

LANDLORD AND TENANT (AMENDMENT) BILL

*Schedule of Amendments referred to in Legislative Council's
Message of 7 December, 1962.*

- No. 1.—Page 7, clause 3, line 4. *Omit* “subject to subsection five of this section but”.
- No. 2.—Page 8, clause 3, lines 13 to 32 inclusive. *Omit* all words on these lines.
- No. 3.—Page 8, clause 3, lines 33 to 38 inclusive. *Omit* all words on these lines.
- No. 4.—Page 10, clause 3, lines 5 and 6. *After* “the” *insert* “improved”.
- No. 5.—Page 10, clause 3, line 13. *After* “the” *insert* “improved”.
- No. 6.—Page 11, clause 3, line 17. *Omit* the word “not,”.
- No. 7.—Page 11, clause 3, lines 21 to 37 inclusive. *Omit* all words on these lines,
insert:—
**“make an allowance based on the appropriate capital value of the premises
not exceeding six per centum per annum of the said appropriate capital value”**
- No. 8.—Page 12, clause 3, lines 5 to 17 inclusive. *Omit* all words on these lines.
- No. 9.—Page 12, clause 3, lines 18 to 20 inclusive. *Omit* “, if it is satisfied that the
premises are in fair and tenantable repair”.
- No. 10.—Page 13, clause 3, line 12. *Omit* “four” *insert* “six”.
- No. 11.—Page 13, clause 3, lines 19 to 30 inclusive. *Omit* all words on these lines.
- No. 12.—Page 15, clause 3, lines 1 to 40 inclusive. *Omit* all words on these lines.
- No. 13.—Page 16, clause 4, lines 22 to 25 inclusive. *Omit* all words on these lines.
- No. 14.—Page 17, clause 4, lines 3 to 6 inclusive. *Omit* all words on these lines.
- No. 15.—Page 17, clause 4, lines 9 to 17 inclusive. *Omit* all words on these lines.
- No. 16.—Page 17, clause 4, lines 18 to 38 inclusive. *Omit* all words on these lines.
- No. 17.—Pages 18 and 19, clause 4, lines 4 to 36 inclusive on page 18 and lines
1 to 37 inclusive on page 19. *Omit* all words on these lines.
- No. 18.—Pages 20, 21 and 22, clause 4, lines 1 to 36 inclusive on page 20, lines
1 to 37 inclusive on page 21 and lines 1 to 6 inclusive on page 22. *Omit*
all words on these lines.
- No. 19.—Page 23, clause 5, lines 9 to 13 inclusive. *Omit* all words on these lines.

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, 6 December, 1962, A.M.*

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

J. R. STEVENSON,
Clerk of the Parliaments.

*Legislative Council Chamber,
Sydney, 7 December, 1962.*

New South Wales



ANNO UNDECIMO

ELIZABETHÆ II REGINÆ

Act No. , 1962.

An Act to make further provisions relating to fixing the fair rent of certain premises and otherwise to amend the law relating to landlord and tenant; for this and other purposes to amend the Landlord and Tenant (Amendment) Act, 1948, and certain other Acts; 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, 1962".

Short title
and
citation.

4535 106—A

(2)

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, 1948-1962.

- 5 **2.** Part I of the Landlord and Tenant (Amendment) Act, 1948, as amended by subsequent Acts, is amended :—
- Amendment
of Act No.
25, 1948.
(Part I.—
Prelimin-
ary.)

- 10 (a) (i) by inserting in paragraph (b) of subparagraph (v) of paragraph (b) of subsection one of section 5A after the word "lessor" the words "or by a clerk of petty sessions";
- (ii) by inserting in paragraph (c) of the same subparagraph after the word "solicitor" the words "or clerk of petty sessions";
- 15 (iii) by inserting in subparagraph (ii) of paragraph (c) of the same subsection after the word "lessor" the words "or by a clerk of petty sessions";
- 20 (iv) by inserting in subparagraph (iii) of the same paragraph after the word "solicitor" the words "or clerk of petty sessions";
- (v) by inserting in paragraph (b) of subparagraph (v) of paragraph (d) of the same subsection after the word "lessor" the words "or by a clerk of petty sessions";
- 25 (vi) by inserting in paragraph (c) of the same subparagraph after the word "solicitor" the words "or clerk of petty sessions";
- 30 (vii) by inserting in paragraph (b) of subparagraph (iv) of paragraph (e) of the same subsection after the word "lessor" the words "or by a clerk of petty sessions";
- (viii) by inserting in paragraph (c) of the same subparagraph after the word "solicitor" the words "or clerk of petty sessions";
- (ix)

Landlord and Tenant (Amendment).

- (ix) by inserting in paragraph (b) of subparagraph (iii) of paragraph (f) of the same subsection after the word "lessor" the words "or by a clerk of petty sessions";
- 5 (x) by inserting in paragraph (c) of the same subparagraph after the word "solicitor" the words "or clerk of petty sessions";
- 10 (xi) by inserting in paragraph (b) of subparagraph (iii) of paragraph (g) of the same subsection after the word "lessor" the words "or by a clerk of petty sessions";
- (xii) by inserting in paragraph (c) of the same subparagraph after the word "solicitor" the words "or clerk of petty sessions";
- 15 (xiii) by omitting subsection (1A) of the same section and by inserting in lieu thereof the following subsections :—
- (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—
- 20 (a) (i) that were in existence on the twenty-seventh day of September, one thousand nine hundred and fifty-seven, or were commenced before and completed after that day;
- 25 (ii) that are not "special premises"; and
- 30 (iii) that are the subject of a lease that contains a provision that the said Parts of this Act shall not apply in respect of such premises and—
- 35 (a) that is registered in the office of the Rent Controller;
- (b)

Landlord and Tenant (Amendment).

