first day of August, one thousand nine hundred and thirty-nine, and" and by inserting in lieu thereof the words ", other than shared accommodation,"; Sec. 24A.
(Determination based on increased outgoings.)
- 30
- 35
- (ii) by inserting in paragraph (a) of subsection five of the same section after the words "fair rent" wherever occurring the words "and the rent";
- (h)

Landlord and Tenant (Amendment).

- (h) by inserting in subsection ten of section 26B after the words "be the fair rent" wherever occurring the words "and the rent"; Sec. 26B. (Determination of rent of shared accommodation.)
- 5 (i) by inserting in subsection nine of section twenty-seven after the words "be the fair rent" wherever occurring the words "and the rent"; Sec. 27. (Determination of rent of shared accommodation.)
- (j) by inserting in subsection four of section thirty-one after the words "be the fair rent" wherever occurring the words "and the rent"; Sec. 31. (Procedure on appeal.)
- 10 (k) (i) by inserting in section 31MA after the words "as the case may be, may," the words "from time to time and"; Sec. 31MA. (Interim determination.)
- (ii) by omitting from the same section the words :—
- 15 "Any interim determination so made shall be deemed to be a determination, and shall remain in force until the application has been finally disposed of by the Board to which the application was made or the Controller, as the case may be, and no longer"
- 20 and by inserting in lieu thereof the words :—
- "Any interim determination so made shall be deemed to be a determination, and shall remain in force until—
- 25 (a) the making of a later interim determination in the proceedings; or
- (b) the application has been finally disposed of by the Board to which the application was made or the Controller, as the case may be,
- 30 whichever first happens, and no longer";
- (iii) by omitting from the same section the words "the interim determination" and by inserting in lieu thereof the words "an interim determination or determinations";
- (l)

Landlord and Tenant (Amendment).

- (1) (i) by inserting at the end of paragraph (j) of subsection two of section thirty-two the words "or the amount of land tax payable in respect of the premises by the lessor under those Acts has, since the determination, increased or decreased"; (Variation of determination.)
- (ii) by omitting from subsection four of the same section the words "in need of repair" and by inserting in lieu thereof the words "not in fair and tenantable repair";
- (iii) by inserting at the end of the same section the following new subsection: —
- (5) (a) Where a party to a determination (not being a determination in which a period is specified within which an application shall not be made to vary the determination) has, during the period commencing with the date of the determination and ending twelve months after that date, made application under subsection two of this section for variation of the determination, he shall not, within the last-mentioned period, make further application to a Fair Rents Board or to the Controller, as the case may be, for variation of the determination unless he has first obtained the leave of the Fair Rents Board or the Controller, as the case may be, to do so.
- (b) A Fair Rents Board or the Controller, as the case may be, may, for the purposes of this section, grant or refuse leave to apply for a variation of the determination without a formal or oral hearing of the persons interested or their representatives.
- (m) by inserting next after section thirty-two the following new section: — New sec. 32A.
- 32A. (1) A lessee of prescribed premises who—
- (a) refuses to allow, or fails to take such reasonable steps as are necessary to allow, the lessor of the premises or the lessor's servant or agent to enter and inspect the premises State of repair not to be raised by lessee in certain cases.

Landlord and Tenant (Amendment).

5 premises at least once a year at any reasonable time between ~~nine~~ **eight** o'clock in the morning and ~~six~~ **eight** o'clock in the evening on any week day after not less than seven days' notice in writing of intention to do so has been given to the lessee ; or

10 (b) refuses to allow, or fails to take such reasonable steps as are necessary to allow, the lessor his agents servants workmen or contractors to enter the premises for the purpose of effecting necessary repairs or maintenance after reasonable notice of intention to do so has been given to the lessee,

15 shall not, within a year from the refusal or failure, on any application made to a Fair Rents Board or the Controller, as the case may be, for a determination, or for a variation of a determination, of the fair rent of the prescribed premises, be allowed
20 to raise or put in issue the state of repair of the premises unless he has first obtained the leave of the Fair Rents Board or the Controller, as the case may be, to do so.

25 (2) Subsection one of this section does not apply where a refusal or failure of the kind described in that subsection on the part of the lessee is authorised or permitted, expressly or impliedly, by the terms of the lease.

30 (3) Without prejudice to the generality of the meaning of the expression "reasonable time", that expression in subsection one of this section does not, in the case of a dwelling-house, include any time at which the lessee and the other adult members of his household are ordinarily absent from the dwelling-house in the course or by reason of their
35 respective trades, businesses, occupations or employments.

(n)

Landlord and Tenant (Amendment).

- (n) by inserting in subparagraph (iv) of paragraph (b) of subsection one of section thirty-six after the word "available" where firstly occurring the words "or represented to be available"; Sec. 36. (Certain payments prohibited.)
- 5 (o) (i) by omitting from subsection two of section fifty-seven the words "first day of March, one thousand nine hundred and forty-nine" wherever occurring and by inserting in lieu thereof the words "first day of November, one thousand
10 nine hundred and fifty-one"; Sec. 57. (Lessor to ascertain fair rent.)
- (ii) by omitting subsection three of the same section;
- (p) by inserting in paragraph (b) of subsection (1A) of section fifty-nine after the word "letter" the words
15 ", or certified mail service,"; Sec. 59. (Service of notices.)
4. The Landlord and Tenant (Amendment) Act, 1948, as amended by subsequent Acts, is further amended— Further amendment of Act No. 25, 1948.
- (a) (i) by omitting from the end of paragraph (r) of subsection five of section sixty-two the word
20 "or"; Sec. 62. (Restriction on eviction.)
- (ii) by inserting at the end of the same subsection the following new paragraphs : —
- (t) that the premises, being a dwelling-
25 house, are owned by the lessor who, being a male, is of or over the age of sixty-five years or, being a female, is of or over the age of sixty years, that not more than two other dwelling-
30 houses (exclusive of the dwelling-house in which he resides) are owned by the lessor if he is living alone or, if the lessor is living with his spouse,
not

Landlord and Tenant (Amendment).

5 not more than two other dwelling-
houses (exclusive of the dwelling-
house in which they reside) are owned
by them, that the premises were pur-
chased or acquired by the lessor or
the deceased spouse of the lessor
before the twenty-first day of July,
one thousand nine hundred and forty-
eight, that the income of the lessor if
10 he is living alone, or, if the lessor is
living with his spouse, his income
together with that of his spouse, does
not exceed the Sydney basic wage, and
that the premises are required for sale
with vacant possession;

15 (u) that, where the premises are a
dwelling-house, the lessee has
reasonably suitable alternative accom-
modation available for his occupation
for residential purposes; or

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

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

35 (c) In paragraph (t) of subsection five of
this section, "Sydney basic wage" means the
basic wage for adult males assessed and cal-
culated in accordance with the provisions of
paragraph (a) of subsection two of section

Landlord and Tenant (Amendment).

5 61K of the Industrial Arbitration Act, 1940, as amended by subsequent Acts, and as last adjusted in accordance with the provisions of section 61M of that Act, as so amended, before the notice to quit concerned was given.

10 (d) For the purposes of paragraph (t) of subsection five of this section if the lessor resides with his spouse a dwelling-house owned by them jointly or by either of them severally shall be taken to be owned by them.

(iv) by inserting next after subsection nine of the same section the following new subsection:—

15 (9A) (a) Where a lessor has given notice to quit on the ground specified in paragraph (t) of subsection five of this section and the dwelling-house in respect of which the notice was given has been vacated in accordance with the notice or an order for the recovery of possession of that dwelling-house has been made on
20 that ground, a notice to quit on that ground shall not be given in respect of another dwelling-house by the lessor or his spouse within a period of five years immediately succeeding the date on which the dwelling-house first-
25 mentioned in this subsection was vacated or possession thereof was recovered.

30 (b) Where a notice to quit has been given on the ground specified in paragraph (t) of subsection five of this section and the dwelling-house in respect of which the notice was given has been vacated within a period of six months after the giving of the notice, the dwelling-house shall, unless the contrary is proved or an order for the recovery of possession of the dwelling-house has been made
35 within that period, be deemed for the purposes of this subsection to have been vacated in accordance with the notice.

Landlord and Tenant (Amendment).

- (b) by inserting at the end of section 62A the following new subsection:—
- 5 (4) In this section the expression “premises used solely as a dwelling-house” does not include premises which are sub-let in whole or in part by the lessee, with the express or implied consent of the lessor, in the course of the lessee’s business of sub-letting for residential purposes.
- 10 (c) by inserting at the end of section 62B the following new subsection:—
- 15 (3) In this section the expression “premises used solely as a dwelling-house” does not include premises which are sub-let in whole or in part by the lessee, with the express or implied consent of the lessor, in the course of the lessee’s business of sub-letting for residential purposes.
- 20 (d) (i) by inserting in subsection one of section sixty-five after the words “any person claiming under or through such lessor” wherever occurring the words “otherwise than by virtue of a concurrent lease granted after the commencement of the Landlord and Tenant (Amendment) Act, 1958, by such lessor to the person so claiming”;
- 25 (ii) by omitting from the same subsection the words “June, one thousand nine hundred and fifty-eight” and by inserting in lieu thereof the words “January, one thousand nine hundred and sixty-one”;
- 30 (iii) by inserting next after subsection one of the same section the following new subsection:—
- (1A) A person who has become the lessor of prescribed premises, being a dwelling-house or part of a dwelling-house, by virtue of the assignment

Sec. 62A.
(Judge may bar lessor’s right to take proceedings where refusal of consent to assignment, &c., unreasonable.)

Sec. 62B.
(Power to assign certain tenancies at will.)

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

Landlord and Tenant (Amendment).

5 assignment or transfer to him, after the commencement of the Landlord and Tenant (Amendment) Act, 1958, of a lease of the prescribed premises or the granting to him, after that commencement, of a concurrent lease of the prescribed premises or any person claiming under or through such lessor shall not, within a period of six months after the date of the assignment or transfer of the lease or the grant of the concurrent lease, as the case may be, give a notice to quit on the ground specified in paragraph (g) of subsection five of section sixty-two of this Act to any person who was a lessee of the prescribed premises at the date of the assignment or transfer of the lease or the grant of the concurrent lease, as the case may be :

20 Provided that in respect of any person who has, before the first day of January, one thousand nine hundred and sixty-one, become the lessor of prescribed premises, being a dwelling-house or part of a dwelling-house, by virtue of the assignment or transfer to him, after the commencement of the Landlord and Tenant (Amendment) Act, 1958, of a lease of the prescribed premises or the granting to him, after that commencement, of a concurrent lease of the prescribed premises or any person claiming under or through such lessor, the foregoing provisions of this subsection shall be read and construed as if—

- 30 (a) the words "six months" were omitted therefrom and the words "two years" were inserted in lieu thereof; and
- 35 (b) the words "unless, after that date, he has given to the lessee at least eighteen months' notice in writing of his intention to give such notice to quit" were inserted after the words "as the case may be" where secondly occurring.
- 40

Landlord and Tenant (Amendment).

- 5 (e) (i) by omitting from paragraph (c) of subsection one of section seventy the word, symbols and letter "and (s)" and by inserting in lieu thereof the word, symbols and letters ", (s), (t) and (v)";
- (ii) by omitting subparagraph (iii) of paragraph (d) of the first proviso to subsection two of the same section and by inserting in lieu thereof the following subparagraph:—

 - 10 (iii) the lessor does not own and has not, since the twenty-first day of July, one thousand nine hundred and forty-eight, owned any other dwelling-house, or, if the dwelling-house is one of a pair of semi-detached dwelling-houses that are owned by the lessor, the only other dwelling-house that the lessor owns or has, since the twenty-first day of July, one thousand nine hundred and forty-eight, owned is the other one of that pair of semi-detached dwelling-houses;
 - 15 (iii) by inserting at the end of the second proviso to the same subsection the words "or the Australian Soldiers' Repatriation Act 1920 (as amended by subsequent Acts) of the Parliament of the Commonwealth";
 - 20 (iv) by omitting from the same subsection the words "June, one thousand nine hundred and fifty-eight" and by inserting in lieu thereof the words "January, one thousand nine hundred and sixty-one";
 - 25 (v) by inserting next after subsection four of the same section the following new subsection:—

 - 30 (4A) Notwithstanding anything contained in this section, an order for the recovery of possession of any prescribed premises from any person on the ground specified in paragraph (t) of subsection

Sec. 70.
(Court to consider hardship.)

Landlord and Tenant (Amendment).

subsection five of section sixty-two of this Act shall not be made unless the court is satisfied that the premises have been offered for sale to the tenant upon terms and conditions which, having regard to all relevant circumstances, are fair and reasonable.

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

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

(f) by inserting next after section seventy the following New sec. 70A. new section :—

70A. (1) Where a lessor institutes proceedings after the commencement of the Landlord and Tenant (Amendment) Act, 1958, for the recovery of possession of any prescribed premises, being a dwelling-house, from any person on any of the grounds specified in paragraphs (g), (i), (l) or (m) of subsection five of section sixty-two of this Act, and an order for the recovery of possession of the dwelling-house cannot be made in those proceedings unless the court is satisfied that the lessor had provided at the date of expiry of the notice to quit, and has immediately available for the occupation of the persons occupying the dwelling-house, reasonably suitable alternative accommodation, the court shall have no jurisdiction in the matter unless there was filed, at the time when the information instituting the proceedings was exhibited, with the clerk of the court in which the proceedings are instituted a statutory

Certain dwelling-houses to be subject to this Act notwithstanding section 5A.

Landlord and Tenant (Amendment).

statutory declaration made by the owner of, or other the person having authority to lease, that alternative accommodation declaring that—

- 5 (a) the premises specified in the declaration are the alternative accommodation which the lessor had provided at the date of expiry of the notice to quit and which would be immediately available for occupation as provided in subsection two of section 10 seventy of this Act ; and
- (b) he is aware of the provisions of subsection two of this section and understands their effect.

15 (2) As on and from the date on which the statutory declaration referred to in subsection one of this section is filed with the clerk of the court in accordance with that subsection the premises specified in the declaration as being the alternative 20 accommodation shall be subject to the provisions of this Act in all respects as though section 5A of this Act had not been enacted.

This subsection ceases to apply in respect of those premises—

- 25 (a) if the court finds that that alternative accommodation is not reasonably suitable or had not been provided at the date of expiry of the notice to quit or is not immediately available for occupation as provided in subsection two of section seventy of this 30 Act—from the time when the court makes that finding ;
- (b) if the court finds that that alternative accommodation is reasonably suitable but the lessee of the premises the subject of the proceedings does not accept that alternative accommodation—from the time of 35 that rejection ;

(c)

Landlord and Tenant (Amendment).

- 5 (c) if the lessee vacates the premises for the recovery of possession of which the proceedings were instituted and does not accept that alternative accommodation—
from the time when the lessee vacates those premises ;
- 10 (d) if the lessor discontinues the proceedings and the court orders that this subsection shall cease to apply to that alternative accommodation—from the time when the court makes that order ;
- 15 (e) if that lessee, having accepted that alternative accommodation, vacates that alternative accommodation—from the time of that vacation.

Nothing in this subsection affects the operation of any order made under section 81A of this Act.

20 (3) The clerk of the court with whom is filed any such statutory declaration as is referred to in subsection one of this section shall forward particulars of the alternative accommodation referred to in the statutory declaration to the Rent Controller who shall enter the particulars in a register kept for the purpose.

25 ~~(f)~~ (g) (i) by inserting in paragraphs (a), (b) and (c) of subsection one of section seventy-seven after the word "leased" wherever occurring the words "or made the subject of an agreement or arrangement whether oral or in writing of leave and license for the use thereof"; Sec. 77. (Premises not to be sold or re-let in certain cases.)

30 (ii) by inserting in paragraph (a) of subsection two of the same section after the word "letting" the words ", or the entering into of an agreement or arrangement whether oral or in writing of leave and license for the use,";

35 (iii) by inserting in the same paragraph after the word "let" the words "or the subject of that agreement or arrangement";

(iv)

Landlord and Tenant (Amendment).

(iv) by inserting at the end of the same subsection the words :—

In this subsection "rent", in relation to an agreement or arrangement whether oral or in writing of leave and license for the use of the prescribed premises or portion thereof, means any payment or consideration in respect of any leave and license for the use of the premises or portion, as the case may be, and for any services provided for or supplied to any person using the premises or portion, as the case may be, under leave and license.

(h) (i) by inserting next after subsection three of section eighty-one the following new subsection :—

(3A) Where the lessor of any prescribed premises, being a dwelling-house, or any agent or servant of the lessor, has been convicted of an offence arising under subsection one of this section, the court before which the lessor, agent or servant, as the case may be, was convicted, if it is of opinion that the acts or omissions constituting the offence were done or omitted with intent that the person who was lessee at the time when those acts or omissions were done or omitted to be done vacate the premises and that person has vacated the premises, may, in addition to the penalty prescribed by this Act for the offence, order the lessor to pay to that person such sum as appears to the court to be sufficient as compensation for damage or loss sustained by that person as the result of his vacating the premises, and the provisions of subsection three of section sixty-one of this Act shall apply, mutatis mutandis, to and in respect of any order for the payment of any sum under this subsection.

Sec. 81.

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

(g) (ii) by inserting in paragraph (b) of subsection four of section eighty-one after the words "power of the lessor" the words "to restore the service or to have the service restored or"; (i)

Landlord and Tenant (Amendment).

(i) by inserting next after section eighty-one the following new section :— New sec. 81A.

5 81A. (1) A court for the district in which pre-
scribed premises, being a dwelling-house that is not
exempt by section 5A of this Act from the provisions
of Parts II, III, IV and V of this Act to the extent
provided by that section, are situated, shall, on
application in that behalf made by the lessee of the
premises, order that the premises, if vacated by the
10 lessee, shall remain subject to the provisions of this
Act in all respects as though section 5A of this Act
had not been enacted, if the court is satisfied that—

15 (a) the lessor has done, or caused to be done,
any act, or omitted, or caused to be
omitted, any act whereby the ordinary use
or enjoyment by the lessee of the premises
or of any goods leased therewith, or of any
conveniences usually available to the lessee,
20 or of any service supplied to, or provided
in connection with, the premises is inter-
fered with or restricted ;

 (b) that the lessor has by his conduct endeavoured to induce the lessee to vacate the premises ;

25 (c) that the lessor has unreasonably caused
expense and inconvenience to the lessee by
requiring him to defend proceedings under
this Act for the recovery of the premises
from the lessee and that those proceedings
30 were vexatious ;

 (d) the lessor has allowed the premises to fall into a dilapidated or dangerous condition.

35 (2) Notwithstanding anything contained in
subsection one of this section, the court, although
satisfied of any one or more of the matters specified
in paragraphs (a), (c) and (d), may refuse to make
the order if the lessor satisfies the court that his
conduct in relation to that matter or those matters
was not intended to induce the lessee to vacate the
40 premises.

(3)

Landlord and Tenant (Amendment).

(3) An order under this section—

(a) shall remain in force for such period as is specified in the order or until the court otherwise orders; and

5 **(b) shall have effect according to its tenor.**

(4) Where an order is made under this section, the clerk of the court shall forthwith forward a copy of the order to the Rent Controller who shall enter particulars of the order in a register kept for the purpose.

10

(5) For the purposes of this section, conveniences shall be deemed to be usually available to the lessee where prior to the use of the conveniences having been interfered with or restricted without his consent, he has been allowed, at all times during the tenancy, to use those conveniences as he desired or he has been allowed to use those conveniences at times agreed to by the lessor and lessee or at times equivalent to those times.

15

(6) In this section "court" means a court of petty sessions holden before a Stipendiary Magistrate.

20

~~(h)~~ **(j) by inserting in section 85B after the word "eighty-six," the figures and letter "86A,";**

Sec. 85B.
(Application by solicitor or agent.)

25 ~~(i)~~ **(k) by inserting next after section eighty-six the following new section:—**

New sec. 86A.

86A. (1) The owner of any prescribed premises who wishes to make the premises available for leasing to his employees (whether or not the premises are then let to one of his employees) may make application in writing to the Controller to exclude the premises from the operation of this Part and Part V of this Act.

Exclusion of premises from operation of Part III and Part V where lessor and lessee are employer and employee.

30

(2)

Landlord and Tenant (Amendment).

(2) The applicant shall furnish such information in relation to the application as the Controller requires.

5

(3) (a) The Controller may, in his discretion, issue a certificate under this section excluding the premises from the operation of this Part and Part V of this Act during—

10

(i) any period during which the premises are let to any person who is an employee of the applicant; and

15

(ii) where any such person ceases to be an employee of the applicant while the premises are let to that person, the period of two months immediately succeeding the date on which that person so ceases to be an employee,

and the premises shall be excluded accordingly.

20

(b) Nothing in subparagraph (ii) of paragraph (a) of this subsection shall be construed as affecting or limiting the operation of subparagraph (i) of that paragraph.

25

(4) The Controller may at any time revoke or vary any certificate issued under subsection three of this section.

~~(j)~~ (I) (i) by omitting subsections three and (3A) of section eighty-seven and by inserting in lieu thereof the following subsection:—

Sec. 87.
(Exclusion of certain subdivided premises, &c., from operation of Part III and Part V.)