5 (b) the execution of which is
witnessed by a solicitor
instructed and employed
independently of the
lessor or by a clerk of
petty sessions; and

10 (c) that is certified by a
solicitor or by a clerk of
petty sessions as provided
in subsection two of this
section; or

15 (b) the erection of which commenced after
the twenty-seventh day of September,
one thousand nine hundred and fifty-
seven.

(1B) Where—

20 (a) any prescribed premises being premises
used for business or commercial
purposes cease to be subject to the
provisions of Parts II, III, IV and V
of the Act by reason of the provisions
of paragraph (a) of subsection (1A)
of this section;

25 (b) the premises or any part of the premises
were or was, under any sub-lease
consented to or approved by the lessor
and in force immediately before such
premises or part so ceased, occupied
by a sub-lessee; and

30 (c) the premises or part so occupied were
or was, immediately before such
premises or part so ceased, subject to
the said Parts of this Act as regards
the premises or part of the premises so
35 occupied,

then—

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then—

- 5 (i) the premises or part of the premises so occupied shall continue to be prescribed premises and the provisions of the said Parts of this Act shall so far as applicable continue to apply to the premises or part of the premises so occupied;
- 10 (ii) if the lessee at any time ceases to be in possession of the premises because of the termination or surrender of his lease or the making of an order for the recovery of possession or for ejectment the sub-lessee shall become the lessee from the lessor of the premises or part of the premises so occupied upon the same terms and conditions as the terms and conditions of the sub-lease as in force immediately before that time;
- 15 (iii) any order for recovery of possession or for the ejectment as aforesaid shall not be enforced against the sub-lessee; and
- 20 (iv) the sub-lessee shall on the hearing of any proceedings for such an order be entitled to be heard.
- 25 (xv) by inserting in subsection three of the same section after the words "subsection one" where firstly and lastly occurring the word, symbols, figure and letter "or (1A)";
- 30 (xvi) by inserting in subsection two of the same section after the words "subsection one" where firstly and lastly occurring the word, symbols, figure and letter "or (1A)";
- 35 (b)

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- (b) by inserting in subsection one of section eight in the definition of "lease" after the word "land" the words "or any lease arising under a clause in a mortgage or in an agreement for the sale and purchase of land (however expressed and whenever executed) whereby in case of default the mortgagee or the vendor (as the case may be) is given the powers of a lessor with respect to the recovery of possession or ejectment, or any tenancy at will implied at law in any mortgage or agreement for the sale or purchase of land".

Sec. 8.
(Defini-
tions.)

3. Part II of the Landlord and Tenant (Amendment) Act, 1948, as amended by subsequent Acts, is amended :—

Further
amendment
of Act
No. 25,
1948.
(Part II.—
Fair Rents.)

- (a) by omitting subsection three of section fifteen ;

Sec. 15.
(Rent of
prescribed
premises.)

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

New
sec. 17A.

- 17A. (1) Where an agreement in writing is entered into by the lessor and lessee of any prescribed premises (other than shared accommodation) which are leased with or without goods and under that agreement the lessor and lessee agree as to the amount of the rent to be paid by the lessee to the lessor in respect of such premises, the amount specified in that agreement as the rent shall, without any determination or further determination being made, be for all purposes as between the lessor and the lessee the fair rent and the rent of the premises without goods or together with goods, as the case may be, as on and from the day specified in that behalf in the agreement not being earlier than the day on which the agreement is entered into and no proceedings for the determination of the fair rent of those premises by a Fair Rents Board and no

Fixing of
fair rent of
prescribed
premises by
agreement.

Landlord and Tenant (Amendment).

no application for the assessment of the fair rent of those premises by the Rent Controller or a clerk of the Fair Rents Board, as the case may be, shall
5 ~~subject to subsection five of this section but~~ notwithstanding any other provision of this Act be commenced or lodged by the lessor or lessee during the period for which the agreement is expressed to be in force or, if no such period is expressed, during
10 a period of twelve months next after the day on and from which the fair rent is fixed by the agreement.

(2) An agreement referred to in subsection one of this section shall have no force or effect unless—

- 15 (a) it is registered in the office of the Rent Controller within one month after the day on which it is entered into;
- (b) its execution by the lessee is witnessed by a solicitor instructed and employed independently of the lessor or by a clerk of petty
20 sessions; and
- (c) it is certified by that solicitor or clerk of petty sessions as provided in subsection three of this section.

(3) A solicitor or clerk of petty sessions
25 certifying to an agreement for the purposes of subsection two of this section—

- (a) shall explain the agreement to the lessee;
- (b) shall examine the lessee touching his knowledge of the agreement;
- 30 (c) if he thinks fit may so examine the lessee separately and apart from any other person; and
- (d) if he is satisfied that the lessee understands the true purport and effect thereof and
35 freely and voluntarily executes the same, shall certify in writing upon the agreement that the agreement has been so explained, and

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and that he has examined the lessee and is satisfied as hereinbefore required, and that the lessee has executed the agreement in his presence.

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

15 ~~(5) A lessee of any prescribed premises the subject of any such agreement may, notwithstanding the provisions of subsection two of section thirty-two of this Act and during any period for which the agreement is expressed to be in force or, if no such period is expressed, during a period of twelve months next after the day on and from which the fair rent is fixed by the agreement, make application to a Fair Rents Board for a determination of the fair rent of those premises and the Board shall make a determination of the fair rent of those~~
20 ~~premises or vary any such existing determination in accordance with the provisions of this Act, where the lessee proves to the satisfaction of the Board that—~~

25 ~~(a) the rent fixed by the agreement is harsh or unconscionable; or~~
30

~~(b) the agreement was obtained by fraud, duress, intimidation or improper means.~~

35 ~~(6) Any person, whether as principal, agent or otherwise, who procures the execution by the lessee of an agreement referred to in subsection one of this section by fraud, duress, intimidation or improper means, shall be guilty of an offence against this Act.~~

(c)

Landlord and Tenant (Amendment).

- (c) (i) by omitting paragraph (a) of subsection one of section twenty-one and by inserting in lieu thereof the following paragraph : —

Sec. 21.
(Matters
to be
considered.)

5 (a) the appropriate capital value of the premises;

10 (ii) by omitting from paragraph (f) of the same subsection the words “the rate” and by inserting in lieu thereof the words “except in the case of premises used for business or commercial purposes, the rate”;

15 (iii) by omitting from paragraph (j) of the same subsection the words “including (but without limiting the generality of the word ‘hardship’) any loss which might be imposed upon the lessor by an order fixing the rent of the premises at an amount less than the lessor’s liability under a mortgage of, or contract of sale in respect of, the premises, or under a hire purchase agreement or contract of sale in respect of any goods leased with the premises”;

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

25 In determining the fair rent of any premises used for business or commercial purposes the Fair Rents Board shall not make any allowance based on the rate of interest charged upon overdrafts.

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

In

Landlord and Tenant (Amendment).

In paragraph (a) of this subsection
“appropriate capital value”—

- 5 (i) in respect of any prescribed premises,
not being premises used for business
or commercial purposes, means the
improved capital value of the premises
at the prescribed date, or, if the
premises were not in existence on that
10 date, on the date on which the erection
of the premises was completed ; or
- 15 (ii) in respect of any prescribed premises
used for business or commercial
purposes, means the **improved** capital
value of the premises as shown in a
valuation made not earlier than one
month before the date of the applica-
tion for determination ; or where—
- 20 (a) the premises consist partly of
land that is included in a valua-
tion list or supplementary list
under the Valuation of Land
Act, 1916, as amended by
subsequent Acts, or land that
25 is within an area within the
meaning of the Local Govern-
ment Act, 1919, as amended
by subsequent Acts, not being
land included in any such list,
and
- 30 (b) the Fair Rents Board is satis-
fied that there has been no
substantial alteration in the
value of the premises since the
date of the valuation of the
premises as shown on the
notice of valuation under the
Valuation of Land Act, 1916,
35 as amended by subsequent
Acts, last furnished in respect
of

Landlord and Tenant (Amendment).

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of the premises before the date of the application for determination, or as the case may be, since the date of the valuation and rate notice last furnished under the Local Government Act, 1919, as amended by subsequent Acts, before the date of the application for determination,

means the capital value of the premises as shown on such notice of valuation or valuation and rate notice.

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

(1B) A Fair Rents Board shall not, in determining the fair rent of prescribed premises used for business or commercial purposes,—

(a) unless it is satisfied that the premises are in fair and tenantable repair, make any allowance based on the appropriate capital value, referred to in paragraph (a) of subsection one of this section, of the premises, but this paragraph does not apply where the lessee has failed to comply with any obligation to maintain the premises in fair and tenantable repair; or

(b) if it is satisfied that the premises are in fair and tenantable repair, make any such allowance except an annual allowance not exceeding four per centum per annum of the said appropriate capital value.

make an allowance based on the appropriate capital value of the premises not exceeding six per centum per annum of the said appropriate capital value.

(1c)

Landlord and Tenant (Amendment).

(1c) A Fair Rents Board, in determining the fair rent of prescribed premises used in part for business or commercial purposes and in part for other purposes—

5 ~~(a)~~ shall not, unless it is satisfied that
the premises are in fair and tenant-
able repair, make any allowance
based on the appropriate capital
10 value, referred to in paragraph ~~(a)~~
of subsection one of this section, of
the premises, but this paragraph
does not apply where the lessee has
failed to comply with any obliga-
15 tion to maintain the part of the
premises used for business or com-
mercial purposes in fair and
tenantable repair; and

20 ~~(b)~~ shall, if it is satisfied that the pre-
mises are in fair and tenantable
repair—

25 ~~(i)~~~~(a)~~ determine which part of the premises
is at the date of the application for
the determination being used wholly
or primarily for business or com-
mercial purposes (such part being
referred to in this subsection as the
business part) and which part of the
premises is at such date being used
30 wholly or primarily for other pur-
poses (such part being referred to in
this subsection as the non-business
part); and

35 ~~(ii)~~~~(b)~~ determine the fair rent of the
premises at an amount equal to the
sum of—

40 ~~(a)~~~~(i)~~ an amount equal to the fair
rent of the non-business part
having regard to the appro-
priate capital value, referred
to in paragraph (a) of sub-
section one of this section,
of that part; and ~~(b)~~~~(ii)~~

Landlord and Tenant (Amendment).