30

(3) The Controller may—

(a) grant the application and issue the certificate, either unconditionally or subject to such conditions as he thinks fit and for such period as he thinks fit; or

(b) refuse the application.

(ii)

Landlord and Tenant (Amendment).

5 (ii) by inserting at the end of subsection four of the same section the words "unless immediately prior to that date a prior certificate issued under this section had force or effect in respect of that person as such lessee";

(k) (m) by inserting in section 87A after the words "this Part" the words "and Part V".
Sec. 87A.
(Part III not to apply to a dwelling-house let on behalf of an insane patient.)

5. The Landlord and Tenant (Amendment) Act, 1948, as amended by subsequent Acts, is further amended by inserting
10 next after section eighty-eight the following new section:—
Further amendment of Act No. 25, 1948.
New sec. 88A.

15 88A. (1) A person shall not sell or agree to sell any prescribed premises, being a dwelling-house which is occupied by a lessee and being the only premises comprised in the sale or agreement for sale, to any person other than the lessee unless—
Dwelling-house not to be sold unless tenant given opportunity to purchase.
cf. Vict. Act No. 6098, s. 72.

(a) the premises are sold at an auction sale of which not less than fourteen days' notice in writing has been given to the lessee; or

20 (b) the vendor has first offered in writing to sell the premises to the lessee at a price not greater than the price at which the premises are actually sold or agreed to be sold and upon terms as to payment and otherwise not less favourable to
25 the lessee than the terms upon which the premises are actually sold or agreed to be sold and the lessee has not accepted that offer within fourteen days after the receipt thereof by him:

30 Provided that nothing in this subsection shall be construed as prohibiting the vendor from entering into and giving effect to a contract to sell the premises to any person

Landlord and Tenant (Amendment).

person conditionally upon the lessee's rejection of an offer of sale of the premises made in accordance with paragraph (b) of this subsection.

5 (2) Any person who contravenes or fails to comply with any provision of this section shall be guilty of an offence against this Act.

(3) Any contravention of or failure to comply with any provision of this section shall not invalidate any contract or agreement.

10 This subsection shall have effect notwithstanding anything contained in section eighty-nine of this Act.

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

15 (a) by omitting from section one hundred the word, symbols and letter "or (r)" and by inserting in lieu thereof the word, symbols and letters " , (r), (t), (u) or (v)";

20 (b) by omitting from subsection two of section one hundred and one the word, symbols and letter "or (r)" and by inserting in lieu thereof the word, symbols and letters " , (r), (t), (u) or (v)".

7. Any determination of the fair rent of prescribed premises purporting to have been made before the commencement of this Act pursuant to subsection three of section 6A of the
25 Landlord and Tenant (Amendment) Act, 1948, as amended from time to time, which would have been valid, and would have been in force immediately before that commencement, had the amendments made by subparagraph (ii), (iii) and (iv) of paragraph (b) of section two of this Act been in force at,
30 and since, the time when the determination was made shall, as from that commencement, be the fair rent and the rent of the prescribed premises until it is varied in pursuance of Part II of the Landlord and Tenant (Amendment) Act, 1948-1958.

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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.

ALLAN PICKERING,
Clerk of the Legislative Assembly.

*Legislative Assembly Chamber,
Sydney, 19 March, 1958.*

New South Wales



ANNO SEPTIMO

ELIZABETHÆ II REGINÆ

Act No. , 1958.

An Act to amend the law relating to landlord and tenant; for this purpose to amend the Landlord and Tenant (Amendment) Act, 1948, and certain other Acts in certain respects; and for purposes connected therewith.

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

- 5 **1.** (1) This Act may be cited as the "Landlord and Tenant (Amendment) Act, 1958".

Short title
and
citation.

Landlord and Tenant (Amendment).

(2) The Landlord and Tenant (Amendment) Act, 1948, as amended by subsequent Acts and by this Act, may be cited as the Landlord and Tenant (Amendment) Act, 1948-1958.

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

Amendment of Act No. 25, 1948.

(a) (i) by inserting in subparagraph (ii) of paragraph (b) of subsection one of section 5A after the word "lease" the words ", other than a prescribed lease,";

Sec. 5A. (Certain premises excluded from operation of Act.)

10 (ii) by inserting in subparagraph (iii) of the same paragraph after the word "lease" the words ", other than a prescribed lease,";

(iii) by omitting the word "or" appearing at the end of subparagraph (v) of the same paragraph;

15 (iv) by inserting at the end of the same subsection the following new paragraphs:—

(d) any dwelling-house that—

20 (i) was in existence on the first day of December, one thousand nine hundred and fifty-seven;

25 (ii) has not been, either in whole or in part, the subject of a lease, other than a prescribed lease, at any time between that day and the commencement of the Landlord and Tenant (Amendment) Act, 1958;

30 (iii) does not form part of any premises that were the subject of a lease, other than a prescribed lease, between that day and that commencement;

(iv) is not "special premises" for the purposes of this Act; and

(v)

Landlord and Tenant (Amendment).

- (v) is the subject of a lease (not being a lease of shared accommodation)—
- (a) that is registered in the office of the Rent Controller;
 - 5 (b) the execution of which by the lessee is witnessed by a solicitor instructed and employed independently of the lessor; and
 - 10 (c) that is certified by that solicitor as provided in subsection two of this section;
- (e) any dwelling-house that—
- 15 (i) was in existence at the commencement of the Landlord and Tenant (Amendment) Act, 1958;
 - (ii) has not been, either in whole or in part, the subject of a lease, other than a prescribed lease, at any time during the period of three years immediately preceding the date on which the lease referred to in subparagraph (v) of this paragraph was registered in the office of the Rent Controller;
 - 20 (iii) does not form part of any premises that were the subject of a lease, other than a prescribed lease, at any time during the period referred to in subparagraph (ii) of this paragraph;
 - 25 (iv) is not “special premises” for the purposes of this Act; and
 - 30 (v) is the subject of a lease (not being a lease of shared accommodation)—
 - (a) that is registered in the office of the Rent Controller;
 - (b)

Landlord and Tenant (Amendment).

- 5 (b) the execution of which by the lessee is witnessed by a solicitor instructed and employed independently of the lessor; and
- (c) that is certified by that solicitor as provided in subsection two of this section;
- (f) any residential unit that—
- 10 (i) came into existence by reason of alterations, or alterations and additions, made after the commencement of the Local Government (Regulation of Flats) Act, 1955, to a dwelling-house that—
- 15 (a) was in existence at the commencement of the Local Government (Regulation of Flats) Act, 1955;
- 20 (b) has not been, either in whole or in part, the subject of a lease, other than a prescribed lease, at any time between the seventh day of December, one thousand nine hundred and forty-one, and the twenty-fourth day of February, one thousand nine hundred and fifty-six;
- 25 (c) does not form part of any premises that were the subject of a lease, other than a prescribed lease, at any time between those days;
- 30 (d) is not “special premises” for the purposes of this Act;
- (ii)

Landlord and Tenant (Amendment).

- 5 (ii) is one of two or three, but not more, residential units in that dwelling-house which were provided out of that dwelling-house, by those alterations, or those alterations and additions; and
- (iii) is the subject of a lease (not being a lease of shared accommodation)—
- 10 (a) that is registered in the office of the Rent Controller;
- (b) the execution of which by the lessee is witnessed by a solicitor instructed and employed independently of the lessor; and
- 15 (c) that is certified by that solicitor as provided in subsection two of this section; or
- (g) any residential unit that—
- 20 (i) came into existence by reason of alterations, or alterations and additions, made after the commencement of the Local Government (Regulation of Flats) Act, 1955, to a dwelling-house that—
- 25 (a) was in existence at the commencement of the Local Government (Regulation of Flats) Act, 1955;
- 30 (b) has not been, either in whole or in part, the subject of a lease, other than a prescribed lease, at any time during the period of three years immediately preceding the date on which the lease referred to in subparagraph (iii) of this paragraph was registered in the office of the Rent Controller;
- 35 (c)

Landlord and Tenant (Amendment).

5 (c) does not form part of any premises that were the subject of a lease, other than a prescribed lease, at any time during that period;

(d) is not "special premises" for the purposes of this Act;

10 (ii) is one of two or three, but not more, residential units in that dwelling-house which were provided out of that dwelling-house, by those alterations, or those alterations and additions; and

(iii) is the subject of a lease (not being a lease of shared accommodation)—

15 (a) that is registered in the office of the Rent Controller;

20 (b) the execution of which by the lessee is witnessed by a solicitor instructed and employed independently of the lessor; and

(c) that is certified by that solicitor as provided in subsection two of this section.

25 (v) by inserting next after the same subsection the following new subsection :—

30 (1A) The provisions of Parts II, III, IV and V of this Act do not apply in respect of any premises used for business or commercial purposes the erection of which commenced after the twenty-seventh day of September, one thousand nine hundred and fifty-seven.

(vi)

Landlord and Tenant (Amendment).

(vi) by inserting next after subsection two of the same section the following new subsections :—

5 (2A) Where the lessee under a lease is a company or other corporate body the provisions of this section which, but for this subsection, would require the execution of the lease to be witnessed, and the lease to be certified, in the manner provided in this section shall be deemed to be omitted therefrom.

10 (2B) Premises that comply with the provisions of any one of the paragraphs (namely, paragraphs (a), (b), (c), (d), (e), (f) and (g)) contained in subsection one of this section and would, if that one paragraph were the only paragraph contained in that subsection, be exempt from the provisions of Parts II, III, 15 IV and V of this Act to the extent provided by this section, shall be so exempt notwithstanding that they comply with some, but not all, of the provisions of any one or more of the other such paragraphs. 20

(vii) by inserting next after subsection three of the same section the following new subsection:---

(4) In this section—

25 “Prescribed lease” means—

30 (a) a lease that was registered in the office of the Rent Controller and during any part of the currency of which the premises the subject of the lease were, to the extent provided by this section or by the order under section six of this Act published in Gazette No. 19 of the twenty- 35 fourth day of February, one thousand

Landlord and Tenant (Amendment).

5 thousand nine hundred and
fifty-six, excluded by the operation
of this section or that order from
the provisions of Parts II, III,
IV and V of this Act; or

10 (b) a lease in respect of which an
application under section eighty-
six of this Act or under Regula-
tion seventy-eight of the Com-
monwealth Regulations was
15 granted by the issue of a
certificate or any extension
thereof pursuant to that section
or regulation, as the case may
be, but does not include a lease
as defined in this paragraph of
this definition under which the
lessor and lessee were employer
and employee.

20 “Residential unit” means any part of a
dwelling-house which is or has been
designed for occupation as a residence
independently of any other part of the
dwelling-house.

25 (b) (i) by omitting from paragraph (a) of subsection Sec. 6A.
three of section 6A the figures “1954” and by (Special
inserting in lieu thereof the figures “1958”; premises.)

30 (ii) by inserting in the same paragraph after the
words “that commencement” where firstly
occurring the words “, whether or not that
agreement or arrangement was entered into in
substitution for a lease of such premises or of
any part of such premises or of the premises
of which such premises form a part.”;

(iii)

Landlord and Tenant (Amendment).

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

5

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

10

In this paragraph “bona-fide boarder” means a licensee who is supplied by the licensor with—

15

(i) one meal before midday consisting of at least two courses, one of which comprises cereal or porridge and the other of which comprises cooked meat, eggs or a like dish, together with bread (or toast), butter, jam and tea or coffee; and

20

(ii) one meal after midday consisting of at least two courses, one of which comprises fish or meat (other than in sandwich form) and cooked vegetables,

25

if the value of the meals so supplied forms a substantial portion of the whole charge paid by the licensee under the agreement or arrangement.

30

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

Further amendment of Act No. 25, 1948.

(a) (i) by omitting subsections one and two of section fifteen and by inserting in lieu thereof the following subsection:—

Sec. 15. (Rent of prescribed premises.)

35

(1) Except in the case of premises which were not in existence or were not leased on the first day of November, one thousand nine hundred

Landlord and Tenant (Amendment).

- 5 hundred and fifty-one, the rent payable by the lessee of any prescribed premises (or of prescribed premises together with goods) shall not, in respect of any period after the commencement of the Landlord and Tenant (Amendment) Act, 1958, and notwithstanding any term or covenant in any lease in force at any time after that commencement, exceed the rent payable in respect of the prescribed premises at the first day of November, one thousand nine hundred and fifty-one (including the rent of any goods then leased therewith and the charge for any service then provided in connection with the lease), or where that rent has been increased or decreased by a determination made before that commencement and in force immediately before that commencement the rent as so increased or decreased.
- 10
- 15
- 20 (ii) by omitting from subsection four of the same section the words "or subsection two" wherever occurring;
- (iii) by inserting in the same subsection after the words "fair rent" wherever occurring the words
- 25 "and the rent";
- (b) (i) by omitting from subsection one of section sixteen the words "or subsection two";
- (ii) by omitting from the same subsection the words "on the first day of March, one thousand nine hundred and forty-nine, or";
- 30 (iii) by omitting from the same subsection the words "as the case may be,";
- (c) by omitting from section 16A the words "has been sub-let by the lessee or is in the occupation of any other person, and if so, the names of the persons to whom the prescribed premises or any part thereof has been so sub-let and the rent payable
- 35 by
- Sec. 16.
(Lessors may be required to furnish statutory declaration as to rent.)
- Sec. 16A.
(Lessee to furnish information as to other persons in occupation.)

Landlord and Tenant (Amendment).

- 5 by such persons together with the moneys received from such other persons in occupation” and by inserting in lieu thereof the words “is in the occupation of any other person, and if so, the name of such other person together with the moneys receivable from such other person in respect of that occupation”;
- 10 (d) by omitting from subsection two of section twenty the word “six” and by inserting in lieu thereof the word “eight”; Sec. 20. (Determination of application.)
- (e) by omitting from subsection two of section twenty-two the words “the applicant” and by inserting in lieu thereof the word “applicant”; Sec. 22. (Date of operation of determination.)
- 15 (f) by inserting in section twenty-three after the words “be the fair rent” wherever occurring the words “and the rent”; Sec. 23. (Effect of determination.)
- 20 (g) (i) by omitting from subsection one of section 24A the words “other than shared accommodation which were in existence on the thirty-first day of August, one thousand nine hundred and thirty-nine, and” and by inserting in lieu thereof the words “, other than shared accommodation,”; Sec. 24A. (Determination based on increased outgoings.)
- 25 (ii) by inserting in paragraph (a) of subsection five of the same section after the words “fair rent” wherever occurring the words “and the rent”;
- (h) by inserting in subsection ten of section 26B after the words “be the fair rent” wherever occurring the words “and the rent”; Sec. 26B. (Determination of rent of shared accommodation.)
- 30 (i) by inserting in subsection nine of section twenty-seven after the words “be the fair rent” wherever occurring the words “and the rent”; Sec. 27. (Determination of rent of shared accommodation.)
- (j) (Determination of rent of shared accommodation.)

Landlord and Tenant (Amendment).

- (j) by inserting in subsection four of section thirty-one after the words "be the fair rent" wherever occurring the words "and the rent"; Sec. 31. (Procedure on appeal.)
- 5 (k) (i) by inserting in section 31MA after the words "as the case may be, may," the words "from time to time and"; Sec. 31MA. (Interim determination.)
- (ii) by omitting from the same section the words :—
- 10 "Any interim determination so made shall be deemed to be a determination, and shall remain in force until the application has been finally disposed of by the Board to which the application was made or the Controller, as the case may be, and no longer"
- and by inserting in lieu thereof the words :—
- 15 "Any interim determination so made shall be deemed to be a determination, and shall remain in force until—
- (a) the making of a later interim determination in the proceedings; or
- 20 (b) the application has been finally disposed of by the Board to which the application was made or the Controller, as the case may be,
- whichever first happens, and no longer";
- 25 (iii) by omitting from the same section the words "the interim determination" and by inserting in lieu thereof the words "an interim determination or determinations";
- 30 (l) (i) by inserting at the end of paragraph (j) of subsection two of section thirty-two the words "or the amount of land tax payable in respect of the premises by the lessor under those Acts has, since the determination, increased or decreased"; Sec. 32. (Variation of determination.)
- (ii)

Landlord and Tenant (Amendment).

(ii) by omitting from subsection four of the same section the words "in need of repair" and by inserting in lieu thereof the words "not in fair and tenantable repair";

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

10 (5) (a) Where a party to a determination (not being a determination in which a period is specified within which an application shall not be made to vary the determination) has, during the period commencing with the date of the determination and ending twelve months after that date, made application under subsection two of this section for variation of the determination, he shall not, within the last-mentioned period, make further application to a Fair Rents Board or to the Controller, as the case may be, for variation of the determination unless he has first obtained the leave of the Fair Rents Board or the Controller, as the case may be, to do so.

15 (b) A Fair Rents Board or the Controller, as the case may be, may, for the purposes of this section, grant or refuse leave to apply for a variation of the determination without a formal or oral hearing of the persons interested or their representatives.

20 (m) by inserting next after section thirty-two the following new section:— New sec. 32A.

30 32A. (1) A lessee of prescribed premises who— State of repair not to be raised by lessee in certain cases.
(a) refuses to allow, or fails to take such reasonable steps as are necessary to allow, the lessor of the premises or the lessor's servant or agent to enter and inspect the premises

Landlord and Tenant (Amendment).

premises at least once a year at any reasonable time between nine o'clock in the morning and six o'clock in the evening on any week day after not less than seven days' notice in writing of intention to do so has been given to the lessee; or

5

(b) refuses to allow, or fails to take such reasonable steps as are necessary to allow, the lessor his agents servants workmen or contractors to enter the premises for the purpose of effecting necessary repairs or maintenance after reasonable notice of intention to do so has been given to the lessee,

10

shall not, within a year from the refusal or failure, on any application made to a Fair Rents Board or the Controller, as the case may be, for a determination, or for a variation of a determination, of the fair rent of the prescribed premises, be allowed to raise or put in issue the state of repair of the premises unless he has first obtained the leave of the Fair Rents Board or the Controller, as the case may be, to do so.

15

20

(2) Subsection one of this section does not apply where a refusal or failure of the kind described in that subsection on the part of the lessee is authorised or permitted, expressly or impliedly, by the terms of the lease.

25

(3) Without prejudice to the generality of the meaning of the expression "reasonable time", that expression in subsection one of this section does not, in the case of a dwelling-house, include any time at which the lessee and the other adult members of his household are ordinarily absent from the dwelling-house in the course or by reason of their respective trades, businesses, occupations or employments.

30

35

(n)

Landlord and Tenant (Amendment).

- (n) by inserting in subparagraph (iv) of paragraph (b) of subsection one of section thirty-six after the word "available" where firstly occurring the words "or represented to be available"; Sec. 36. (Certain payments prohibited.)
- 5 (o) (i) by omitting from subsection two of section fifty-seven the words "first day of March, one thousand nine hundred and forty-nine" where- Sec. 57. (Lessor to ascertain fair rent.)
 ever occurring and by inserting in lieu thereof the words "first day of November, one thousand
 10 nine hundred and fifty-one";
- (ii) by omitting subsection three of the same section;
- (p) by inserting in paragraph (b) of subsection (1A) of section fifty-nine after the word "letter" the words Sec. 59. (Service of notices.)
 15 ", or certified mail service,";
4. The Landlord and Tenant (Amendment) Act, 1948, as amended by subsequent Acts, is further amended— Further amendment of Act No. 25, 1948.
- (a) (i) by omitting from the end of paragraph (r) of subsection five of section sixty-two the word Sec. 62. (Restriction on eviction.)
 20 "or";
- (ii) by inserting at the end of the same subsection the following new paragraphs :—
- (t) that the premises, being a dwelling- 25
 house, are owned by the lessor who, being a male, is of or over the age of sixty-five years or, being a female, is of or over the age of sixty years, that
 not more than two other dwelling- 30
 houses (exclusive of the dwelling-house in which he resides) are owned by the lessor if he is living alone or, if the lessor is living with his spouse,
 not

Landlord and Tenant (Amendment).

5 not more than two other dwelling-
houses (exclusive of the dwelling-
house in which they reside) are owned
by them, that the premises were pur-
chased or acquired by the lessor or
the deceased spouse of the lessor
before the twenty-first day of July,
one thousand nine hundred and forty-
10 eight, that the income of the lessor if
he is living alone, or, if the lessor is
living with his spouse, his income
together with that of his spouse, does
not exceed the Sydney basic wage, and
15 that the premises are required for sale
with vacant possession;

(u) that, where the premises are a
dwelling-house, the lessee has
reasonably suitable alternative accom-
modation available for his occupation
20 for residential purposes; or

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

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

35 (c) In paragraph (t) of subsection five of
this section, "Sydney basic wage" means the
basic wage for adult males assessed and cal-
culated in accordance with the provisions of
paragraph (a) of subsection two of section
61K

Landlord and Tenant (Amendment).

5 61K of the Industrial Arbitration Act, 1940, as amended by subsequent Acts, and as last adjusted in accordance with the provisions of section 61M of that Act, as so amended, before the notice to quit concerned was given.

10 (d) For the purposes of paragraph (t) of subsection five of this section if the lessor resides with his spouse a dwelling-house owned by them jointly or by either of them severally shall be taken to be owned by them.

(iv) by inserting next after subsection nine of the same section the following new subsection:—

15 (9A) (a) Where a lessor has given notice to quit on the ground specified in paragraph (t) of subsection five of this section and the dwelling-house in respect of which the notice was given has been vacated in accordance with the notice or an order for the recovery of possession of that dwelling-house has been made on that ground, a notice to quit on that ground shall not be given in respect of another dwelling-house by the lessor or his spouse within a period of five years immediately succeeding the date on which the dwelling-house first-mentioned in this subsection was vacated or possession thereof was recovered.

25 (b) Where a notice to quit has been given on the ground specified in paragraph (t) of subsection five of this section and the dwelling-house in respect of which the notice was given has been vacated within a period of six months after the giving of the notice, the dwelling-house shall, unless the contrary is proved or an order for the recovery of possession of the dwelling-house has been made within that period, be deemed for the purposes of this subsection to have been vacated in accordance with the notice.

Landlord and Tenant (Amendment).

- (b) by inserting at the end of section 62A the following new subsection:—
- 5 (4) In this section the expression “premises used solely as a dwelling-house” does not include premises which are sub-let in whole or in part by the lessee, with the express or implied consent of the lessor, in the course of the lessee’s business of sub-letting for residential purposes.
- Sec. 62A.
(Judge may bar lessor’s right to take proceedings where refusal of consent to assignment, &c., unreasonable.)
- (c) by inserting at the end of section 62B the following new subsection:—
- 10 (3) In this section the expression “premises used solely as a dwelling-house” does not include premises which are sub-let in whole or in part by the lessor, in the course of the lessee’s business of sub-letting for residential purposes.
- 15 Sec. 62B.
(Power to assign certain tenancies at will.)
- (d) (i) by inserting in subsection one of section sixty-five after the words “any person claiming under or through such lessor” wherever occurring the words “otherwise than by virtue of a concurrent lease granted after the commencement of the Landlord and Tenant (Amendment) Act, 1958, by such lessor to the person so claiming”;
- 20 Sec. 65.
(Notice to quit where dwelling-house sold.)
- 25 (ii) by omitting from the same subsection the words “June, one thousand nine hundred and fifty-eight” and by inserting in lieu thereof the words “January, one thousand nine hundred and sixty-one”;
- 30 (iii) by inserting next after subsection one of the same section the following new subsection:—
- (1A) A person who has become the lessor of prescribed premises, being a dwelling-house or part of a dwelling-house, by virtue of the assignment

Landlord and Tenant (Amendment).

6. The Landlord and Tenant (Amendment) Act, 1948, as amended by subsequent Acts, is further amended—
- 5 (a) by omitting from section one hundred the word, symbols and letter “or (r)” and by inserting in lieu thereof the word, symbols and letters “, (r), (t), (u) or (v)”;
- 10 (b) by omitting from subsection two of section one hundred and one the word, symbols and letter “or (r)” and by inserting in lieu thereof the word, symbols and letters “, (r), (t), (u) or (v)”.
7. Any determination of the fair rent of prescribed premises purporting to have been made before the commencement of this Act pursuant to subsection three of section 6A of the Landlord and Tenant (Amendment) Act, 1948, as amended from time to time, which would have been valid, and would have been in force immediately before that commencement, had the amendments made by subparagraph (ii) of paragraph (b) of section two of this Act been in force at, and since, the time when the determination was made shall, as from that commencement, be the fair rent and the rent of the prescribed premises until it is varied in pursuance of Part II of the Landlord and Tenant (Amendment) Act, 1948-1958.

Further amendment of Act No. 25, 1948.

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

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

Effect of certain determinations.

The first part of the report deals with the general situation of the country and the progress of the work during the year. It is followed by a detailed account of the various projects and the results achieved. The report concludes with a summary of the work done and the plans for the future.

The work has been carried out in accordance with the programme of work approved by the Council at its meeting on 15th December 1954. The main areas of activity have been the study of the physical properties of the various types of steel and the investigation of the factors which influence the rate of corrosion.

The results of the work have been published in a number of papers and reports. The most important of these are:

1. The effect of the rate of cooling on the mechanical properties of steel.

2. The effect of the rate of cooling on the rate of corrosion of steel.

3. The effect of the rate of cooling on the rate of oxidation of steel.

4. The effect of the rate of cooling on the rate of hydrogen absorption by steel.

5. The effect of the rate of cooling on the rate of nitrogen absorption by steel.

The work has been carried out in close collaboration with the other members of the staff and the results have been discussed at regular meetings.

Landlord and Tenant (Amendment).

5 (ii) where any such person ceases to be an employee of the applicant while the premises are let to that person, the period of two months immediately succeeding the date on which that person so ceases to be an employee,

and the premises shall be excluded accordingly.

10 (b) Nothing in subparagraph (ii) of paragraph (a) of this subsection shall be construed as affecting or limiting the operation of subparagraph (i) of that paragraph.

(4) The Controller may at any time revoke or vary any certificate issued under subsection three of this section.

15 (j) (i) by omitting subsections three and (3A) of section eighty-seven and by inserting in lieu thereof the following subsection:—

Sec. 87.
(Exclusion of certain subdivided premises, &c., from operation of Part III and Part V.)

(3) The Controller may—

20 (a) grant the application and issue the certificate, either unconditionally or subject to such conditions as he thinks fit and for such period as he thinks fit; or

(b) refuse the application.

25 (ii) by inserting at the end of subsection four of the same section the words “unless immediately prior to that date a prior certificate issued under this section had force or effect in respect of that person as such lessee”;

30 (k) by inserting in section 87A after the words “this Part” the words “and Part V”.

Sec. 87A.
(Part III not to apply to a dwelling-house let on behalf of an insane patient.)

Landlord and Tenant (Amendment).

5. The Landlord and Tenant (Amendment) Act, 1948, as amended by subsequent Acts, is further amended by inserting next after section eighty-eight the following new section:—

Further amendment of Act No. 25, 1948. New sec. 88A.

5 88A. (1) A person shall not sell or agree to sell any prescribed premises, being a dwelling-house which is occupied by a lessee and being the only premises comprised in the sale or agreement for sale, to any person other than the lessee unless—

Dwelling-house not to be sold unless tenant given opportunity to purchase.

10 (a) the premises are sold at an auction sale of which not less than fourteen days' notice in writing has been given to the lessee; or

cf. Vict. Act No. 6098, s. 72.

15 (b) the vendor has first offered in writing to sell the premises to the lessee at a price not greater than the price at which the premises are actually sold or agreed to be sold and upon terms as to payment and otherwise not less favourable to the lessee than the terms upon which the premises are actually sold or agreed to be sold and the lessee has not accepted that offer within

20 fourteen days after the receipt thereof by him:

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

(2) Any person who contravenes or fails to comply with any provision of this section shall be guilty of an offence against this Act.

30 (3) Any contravention of or failure to comply with any provision of this section shall not invalidate any contract or agreement.

This subsection shall have effect notwithstanding anything contained in section eighty-nine of this Act.

Landlord and Tenant (Amendment).

5 subsection five of section sixty-two of this Act shall not be made unless the court is satisfied that the premises have been offered for sale to the tenant upon terms and conditions which, having regard to all relevant circumstances, are fair and reasonable.

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

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

20 (f) (i) by inserting in paragraphs (a), (b) and (c) of subsection one of section seventy-seven after the word "leased" wherever occurring the words "or made the subject of an agreement or arrangement whether oral or in writing of leave and license for the use thereof";

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

25 (ii) by inserting in paragraph (a) of subsection two of the same section after the word "letting" the words ", or the entering into of an agreement or arrangement whether oral or in writing of leave and license for the use,";

30 (iii) by inserting in the same paragraph after the word "let" the words "or the subject of that agreement or arrangement";

35 (iv) by inserting at the end of the same subsection the words:—

In this subsection "rent", in relation to an agreement or arrangement whether oral or in writing of leave and license for the use of the prescribed

Landlord and Tenant (Amendment).

5 prescribed premises or portion thereof, means any payment or consideration in respect of any leave and license for the use of the premises or portion, as the case may be, and for any services provided for or supplied to any person using the premises or portion, as the case may be, under leave and license.

10 (g) by inserting in paragraph (b) of subsection four of section eighty-one after the words "power of the lessor" the words "to restore the service or to have the service restored or"; Sec. 81. (Persons not to interfere with use or enjoyment of premises.)

(h) by inserting in section 85B after the word "eighty-six," the figures and letter "86A,"; Sec. 85B. (Application by solicitor or agent.)

15 (i) by inserting next after section eight-six the following new section:— New sec. 86A.

20 86A. (1) The owner of any prescribed premises who wishes to make the premises available for leasing to his employees (whether or not the premises are then let to one of his employees) may make application in writing to the Controller to exclude the premises from the operation of this Part and Part V of this Act. Exclusion of premises from operation of Part III and Part V where lessor and lessee are employer and employee.

25 (2) The applicant shall furnish such information in relation to the application as the Controller requires.

(3) (a) The Controller may, in his discretion, issue a certificate under this section excluding the premises from the operation of this Part and Part V of this Act during—

30 (i) any period during which the premises are let to any person who is an employee of the applicant; and

(ii)

Landlord and Tenant (Amendment).

5 assignment or transfer to him, after the commencement of the Landlord and Tenant (Amendment) Act, 1958, of a lease of the prescribed premises or the granting to him, after that commencement, of a concurrent lease of the prescribed premises or any person claiming under or through such lessor shall not, within a period of six months after the date of the assignment or transfer of the lease or the grant of the concurrent lease, as the case may be, give a notice to quit on the ground specified in paragraph (g) of subsection five of section sixty-two of this Act to any person who was a lessee of the prescribed premises at the date of the assignment or transfer of the lease or the grant of the concurrent lease, as the case may be :

20 Provided that in respect of any person who has, before the first day of January, one thousand nine hundred and sixty-one, become the lessor of prescribed premises, being a dwelling-house or part of a dwelling-house, by virtue of the assignment or transfer to him, after the commencement of the Landlord and Tenant (Amendment) Act, 1958, of a lease of the prescribed premises or the granting to him, after that commencement, of a concurrent lease of the prescribed premises or any person claiming under or through such lessor, the foregoing provisions of this subsection shall be read and construed as if—

- 30 (a) the words "six months" were omitted therefrom and the words "two years" were inserted in lieu thereof; and
- 35 (b) the words "unless, after that date, he has given to the lessee at least eighteen months' notice in writing of his intention to give such notice to quit" were inserted after the words "as the case may be" where secondly occurring.

40

Landlord and Tenant (Amendment).

- (e) (i) by omitting from paragraph (c) of subsection Sec. 70.
 one of section seventy the word, symbols and (Court to
 letter "and (s)" and by inserting in lieu thereof consider
 the word, symbols and letters ", (s), (t) and hardship.)
 (v)";
- 5
- (ii) by omitting subparagraph (iii) of paragraph
 (d) of the first proviso to subsection two of the
 same section and by inserting in lieu thereof the
 following subparagraph:—
- 10
- (iii) the lessor does not own and has not,
 since the twenty-first day of July, one
 thousand nine hundred and forty-eight,
 owned any other dwelling-house, or,
 if the dwelling-house is one of a pair
 of semi-detached dwelling-houses that
 are owned by the lessor, the only other
 dwelling-house that the lessor owns or
 has, since the twenty-first day of July,
 one thousand nine hundred and forty-
 eight, owned is the other one of that
 pair of semi-detached dwelling-houses;
- 15
- 20
- (iii) by inserting at the end of the second proviso to
 the same subsection the words "or the Austra-
 lian Soldiers' Repatriation Act 1920 (as
 amended by subsequent Acts) of the Parliament
 of the Commonwealth";
- 25
- (iv) by omitting from the same subsection the words
 "June, one thousand nine hundred and fifty-
 eight" and by inserting in lieu thereof the words
 "January, one thousand nine hundred and sixty-
 one";
- 30
- (v) by inserting next after subsection four of the
 same section the following new subsection:—
- 35
- (4A) Notwithstanding anything contained in
 this section, an order for the recovery of posses-
 sion of any prescribed premises from any per-
 son on the ground specified in paragraph (t) of
 subsection

PROOF

LANDLORD AND TENANT (AMENDMENT) BILL, 1958.

EXPLANATORY NOTE.

THE objects of this Bill are—

- (a) to extend the classes of premises that are, by s. 5A of the Act, exempt from the provisions of Parts II, III, IV and V of the Act; and to relax the provisions of that section in relation to the execution and certification of a lease where the lessee is a company (clause 2 (a));
- (b) to provide that subsection three of s. 6A of the Act applies whether or not the licensee conditions concerned are in substitution for an earlier lease, but not where the licensee under those conditions is a bona-fide lodger (clause 2 (b));
- (c) to peg rents by reference to 1st November, 1951, only (clause 3 (a) (i) (ii));
- (d) to provide that, where the rent of premises is so pegged or is fixed by a determination, the rent so fixed or determined is the rent of the premises as well as the fair rent (clause 3 (a) (iii), (f), (g) (ii), (h), (i), (j));
- (e) to amend s. 16 consequentially on the amendment referred to in paragraph (c) above (clause 3 (b));
- (f) to provide that a statutory declaration under s. 16A, which at present must set out the names of sub-lessees and the rent payable by them, need only set out the names of persons in occupation and the moneys payable in respect of their occupation (clause 3 (c));
- (g) to substitute eight per cent. for six per cent. in the subsection (s. 20 (2)) that limits the amount by which the rental of a dwelling-house can be increased (clause 3 (d));
- (h) to amend s. 22 to remove a superfluous "the" (clause 3 (e));
- (i) to remove from s. 24A (Determination based on increased out-goings) the limitation that the premises to which the section applies must have been in existence on 31st August, 1939 (clause 3 (g) (i));
- (j) to allow more than one interim determination of fair rent to be made (clause 3 (k));
- (k) to allow an application to be made for a variation within twelve months of the determination where land tax payable by the lessor has increased or decreased since the determination (clause 3 (l) (i));
- (l) to limit s. 32 (4), which at present prevents an increase of the rent of a dwelling-house on account of an increase of the lessor's liability for repairs, &c. if the dwelling-house is in need of repair, to the case where the dwelling-house is not in fair and tenantable repair (clause 3 (l) (ii));
- (m) to prevent vexatious use being made of s. 32 (2) (clause 3 (1) (iii));

- (n) to prevent a lessee from raising the state of repair of premises on a fair rents application if the lessee has not allowed the lessor to enter at least once a year to view the state of repair or to enter for the purpose of effecting necessary repairs (clause 3 (m)) ;
- (o) to extend s. 36 (1) (b) to cases of supplying or undertaking to supply addresses of premises that are represented as being available for letting (clause 3 (n)) ;
- (p) to amend s. 57 consequentially on the amendment referred to in paragraph (c) above (clause 3 (o)) ;
- (q) to allow notices required to be given under s. 24A (Determination based on increased out-goings) to be sent by certified mail service (clause 3 (p)) ;
- (r) to enact three new grounds ((t), (u), (v)) on which a notice to quit may be given (clause 4 (a) (i) (ii) (iii)) ;
- (s) to limit the circumstances in which a notice to quit may be given on ground (t) (clause 4 (a) (iv)) ;
- (t) to provide that in s. 62A (Barring lessor's right to take proceedings where refusal of consent to assignment, &c., unreasonable) and in s. 62B (Assignment of certain tenancies at will) the expression "premises used solely as a dwelling-house" does not include premises run as a residential (clause 4 (b) (c)) ;
- (u) to extend s. 65, which restricts the right to give a notice to quit where a dwelling-house is sold, to cases where a person becomes the lessor by virtue of the transfer or assignment of a lease or the granting of a concurrent lease (clause 4 (d) (i) (iii)) ;
- (v) to extend the date in the proviso to s. 65 (1) to 1st January, 1961 (clause 4 (d) (ii)) ;
- (w) to extend the cases in which the court is to have regard to the availability of alternative accommodation to cases where an order for possession is sought on the new grounds (t) and (v) (clause 4 (e) (i)) ;
- (x) to waive the absolute obligation to provide alternative accommodation—
 - (i) by extending paragraph (d) of the proviso to s. 70 (2) to cover a case where the lessor therein described is seeking to recover possession of one of a pair of semi-detached dwelling-houses and the only other dwelling-house that he owns, or since 21st July, 1948, has owned is the other one of that pair of semi-detached dwelling-houses ; and
 - (ii) where the court is satisfied that refusal to make an order for possession would prejudice the lessor's claim to a service pension (clause 4 (e) (ii) (iii)) ;
- (y) to extend the operation of s. 70 (2) (Absolute obligation to provide alternative accommodation) to 1st January, 1961 (clause 4 (e) (iv)) ;
- (z) to prevent a court from making an order for possession on ground (t) unless the court is satisfied that the premises concerned have first been offered for sale to the tenant upon fair and reasonable terms and conditions (clause 4 (e) (v)) ;

- (aa) to provide that a court when determining whether alternative accommodation is reasonably suitable is to have regard to the terms and conditions of any proposed lease of the accommodation and the ability of the tenant to pay the rent reserved by that lease (clause 4 (e) (vi)) ;
- (bb) to provide in s. 77, which enacts that in certain cases premises are not to be sold or re-let for certain periods except with the leave of the court, that in the same cases the premises are not to be made the subject of leave and license conditions for the same periods except with the like consent (clause 4 (f)) ;
- (cc) to amend s. 81 (4), which authorises a reduction of rent where a service ceases to be supplied or provided, by removing the prohibition against a reduction where it is in the power of the lessor to restore the service or to have it restored (clause 4 (g)) ;
- (dd) to amend s. 85B consequentially on the amendment referred to in paragraph (ee) below (clause 4 (h)) ;
- (ee) to authorise the Controller to exclude premises from the operation of Parts III and V of the Act where the lessor and lessee are employer and employee (clause 4 (i)) ;
- (ff) to authorise the granting of a certificate under s. 87 (Exclusion of certain subdivided premises from Parts III and V) for such period as the Controller thinks fit (clause 4 (j)) ;
- (gg) to exclude from Part V of the Act a dwelling-house to which s. 87A (Part III not to apply to dwelling-houses let on behalf of an insane patient) of the Act applies (clause 4 (k)) ;
- (hh) to provide that a dwelling-house is not to be sold unless the tenant is first given an opportunity to purchase (clause 5) ;
- (ii) to amend s. 100 (Limitation on power of court to make order for recovery of possession) and s. 101 (Protection of person claiming under lessee where tenancy determined) as a consequence of the addition of the new grounds (t), (u) and (v) to s. 65 (2) (clause 6) ;
- (jj) to validate certain determinations of the fair rent of premises (clause 7).

(44) to provide that a court with jurisdiction whether in law or in equity shall have jurisdiction to grant an injunction or other relief in respect of any proposed lease of the accommodation and the ability of the tenant to pay the rent imposed by that lease (Section 4 (e) (VI)).

(45) to provide in Section 4 (f) that in certain cases provided for not to be void or liable for certain periods of time with the tenant in the same manner as the provisions for the period of time and periods of time for the same periods except with the tenant (Section 4 (f)).

(46) to provide in Section 4 (g) that in certain cases provided for not to be void or liable for certain periods of time with the tenant in the same manner as the provisions for the period of time and periods of time for the same periods except with the tenant (Section 4 (g)).

(47) to provide in Section 4 (h) that in certain cases provided for not to be void or liable for certain periods of time with the tenant in the same manner as the provisions for the period of time and periods of time for the same periods except with the tenant (Section 4 (h)).

(48) to provide in Section 4 (i) that in certain cases provided for not to be void or liable for certain periods of time with the tenant in the same manner as the provisions for the period of time and periods of time for the same periods except with the tenant (Section 4 (i)).

(49) to provide in Section 4 (j) that in certain cases provided for not to be void or liable for certain periods of time with the tenant in the same manner as the provisions for the period of time and periods of time for the same periods except with the tenant (Section 4 (j)).

(50) to provide in Section 4 (k) that in certain cases provided for not to be void or liable for certain periods of time with the tenant in the same manner as the provisions for the period of time and periods of time for the same periods except with the tenant (Section 4 (k)).

(51) to provide in Section 4 (l) that in certain cases provided for not to be void or liable for certain periods of time with the tenant in the same manner as the provisions for the period of time and periods of time for the same periods except with the tenant (Section 4 (l)).

(52) to provide in Section 4 (m) that in certain cases provided for not to be void or liable for certain periods of time with the tenant in the same manner as the provisions for the period of time and periods of time for the same periods except with the tenant (Section 4 (m)).

(53) to provide in Section 4 (n) that in certain cases provided for not to be void or liable for certain periods of time with the tenant in the same manner as the provisions for the period of time and periods of time for the same periods except with the tenant (Section 4 (n)).

(54) to provide in Section 4 (o) that in certain cases provided for not to be void or liable for certain periods of time with the tenant in the same manner as the provisions for the period of time and periods of time for the same periods except with the tenant (Section 4 (o)).

(55) to provide in Section 4 (p) that in certain cases provided for not to be void or liable for certain periods of time with the tenant in the same manner as the provisions for the period of time and periods of time for the same periods except with the tenant (Section 4 (p)).