- (e) by inserting at the end of section 31MB the following new paragraph :—

Sec. 31MB.
(Amend-
ment of
applica-
tions.)

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

- (f) (i) by inserting at the end of subsection one of section 31N the words "and particulars of how that amount is calculated. A notice setting out such amount and particulars shall be given to the lessee together with the notice given to him pursuant to subsection one of section nineteen of this Act.";

Sec. 31N.
(Applica-
tion by
lessor for
fair rent
determina-
tion to
indicate
assessment
of rent
sought.)

- (ii) by omitting from subsection two of the same section the words "Notwithstanding anything" and by inserting in lieu thereof the words "Subject to section 31MB of this Act, but notwithstanding any other provision";

- (iii) by inserting at the end of the same subsection the words "or the application as amended pursuant to section 31MB of this Act";

- (g) (i) by omitting from paragraph (i) of subsection two of section thirty-two the word "or";

Sec. 32.
(Variation
of deter-
mination.)

- (ii) by inserting at the end of paragraph (j) of subsection two of section thirty-two the following word and new paragraph :—

; or

- (k) the lessor's liability in respect of the premises for annual rates has, since the determination, increased or decreased.

~~(iii)~~(h)

Landlord and Tenant (Amendment).

- (iii) by omitting from subsection four of the same section the words "and if it appears to the Board or the Controller, as the case may be, that the premises being a dwelling-house are not in fair and tenantable repair, no increase of rent shall be allowed by the Board or Controller, as the case may be, on account of any increase in the lessee's liability for repairs, maintenance and renewals of the premises and fixtures thereon" and by inserting in lieu thereof the words "and by inserting in the Board or the Controller in making the variation shall not—
- (a) where the premises the subject of the application are used wholly or in part for business or commercial purposes, make any allowance based on the appropriate capital value, referred to in paragraph (a) of subsection one of section twenty-one of this Act, of the premises or part so used unless it or he is satisfied that the premises the subject of the application are in fair and tenantable repair, except where the lessee has failed to comply with any obligation to maintain the premises in fair and tenantable repair; and
- (b) where it or he considers that any repairs, maintenance, or renewals of the premises whether or not they or any part of them are used for business or commercial purposes) should be carried out, make any allowance based on paragraph (c) of subsection one of section twenty-one of this Act, except where in respect of any part of the premises used for business or commercial purposes, the lessee is obliged to carry out the repairs, maintenance or renewals";

(h)

Landlord and Tenant (Amendment).

- (h) by inserting in subsection one of section thirty-five after the word "not" the words ", whether as principal or agent or in any other capacity";
- 5 (i) by inserting at the end of subsection two of section fifty-two the words "or by an agreement referred to in subsection one of section 17A of this Act";
- 10 (j) (i) by inserting in subsection one of section fifty-seven after the word "Part" the words "or by an agreement referred to in subsection one of section 17A of this Act";
- (ii) by inserting in subsection (1A) of the same section after the word "determination" the words "or by an agreement referred to in subsection one of section 17A of this Act";
- 15 (k) by inserting in subsection one of section fifty-eight after the words "Fair Rents Board)" the words "or, in the case of a certificate by the Controller, by an agreement referred to in subsection one of section 17A of this Act".
- 20 **4. Part III of the Landlord and Tenant (Amendment) Act, 1948, as amended by subsequent Acts, is amended :—**
- (a) (i) by omitting from subsection one of section sixty-five the words "six months" and by inserting in lieu thereof the words "two years";
- 25 (ii) by inserting in subsection one of section sixty-five the words "or by an agreement referred to in subsection one of section 17A of this Act";

Sec. 35.
(Premises not to be let at rent exceeding fair rent.)

Sec. 52.
(Information as to fair rent.)

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

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

Further amendment of Act No. 25, 1948.
(Part III.—Recovery of Possession of Prescribed Premises.)

Sec. 61.
(Notice to quit where dwelling-house sold.)

Landlord and Tenant (Amendment).

(ii)(a) (i) by omitting the proviso to the same subsection;

(iii) by omitting from subsection (1A) of the same section the words "six months" and by inserting in lieu thereof the words "two years";

(iv)(ii) by omitting the proviso to the same subsection;

(b) (i) by inserting at the end of subparagraph (iii) of paragraph (d) of the first proviso to subsection two of section seventy the word "and";

(ii) by omitting from the same subsection the words "one thousand nine hundred and sixty-three" and by inserting in lieu thereof the words "one thousand nine hundred and sixty-six";

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

(2A) Subsection two of this section does not apply in any case where an order for the recovery of possession of any prescribed premises, being a dwelling house, from any person is sought on the ground specified in paragraph (g) of subsection five of section sixty-two of this Act and the lessor has at the date of the notice to quit for a continuous period of not less than eight years, whether such period is before or after or partly before and partly after the commencement of the Landlord and Tenant (Amendment) Act, 1962, been the owner of the premises and has, at the time of the service of the notice to quit, served, where a form is prescribed, a notice in the prescribed form setting out the effect of the provisions of subsections one and two of this section.

Sec. 70.
(Count to
consider
hardship.)

Landlord and Tenant (Amendment).