(56) to provide in Section 4 (q) that in certain cases provided for not to be void or liable for certain periods of time with the tenant in the same manner as the provisions for the period of time and periods of time for the same periods except with the tenant (Section 4 (q)).

(57) to provide in Section 4 (r) that in certain cases provided for not to be void or liable for certain periods of time with the tenant in the same manner as the provisions for the period of time and periods of time for the same periods except with the tenant (Section 4 (r)).

PROOF

No. , 1958.

A BILL

To amend the law relating to landlord and tenant; for this purpose to amend the Landlord and Tenant (Amendment) Act, 1948, and certain other Acts in certain respects; and for purposes connected therewith.

[MR. SHEAHAN;—6 *March*, 1958.]

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

- 5 **1.** (1) This Act may be cited as the "Landlord and Tenant (Amendment) Act, 1958".

Short title
and
citation.

Landlord and Tenant (Amendment).

(2) The Landlord and Tenant (Amendment) Act, 1948, as amended by subsequent Acts and by this Act, may be cited as the Landlord and Tenant (Amendment) Act, 1948-1958.

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

Amendment
of Act
No. 25,
1948.

(a) (i) by inserting in subparagraph (ii) of paragraph (b) of subsection one of section 5A after the word "lease" the words ", other than a prescribed lease,";

Sec. 5A.
(Certain
premises
excluded
from opera-
tion of Act.)

10 (ii) by inserting in subparagraph (iii) of the same paragraph after the word "lease" the words ", other than a prescribed lease,";

(iii) by omitting the word "or" appearing at the end of subparagraph (v) of the same paragraph;

15 (iv) by inserting at the end of the same subsection the following new paragraphs:—

(d) any dwelling-house that—

20 (i) was in existence on the first day of December, one thousand nine hundred and fifty-seven;

25 (ii) has not been, either in whole or in part, the subject of a lease, other than a prescribed lease, at any time between that day and the commencement of the Landlord and Tenant (Amendment) Act, 1958;

30 (iii) does not form part of any premises that were the subject of a lease, other than a prescribed lease, between that day and that commencement;

(iv) is not "special premises" for the purposes of this Act; and

(v)

Landlord and Tenant (Amendment).

- (v) is the subject of a lease (not being a lease of shared accommodation)—
- 5 (a) that is registered in the office of the Rent Controller;
- (b) the execution of which by the lessee is witnessed by a solicitor instructed and employed independently of the lessor; and
- 10 (c) that is certified by that solicitor as provided in subsection two of this section;
- (e) any dwelling-house that—
- 15 (i) was in existence at the commencement of the Landlord and Tenant (Amendment) Act, 1958;
- 20 (ii) has not been, either in whole or in part, the subject of a lease, other than a prescribed lease, at any time during the period of three years immediately preceding the date on which the lease referred to in subparagraph (v) of this paragraph was registered in the office of the Rent Controller;
- 25 (iii) does not form part of any premises that were the subject of a lease, other than a prescribed lease, at any time during the period referred to in subparagraph (ii) of this paragraph;
- 30 (iv) is not “special premises” for the purposes of this Act; and
- (v) is the subject of a lease (not being a lease of shared accommodation)—
- (a) that is registered in the office of the Rent Controller;
- (b)

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- (b) the execution of which by the lessee is witnessed by a solicitor instructed and employed independently of the lessor; and
- 5 (c) that is certified by that solicitor as provided in subsection two of this section;
- (f) any residential unit that—
- 10 (i) came into existence by reason of alterations, or alterations and additions, made after the commencement of the Local Government (Regulation of Flats) Act, 1955, to a dwelling-house that—
- 15 (a) was in existence at the commencement of the Local Government (Regulation of Flats) Act, 1955;
- 20 (b) has not been, either in whole or in part, the subject of a lease, other than a prescribed lease, at any time between the seventh day of December, one thousand nine hundred and forty-one, and the twenty-fourth day of February, one thousand nine hundred and fifty-six;
- 25 (c) does not form part of any premises that were the subject of a lease, other than a prescribed lease, at any time between those days;
- 30 (d) is not “special premises” for the purposes of this Act;
- (ii)

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- 5 (ii) is one of two or three, but not more, residential units in that dwelling-house which were provided out of that dwelling-house, by those alterations, or those alterations and additions; and
- (iii) is the subject of a lease (not being a lease of shared accommodation)—
- 10 (a) that is registered in the office of the Rent Controller;
- (b) the execution of which by the lessee is witnessed by a solicitor instructed and employed independently of the lessor; and
- 15 (c) that is certified by that solicitor as provided in subsection two of this section; or
- (g) any residential unit that—
- 20 (i) came into existence by reason of alterations, or alterations and additions, made after the commencement of the Local Government (Regulation of Flats) Act, 1955, to a dwelling-house that—
- 25 (a) was in existence at the commencement of the Local Government (Regulation of Flats) Act, 1955;
- 30 (b) has not been, either in whole or in part, the subject of a lease, other than a prescribed lease, at any time during the period of three years immediately preceding the date on which the lease referred to in subparagraph (iii) of this paragraph was registered in the office of the Rent Controller;
- 35 (c)

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- 5 (c) does not form part of any premises that were the subject of a lease, other than a prescribed lease, at any time during that period;
- (d) is not "special premises" for the purposes of this Act;
- 10 (ii) is one of two or three, but not more, residential units in that dwelling-house which were provided out of that dwelling-house, by those alterations, or those alterations and additions; and
- (iii) is the subject of a lease (not being a lease of shared accommodation)—
- 15 (a) that is registered in the office of the Rent Controller;
- (b) the execution of which by the lessee is witnessed by a solicitor instructed and employed independently of the lessor; and
- 20 (c) that is certified by that solicitor as provided in subsection two of this section.
- 25 (v) by inserting next after the same subsection the following new subsection :—
- 30 (1A) The provisions of Parts II, III, IV and V of this Act do not apply in respect of any premises used for business or commercial purposes the erection of which commenced after the twenty-seventh day of September, one thousand nine hundred and fifty-seven.
- (vi)

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(vi) by inserting next after subsection two of the same section the following new subsections :—

5 (2A) Where the lessee under a lease is a company or other corporate body the provisions of this section which, but for this subsection, would require the execution of the lease to be witnessed, and the lease to be certified, in the manner provided in this section shall be deemed to be omitted therefrom.

10 (2B) Premises that comply with the provisions of any one of the paragraphs (namely, paragraphs (a), (b), (c), (d), (e), (f) and (g)) contained in subsection one of this section and would, if that one paragraph were the only
15 paragraph contained in that subsection, be exempt from the provisions of Parts II, III, IV and V of this Act to the extent provided by this section, shall be so exempt notwithstanding
20 that they comply with some, but not all, of the provisions of any one or more of the other such paragraphs.

(vii) by inserting next after subsection three of the same section the following new subsection:—

(4) In this section—

25 “Prescribed lease” means—

(a) a lease that was registered in the office of the Rent Controller and during any part of the currency of which the premises the subject of the lease were, to the extent provided by this section or by the order under section six of this Act published in Gazette No. 19 of the twenty-fourth day of February, one
30 thousand
35

Landlord and Tenant (Amendment).

5 thousand nine hundred and fifty-six, excluded by the operation of this section or that order from the provisions of Parts II, III, IV and V of this Act; or

10 (b) a lease in respect of which an application under section eighty-six of this Act or under Regulation seventy-eight of the Commonwealth Regulations was granted by the issue of a certificate or any extension thereof pursuant to that section or regulation, as the case may be, but does not include a lease as defined in this paragraph of this definition under which the lessor and lessee were employer and employee.

20 "Residential unit" means any part of a dwelling-house which is or has been designed for occupation as a residence independently of any other part of the dwelling-house.

25 (b) (i) by omitting from paragraph (a) of subsection Sec. 6A. three of section 6A the figures "1954" and by (Special inserting in lieu thereof the figures "1958"; premises.)

30 (ii) by inserting in the same paragraph after the words "that commencement" where firstly occurring the words "whether or not that agreement or arrangement was entered into in substitution for a lease of such premises or of any part of such premises or of the premises of which such premises form a part,";

(iii)

Landlord and Tenant (Amendment).

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

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

10 In this paragraph “bona-fide boarder” means a licensee who is supplied by the licensor with—

15 (i) one meal before midday consisting of at least two courses, one of which comprises cereal or porridge and the other of which comprises cooked meat, eggs or a like dish, together with bread (or toast), butter, jam and tea or coffee; and

20 (ii) one meal after midday consisting of at least two courses, one of which comprises fish or meat (other than in sandwich form) and cooked vegetables,

25 if the value of the meals so supplied forms a substantial portion of the whole charge paid by the licensee under the agreement or arrangement.

30 3. The Landlord and Tenant (Amendment) Act, 1948, as amended by subsequent Acts, is further amended— Further amendment of Act No. 25, 1948.

(a) (i) by omitting subsections one and two of section fifteen and by inserting in lieu thereof the following subsection:— Sec. 15. (Rent of prescribed premises.)

35 (1) Except in the case of premises which were not in existence or were not leased on the first day of November, one thousand nine hundred hundred

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- 5 hundred and fifty-one, the rent payable by the lessee of any prescribed premises (or of prescribed premises together with goods) shall not, in respect of any period after the commencement of the Landlord and Tenant (Amendment) Act, 1958, and notwithstanding any term or covenant in any lease in force at any time after that commencement, exceed the rent payable in respect of the prescribed premises at the first day of November, one thousand nine hundred and fifty-one (including the rent of any goods then leased therewith and the charge for any service then provided in connection with the lease), or where that rent has been increased or decreased by a determination made before that commencement and in force immediately before that commencement the rent as so increased or decreased.
- 10
- 15
- 20 (ii) by omitting from subsection four of the same section the words "or subsection two" wherever occurring;
- (iii) by inserting in the same subsection after the words "fair rent" wherever occurring the words "and the rent";
- 25
- (b) (i) by omitting from subsection one of section sixteen the words "or subsection two";
- (ii) by omitting from the same subsection the words "on the first day of March, one thousand nine hundred and forty-nine, or";
- 30
- (iii) by omitting from the same subsection the words "as the case may be,";
- (c) by omitting from section 16A the words "has been sub-let by the lessee or is in the occupation of any other person, and if so, the names of the persons to whom the prescribed premises or any part thereof has been so sub-let and the rent payable by
- 35
- Sec. 16.
(Lessors may be required to furnish statutory declaration as to rent.)
- Sec. 16A.
(Lessee to furnish information as to other persons in occupation.)

Landlord and Tenant (Amendment).

- 5 by such persons together with the moneys received from such other persons in occupation" and by inserting in lieu thereof the words "is in the occupation of any other person, and if so, the name of such other person together with the moneys receivable from such other person in respect of that occupation";
- 10 (d) by omitting from subsection two of section twenty the word "six" and by inserting in lieu thereof the word "eight"; Sec. 20. (Determination of application.)
- (e) by omitting from subsection two of section twenty-two the words "the applicant" and by inserting in lieu thereof the word "applicant"; Sec. 22. (Date of operation of determination.)
- 15 (f) by inserting in section twenty-three after the words "be the fair rent" wherever occurring the words "and the rent"; Sec. 23. (Effect of determination.)
- 20 (g) (i) by omitting from subsection one of section 24A the words "other than shared accommodation which were in existence on the thirty-first day of August, one thousand nine hundred and thirty-nine, and" and by inserting in lieu thereof the words ", other than shared accommodation,"; Sec. 24A. (Determination based on increased outgoings.)
- 25 (ii) by inserting in paragraph (a) of subsection five of the same section after the words "fair rent" wherever occurring the words "and the rent";
- (h) by inserting in subsection ten of section 26B after the words "be the fair rent" wherever occurring the words "and the rent"; Sec. 26B. (Determination of rent of shared accommodation.)
- 30 (i) by inserting in subsection nine of section twenty-seven after the words "be the fair rent" wherever occurring the words "and the rent"; Sec. 27. (Determination of rent of shared accommodation.)
- (j)

Landlord and Tenant (Amendment).

- (j) by inserting in subsection four of section thirty-one after the words "be the fair rent" wherever occurring the words "and the rent"; Sec. 31. (Procedure on appeal.)
- 5 (k) (i) by inserting in section 31^{MA} after the words "as the case may be, may," the words "from time to time and"; Sec. 31^{MA}. (Interim determination.)
- (ii) by omitting from the same section the words :—
- 10 "Any interim determination so made shall be deemed to be a determination, and shall remain in force until the application has been finally disposed of by the Board to which the application was made or the Controller, as the case may be, and no longer"
- and by inserting in lieu thereof the words :—
- 15 "Any interim determination so made shall be deemed to be a determination, and shall remain in force until—
- (a) the making of a later interim determination in the proceedings; or
- 20 (b) the application has been finally disposed of by the Board to which the application was made or the Controller, as the case may be,
- whichever first happens, and no longer";
- 25 (iii) by omitting from the same section the words "the interim determination" and by inserting in lieu thereof the words "an interim determination or determinations";
- 30 (l) (i) by inserting at the end of paragraph (j) of subsection two of section thirty-two the words "or the amount of land tax payable in respect of the premises by the lessor under those Acts has, since the determination, increased or decreased"; Sec. 32. (Variation of determination.)
- (ii)

Landlord and Tenant (Amendment).

(ii) by omitting from subsection four of the same section the words "in need of repair" and by inserting in lieu thereof the words "not in fair and tenantable repair";

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

10 (5) (a) Where a party to a determination (not being a determination in which a period is specified within which an application shall not be made to vary the determination) has, during the period commencing with the date of the determination and ending twelve months after that date, made application under subsection two of this section for variation of the determination, he shall not, within the last-mentioned period, make further application to a Fair Rents Board or to the Controller, as the case may be, for variation of the determination unless he has first obtained the leave of the Fair Rents Board or the Controller, as the case may be, to do so.

15 (b) A Fair Rents Board or the Controller, as the case may be, may, for the purposes of this section, grant or refuse leave to apply for a variation of the determination without a formal or oral hearing of the persons interested or their representatives.

20 (m) by inserting next after section thirty-two the following new section:—

30 32A. (1) A lessee of prescribed premises who—

(a) refuses to allow, or fails to take such reasonable steps as are necessary to allow, the lessor of the premises or the lessor's servant or agent to enter and inspect the premises

New sec. 32A.

State of repair not to be raised by lessee in certain cases.

Landlord and Tenant (Amendment).

5 premises at least once a year at any reasonable time between nine o'clock in the morning and six o'clock in the evening on any week day after not less than seven days' notice in writing of intention to do so has been given to the lessee; or

10 (b) refuses to allow, or fails to take such reasonable steps as are necessary to allow, the lessor his agents servants workmen or contractors to enter the premises for the purpose of effecting necessary repairs or maintenance after reasonable notice of intention to do so has been given to the lessee,

15 shall not, within a year from the refusal or failure, on any application made to a Fair Rents Board or the Controller, as the case may be, for a determination, or for a variation of a determination, of the fair rent of the prescribed premises, be allowed
20 to raise or put in issue the state of repair of the premises unless he has first obtained the leave of the Fair Rents Board or the Controller, as the case may be, to do so.

25 (2) Subsection one of this section does not apply where a refusal or failure of the kind described in that subsection on the part of the lessee is authorised or permitted, expressly or impliedly, by the terms of the lease.

30 (3) Without prejudice to the generality of the meaning of the expression "reasonable time", that expression in subsection one of this section does not, in the case of a dwelling-house, include any time at which the lessee and the other adult members of his household are ordinarily absent from the dwelling-house in the course or by reason of their
35 respective trades, businesses, occupations or employments.

(n)

Landlord and Tenant (Amendment).

- (n) by inserting in subparagraph (iv) of paragraph (b) of subsection one of section thirty-six after the word "available" where firstly occurring the words "or represented to be available"; Sec. 36. (Certain payments prohibited.)
- 5 (o) (i) by omitting from subsection two of section fifty-seven the words "first day of March, one thousand nine hundred and forty-nine" wherever occurring and by inserting in lieu thereof the words "first day of November, one thousand
10 nine hundred and fifty-one"; Sec. 57. (Lessor to ascertain fair rent.)
- (ii) by omitting subsection three of the same section;
- (p) by inserting in paragraph (b) of subsection (1A) of section fifty-nine after the word "letter" the words
15 ", or certified mail service,"; Sec. 59. (Service of notices.)
4. The Landlord and Tenant (Amendment) Act, 1948, as amended by subsequent Acts, is further amended— Further amendment of Act No. 25, 1948.
- (a) (i) by omitting from the end of paragraph (r) of subsection five of section sixty-two the word
20 "or"; Sec. 62. (Restriction on eviction.)
- (ii) by inserting at the end of the same subsection the following new paragraphs :—
- (t) that the premises, being a dwelling-house, are owned by the lessor who, being a male, is of or over the age of sixty-five years or, being a female, is of or over the age of sixty years, that not more than two other dwelling-houses (exclusive of the dwelling-house in which he resides) are owned
25 by the lessor if he is living alone or,
30 if the lessor is living with his spouse,
not

Landlord and Tenant (Amendment).

5 not more than two other dwelling-
houses (exclusive of the dwelling-
house in which they reside) are owned
by them, that the premises were pur-
chased or acquired by the lessor or
the deceased spouse of the lessor
before the twenty-first day of July,
one thousand nine hundred and forty-
eight, that the income of the lessor if
10 he is living alone, or, if the lessor is
living with his spouse, his income
together with that of his spouse, does
not exceed the Sydney basic wage, and
that the premises are required for sale
with vacant possession ;

15 (u) that, where the premises are a
dwelling-house, the lessee has
reasonably suitable alternative accom-
modation available for his occupation
for residential purposes ; or

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

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

35 (c) In paragraph (t) of subsection five of
this section, "Sydney basic wage" means the
basic wage for adult males assessed and cal-
culated in accordance with the provisions of
paragraph (a) of subsection two of section
61k

Landlord and Tenant (Amendment).

5 61K of the Industrial Arbitration Act, 1940, as amended by subsequent Acts, and as last adjusted in accordance with the provisions of section 61M of that Act, as so amended, before the notice to quit concerned was given.

10 (d) For the purposes of paragraph (t) of subsection five of this section if the lessor resides with his spouse a dwelling-house owned by them jointly or by either of them severally shall be taken to be owned by them.

(iv) by inserting next after subsection nine of the same section the following new subsection:—

15 (9A) (a) Where a lessor has given notice to quit on the ground specified in paragraph (t) of subsection five of this section and the dwelling-house in respect of which the notice was given has been vacated in accordance with the notice or an order for the recovery of possession of that dwelling-house has been made on that ground, a notice to quit on that ground shall not be given in respect of another dwelling-house by the lessor or his spouse within a period of five years immediately succeeding the date on which the dwelling-house first-mentioned in this subsection was vacated or possession thereof was recovered.

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25
30 (b) Where a notice to quit has been given on the ground specified in paragraph (t) of subsection five of this section and the dwelling-house in respect of which the notice was given has been vacated within a period of six months after the giving of the notice, the dwelling-house shall, unless the contrary is proved or an order for the recovery of possession of the dwelling-house has been made within that period, be deemed for the purposes of this subsection to have been vacated in accordance with the notice.

Landlord and Tenant (Amendment).

- (b) by inserting at the end of section 62A the following new subsection:—

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

Sec. 62A.
(Judge may bar lessor’s right to take proceedings where refusal of consent to assignment, &c., unreasonable.)

- (c) by inserting at the end of section 62B the following new subsection:—

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

Sec. 62B.
(Power to assign certain tenancies at will.)

- (d) (i) by inserting in subsection one of section sixty-five after the words “any person claiming under or through such lessor” wherever occurring the words “otherwise than by virtue of a concurrent lease granted after the commencement of the Landlord and Tenant (Amendment) Act, 1958, by such lessor to the person so claiming”;

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

- (ii) by omitting from the same subsection the words “June, one thousand nine hundred and fifty-eight” and by inserting in lieu thereof the words “January, one thousand nine hundred and sixty-one”;

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

(1A) A person who has become the lessor of prescribed premises, being a dwelling-house or part of a dwelling-house, by virtue of the assignment

Landlord and Tenant (Amendment).

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

Further amendment of Act No. 25, 1948.

5 (a) by omitting from section one hundred the word, symbols and letter “or (r)” and by inserting in lieu thereof the word, symbols and letters “, (r), (t), (u) or (v)”;

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

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

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

15 7. Any determination of the fair rent of prescribed premises purporting to have been made before the commencement of this Act pursuant to subsection three of section 6A of the Landlord and Tenant (Amendment) Act, 1948, as amended
20 from time to time, which would have been valid, and would have been in force immediately before that commencement, had the amendments made by subparagraph (ii) of paragraph (b) of section two of this Act been in force at, and since, the time when the determination was made shall, as from that commencement, be the fair rent and the rent of the prescribed premises until it is varied in pursuance of Part II of the Landlord and Tenant (Amendment) Act, 1948-1958.

Effect of certain determinations.

The following is a list of the names of the persons who have been appointed to the various positions in the Department of the Interior, and the date of their appointment:

1. Commissioner of the General Land Office, [Name], [Date].
 2. Chief of the Bureau of Land Management, [Name], [Date].
 3. Chief of the Bureau of Reclamation, [Name], [Date].
 4. Chief of the Bureau of Indian Affairs, [Name], [Date].
 5. Chief of the Bureau of Geographical Names, [Name], [Date].
 6. Chief of the Bureau of Land Administration, [Name], [Date].
 7. Chief of the Bureau of Land Surveying, [Name], [Date].
 8. Chief of the Bureau of Land Surveying and Mapping, [Name], [Date].
 9. Chief of the Bureau of Land Surveying and Mapping, [Name], [Date].
 10. Chief of the Bureau of Land Surveying and Mapping, [Name], [Date].

Landlord and Tenant (Amendment).

5 (ii) where any such person ceases to be an employee of the applicant while the premises are let to that person, the period of two months immediately succeeding the date on which that person so ceases to be an employee,

and the premises shall be excluded accordingly.

10 (b) Nothing in subparagraph (ii) of paragraph (a) of this subsection shall be construed as affecting or limiting the operation of subparagraph (i) of that paragraph.

(4) The Controller may at any time revoke or vary any certificate issued under subsection three of this section.

15 (j) (i) by omitting subsections three and (3A) of section eighty-seven and by inserting in lieu thereof the following subsection:—

Sec. 87.
(Exclusion of certain subdivided premises, &c., from operation of Part III and Part V.)

(3) The Controller may—

20 (a) grant the application and issue the certificate, either unconditionally or subject to such conditions as he thinks fit and for such period as he thinks fit; or

(b) refuse the application.

25 (ii) by inserting at the end of subsection four of the same section the words “unless immediately prior to that date a prior certificate issued under this section had force or effect in respect of that person as such lessee”;

30 (k) by inserting in section 87A after the words “this Part” the words “and Part V”.

Sec. 87A.
(Part III not to apply to a dwelling-house let on behalf of an insane patient.)

Landlord and Tenant (Amendment).

5. The Landlord and Tenant (Amendment) Act, 1948, as amended by subsequent Acts, is further amended by inserting next after section eighty-eight the following new section:—
Further amendment of Act No. 25, 1948.
New sec. 88A.

5 88A. (1) A person shall not sell or agree to sell any prescribed premises, being a dwelling-house which is occupied by a lessee and being the only premises comprised in the sale or agreement for sale, to any person other than the lessee unless—
Dwelling-house not to be sold unless tenant given opportunity to purchase.
cf. Vict. Act No. 6098, s. 72.

10 (a) the premises are sold at an auction sale of which not less than fourteen days' notice in writing has been given to the lessee; or

15 (b) the vendor has first offered in writing to sell the premises to the lessee at a price not greater than the price at which the premises are actually sold or agreed to be sold and upon terms as to payment and otherwise not less favourable to the lessee than the terms upon which the premises are actually sold or agreed to be sold and the lessee has not accepted that offer within
20 fourteen days after the receipt thereof by him:

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

(2) Any person who contravenes or fails to comply with any provision of this section shall be guilty of an offence against this Act.

30 (3) Any contravention of or failure to comply with any provision of this section shall not invalidate any contract or agreement.

This subsection shall have effect notwithstanding anything contained in section eighty-nine of this Act.

Landlord and Tenant (Amendment).

5 subsection five of section sixty-two of this Act shall not be made unless the court is satisfied that the premises have been offered for sale to the tenant upon terms and conditions which, having regard to all relevant circumstances, are fair and reasonable.

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

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

20 (f) (i) by inserting in paragraphs (a), (b) and (c) of subsection one of section seventy-seven after the word "leased" wherever occurring the words "or made the subject of an agreement or arrangement whether oral or in writing of leave and license for the use thereof";

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

25 (ii) by inserting in paragraph (a) of subsection two of the same section after the word "letting" the words ", or the entering into of an agreement or arrangement whether oral or in writing of leave and license for the use,";

30 (iii) by inserting in the same paragraph after the word "let" the words "or the subject of that agreement or arrangement";

35 (iv) by inserting at the end of the same subsection the words :—

In this subsection "rent", in relation to an agreement or arrangement whether oral or in writing of leave and license for the use of the prescribed

Landlord and Tenant (Amendment).

prescribed premises or portion thereof, means any payment or consideration in respect of any leave and license for the use of the premises or portion, as the case may be, and for any services provided for or supplied to any person using the premises or portion, as the case may be, under leave and license.

5

(g) by inserting in paragraph (b) of subsection four of section eighty-one after the words "power of the lessor" the words "to restore the service or to have the service restored or";

10

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

(h) by inserting in section 85B after the word "eighty-six," the figures and letter "86A,";

Sec. 85B.
(Application by solicitor or agent.)

15

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

New sec.
86A.

86A. (1) The owner of any prescribed premises who wishes to make the premises available for leasing to his employees (whether or not the premises are then let to one of his employees) may make application in writing to the Controller to exclude the premises from the operation of this Part and Part V of this Act.

20

Exclusion of premises from operation of Part III and Part V where lessor and lessee are employer and employee.

(2) The applicant shall furnish such information in relation to the application as the Controller requires.

25

(3) (a) The Controller may, in his discretion, issue a certificate under this section excluding the premises from the operation of this Part and Part V of this Act during—

30

(i) any period during which the premises are let to any person who is an employee of the applicant; and

(ii)

Landlord and Tenant (Amendment).

5 assignment or transfer to him, after the commencement of the Landlord and Tenant (Amendment) Act, 1958, of a lease of the prescribed premises or the granting to him, after that commencement, of a concurrent lease of the prescribed premises or any person claiming under or through such lessor shall not, within a period of six months after the date of the assignment or transfer of the lease or the grant of the concurrent lease, as the case may be, give a notice to quit on the ground specified in paragraph (g) of subsection five of section sixty-two of this Act to any person who was a lessee of the prescribed premises at the date of the assignment or transfer of the lease or the grant of the concurrent lease, as the case may be :

20 Provided that in respect of any person who has, before the first day of January, one thousand nine hundred and sixty-one, become the lessor of prescribed premises, being a dwelling-house or part of a dwelling-house, by virtue of the assignment or transfer to him, after the commencement of the Landlord and Tenant (Amendment) Act, 1958, of a lease of the prescribed premises or the granting to him, after that commencement, of a concurrent lease of the prescribed premises or any person claiming under or through such lessor, the foregoing provisions of this subsection shall be read and construed as if—

- 25
- 30
- 35
- 40
- (a) the words "six months" were omitted therefrom and the words "two years" were inserted in lieu thereof; and
 - (b) the words "unless, after that date, he has given to the lessee at least eighteen months' notice in writing of his intention to give such notice to quit" were inserted after the words "as the case may be" where secondly occurring.

Landlord and Tenant (Amendment).

- (e) (i) by omitting from paragraph (c) of subsection Sec. 70.
one of section seventy the word, symbols and (Court to
letter "and (s)" and by inserting in lieu thereof consider
the word, symbols and letters ", (s), (t) and hardship.)
(v)";
- 5
- (ii) by omitting subparagraph (iii) of paragraph
(d) of the first proviso to subsection two of the
same section and by inserting in lieu thereof the
following subparagraph: —
- 10
- (iii) the lessor does not own and has not,
since the twenty-first day of July, one
thousand nine hundred and forty-eight,
owned any other dwelling-house, or,
if the dwelling-house is one of a pair
15 of semi-detached dwelling-houses that
are owned by the lessor, the only other
dwelling-house that the lessor owns or
has, since the twenty-first day of July,
one thousand nine hundred and forty-
20 eight, owned is the other one of that
pair of semi-detached dwelling-houses;
- (iii) by inserting at the end of the second proviso to
the same subsection the words "or the Austra-
lian Soldiers' Repatriation Act 1920 (as
25 amended by subsequent Acts) of the Parliament
of the Commonwealth";
- (iv) by omitting from the same subsection the words
"June, one thousand nine hundred and fifty-
eight" and by inserting in lieu thereof the words
30 "January, one thousand nine hundred and sixty-
one";
- (v) by inserting next after subsection four of the
same section the following new subsection: —
- 35 (4A) Notwithstanding anything contained in
this section, an order for the recovery of posses-
sion of any prescribed premises from any per-
son on the ground specified in paragraph (t) of
subsection

New South Wales



ANNO SEPTIMO

ELIZABETHÆ II REGINÆ

Act No. 7, 1958.

An Act to amend the law relating to landlord and tenant; for this purpose to amend the Landlord and Tenant (Amendment) Act, 1948, and certain other Acts in certain respects; and for purposes connected therewith. [Assented to, 10th April, 1958.]

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

1. (1) This Act may be cited as the "Landlord and Tenant (Amendment) Act, 1958".

Short title
and
citation.

Landlord and Tenant (Amendment).

(2) The Landlord and Tenant (Amendment) Act, 1948, as amended by subsequent Acts and by this Act, may be cited as the Landlord and Tenant (Amendment) Act, 1948-1958.

Amendment
of Act
No. 25,
1948.

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

Sec. 5A.
(Certain
premises
excluded
from opera-
tion of Act.)

(a) (i) by inserting in subparagraph (ii) of paragraph (b) of subsection one of section 5A after the word "lease" the words " , other than a prescribed lease,";

(ii) by inserting in subparagraph (iii) of the same paragraph after the word "lease" the words " , other than a prescribed lease,";

(iii) by omitting the word "or" appearing at the end of subparagraph (v) of the same paragraph;

(iv) by inserting at the end of the same subsection the following new paragraphs:—

(d) any dwelling-house that—

(i) was in existence on the first day of December, one thousand nine hundred and fifty-seven;

(ii) has not been, either in whole or in part, the subject of a lease, other than a prescribed lease, at any time between that day and the commencement of the Landlord and Tenant (Amendment) Act, 1958;

(iii) does not form part of any premises that were the subject of a lease, other than a prescribed lease, between that day and that commencement;

(iv) is not "special premises" for the purposes of this Act; and

Landlord and Tenant (Amendment).

- (v) is the subject of a lease (not being a lease of shared accommodation or a lease the lessor under which is the employer of the lessee)—
 - (a) that is registered in the office of the Rent Controller;
 - (b) the execution of which by the lessee is witnessed by a solicitor instructed and employed independently of the lessor; and
 - (c) that is certified by that solicitor as provided in subsection two of this section;
- (e) any dwelling-house (not being a residential unit)—
 - (i) that was in existence at the commencement of the Landlord and Tenant (Amendment) Act, 1958;
 - (ii) of which a lessor has obtained vacant possession after that commencement otherwise than by an order for recovery of possession made on any one or more of the grounds specified in paragraph (g), (h), (i), (j), (k), (l), (m), (t) or (v) of subsection five of section sixty-two of this Act;
 - (iii) that is not “special premises” for the purposes of this Act; and
 - (iv) that is the subject of a lease (not being a lease of shared accommodation or a lease the lessor under which is the employer of the lessee)—
 - (a) that is registered in the office of the Rent Controller;
 - (b)

Landlord and Tenant (Amendment).

- (b) the execution of which by the lessee is witnessed by a solicitor instructed and employed independently of the lessor; and
 - (c) that is certified by that solicitor as provided in subsection two of this section;
- (f) any residential unit that—
- (i) came into existence by reason of alterations, or alterations and additions, made after the commencement of the Local Government (Regulation of Flats) Act, 1955, to a dwelling-house that—
 - (a) was in existence at the commencement of the Local Government (Regulation of Flats) Act, 1955;
 - (b) has not been, either in whole or in part, the subject of a lease, other than a prescribed lease, at any time between the seventh day of December, one thousand nine hundred and forty-one, and the twenty-fourth day of February, one thousand nine hundred and fifty-six;
 - (c) does not form part of any premises that were the subject of a lease, other than a prescribed lease, at any time between those days;
 - (d)

Landlord and Tenant (Amendment).

- (d) is not "special premises" for the purposes of this Act;
- (ii) is one of two or three, but not more, residential units in that dwelling-house which were provided out of that dwelling-house, by those alterations, or those alterations and additions; and
- (iii) is the subject of a lease (not being a lease of shared accommodation)—
 - (a) that is registered in the office of the Rent Controller;
 - (b) the execution of which by the lessee is witnessed by a solicitor instructed and employed independently of the lessor; and
 - (c) that is certified by that solicitor as provided in subsection two of this section; or
- (g) any residential unit that—
 - (i) came into existence by reason of alterations, or alterations and additions, made after the commencement of the Local Government (Regulation of Flats) Act, 1955, to a dwelling-house—
 - (a) that was in existence at the commencement of the Local Government (Regulation of Flats) Act, 1955;

(b)

Landlord and Tenant (Amendment).

- (b) of which a lessor has obtained vacant possession after the commencement of the Landlord and Tenant (Amendment) Act, 1958, otherwise than by an order for recovery of possession made on any one or more of the grounds specified in paragraph (g), (h), (i), (j), (k), (l), (m), (t) or (v) of subsection five of section sixty-two of this Act;
 - (c) that is not "special premises" for the purposes of this Act;
- (ii) is one of two or three, but not more, residential units in that dwelling-house which were provided out of that dwelling-house, by those alterations, or those alterations and additions; and
 - (iii) is the subject of a lease (not being a lease of shared accommodation or a lease the lessor under which is the employer of the lessee)—
 - (a) that is registered in the office of the Rent Controller;
 - (b) the execution of which by the lessee is witnessed by a solicitor instructed and employed independently of the lessor; and
 - (c) that is certified by that solicitor as provided in subsection two of this section.

(v)

Landlord and Tenant (Amendment).

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

(1A) The provisions of Parts II, III, IV and V of this Act do not apply in respect of any premises used for business or commercial purposes the erection of which commenced after the twenty-seventh day of September, one thousand nine hundred and fifty-seven.

- (vi) by inserting next after subsection two of the same section the following new subsections :—

(2A) Where the lessee under a lease is a company or other corporate body the provisions of this section which, but for this subsection, would require the execution of the lease to be witnessed, and the lease to be certified, in the manner provided in this section shall be deemed to be omitted therefrom.

(2B) Premises that comply with the provisions of any one of the paragraphs (namely, paragraphs (a), (b), (c), (d), (e), (f) and (g)) contained in subsection one of this section and would, if that one paragraph were the only paragraph contained in that subsection, be exempt from the provisions of Parts II, III, IV and V of this Act to the extent provided by this section, shall be so exempt notwithstanding that they comply with some, but not all, of the provisions of any one or more of the other such paragraphs.

- (vii) by inserting in subsection three of the same section after the figures and letter "36A," the word "seventy-seven,";

(viii)

Landlord and Tenant (Amendment).

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

(4) In this section—

“Prescribed lease” means—

- (a) a lease that was registered in the office of the Rent Controller and during any part of the currency of which the premises the subject of the lease were, to the extent provided by this section or by the order under section six of this Act published in Gazette No. 19 of the twenty-fourth day of February, one thousand nine hundred and fifty-six, excluded by the operation of this section or that order from the provisions of Parts II, III, IV and V of this Act; or
- (b) a lease in respect of which an application under section eighty-six of this Act or under Regulation seventy-eight of the Commonwealth Regulations was granted by the issue of a certificate or any extension thereof pursuant to that section or regulation, as the case may be, but does not include a lease as defined in this paragraph of this definition under which the lessor and lessee were employer and employee.

“Residential unit” means any part of a dwelling-house which is or has been designed for occupation as a residence independently of any other part of the dwelling-house.

(5) This section has effect subject to the operation of sections 70A and 81A of this Act.

(b)

Landlord and Tenant (Amendment).

- (b) (i) by omitting from paragraph (a) of subsection three of section 6A the figures "1954" and by inserting in lieu thereof the figures "1958"; Sec. 6A. (Special premises.)
- (ii) by inserting in the same paragraph after the words "that commencement" where firstly occurring the words "whether or not that agreement or arrangement was entered into in substitution for a lease of such premises or of any part of such premises or of the premises of which such premises form a part,";
- (iii) by inserting in the same paragraph after the word "forty-nine" the words "and before that agreement or arrangement was entered into";
- (iv) by inserting in the same paragraph after the word "date" the words "and whether or not the lease is still subsisting";
- (v) by omitting paragraph (d) of the same subsection and by inserting in lieu thereof the following paragraph:—

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

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

- (i) one meal before midday consisting of at least two courses, one of which comprises cereal or porridge and the other of which comprises cooked meat, eggs or a like dish, together with bread (or toast), butter, jam and tea or coffee; and
- (ii) one meal after midday consisting of at least two courses, one of which comprises fish or meat (other than in sandwich form) and cooked vegetables,

if

Landlord and Tenant (Amendment).

if the value of the meals so supplied forms a substantial portion of the whole charge paid by the licensee under the agreement or arrangement.

Further amendment of Act No. 25, 1948.

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

Sec. 15.
(Rent of prescribed premises.)

(a) (i) by omitting subsections one and two of section fifteen and by inserting in lieu thereof the following subsection:—

(1) Except in the case of premises which were not in existence or were not leased on the first day of November, one thousand nine hundred and fifty-one, the rent payable by the lessee of any prescribed premises (or of prescribed premises together with goods) shall not, in respect of any period after the commencement of the Landlord and Tenant (Amendment) Act, 1958, and notwithstanding any term or covenant in any lease in force at any time after that commencement, exceed the rent payable in respect of the prescribed premises at the first day of November, one thousand nine hundred and fifty-one (including the rent of any goods then leased therewith and the charge for any service then provided in connection with the lease), or where that rent has been increased or decreased by a determination made before that commencement and in force immediately before that commencement the rent as so increased or decreased.

- (ii) by omitting from subsection four of the same section the words “or subsection two” wherever occurring;
- (iii) by inserting in the same subsection after the words “fair rent” wherever occurring the words “and the rent”;
- (b)

Landlord and Tenant (Amendment).

- (b) (i) by omitting from subsection one of section sixteen the words "or subsection two"; Sec. 16.
(Lessors may be required to furnish statutory declaration as to rent.)
- (ii) by omitting from the same subsection the words "on the first day of March, one thousand nine hundred and forty-nine, or";
- (iii) by omitting from the same subsection the words "as the case may be,";
- (c) by omitting section 16A;
- (d) by omitting from subsection two of section twenty the word "six" and by inserting in lieu thereof the word "eight"; Sec. 20.
(Determination of application.)
- (e) by omitting from subsection two of section twenty-two the words "the applicant" and by inserting in lieu thereof the word "applicant"; Sec. 22.
(Date of operation of determination.)
- (f) by inserting in section twenty-three after the words "be the fair rent" wherever occurring the words "and the rent"; Sec. 23.
(Effect of determination.)
- (g) (i) by omitting from subsection one of section 24A the words "other than shared accommodation which were in existence on the thirty-first day of August, one thousand nine hundred and thirty-nine, and" and by inserting in lieu thereof the words ", other than shared accommodation,"; Sec. 24A.
(Determination based on increased outgoings.)
- (ii) by inserting in paragraph (a) of subsection five of the same section after the words "fair rent" wherever occurring the words "and the rent";
- (h)

Landlord and Tenant (Amendment).

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

(h) by inserting in subsection ten of section 26B after the words "be the fair rent" wherever occurring the words "and the rent";

Sec. 27.
(Determina-
tion of rent
of shared
accom-
modation.)

(i) by inserting in subsection nine of section twenty-seven after the words "be the fair rent" wherever occurring the words "and the rent";

Sec. 31.
(Procedure
on appeal.)

(j) by inserting in subsection four of section thirty-one after the words "be the fair rent" wherever occurring the words "and the rent";

Sec. 31MA.
(Interim
determina-
tion.)

(k) (i) by inserting in section 31MA after the words "as the case may be, may," the words "from time to time and";

(ii) by omitting from the same section the words :—

"Any interim determination so made shall be deemed to be a determination, and shall remain in force until the application has been finally disposed of by the Board to which the application was made or the Controller, as the case may be, and no longer"

and by inserting in lieu thereof the words :—

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

(a) the making of a later interim determination in the proceedings; or

(b) the application has been finally disposed of by the Board to which the application was made or the Controller, as the case may be,

whichever first happens, and no longer";

(iii) by omitting from the same section the words "the interim determination" and by inserting in lieu thereof the words "an interim determination or determinations";

Landlord and Tenant (Amendment).

- (l) (i) by inserting at the end of paragraph (j) of subsection two of section thirty-two the words "or the amount of land tax payable in respect of the premises by the lessor under those Acts has, since the determination, increased or decreased"; Sec. 32. (Variation of determination.)
- (ii) by omitting from subsection four of the same section the words "in need of repair" and by inserting in lieu thereof the words "not in fair and tenantable repair";
- (iii) by inserting at the end of the same section the following new subsection:—

(5) (a) Where a party to a determination (not being a determination in which a period is specified within which an application shall not be made to vary the determination) has, during the period commencing with the date of the determination and ending twelve months after that date, made application under subsection two of this section for variation of the determination, he shall not, within the last-mentioned period, make further application to a Fair Rents Board or to the Controller, as the case may be, for variation of the determination unless he has first obtained the leave of the Fair Rents Board or the Controller, as the case may be, to do so.