(e)(b) by inserting in subsection one of section eighty-one after the word "not," the words "whether as principal or agent or in any other capacity,";

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

5 (d) (i) by omitting from section eighty-three the following words:—

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

"(e) a person (not being a lodger or boarder) resided with the former lessee immediately prior to his death and is actually in possession of the premises immediately after the death of the former lessee,

that person"

and by inserting in lieu thereof the following paragraph and words:—

15 "(e) immediately before the death of the lessee—

(i) the wife or husband of the lessee resided with the lessee and is actually in possession of the premises immediately after the death of the lessee;

(ii) where the wife or husband of the lessee was not so residing or is not so in possession or the lessee was not married at the date of his death, a child of the lessee (being a child of or over the age of twenty-one years) so resided and is so in possession;

(iii) where no person referred to in subparagraph (i) or (ii) of this paragraph was so residing or is so in possession, a brother or sister, or the father or

Landlord and Tenant (Amendment).

- or mother, of the lessee so
resided and is so in possession;
or
- (iv) where no person referred to in
subparagraph (i), (ii) or
(iii) of this paragraph was so
residing or is so in possession,
any other person so resided
(otherwise than as a lodger or
boarder) and is so in pos-
session and had resided with
the lessor for a period of not
less than two years immedi-
ately before the death of the
lessee,
- the wife or husband, or such child,
brother or sister or the father or
mother, or other person, as the case
may be,";
- (ii) by omitting from the same section the words
"that person" where secondly occurring and
by inserting in lieu thereof the words "the
person having the right under this subsection
to continue in possession of the premises";
- (iii) by omitting from the same section the
words "as if he" and by inserting in lieu there-
of the words "as if he or she";
- (iv) by inserting at the end of the same section
the following new subsection :—
- (2) Where but for this subsection more
than one person would be entitled under subparagraph
(ii), (iii) or (iv) of paragraph (c) of sub-
section one of this section, have had a right
to continue in possession of any premises, the
elder or eldest of the persons so entitled under
such subparagraph shall have that right to the
exclusion of any other of those persons.
- (e)

Landlord and Tenant (Amendment).

(e) (i) by omitting from subsection one of section 83A the following words:—

Sec. 83A.
(Protection of member of the family of deceased lessee.)

“(a) the spouse of the lessee resided with the lessee immediately before the death of the lessee and is actually in possession of the premises immediately after the death of the lessee; or

(b) where the spouse of the lessee was not so residing or is not so in possession or the lessee was not married at the date of his death, a child of the lessee (being a child of or over the age of twenty-one years) so resided and is so in possession,

such spouse or child”

and by inserting in lieu thereof the following paragraphs and words:—

“(a) the wife or husband of the lessee resided with the lessee immediately before the death of the lessee and is actually in possession of the premises immediately after the death of the lessee;

(b) where the wife or husband of the lessee was not so residing or is not so in possession or the lessee was not married at the date of his death, a child of the lessee (being a child of or over the age of twenty-one years) so resided and is so in possession;

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

(d)

Landlord and Tenant (Amendment).

- (d) where no person referred to in paragraph (a), (b) or (c) of this subsection was so residing or is so in possession, any other person so resided (otherwise than as a lodger or boarder) and is so in possession and had resided with the lessee for a period of not less than two years immediately before the death of the lessee,
- the wife or husband or such child, brother or sister or the father or mother, or other person, as the case may be";
- (ii) by omitting from the same subsection the words "In this subsection 'child of the lessee' means, where more than one child of the lessee so resided and is so in possession, the elder or eldest of such children.";
- (iii) by inserting next after the same subsection the following new subsection : —
- (1A) Where but for this subsection more than one person would, under paragraph (b), (c) or (d) of subsection one of this section, have had a right to continue in possession of any premises, the elder or eldest of the persons so entitled under such paragraph shall have that right to the exclusion of any other of those persons.
- (iv) by omitting from subsection two of the same section the words "such spouse or child, as the case may be," and by inserting in lieu thereof the words "the person having the right under subsection one of this section to continue in possession of the premises";
- (v) by inserting in the same subsection after the word "him" the words "or her";
- (vi) by inserting in the same subsection after the word "he" the word "or she";
- (vii)

Landlord and Tenant (Amendment).

5 ~~(vii)~~ by omitting from subsection three of the same section the words "such spouse or child" and by inserting in lieu thereof the words "the person having the right under subsection one of this section to continue in possession of the premises";

~~(f)~~(c) by inserting next after section 83A the following New sec. 83B.
new section : —

10 83B. Where a lessee of prescribed premises dies and during the period after his death and before probate or letters of administration of the estate of the deceased lessee are granted, a person is actually in possession of the premises, and an action of ejectment is during that period brought against such person in the Supreme Court or a District Court, of proceedings are during that period commenced under section seventeen or twenty-three of the Landlord and Tenant Act of 1899, as amended by subsequent Acts, for the recovery of the premises, such person shall not be entitled to raise as a defence to that action or those proceedings the fact that the deceased lessee's interest in the premises is deemed by section sixty-one of the Wills, Probate and Administration Act, 1898, as amended by subsequent Acts, to be vested in the Public Trustee.

~~(g)~~(d) (i) by omitting from subsection three of section eighty-six the word "five" and by inserting in lieu thereof the word "seven"; Sec. 86. (Exclusion of premises from Part III and Part V.)
30 (ii) by omitting from paragraph (b) of subsection four of the same section the word "five" and by inserting in lieu thereof the word "seven";
(iii) by omitting from subsection five of the same section the word "five" wherever occurring and by inserting in lieu thereof the word "seven";
~~(h)~~(e)

Landlord and Tenant (Amendment).