(b) A Fair Rents Board or the Controller, as the case may be, may, for the purposes of this section, grant or refuse leave to apply for a variation of the determination without a formal or oral hearing of the persons interested or their representatives.

- (m) by inserting next after section thirty-two the following new section:— New sec. 32A.

32A. (1) A lessee of prescribed premises who— State of repair not to be raised by lessee in certain cases.

(a) refuses to allow, or fails to take such reasonable steps as are necessary to allow, the lessor of the premises or the lessor's servant or agent to enter and inspect the premises

Landlord and Tenant (Amendment).

premises at least once a year at any reasonable time between eight o'clock in the morning and eight o'clock in the evening on any week day after not less than seven days' notice in writing of intention to do so has been given to the lessee; or

- (b) refuses to allow, or fails to take such reasonable steps as are necessary to allow, the lessor his agents servants workmen or contractors to enter the premises for the purpose of effecting necessary repairs or maintenance after reasonable notice of intention to do so has been given to the lessee,

shall not, within a year from the refusal or failure, on any application made to a Fair Rents Board or the Controller, as the case may be, for a determination, or for a variation of a determination, of the fair rent of the prescribed premises, be allowed to raise or put in issue the state of repair of the premises unless he has first obtained the leave of the Fair Rents Board or the Controller, as the case may be, to do so.

(2) Subsection one of this section does not apply where a refusal or failure of the kind described in that subsection on the part of the lessee is authorised or permitted, expressly or impliedly, by the terms of the lease.

(3) Without prejudice to the generality of the meaning of the expression "reasonable time", that expression in subsection one of this section does not, in the case of a dwelling-house, include any time at which the lessee and the other adult members of his household are ordinarily absent from the dwelling-house in the course or by reason of their respective trades, businesses, occupations or employments.

(n)

Landlord and Tenant (Amendment).

- (n) by inserting in subparagraph (iv) of paragraph (b) of subsection one of section thirty-six after the word "available" where firstly occurring the words "or represented to be available"; Sec. 36.
(Certain payments prohibited.)
- (o) (i) by omitting from subsection two of section fifty-seven the words "first day of March, one thousand nine hundred and forty-nine" wherever occurring and by inserting in lieu thereof the words "first day of November, one thousand nine hundred and fifty-one"; Sec. 57.
(Lessor to ascertain fair rent.)
- (ii) by omitting subsection three of the same section;
- (p) by inserting in paragraph (b) of subsection (1A) of section fifty-nine after the word "letter" the words "; or certified mail service,"; Sec. 59.
(Service of notices.)
4. The Landlord and Tenant (Amendment) Act, 1948, as amended by subsequent Acts, is further amended— Further amendment of Act No. 25, 1948.
- (a) (i) by omitting from the end of paragraph (r) of subsection five of section sixty-two the word "or"; Sec. 62.
(Restriction on eviction.)
- (ii) by inserting at the end of the same subsection the following new paragraphs :—
- (t) that the premises, being a dwelling-house, are owned by the lessor who, being a male, is of or over the age of sixty-five years or, being a female, is of or over the age of sixty years, that not more than two other dwelling-houses (exclusive of the dwelling-house in which he resides) are owned by the lessor if he is living alone or, if the lessor is living with his spouse,
not

Landlord and Tenant (Amendment).

not more than two other dwelling-houses (exclusive of the dwelling-house in which they reside) are owned by them, that the premises were purchased or acquired by the lessor or the deceased spouse of the lessor before the twenty-first day of July, one thousand nine hundred and forty-eight, that the income of the lessor if he is living alone, or, if the lessor is living with his spouse, his income together with that of his spouse, does not exceed the Sydney basic wage, and that the premises are required for sale with vacant possession;

- (u) that, where the premises are a dwelling-house, the lessee has reasonably suitable alternative accommodation available for his occupation for residential purposes; or
 - (v) that the premises, being shared accommodation, are required by the lessor, being a person of or over the age of sixty-five years, and that at the date on which the notice to quit was given and during the three years immediately preceding that date only one lease of shared accommodation in the dwelling-house of which the shared accommodation forms part was in force at any one time.
- (iii) by inserting at the end of subsection six of the same section the following new paragraphs:—

(c) In paragraph (t) of subsection five of this section, "Sydney basic wage" means the basic wage for adult males assessed and calculated in accordance with the provisions of paragraph (a) of subsection two of section

Landlord and Tenant (Amendment).

61K of the Industrial Arbitration Act, 1940, as amended by subsequent Acts, and as last adjusted in accordance with the provisions of section 61M of that Act, as so amended, before the notice to quit concerned was given.

(d) For the purposes of paragraph (t) of subsection five of this section if the lessor resides with his spouse a dwelling-house owned by them jointly or by either of them severally shall be taken to be owned by them.

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

(9A) (a) Where a lessor has given notice to quit on the ground specified in paragraph (t) of subsection five of this section and the dwelling-house in respect of which the notice was given has been vacated in accordance with the notice or an order for the recovery of possession of that dwelling-house has been made on that ground, a notice to quit on that ground shall not be given in respect of another dwelling-house by the lessor or his spouse within a period of five years immediately succeeding the date on which the dwelling-house first-mentioned in this subsection was vacated or possession thereof was recovered.

(b) Where a notice to quit has been given on the ground specified in paragraph (t) of subsection five of this section and the dwelling-house in respect of which the notice was given has been vacated within a period of six months after the giving of the notice, the dwelling-house shall, unless the contrary is proved or an order for the recovery of possession of the dwelling-house has been made within that period, be deemed for the purposes of this subsection to have been vacated in accordance with the notice.

(b)

Landlord and Tenant (Amendment).

Sec. 62A.
(Judge may bar lessor's right to take proceedings where refusal of consent to assignment, &c., unreasonable.)

- (b) by inserting at the end of section 62A the following new subsection:—

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

Sec. 62B.
(Power to assign certain tenancies at will.)

- (c) by inserting at the end of section 62B the following new subsection:—

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

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

- (d) (i) by inserting in subsection one of section sixty-five after the words "any person claiming under or through such lessor" wherever occurring the words "otherwise than by virtue of a concurrent lease granted after the commencement of the Landlord and Tenant (Amendment) Act, 1958, by such lessor to the person so claiming";

- (ii) by omitting from the same subsection the words "June, one thousand nine hundred and fifty-eight" and by inserting in lieu thereof the words "January, one thousand nine hundred and sixty-one";

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

(1A) A person who has become the lessor of prescribed premises, being a dwelling-house or part of a dwelling-house, by virtue of the assignment

Landlord and Tenant (Amendment).

assignment or transfer to him, after the commencement of the Landlord and Tenant (Amendment) Act, 1958, of a lease of the prescribed premises or the granting to him, after that commencement, of a concurrent lease of the prescribed premises or any person claiming under or through such lessor shall not, within a period of six months after the date of the assignment or transfer of the lease or the grant of the concurrent lease, as the case may be, give a notice to quit on the ground specified in paragraph (g) of subsection five of section sixty-two of this Act to any person who was a lessee of the prescribed premises at the date of the assignment or transfer of the lease or the grant of the concurrent lease, as the case may be :

Provided that in respect of any person who has, before the first day of January, one thousand nine hundred and sixty-one, become the lessor of prescribed premises, being a dwelling-house or part of a dwelling-house, by virtue of the assignment or transfer to him, after the commencement of the Landlord and Tenant (Amendment) Act, 1958, of a lease of the prescribed premises or the granting to him, after that commencement, of a concurrent lease of the prescribed premises or any person claiming under or through such lessor, the foregoing provisions of this subsection shall be read and construed as if—

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

Landlord and Tenant (Amendment).

Sec. 70.
(Court to
consider
hardship.)

(e) (i) by omitting from paragraph (c) of subsection one of section seventy the word, symbols and letter "and (s)" and by inserting in lieu thereof the word, symbols and letters ", (s), (t) and (v)";

(ii) by omitting subparagraph (iii) of paragraph (d) of the first proviso to subsection two of the same section and by inserting in lieu thereof the following subparagraph:—

(iii) the lessor does not own and has not, since the twenty-first day of July, one thousand nine hundred and forty-eight, owned any other dwelling-house, or, if the dwelling-house is one of a pair of semi-detached dwelling-houses that are owned by the lessor, the only other dwelling-house that the lessor owns or has, since the twenty-first day of July, one thousand nine hundred and forty-eight, owned is the other one of that pair of semi-detached dwelling-houses;

(iii) by inserting at the end of the second proviso to the same subsection the words "or the Australian Soldiers' Repatriation Act 1920 (as amended by subsequent Acts) of the Parliament of the Commonwealth";

(iv) by omitting from the same subsection the words "June, one thousand nine hundred and fifty-eight" and by inserting in lieu thereof the words "January, one thousand nine hundred and sixty-one";

(v) by inserting next after subsection four of the same section the following new subsection:—

(4A) Notwithstanding anything contained in this section, an order for the recovery of possession of any prescribed premises from any person on the ground specified in paragraph (t) of subsection

Landlord and Tenant (Amendment).

subsection five of section sixty-two of this Act shall not be made unless the court is satisfied that the premises have been offered for sale to the tenant upon terms and conditions which, having regard to all relevant circumstances, are fair and reasonable.

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

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

- (f) by inserting next after section seventy the following new section:—

70A. (1) Where a lessor institutes proceedings after the commencement of the Landlord and Tenant (Amendment) Act, 1958, for the recovery of possession of any prescribed premises, being a dwelling-house, from any person on any of the grounds specified in paragraphs (g), (i), (l) or (m) of subsection five of section sixty-two of this Act, and an order for the recovery of possession of the dwelling-house cannot be made in those proceedings unless the court is satisfied that the lessor had provided at the date of expiry of the notice to quit, and has immediately available for the occupation of the persons occupying the dwelling-house, reasonably suitable alternative accommodation, the court shall have no jurisdiction in the matter unless there was filed, at the time when the information instituting the proceedings was exhibited, with the clerk of the court in which the proceedings are instituted a

statutory

Certain dwelling-houses to be subject to this Act notwithstanding section 5A.

New sec. 70A.

Landlord and Tenant (Amendment).

statutory declaration made by the owner of, or other the person having authority to lease, that alternative accommodation declaring that—

- (a) the premises specified in the declaration are the alternative accommodation which the lessor had provided at the date of expiry of the notice to quit and which would be immediately available for occupation as provided in subsection two of section seventy of this Act; and
- (b) he is aware of the provisions of subsection two of this section and understands their effect.

(2) As on and from the date on which the statutory declaration referred to in subsection one of this section is filed with the clerk of the court in accordance with that subsection the premises specified in the declaration as being the alternative accommodation shall be subject to the provisions of this Act in all respects as though section 5A of this Act had not been enacted.

This subsection ceases to apply in respect of those premises—

- (a) if the court finds that that alternative accommodation is not reasonably suitable or had not been provided at the date of expiry of the notice to quit or is not immediately available for occupation as provided in subsection two of section seventy of this Act—from the time when the court makes that finding;
- (b) if the court finds that that alternative accommodation is reasonably suitable but the lessee of the premises the subject of the proceedings does not accept that alternative accommodation—from the time of that rejection;

(c)

Landlord and Tenant (Amendment).

- (c) if the lessee vacates the premises for the recovery of possession of which the proceedings were instituted and does not accept that alternative accommodation—from the time when the lessee vacates those premises;
- (d) if the lessor discontinues the proceedings and the court orders that this subsection shall cease to apply to that alternative accommodation—from the time when the court makes that order;
- (e) if that lessee, having accepted that alternative accommodation, vacates that alternative accommodation—from the time of that vacation.

Nothing in this subsection affects the operation of any order made under section 81A of this Act.

(3) The clerk of the court with whom is filed any such statutory declaration as is referred to in subsection one of this section shall forward particulars of the alternative accommodation referred to in the statutory declaration to the Rent Controller who shall enter the particulars in a register kept for the purpose.

- (g) (i) by inserting in paragraphs (a), (b) and (c) of subsection one of section seventy-seven after the word “leased” wherever occurring the words “or made the subject of an agreement or arrangement whether oral or in writing of leave and license for the use thereof”;
- (ii) by inserting in paragraph (a) of subsection two of the same section after the word “letting” the words “, or the entering into of an agreement or arrangement whether oral or in writing of leave and license for the use,”;
- (iii) by inserting in the same paragraph after the word “let” the words “or the subject of that agreement or arrangement”;

(iv)

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

Landlord and Tenant (Amendment).

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

In this subsection “rent”, in relation to an agreement or arrangement whether oral or in writing of leave and license for the use of the prescribed premises or portion thereof, means any payment or consideration in respect of any leave and license for the use of the premises or portion, as the case may be, and for any services provided for or supplied to any person using the premises or portion, as the case may be, under leave and license.

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

- (h) (i) by inserting next after subsection three of section eighty-one the following new subsection:—

(3A) Where the lessor of any prescribed premises, being a dwelling-house, or any agent or servant of the lessor, has been convicted of an offence arising under subsection one of this section, the court before which the lessor, agent or servant, as the case may be, was convicted, if it is of opinion that the acts or omissions constituting the offence were done or omitted with intent that the person who was lessee at the time when those acts or omissions were done or omitted to be done vacate the premises and that person has vacated the premises, may, in addition to the penalty prescribed by this Act for the offence, order the lessor to pay to that person such sum as appears to the court to be sufficient as compensation for damage or loss sustained by that person as the result of his vacating the premises, and the provisions of subsection three of section sixty-one of this Act shall apply, mutatis mutandis, to and in respect of any order for the payment of any sum under this subsection.

- (ii) by inserting in paragraph (b) of subsection four of section eighty-one after the words “power of the lessor” the words “to restore the service or to have the service restored or”; (i)

Landlord and Tenant (Amendment).

- (i) by inserting next after section eighty-one the following new section:—

New sec.
81A.

81A. (1) A court for the district in which prescribed premises, being a dwelling-house that is not exempt by section 5A of this Act from the provisions of Parts II, III, IV and V of this Act to the extent provided by that section, are situated, shall, on application in that behalf made by the lessee of the premises, order that the premises, if vacated by the lessee, shall remain subject to the provisions of this Act in all respects as though section 5A of this Act had not been enacted, if the court is satisfied that—

Court may order that certain dwelling-houses remain subject to this Act.

- (a) the lessor has done, or caused to be done, any act, or omitted, or caused to be omitted, any act whereby the ordinary use or enjoyment by the lessee of the premises or of any goods leased therewith, or of any conveniences usually available to the lessee, or of any service supplied to, or provided in connection with, the premises is interfered with or restricted;
- (b) that the lessor has by his conduct endeavoured to improperly induce the lessee to vacate the premises;
- (c) that the lessor has unreasonably caused expense and inconvenience to the lessee by requiring him to defend proceedings under this Act for the recovery of the premises from the lessee and that those proceedings were vexatious;
- (d) the lessor has allowed the premises to fall into a dilapidated or dangerous condition.

(2) Notwithstanding anything contained in subsection one of this section, the court, although satisfied of any one or more of the matters specified in paragraphs (a), (c) and (d) of subsection one of this section, may refuse to make the order if the lessor satisfies the court that his conduct in relation to that matter or those matters was not intended to induce the lessee to vacate the premises. (3)

Landlord and Tenant (Amendment).

(3) An order under this section—

(a) shall remain in force for such period as is specified in the order or until the court otherwise orders; and

(b) shall have effect according to its tenor.

(4) Where an order is made under this section, the clerk of the court shall forthwith forward a copy of the order to the Rent Controller who shall enter particulars of the order in a register kept for the purpose.

(5) For the purposes of this section, conveniences shall be deemed to be usually available to the lessee where prior to the use of the conveniences having been interfered with or restricted without his consent, he has been allowed, at all times during the tenancy, to use those conveniences as he desired or he has been allowed to use those conveniences at times agreed to by the lessor and lessee or at times equivalent to those times.

(6) In this section “court” means a court of petty sessions holden before a Stipendiary Magistrate.

Sec. 85B.
(Application
by solicitor
or agent.)

(j) by inserting in section 85B after the word “eighty-six,” the figures and letter “86A,”;

New sec.
86A.

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

Exclusion of
premises
from operation
of
Part III
and Part V
where lessor
and lessee
are
employer
and
employee.

86A. (1) The owner of any prescribed premises who wishes to make the premises available for leasing to his employees (whether or not the premises are then let to one of his employees) may make application in writing to the Controller to exclude the premises from the operation of this Part and Part V of this Act.

(2)

Landlord and Tenant (Amendment).

(2) The applicant shall furnish such information in relation to the application as the Controller requires.

(3) (a) The Controller may, in his discretion, issue a certificate under this section excluding the premises from the operation of this Part and Part V of this Act during—

- (i) any period during which the premises are let to any person who is an employee of the applicant; and
- (ii) where any such person ceases to be an employee of the applicant while the premises are let to that person, the period of two months immediately succeeding the date on which that person so ceases to be an employee,

and the premises shall be excluded accordingly.

(b) Nothing in subparagraph (ii) of paragraph (a) of this subsection shall be construed as affecting or limiting the operation of subparagraph (i) of that paragraph.

(4) The Controller may at any time revoke or vary any certificate issued under subsection three of this section.

- (1) (i) by omitting subsections three and (3A) of section eighty-seven and by inserting in lieu thereof the following subsection:—
- (3) The Controller may—
- (a) grant the application and issue the certificate, either unconditionally or subject to such conditions as he thinks fit and for such period as he thinks fit; or
 - (b) refuse the application.

Sec. 87.
(Exclusion of certain subdivided premises, &c., from operation of Part III and Part V.)

(ii)

Landlord and Tenant (Amendment).

- (ii) by inserting at the end of subsection four of the same section the words "unless immediately prior to that date a prior certificate issued under this section had force or effect in respect of that person as such lessee";

Sec. 87A.
(Part III not to apply to a dwelling-house let on behalf of an insane patient.)

- (m) by inserting in section 87A after the words "this Part" the words "and Part V".

Further amendment of Act No. 25, 1948.
New sec. 88A.

5. The Landlord and Tenant (Amendment) Act, 1948, as amended by subsequent Acts, is further amended by inserting next after section eighty-eight the following new section:—

Dwelling-house not to be sold unless tenant given opportunity to purchase.
cf. Vict. Act No. 6098, s. 72.

88A. (1) A person shall not sell or agree to sell any prescribed premises, being a dwelling-house which is occupied by a lessee and being the only premises comprised in the sale or agreement for sale, to any person other than the lessee unless—

- (a) the premises are sold at an auction sale of which not less than fourteen days' notice in writing has been given to the lessee; or
- (b) the vendor has first offered in writing to sell the premises to the lessee at a price not greater than the price at which the premises are actually sold or agreed to be sold and upon terms as to payment and otherwise not less favourable to the lessee than the terms upon which the premises are actually sold or agreed to be sold and the lessee has not accepted that offer within fourteen days after the receipt thereof by him:

Provided that nothing in this subsection shall be construed as prohibiting the vendor from entering into and giving effect to a contract to sell the premises to any person

Landlord and Tenant (Amendment).

person conditionally upon the lessee's rejection of an offer of sale of the premises made in accordance with paragraph (b) of this subsection.

(2) Any person who contravenes or fails to comply with any provision of this section shall be guilty of an offence against this Act.

(3) Any contravention of or failure to comply with any provision of this section shall not invalidate any contract or agreement.

This subsection shall have effect notwithstanding anything contained in section eighty-nine of this Act.

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

- (a) by omitting from section one hundred the word, symbols and letter "or (r)" and by inserting in lieu thereof the word, symbols and letters ", (r), (t), (u) or (v)";
- (b) by omitting from subsection two of section one hundred and one the word, symbols and letter "or (r)" and by inserting in lieu thereof the word, symbols and letters ", (r), (t), (u) or (v)".

Further amendment of Act No. 25, 1948.

Sec. 100.

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

Sec. 101.

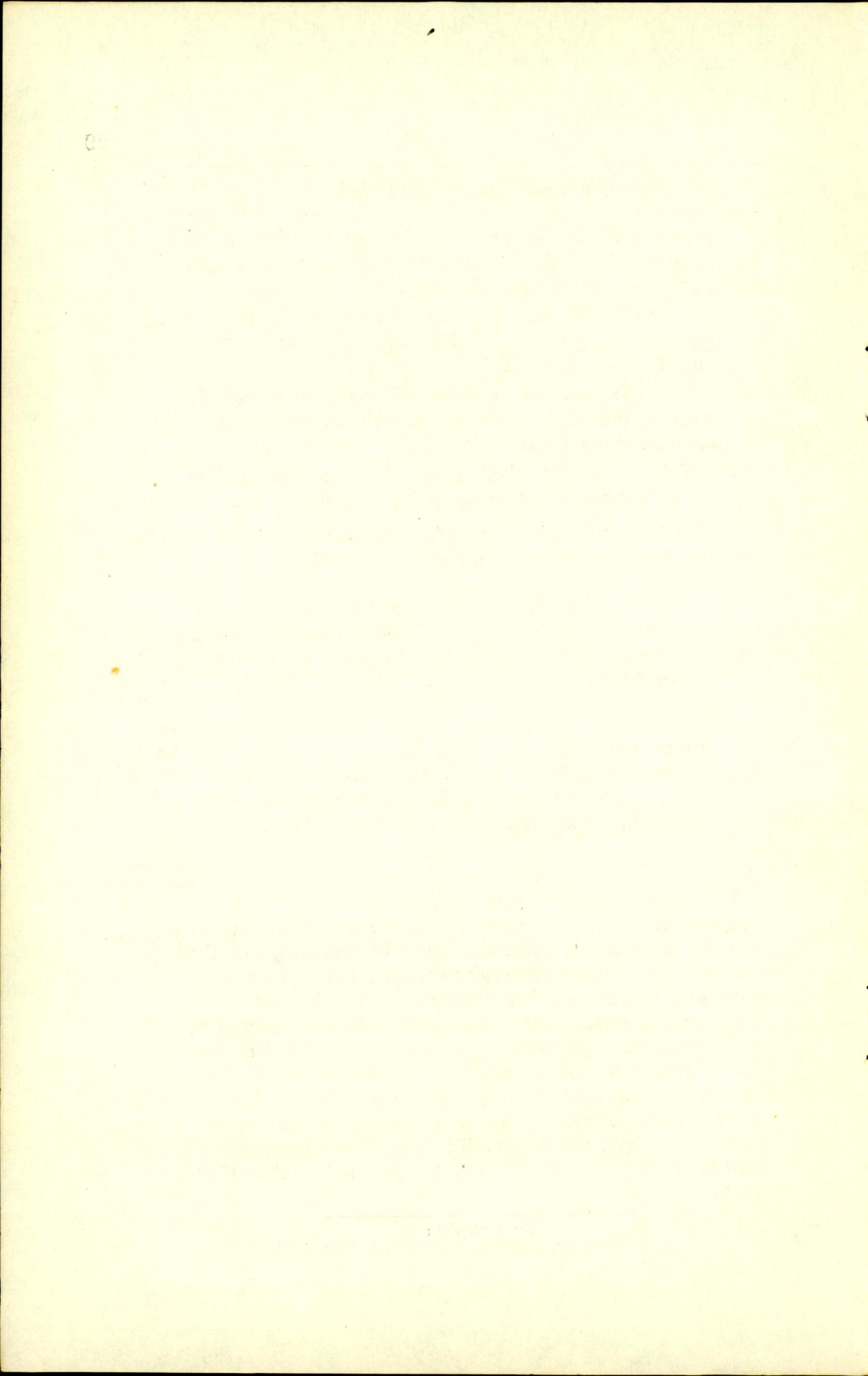
(Protection of protected person claiming under lessee where tenancy determined.)

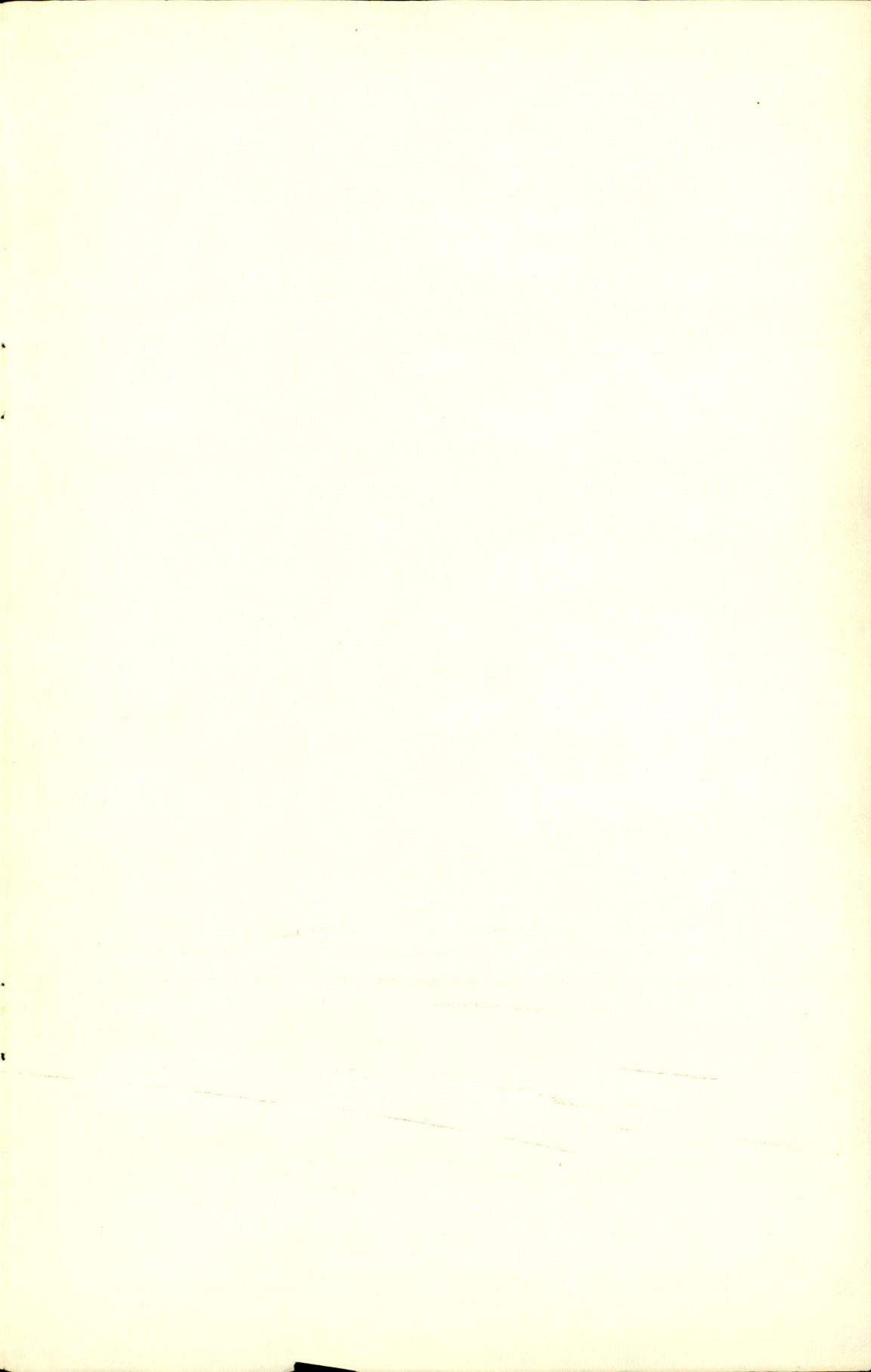
7. Any determination of the fair rent of prescribed premises purporting to have been made before the commencement of this Act pursuant to subsection three of section 6A of the Landlord and Tenant (Amendment) Act, 1948, as amended from time to time, which would have been valid, and would have been in force immediately before that commencement, had the amendments made by subparagraphs (ii), (iii) and (iv) of paragraph (b) of section two of this Act been in force at, and since, the time when the determination was made shall, as from that commencement, be the fair rent and the rent of the prescribed premises until it is varied in pursuance of Part II of the Landlord and Tenant (Amendment) Act, 1948-1958.

Effect of certain determinations.

By Authority:

A. H. PETTIFER, Government Printer, Sydney, 1958





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.

ALLAN PICKERING,
Clerk of the Legislative Assembly.

*Legislative Assembly Chamber,
Sydney, 27 March, 1958.*

New South Wales



ANNO SEPTIMO

ELIZABETHÆ II REGINÆ

Act No. 7, 1958.

An Act to amend the law relating to landlord and tenant; for this purpose to amend the Landlord and Tenant (Amendment) Act, 1948, and certain other Acts in certain respects; and for purposes connected therewith. [Assented to, 10th April, 1958.]

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

1. (1) This Act may be cited as the "Landlord and Tenant (Amendment) Act, 1958".

Short title
and
citation.

(2)

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

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

Landlord and Tenant (Amendment).

(2) The Landlord and Tenant (Amendment) Act, 1948, as amended by subsequent Acts and by this Act, may be cited as the Landlord and Tenant (Amendment) Act, 1948-1958.

Amendment
of Act
No. 25,
1948.

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

Sec. 5A.
(Certain
premises
excluded
from opera-
tion of Act.)

(a) (i) by inserting in subparagraph (ii) of paragraph (b) of subsection one of section 5A after the word "lease" the words ", other than a prescribed lease,";

(ii) by inserting in subparagraph (iii) of the same paragraph after the word "lease" the words ", other than a prescribed lease,";

(iii) by omitting the word "or" appearing at the end of subparagraph (v) of the same paragraph;

(iv) by inserting at the end of the same subsection the following new paragraphs:—

(d) any dwelling-house that—

(i) was in existence on the first day of December, one thousand nine hundred and fifty-seven;

(ii) has not been, either in whole or in part, the subject of a lease, other than a prescribed lease, at any time between that day and the commencement of the Landlord and Tenant (Amendment) Act, 1958;

(iii) does not form part of any premises that were the subject of a lease, other than a prescribed lease, between that day and that commencement;

(iv) is not "special premises" for the purposes of this Act; and

(v)

Landlord and Tenant (Amendment).

- (v) is the subject of a lease (not being a lease of shared accommodation or a lease the lessor under which is the employer of the lessee)—
 - (a) that is registered in the office of the Rent Controller;
 - (b) the execution of which by the lessee is witnessed by a solicitor instructed and employed independently of the lessor; and
 - (c) that is certified by that solicitor as provided in subsection two of this section;
- (e) any dwelling-house (not being a residential unit)—
 - (i) that was in existence at the commencement of the Landlord and Tenant (Amendment) Act, 1958;
 - (ii) of which a lessor has obtained vacant possession after that commencement otherwise than by an order for recovery of possession made on any one or more of the grounds specified in paragraph (g), (h), (i), (j), (k), (l), (m), (t) or (v) of subsection five of section sixty-two of this Act;
 - (iii) that is not “special premises” for the purposes of this Act; and
 - (iv) that is the subject of a lease (not being a lease of shared accommodation or a lease the lessor under which is the employer of the lessee)—
 - (a) that is registered in the office of the Rent Controller;
 - (b)

Landlord and Tenant (Amendment).

(b) the execution of which by the lessee is witnessed by a solicitor instructed and employed independently of the lessor; and

(c) that is certified by that solicitor as provided in subsection two of this section;

(f) any residential unit that—

(i) came into existence by reason of alterations, or alterations and additions, made after the commencement of the Local Government (Regulation of Flats) Act, 1955, to a dwelling-house that—

(a) was in existence at the commencement of the Local Government (Regulation of Flats) Act, 1955;

(b) has not been, either in whole or in part, the subject of a lease, other than a prescribed lease, at any time between the seventh day of December, one thousand nine hundred and forty-one, and the twenty-fourth day of February, one thousand nine hundred and fifty-six:

(c) does not form part of any premises that were the subject of a lease, other than a prescribed lease, at any time between those days;

(d)

Landlord and Tenant (Amendment).

- (d) is not "special premises" for the purposes of this Act;
- (ii) is one of two or three, but not more, residential units in that dwelling-house which were provided out of that dwelling-house, by those alterations, or those alterations and additions; and
- (iii) is the subject of a lease (not being a lease of shared accommodation)—
 - (a) that is registered in the office of the Rent Controller;
 - (b) the execution of which by the lessee is witnessed by a solicitor instructed and employed independently of the lessor; and
 - (c) that is certified by that solicitor as provided in subsection two of this section; or
- (g) any residential unit that—
 - (i) came into existence by reason of alterations, or alterations and additions, made after the commencement of the Local Government (Regulation of Flats) Act, 1955, to a dwelling-house—
 - (a) that was in existence at the commencement of the Local Government (Regulation of Flats) Act, 1955;
 - (b)

Landlord and Tenant (Amendment).

(b) of which a lessor has obtained vacant possession after the commencement of the Landlord and Tenant (Amendment) Act, 1958, otherwise than by an order for recovery of possession made on any one or more of the grounds specified in paragraph (g), (h), (i), (j), (k), (l), (m), (t) or (v) of subsection five of section sixty-two of this Act;

(c) that is not "special premises" for the purposes of this Act;

(ii) is one of two or three, but not more, residential units in that dwelling-house which were provided out of that dwelling-house, by those alterations, or those alterations and additions; and

(iii) is the subject of a lease (not being a lease of shared accommodation or a lease the lessor under which is the employer of the lessee)—

(a) that is registered in the office of the Rent Controller;

(b) the execution of which by the lessee is witnessed by a solicitor instructed and employed independently of the lessor; and

(c) that is certified by that solicitor as provided in subsection two of this section.

(v)

Landlord and Tenant (Amendment).

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

(1A) The provisions of Parts II, III, IV and V of this Act do not apply in respect of any premises used for business or commercial purposes the erection of which commenced after the twenty-seventh day of September, one thousand nine hundred and fifty-seven.

- (vi) by inserting next after subsection two of the same section the following new subsections :—

(2A) Where the lessee under a lease is a company or other corporate body the provisions of this section which, but for this subsection, would require the execution of the lease to be witnessed, and the lease to be certified, in the manner provided in this section shall be deemed to be omitted therefrom.

(2B) Premises that comply with the provisions of any one of the paragraphs (namely, paragraphs (a), (b), (c), (d), (e), (f) and (g)) contained in subsection one of this section and would, if that one paragraph were the only paragraph contained in that subsection, be exempt from the provisions of Parts II, III, IV and V of this Act to the extent provided by this section, shall be so exempt notwithstanding that they comply with some, but not all, of the provisions of any one or more of the other such paragraphs.

- (vii) by inserting in subsection three of the same section after the figures and letter "36A," the word "seventy-seven,";

(viii)

Landlord and Tenant (Amendment).

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

(4) In this section—

“Prescribed lease” means—

(a) a lease that was registered in the office of the Rent Controller and during any part of the currency of which the premises the subject of the lease were, to the extent provided by this section or by the order under section six of this Act published in Gazette No. 19 of the twenty-fourth day of February, one thousand nine hundred and fifty-six, excluded by the operation of this section or that order from the provisions of Parts II, III, IV and V of this Act; or

(b) a lease in respect of which an application under section eighty-six of this Act or under Regulation seventy-eight of the Commonwealth Regulations was granted by the issue of a certificate or any extension thereof pursuant to that section or regulation, as the case may be, but does not include a lease as defined in this paragraph of this definition under which the lessor and lessee were employer and employee.

“Residential unit” means any part of a dwelling-house which is or has been designed for occupation as a residence independently of any other part of the dwelling-house.

(5) This section has effect subject to the operation of sections 70A and 81A of this Act.

(b)

Landlord and Tenant (Amendment).

- (b) (i) by omitting from paragraph (a) of subsection Sec. 6A. three of section 6A the figures "1954" and by (Special premises.) inserting in lieu thereof the figures "1958";
- (ii) by inserting in the same paragraph after the words "that commencement" where firstly occurring the words ", whether or not that agreement or arrangement was entered into in substitution for a lease of such premises or of any part of such premises or of the premises of which such premises form a part,";
- (iii) by inserting in the same paragraph after the word "forty-nine" the words "and before that agreement or arrangement was entered into";
- (iv) by inserting in the same paragraph after the word "date" the words "and whether or not the lease is still subsisting";
- (v) by omitting paragraph (d) of the same subsection and by inserting in lieu thereof the following paragraph:—

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

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

- (i) one meal before midday consisting of at least two courses, one of which comprises cereal or porridge and the other of which comprises cooked meat, eggs or a like dish, together with bread (or toast), butter, jam and tea or coffee; and
- (ii) one meal after midday consisting of at least two courses, one of which comprises fish or meat (other than in sandwich form) and cooked vegetables, if

Landlord and Tenant (Amendment).

if the value of the meals so supplied forms a substantial portion of the whole charge paid by the licensee under the agreement or arrangement.

Further amendment of Act No. 25, 1948.

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

Sec. 15.
(Rent of prescribed premises.)

(a) (i) by omitting subsections one and two of section fifteen and by inserting in lieu thereof the following subsection:—

(1) Except in the case of premises which were not in existence or were not leased on the first day of November, one thousand nine hundred and fifty-one, the rent payable by the lessee of any prescribed premises (or of prescribed premises together with goods) shall not, in respect of any period after the commencement of the Landlord and Tenant (Amendment) Act, 1958, and notwithstanding any term or covenant in any lease in force at any time after that commencement, exceed the rent payable in respect of the prescribed premises at the first day of November, one thousand nine hundred and fifty-one (including the rent of any goods then leased therewith and the charge for any service then provided in connection with the lease), or where that rent has been increased or decreased by a determination made before that commencement and in force immediately before that commencement the rent as so increased or decreased.

(ii) by omitting from subsection four of the same section the words “or subsection two” wherever occurring;

(iii) by inserting in the same subsection after the words “fair rent” wherever occurring the words “and the rent”;

(b)

Landlord and Tenant (Amendment).

- (b) (i) by omitting from subsection one of section sixteen the words "or subsection two"; Sec. 16.
(Lessors may be required to furnish statutory declaration as to rent.)
- (ii) by omitting from the same subsection the words "on the first day of March, one thousand nine hundred and forty-nine, or"; to furnish statutory declaration as to rent.)
- (iii) by omitting from the same subsection the words "as the case may be,";
- (c) by omitting section 16A;
- (d) by omitting from subsection two of section twenty the word "six" and by inserting in lieu thereof the word "eight"; Sec. 20.
(Determination of application.)
- (e) by omitting from subsection two of section twenty-two the words "the applicant" and by inserting in lieu thereof the word "applicant"; Sec. 22.
(Date of operation of determination.)
- (f) by inserting in section twenty-three after the words "be the fair rent" wherever occurring the words "and the rent"; Sec. 23.
(Effect of determination.)
- (g) (i) by omitting from subsection one of section 24A the words "other than shared accommodation which were in existence on the thirty-first day of August, one thousand nine hundred and thirty-nine, and" and by inserting in lieu thereof the words ", other than shared accommodation,"; Sec. 24A.
(Determination based on increased outgoings.)
- (ii) by inserting in paragraph (a) of subsection five of the same section after the words "fair rent" wherever occurring the words "and the rent";
- (h)

Landlord and Tenant (Amendment).

- Sec. 26B. (Determination of rent of shared accommodation.)
- (h) by inserting in subsection ten of section 26B after the words "be the fair rent" wherever occurring the words "and the rent";
- Sec. 27. (Determination of rent of shared accommodation.)
- (i) by inserting in subsection nine of section twenty-seven after the words "be the fair rent" wherever occurring the words "and the rent";
- Sec. 31. (Procedure on appeal.)
- (j) by inserting in subsection four of section thirty-one after the words "be the fair rent" wherever occurring the words "and the rent";
- Sec. 31MA. (Interim determination.)
- (k) (i) by inserting in section 31MA after the words "as the case may be, may," the words "from time to time and";
- (ii) by omitting from the same section the words :—
- "Any interim determination so made shall be deemed to be a determination, and shall remain in force until the application has been finally disposed of by the Board to which the application was made or the Controller, as the case may be, and no longer"
- and by inserting in lieu thereof the words :—
- "Any interim determination so made shall be deemed to be a determination, and shall remain in force until—
- (a) the making of a later interim determination in the proceedings; or
- (b) the application has been finally disposed of by the Board to which the application was made or the Controller, as the case may be,
- whichever first happens, and no longer";
- (iii) by omitting from the same section the words "the interim determination" and by inserting in lieu thereof the words "an interim determination or determinations";
- (l)

Landlord and Tenant (Amendment).

(l) (i) by inserting at the end of paragraph (j) of subsection two of section thirty-two the words "or the amount of land tax payable in respect of the premises by the lessor under those Acts has, since the determination, increased or decreased";

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

(ii) by omitting from subsection four of the same section the words "in need of repair" and by inserting in lieu thereof the words "not in fair and tenantable repair";

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

(5) (a) Where a party to a determination (not being a determination in which a period is specified within which an application shall not be made to vary the determination) has, during the period commencing with the date of the determination and ending twelve months after that date, made application under subsection two of this section for variation of the determination, he shall not, within the last-mentioned period, make further application to a Fair Rents Board or to the Controller, as the case may be, for variation of the determination unless he has first obtained the leave of the Fair Rents Board or the Controller, as the case may be, to do so.

(b) A Fair Rents Board or the Controller, as the case may be, may, for the purposes of this section, grant or refuse leave to apply for a variation of the determination without a formal or oral hearing of the persons interested or their representatives.

(m) by inserting next after section thirty-two the following new section:—

New sec.
32A.

32A. (1) A lessee of prescribed premises who—

(a) refuses to allow, or fails to take such reasonable steps as are necessary to allow, the lessor of the premises or the lessor's servant or agent to enter and inspect the premises

State of
repair not
to be
raised by
lessee in
certain cases.

Landlord and Tenant (Amendment).

premises at least once a year at any reasonable time between eight o'clock in the morning and eight o'clock in the evening on any week day after not less than seven days' notice in writing of intention to do so has been given to the lessee; or

- (b) refuses to allow, or fails to take such reasonable steps as are necessary to allow, the lessor his agents servants workmen or contractors to enter the premises for the purpose of effecting necessary repairs or maintenance after reasonable notice of intention to do so has been given to the lessee,

shall not, within a year from the refusal or failure, on any application made to a Fair Rents Board or the Controller, as the case may be, for a determination, or for a variation of a determination, of the fair rent of the prescribed premises, be allowed to raise or put in issue the state of repair of the premises unless he has first obtained the leave of the Fair Rents Board or the Controller, as the case may be, to do so.