- (h)(e) (i) by omitting from paragraph (a) of subsection three of section 87B the word "five" and by inserting in lieu thereof the word "seven";
- (ii) by omitting from subsection four of the same section the word "five" and by inserting in lieu thereof the word "seven".

Sec. 87B.
(Exclusion
of certain
premises
from
operation of
Part III and
Part V.)

5. Part IV of the Landlord and Tenant (Amendment) Act, 1948, as amended by subsequent Acts, is amended : —

Further
amendment
of Act No.
25, 1948.
(Part IV.—
Miscel-
laneous.)

- (a) (i) by omitting paragraph (a) of subsection one of section 88A;
- (ii) by omitting from the same subsection the words, symbols and letter "paragraph (b) of";

Sec. 81A.
(Dwelling-
house not
to be sold
unless
tenant
given
opportunity
to
purchase.)

- (b)(a) by inserting at the end of section eighty-nine the following new paragraph : —
- Nothing in this section shall apply to a covenant or agreement entered into for the purposes of paragraph (a) of subsection (1A) of section 5A of this Act nor to an agreement referred to in subsection one of section 17A of this Act.

Sec. 89.
(Contracting
out
prohibited.)

- (e)(b) by inserting at the end of section ninety the following new paragraph : —
- Nothing in this section shall operate to prohibit a person entering into or making a lease for the purposes of paragraph (a) of subsection (1A) of section 5A of this Act or an agreement referred to in subsection one of section 17A of this Act.

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

(d)(c)

Landlord and Tenant (Amendment).

(d)(c) by inserting at the end of section ninety-four the following new subsection :—

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

5 (3) A document purporting to be a certificate made or issued by the Controller or his delegate appointed under subsection two of section eleven of this Act and to be signed by the Controller or any such delegate certifying to the effect that—

10 (a) the premises described in the certificate are or are not at the date of the certificate or were or were not at any time or, during any period specified in the certificate, premises, or premises included in any class of premises, to which an order made under subsection one or two of section six of this Act applies or applied or to which a declaration continued in force and effect by subsection three of that section applies or applied;

20 (b) the premises, or part of any premises, described in the certificate are or are not, or is or is not, at the date of the certificate or were or were not, or was or was not, at any time or during any period specified in the certificate premises to which an order made under subsection one of section 6A of this Act applies or applied;

25 (c) the premises are or are not at the date of the certificate, or were or were not at any time or during any period specified in the certificate, premises of a class to which an order made under paragraph (b) of subsection three of section 6A of this Act applies or applied;

30 (d) a lease, specified in the certificate, of premises described in the certificate is or is not registered under the provisions of section 5A or 17A of this Act, and, if it is so registered, certifying the date on which it was so registered;

(e)

Landlord and Tenant (Amendment).

5 (e) the premises described in the certificate are
or are not at the date of the certificate, or
were or were not at any time or during any
period specified in the certificate, premises
in respect of which a certificate under sec-
tion 6A, seven, eighty-six, 86A, eighty-seven
or 87B of this Act is or was in force,

10 shall be received in evidence and shall, until the
contrary is proved, be accepted as evidence of the
matters therein certified to.

6. Part V of the Landlord and Tenant (Amendment) Act, 1948, as amended by subsequent Acts, is amended—

Further
amendment
of Act No.
25, 1948.

(Part V.—
Protected
Persons.)

(a) by omitting section one hundred and three;

Sec. 103.
(Proviso to
section
65 (1) not
to apply in
certain
cases.)

(b) by omitting section one hundred and four;

Sec. 104.
(Letting of
unoccupied
houses to
protected
persons.)

15 (c) by omitting section one hundred and five;

Sec. 105.
(Dwelling-
house is to
be deemed
to be
unoccupied
in certain
cases.)

(d) by omitting section one hundred and six;

Sec. 106.
(Hearing of
applica-
tion.)

106—C

(e)

Landlord and Tenant (Amendment).

- | | |
|--|--|
| (e) by omitting section one hundred and seven; | Sec. 107.
(Provisions where several applications made in respect of same dwelling-house.) |
| (f) by omitting section one hundred and eight; | Sec. 108.
(Enforcement of warrants.) |
| (g) by omitting section one hundred and nine; | Sec. 109.
(Rent of dwelling-house.) |
| (h) by omitting section one hundred and ten. | Sec. 110.
(Interpretation.) |

BY AUTHORITY:

V. C. N. BLIGHT, GOVERNMENT PRINTER, SYDNEY, NEW SOUTH WALES—1962

[2s. 4d.]

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, 6 December, 1962, A.M.*

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

Clerk of the Parliaments.

*Legislative Council Chamber,
Sydney, December, 1962.*

New South Wales



ANNO UNDECIMO

ELIZABETHÆ II REGINÆ

Act No. , 1962.

An Act to make further provisions relating to fixing the fair rent of certain premises and otherwise to amend the law relating to landlord and tenant; for this and other purposes to amend the Landlord and Tenant (Amendment) Act, 1948, and certain other Acts; 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, 1962".

Short title
and
citation.

4535 106—A

(2)

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, 1948-1962.

- 5 2. Part I of the Landlord and Tenant (Amendment) Act, 1948, as amended by subsequent Acts, is amended :—
- Amendment
of Act No.
25, 1948.
(Part I.—
Prelimin-
ary.)