(2) Subsection one of this section does not apply where a refusal or failure of the kind described in that subsection on the part of the lessee is authorised or permitted, expressly or impliedly, by the terms of the lease.

(3) Without prejudice to the generality of the meaning of the expression "reasonable time", that expression in subsection one of this section does not, in the case of a dwelling-house, include any time at which the lessee and the other adult members of his household are ordinarily absent from the dwelling-house in the course or by reason of their respective trades, businesses, occupations or employments.

(n)

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- (n) by inserting in subparagraph (iv) of paragraph (b) of subsection one of section thirty-six after the word "available" where firstly occurring the words "or represented to be available"; Sec. 36.
(Certain payments prohibited.)
- (o) (i) by omitting from subsection two of section fifty-seven the words "first day of March, one thousand nine hundred and forty-nine" wherever occurring and by inserting in lieu thereof the words "first day of November, one thousand nine hundred and fifty-one"; Sec. 57.
(Lessor to ascertain fair rent.)
- (ii) by omitting subsection three of the same section;
- (p) by inserting in paragraph (b) of subsection (1A) of section fifty-nine after the word "letter" the words ", or certified mail service,"; Sec. 59.
(Service of notices.)
4. The Landlord and Tenant (Amendment) Act, 1948, as amended by subsequent Acts, is further amended— Further amendment of Act No. 25, 1948.
- (a) (i) by omitting from the end of paragraph (r) of subsection five of section sixty-two the word "or"; Sec. 62.
(Restriction on eviction.)
- (ii) by inserting at the end of the same subsection the following new paragraphs :—
- (t) that the premises, being a dwelling-house, are owned by the lessor who, being a male, is of or over the age of sixty-five years or, being a female, is of or over the age of sixty years, that not more than two other dwelling-houses (exclusive of the dwelling-house in which he resides) are owned by the lessor if he is living alone or, if the lessor is living with his spouse, not

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not more than two other dwelling-houses (exclusive of the dwelling-house in which they reside) are owned by them, that the premises were purchased or acquired by the lessor or the deceased spouse of the lessor before the twenty-first day of July, one thousand nine hundred and forty-eight, that the income of the lessor if he is living alone, or, if the lessor is living with his spouse, his income together with that of his spouse, does not exceed the Sydney basic wage, and that the premises are required for sale with vacant possession;

(u) that, where the premises are a dwelling-house, the lessee has reasonably suitable alternative accommodation available for his occupation for residential purposes; or

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

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

(c) In paragraph (t) of subsection five of this section, "Sydney basic wage" means the basic wage for adult males assessed and calculated in accordance with the provisions of paragraph (a) of subsection two of section

Landlord and Tenant (Amendment).

61K of the Industrial Arbitration Act, 1940, as amended by subsequent Acts, and as last adjusted in accordance with the provisions of section 61M of that Act, as so amended, before the notice to quit concerned was given.

(d) For the purposes of paragraph (t) of subsection five of this section if the lessor resides with his spouse a dwelling-house owned by them jointly or by either of them severally shall be taken to be owned by them.

(iv) by inserting next after subsection nine of the same section the following new subsection:—

(9A) (a) Where a lessor has given notice to quit on the ground specified in paragraph (t) of subsection five of this section and the dwelling-house in respect of which the notice was given has been vacated in accordance with the notice or an order for the recovery of possession of that dwelling-house has been made on that ground, a notice to quit on that ground shall not be given in respect of another dwelling-house by the lessor or his spouse within a period of five years immediately succeeding the date on which the dwelling-house first-mentioned in this subsection was vacated or possession thereof was recovered.

(b) Where a notice to quit has been given on the ground specified in paragraph (t) of subsection five of this section and the dwelling-house in respect of which the notice was given has been vacated within a period of six months after the giving of the notice, the dwelling-house shall, unless the contrary is proved or an order for the recovery of possession of the dwelling-house has been made within that period, be deemed for the purposes of this subsection to have been vacated in accordance with the notice.

(b)

Landlord and Tenant (Amendment).

- Sec. 62A.
(Judge may bar lessor's right to take proceedings where refusal of consent to assignment, &c., unreasonable.)
- (b) by inserting at the end of section 62A the following new subsection:—
- (4) In this section the expression "premises used solely as a dwelling-house" does not include premises which are sub-let in whole or in part by the lessee, with the express or implied consent of the lessor, in the course of the lessee's business of sub-letting for residential purposes.
- Sec. 62B.
(Power to assign certain tenancies at will.)
- (c) by inserting at the end of section 62B the following new subsection:—
- (3) In this section the expression "premises used solely as a dwelling-house" does not include premises which are sub-let in whole or in part by the lessee, with the express or implied consent of the lessor, in the course of the lessee's business of sub-letting for residential purposes.
- Sec. 65.
(Notice to quit where dwelling-house sold.)
- (d) (i) by inserting in subsection one of section sixty-five after the words "any person claiming under or through such lessor" wherever occurring the words "otherwise than by virtue of a concurrent lease granted after the commencement of the Landlord and Tenant (Amendment) Act, 1958, by such lessor to the person so claiming";
- (ii) by omitting from the same subsection the words "June, one thousand nine hundred and fifty-eight" and by inserting in lieu thereof the words "January, one thousand nine hundred and sixty-one";
- (iii) by inserting next after subsection one of the same section the following new subsection:—
- (1A) A person who has become the lessor of prescribed premises, being a dwelling-house or part of a dwelling-house, by virtue of the assignment

Landlord and Tenant (Amendment).

assignment or transfer to him, after the commencement of the Landlord and Tenant (Amendment) Act, 1958, of a lease of the prescribed premises or the granting to him, after that commencement, of a concurrent lease of the prescribed premises or any person claiming under or through such lessor shall not, within a period of six months after the date of the assignment or transfer of the lease or the grant of the concurrent lease, as the case may be, give a notice to quit on the ground specified in paragraph (g) of subsection five of section sixty-two of this Act to any person who was a lessee of the prescribed premises at the date of the assignment or transfer of the lease or the grant of the concurrent lease, as the case may be :

Provided that in respect of any person who has, before the first day of January, one thousand nine hundred and sixty-one, become the lessor of prescribed premises, being a dwelling-house or part of a dwelling-house, by virtue of the assignment or transfer to him, after the commencement of the Landlord and Tenant (Amendment) Act, 1958, of a lease of the prescribed premises or the granting to him, after that commencement, of a concurrent lease of the prescribed premises or any person claiming under or through such lessor, the foregoing provisions of this subsection shall be read and construed as if—

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

Landlord and Tenant (Amendment).

Sec. 70.
(Court to
consider
hardship.)

- (e) (i) by omitting from paragraph (c) of subsection one of section seventy the word, symbols and letter "and (s)" and by inserting in lieu thereof the word, symbols and letters ", (s), (t) and (v)";
- (ii) by omitting subparagraph (iii) of paragraph (d) of the first proviso to subsection two of the same section and by inserting in lieu thereof the following subparagraph:—
- (iii) the lessor does not own and has not, since the twenty-first day of July, one thousand nine hundred and forty-eight, owned any other dwelling-house, or, if the dwelling-house is one of a pair of semi-detached dwelling-houses that are owned by the lessor, the only other dwelling-house that the lessor owns or has, since the twenty-first day of July, one thousand nine hundred and forty-eight, owned is the other one of that pair of semi-detached dwelling-houses;
- (iii) by inserting at the end of the second proviso to the same subsection the words "or the Australian Soldiers' Repatriation Act 1920 (as amended by subsequent Acts) of the Parliament of the Commonwealth";
- (iv) by omitting from the same subsection the words "June, one thousand nine hundred and fifty-eight" and by inserting in lieu thereof the words "January, one thousand nine hundred and sixty-one";
- (v) by inserting next after subsection four of the same section the following new subsection:—
- (4A) Notwithstanding anything contained in this section, an order for the recovery of possession of any prescribed premises from any person on the ground specified in paragraph (t) of subsection

Landlord and Tenant (Amendment).

subsection five of section sixty-two of this Act shall not be made unless the court is satisfied that the premises have been offered for sale to the tenant upon terms and conditions which, having regard to all relevant circumstances, are fair and reasonable.

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

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

(f) by inserting next after section seventy the following new section:—

70A. (1) Where a lessor institutes proceedings after the commencement of the Landlord and Tenant (Amendment) Act, 1958, for the recovery of possession of any prescribed premises, being a dwelling-house, from any person on any of the grounds specified in paragraphs (g), (i), (l) or (m) of subsection five of section sixty-two of this Act, and an order for the recovery of possession of the dwelling-house cannot be made in those proceedings unless the court is satisfied that the lessor had provided at the date of expiry of the notice to quit, and has immediately available for the occupation of the persons occupying the dwelling-house, reasonably suitable alternative accommodation, the court shall have no jurisdiction in the matter unless there was filed, at the time when the information instituting the proceedings was exhibited, with the clerk of the court in which the proceedings are instituted a statutory

New sec.
70A.

Certain
dwelling-
houses to
be subject
to this Act
notwith-
standing
section 5A.

Landlord and Tenant (Amendment).

statutory declaration made by the owner of, or other the person having authority to lease, that alternative accommodation declaring that—

- (a) the premises specified in the declaration are the alternative accommodation which the lessor had provided at the date of expiry of the notice to quit and which would be immediately available for occupation as provided in subsection two of section seventy of this Act; and
- (b) he is aware of the provisions of subsection two of this section and understands their effect.

(2) As on and from the date on which the statutory declaration referred to in subsection one of this section is filed with the clerk of the court in accordance with that subsection the premises specified in the declaration as being the alternative accommodation shall be subject to the provisions of this Act in all respects as though section 5A of this Act had not been enacted.

This subsection ceases to apply in respect of those premises—

- (a) if the court finds that that alternative accommodation is not reasonably suitable or had not been provided at the date of expiry of the notice to quit or is not immediately available for occupation as provided in subsection two of section seventy of this Act—from the time when the court makes that finding;
- (b) if the court finds that that alternative accommodation is reasonably suitable but the lessee of the premises the subject of the proceedings does not accept that alternative accommodation—from the time of that rejection;

(c)

Landlord and Tenant (Amendment).

- (c) if the lessee vacates the premises for the recovery of possession of which the proceedings were instituted and does not accept that alternative accommodation—from the time when the lessee vacates those premises;
- (d) if the lessor discontinues the proceedings and the court orders that this subsection shall cease to apply to that alternative accommodation—from the time when the court makes that order;
- (e) if that lessee, having accepted that alternative accommodation, vacates that alternative accommodation—from the time of that vacation.

Nothing in this subsection affects the operation of any order made under section 81A of this Act.

(3) The clerk of the court with whom is filed any such statutory declaration as is referred to in subsection one of this section shall forward particulars of the alternative accommodation referred to in the statutory declaration to the Rent Controller who shall enter the particulars in a register kept for the purpose.

- (g) (i) by inserting in paragraphs (a), (b) and (c) of subsection one of section seventy-seven after the word “leased” wherever occurring the words “or made the subject of an agreement or arrangement whether oral or in writing of leave and license for the use thereof”; Sec. 77. (Premises not to be sold or re-let in certain cases.)
- (ii) by inserting in paragraph (a) of subsection two of the same section after the word “letting” the words “, or the entering into of an agreement or arrangement whether oral or in writing of leave and license for the use,”;
- (iii) by inserting in the same paragraph after the word “let” the words “or the subject of that agreement or arrangement”;

(iv)

Landlord and Tenant (Amendment).

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

In this subsection "rent", in relation to an agreement or arrangement whether oral or in writing of leave and license for the use of the prescribed premises or portion thereof, means any payment or consideration in respect of any leave and license for the use of the premises or portion, as the case may be, and for any services provided for or supplied to any person using the premises or portion, as the case may be, under leave and license.

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

- (h) (i) by inserting next after subsection three of section eighty-one the following new subsection:—

(3A) Where the lessor of any prescribed premises, being a dwelling-house, or any agent or servant of the lessor, has been convicted of an offence arising under subsection one of this section, the court before which the lessor, agent or servant, as the case may be, was convicted, if it is of opinion that the acts or omissions constituting the offence were done or omitted with intent that the person who was lessee at the time when those acts or omissions were done or omitted to be done vacate the premises and that person has vacated the premises, may, in addition to the penalty prescribed by this Act for the offence, order the lessor to pay to that person such sum as appears to the court to be sufficient as compensation for damage or loss sustained by that person as the result of his vacating the premises, and the provisions of subsection three of section sixty-one of this Act shall apply, mutatis mutandis, to and in respect of any order for the payment of any sum under this subsection.

- (ii) by inserting in paragraph (b) of subsection four of section eighty-one after the words "power of the lessor" the words "to restore the service or to have the service restored or"; (i)

Landlord and Tenant (Amendment).

- (i) by inserting next after section eighty-one the following new section:—

New sec.
81A.

81A. (1) A court for the district in which prescribed premises, being a dwelling-house that is not exempt by section 5A of this Act from the provisions of Parts II, III, IV and V of this Act to the extent provided by that section, are situated, shall, on application in that behalf made by the lessee of the premises, order that the premises, if vacated by the lessee, shall remain subject to the provisions of this Act in all respects as though section 5A of this Act had not been enacted, if the court is satisfied that—

Court may order that certain dwelling-houses remain subject to this Act.

- (a) the lessor has done, or caused to be done, any act, or omitted, or caused to be omitted, any act whereby the ordinary use or enjoyment by the lessee of the premises or of any goods leased therewith, or of any conveniences usually available to the lessee, or of any service supplied to, or provided in connection with, the premises is interfered with or restricted;
- (b) that the lessor has by his conduct endeavoured to improperly induce the lessee to vacate the premises;
- (c) that the lessor has unreasonably caused expense and inconvenience to the lessee by requiring him to defend proceedings under this Act for the recovery of the premises from the lessee and that those proceedings were vexatious;
- (d) the lessor has allowed the premises to fall into a dilapidated or dangerous condition.

(2) Notwithstanding anything contained in subsection one of this section, the court, although satisfied of any one or more of the matters specified in paragraphs (a), (c) and (d) of subsection one of this section, may refuse to make the order if the lessor satisfies the court that his conduct in relation to that matter or those matters was not intended to induce the lessee to vacate the premises. (3)

Landlord and Tenant (Amendment).

(3) An order under this section—

(a) shall remain in force for such period as is specified in the order or until the court otherwise orders; and

(b) shall have effect according to its tenor.

(4) Where an order is made under this section, the clerk of the court shall forthwith forward a copy of the order to the Rent Controller who shall enter particulars of the order in a register kept for the purpose.

(5) For the purposes of this section, conveniences shall be deemed to be usually available to the lessee where prior to the use of the conveniences having been interfered with or restricted without his consent, he has been allowed, at all times during the tenancy, to use those conveniences as he desired or he has been allowed to use those conveniences at times agreed to by the lessor and lessee or at times equivalent to those times.

(6) In this section "court" means a court of petty sessions holden before a Stipendiary Magistrate.

Sec. 85B.
(Application
by solicitor
or agent.)

(j) by inserting in section 85B after the word "eighty-six," the figures and letter "86A,";

New sec.
86A.

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

Exclusion of
premises
from opera-
tion of
Part III
and Part V
where lessor
and lessee
are
employer
and
employee.

86A. (1) The owner of any prescribed premises who wishes to make the premises available for leasing to his employees (whether or not the premises are then let to one of his employees) may make application in writing to the Controller to exclude the premises from the operation of this Part and Part V of this Act.

(2)

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(2) The applicant shall furnish such information in relation to the application as the Controller requires.

(3) (a) The Controller may, in his discretion, issue a certificate under this section excluding the premises from the operation of this Part and Part V of this Act during—

(i) any period during which the premises are let to any person who is an employee of the applicant; and

(ii) where any such person ceases to be an employee of the applicant while the premises are let to that person, the period of two months immediately succeeding the date on which that person so ceases to be an employee,

and the premises shall be excluded accordingly.

(b) Nothing in subparagraph (ii) of paragraph (a) of this subsection shall be construed as affecting or limiting the operation of subparagraph (i) of that paragraph.

(4) The Controller may at any time revoke or vary any certificate issued under subsection three of this section.

(1) (i) by omitting subsections three and (3A) of section eighty-seven and by inserting in lieu thereof the following subsection:—

Sec. 87.
(Exclusion of certain subdivided premises, &c., from operation of Part III and Part V.)

(3) The Controller may—

(a) grant the application and issue the certificate, either unconditionally or subject to such conditions as he thinks fit and for such period as he thinks fit; or

(b) refuse the application.

(ii)

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- (ii) by inserting at the end of subsection four of the same section the words “unless immediately prior to that date a prior certificate issued under this section had force or effect in respect of that person as such lessee”;

Sec. 87A.
(Part III not to apply to a dwelling-house let on behalf of an insane patient.)

- (m) by inserting in section 87A after the words “this Part” the words “and Part V”.

Further amendment of Act No. 25, 1948. New sec. 88A.

5. The Landlord and Tenant (Amendment) Act, 1948, as amended by subsequent Acts, is further amended by inserting next after section eighty-eight the following new section:—

Dwelling-house not to be sold unless tenant given opportunity to purchase.
cf. Vict. Act No. 6098, s. 72.

88A. (1) A person shall not sell or agree to sell any prescribed premises, being a dwelling-house which is occupied by a lessee and being the only premises comprised in the sale or agreement for sale, to any person other than the lessee unless—

- (a) the premises are sold at an auction sale of which not less than fourteen days’ notice in writing has been given to the lessee; or
- (b) the vendor has first offered in writing to sell the premises to the lessee at a price not greater than the price at which the premises are actually sold or agreed to be sold and upon terms as to payment and otherwise not less favourable to the lessee than the terms upon which the premises are actually sold or agreed to be sold and the lessee has not accepted that offer within fourteen days after the receipt thereof by him:

Provided that nothing in this subsection shall be construed as prohibiting the vendor from entering into and giving effect to a contract to sell the premises to any person

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person conditionally upon the lessee's rejection of an offer of sale of the premises made in accordance with paragraph (b) of this subsection.

(2) Any person who contravenes or fails to comply with any provision of this section shall be guilty of an offence against this Act.

(3) Any contravention of or failure to comply with any provision of this section shall not invalidate any contract or agreement.

This subsection shall have effect notwithstanding anything contained in section eighty-nine of this Act.

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

(a) by omitting from section one hundred the word, symbols and letter "or (r)" and by inserting in lieu thereof the word, symbols and letters ", (r), (t), (u) or (v)";

(b) by omitting from subsection two of section one hundred and one the word, symbols and letter "or (r)" and by inserting in lieu thereof the word, symbols and letters ", (r), (t), (u) or (v)".

7. Any determination of the fair rent of prescribed premises purporting to have been made before the commencement of this Act pursuant to subsection three of section 6A of the Landlord and Tenant (Amendment) Act, 1948, as amended from time to time, which would have been valid, and would have been in force immediately before that commencement, had the amendments made by subparagraphs (ii), (iii) and (iv) of paragraph (b) of section two of this Act been in force at, and since, the time when the determination was made shall, as from that commencement, be the fair rent and the rent of the prescribed premises until it is varied in pursuance of Part II of the Landlord and Tenant (Amendment) Act, 1948-1958.

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

E. W. WOODWARD,
Governor.

Government House,
Sydney, 10th April, 1958,

MEMORANDUM FOR THE RECORD

1. On 11/15/58, the following information was received from the [redacted] regarding the [redacted] of the [redacted] in the [redacted] area.

2. The [redacted] advised that the [redacted] had been observed on [redacted] at [redacted] on [redacted].

3. The [redacted] further stated that the [redacted] was [redacted] and was [redacted] in the [redacted] area.

4. It is noted that the [redacted] was [redacted] and was [redacted] in the [redacted] area.

5. The [redacted] advised that the [redacted] was [redacted] and was [redacted] in the [redacted] area.

6. The [redacted] further stated that the [redacted] was [redacted] and was [redacted] in the [redacted] area.

7. The [redacted] advised that the [redacted] was [redacted] and was [redacted] in the [redacted] area.

8. The [redacted] further stated that the [redacted] was [redacted] and was [redacted] in the [redacted] area.

9. It is noted that the [redacted] was [redacted] and was [redacted] in the [redacted] area.

10. The [redacted] advised that the [redacted] was [redacted] and was [redacted] in the [redacted] area.

11. The [redacted] further stated that the [redacted] was [redacted] and was [redacted] in the [redacted] area.

12. It is noted that the [redacted] was [redacted] and was [redacted] in the [redacted] area.

13. The [redacted] advised that the [redacted] was [redacted] and was [redacted] in the [redacted] area.

14. The [redacted] further stated that the [redacted] was [redacted] and was [redacted] in the [redacted] area.

15. It is noted that the [redacted] was [redacted] and was [redacted] in the [redacted] area.

E. M. WOODWARD

Colonel

20th Air Force, 10th AF, 1958