- 10 (a) (i) by inserting in paragraph (b) of subparagraph (v) of paragraph (b) of subsection one of section 5A after the word "lessor" the words "or by a clerk of petty sessions";
- 15 (ii) by inserting in paragraph (c) of the same subparagraph after the word "solicitor" the words "or clerk of petty sessions";
- 20 (iii) by inserting in subparagraph (ii) of paragraph (c) of the same subsection after the word "lessor" the words "or by a clerk of petty sessions";
- 25 (iv) by inserting in subparagraph (iii) of the same paragraph after the word "solicitor" the words "or clerk of petty sessions";
- 30 (v) by inserting in paragraph (b) of subparagraph (v) of paragraph (d) of the same subsection after the word "lessor" the words "or by a clerk of petty sessions";
- 25 (vi) by inserting in paragraph (c) of the same subparagraph after the word "solicitor" the words "or clerk of petty sessions";
- 30 (vii) by inserting in paragraph (b) of subparagraph (iv) of paragraph (e) of the same subsection after the word "lessor" the words "or by a clerk of petty sessions";
- 30 (viii) by inserting in paragraph (c) of the same subparagraph after the word "solicitor" the words "or clerk of petty sessions";

(ix)

Landlord and Tenant (Amendment).

- (ix) by inserting in paragraph (b) of subparagraph (iii) of paragraph (f) of the same subsection after the word "lessor" the words "or by a clerk of petty sessions";
- 5 (x) by inserting in paragraph (c) of the same subparagraph after the word "solicitor" the words "or clerk of petty sessions";
- (xi) by inserting in paragraph (b) of subparagraph (iii) of paragraph (g) of the same subsection after the word "lessor" the words "or by a clerk of petty sessions";
- 10 (xii) by inserting in paragraph (c) of the same subparagraph after the word "solicitor" the words "or clerk of petty sessions";
- 15 (xiii) by omitting subsection (1A) of the same section and by inserting in lieu thereof the following subsections :—
- (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—
- 20 (a) (i) that were in existence on the twenty-seventh day of September, one thousand nine hundred and fifty-seven, or were commenced before and completed after that day;
- 25 (ii) that are not "special premises"; and
- 30 (iii) that are the subject of a lease that contains a provision that the said Parts of this Act shall not apply in respect of such premises and—
- 35 (a) that is registered in the office of the Rent Controller;
- (b)

Landlord and Tenant (Amendment).

5 (b) the execution of which is
witnessed by a solicitor
instructed and employed
independently of the
lessor or by a clerk of
petty sessions; and

10 (c) that is certified by a
solicitor or by a clerk of
petty sessions as provided
in subsection two of this
section; or

15 (b) the erection of which commenced after
the twenty-seventh day of September,
one thousand nine hundred and fifty-
seven.

(1B) Where—

20 (a) any prescribed premises being premises
used for business or commercial
purposes cease to be subject to the
provisions of Parts II, III, IV and V
of the Act by reason of the provisions
of paragraph (a) of subsection (1A)
of this section;

25 (b) the premises or any part of the premises
were or was, under any sub-lease
consented to or approved by the lessor
and in force immediately before such
premises or part so ceased, occupied
by a sub-lessee; and

30 (c) the premises or part so occupied were
or was, immediately before such
premises or part so ceased, subject to
the said Parts of this Act as regards
the premises or part of the premises so
35 occupied,

then—

Landlord and Tenant (Amendment).

then—

- 5 (i) the premises or part of the premises
so occupied shall continue to be
prescribed premises and the provi-
sions of the said Parts of this Act
shall so far as applicable continue
to apply to the premises or part of the
premises so occupied;
- 10 (ii) if the lessee at any time ceases to be
in possession of the premises because
of the termination or surrender of his
lease or the making of an order for
the recovery of possession or for eject-
ment the sub-lessee shall become the
15 lessee from the lessor of the premises
or part of the premises so occupied
upon the same terms and conditions as
the terms and conditions of the sub-
lease as in force immediately before
20 that time;
- (iii) any order for recovery of possession or
for the ejectment as aforesaid shall not
be enforced against the sub-lessee; and
- 25 (iv) the sub-lessee shall on the hearing of
any proceedings for such an order be
entitled to be heard.
- (xiv) by omitting from subsection two of the same
section the words "certifying to a lease for the
purposes of subsection one" and by inserting in
30 lieu thereof the words "or clerk of petty ses-
sions certifying to a lease for the purposes of
subsection one or (1A)";
- (xv) by inserting in subsection three of the same
section after the words "subsection one" where
35 firstly and lastly occurring the word, symbols,
figure and letter "or (1A)";

(b)

Landlord and Tenant (Amendment).

- (b) by inserting in subsection one of section eight in the definition of "lease" after the word "land" the words "or any lease arising under a clause in a mortgage or in an agreement for the sale and purchase of land (however expressed and whenever executed) whereby in case of default the mortgagee or the vendor (as the case may be) is given the powers of a lessor with respect to the recovery of possession or ejectment, or any tenancy at will implied at law in any mortgage or agreement for the sale or purchase of land".

Sec. 8.
(Definitions.)

3. Part II of the Landlord and Tenant (Amendment) Act, 1948, as amended by subsequent Acts, is amended :—

Further amendment of Act No. 25, 1948.
(Part II.—Fair Rents.)

- (a) by omitting subsection three of section fifteen ;
- (b) by inserting next before section eighteen the following new section :—

Sec. 15.
(Rent of prescribed premises.)

New sec. 17A.

- 17A. (1) Where an agreement in writing is entered into by the lessor and lessee of any prescribed premises (other than shared accommodation) which are leased with or without goods and under that agreement the lessor and lessee agree as to the amount of the rent to be paid by the lessee to the lessor in respect of such premises, the amount specified in that agreement as the rent shall, without any determination or further determination being made, be for all purposes as between the lessor and the lessee the fair rent and the rent of the premises without goods or together with goods, as the case may be, as on and from the day specified in that behalf in the agreement not being earlier than the day on which the agreement is entered into and no proceedings for the determination of the fair rent of those premises by a Fair Rents Board and

Fixing of fair rent of prescribed premises by agreement.

no

Landlord and Tenant (Amendment).

5 no application for the assessment of the fair rent
of those premises by the Rent Controller or a clerk
of the Fair Rents Board, as the case may be, shall
subject to subsection five of this section but
notwithstanding any other provision of this Act be
commenced or lodged by the lessor or lessee during
the period for which the agreement is expressed to
be in force or, if no such period is expressed, during
10 a period of twelve months next after the day on and
from which the fair rent is fixed by the agreement.

(2) An agreement referred to in subsection
one of this section shall have no force or effect
unless—

- 15 (a) it is registered in the office of the Rent
Controller within one month after the day
on which it is entered into;
- (b) its execution by the lessee is witnessed by a
solicitor instructed and employed indepen-
dently of the lessor or by a clerk of petty
20 sessions; and
- (c) it is certified by that solicitor or clerk of
petty sessions as provided in subsection
three of this section.

25 (3) A solicitor or clerk of petty sessions
certifying to an agreement for the purposes of
subsection two of this section—

- (a) shall explain the agreement to the lessee;
- (b) shall examine the lessee touching his know-
ledge of the agreement;
- 30 (c) if he thinks fit may so examine the lessee
separately and apart from any other person;
and
- (d) if he is satisfied that the lessee understands
the true purport and effect thereof and
freely and voluntarily executes the same,
35 shall certify in writing upon the agreement
that the agreement has been so explained,
and

Landlord and Tenant (Amendment).

and that he has examined the lessee and is satisfied as hereinbefore required, and that the lessee has executed the agreement in his presence.

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

(5) A lessee of any prescribed premises
15 the subject of any such agreement may, notwithstanding the provisions of subsection two of section thirty-two of this Act and during any period for which the agreement is expressed to be in force or, if no such period is expressed, during a period of twelve months next after the
20 day on and from which the fair rent is fixed by the agreement, make application to a Fair Rents Board for a determination of the fair rent of those premises and the Board shall make a determination of the fair rent of those
25 premises or vary any such existing determination in accordance with the provisions of this Act, where the lessee proves to the satisfaction of the Board that—

(a) the rent fixed by the agreement is harsh
30 or unconscionable; or

(b) the agreement was obtained by fraud, duress, intimidation or improper means.

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

(c)

Landlord and Tenant (Amendment).

- (c) (i) by omitting paragraph (a) of subsection one of section twenty-one and by inserting in lieu thereof the following paragraph :—

Sec. 21.
(Matters
to be
considered.)

5 (a) the appropriate capital value of the premises;

10 (ii) by omitting from paragraph (f) of the same subsection the words "the rate" and by inserting in lieu thereof the words "except in the case of premises used for business or commercial purposes, the rate";

15 (iii) by omitting from paragraph (j) of the same subsection the words "including (but without limiting the generality of the word 'hardship') any loss which might be imposed upon the lessor by an order fixing the rent of the premises at an amount less than the lessor's liability under a mortgage of, or contract of sale in respect of, the premises, or under a hire purchase agreement or contract of sale in respect of any goods leased with the premises";

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

25 In determining the fair rent of any premises used for business or commercial purposes the Fair Rents Board shall not make any allowance based on the rate of interest charged upon overdrafts.

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

In

Landlord and Tenant (Amendment).

In paragraph (a) of this subsection
“appropriate capital value”—

- 5 (i) in respect of any prescribed premises,
not being premises used for business
or commercial purposes, means the
improved capital value of the premises
at the prescribed date, or, if the
premises were not in existence on that
10 date, on the date on which the erection
of the premises was completed ; or
- 15 (ii) in respect of any prescribed premises
used for business or commercial
purposes, means the **improved** capital
value of the premises as shown in a
valuation made not earlier than one
month before the date of the applica-
tion for determination ; or where—
- 20 (a) the premises consist partly of
land that is included in a valua-
tion list or supplementary list
under the Valuation of Land
Act, 1916, as amended by
subsequent Acts, or land that
25 is within an area within the
meaning of the Local Govern-
ment Act, 1919, as amended
by subsequent Acts, not being
land included in any such list,
and
- 30 (b) the Fair Rents Board is satis-
fied that there has been no
substantial alteration in the
value of the premises since the
date of the valuation of the
premises as shown on the
35 notice of valuation under the
Valuation of Land Act, 1916,
as amended by subsequent
Acts, last furnished in respect
of

Landlord and Tenant (Amendment).

of the premises before the date of the application for determination, or as the case may be, since the date of the valuation and rate notice last furnished under the Local Government Act, 1919, as amended by subsequent Acts, before the date of the application for determination,

means the capital value of the premises as shown on such notice of valuation or valuation and rate notice.

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

(1B) A Fair Rents Board shall ~~not~~, in determining the fair rent of prescribed premises used for business or commercial purposes,—

~~(a) unless it is satisfied that the premises are in fair and tenantable repair, make any allowance based on the appropriate capital value, referred to in paragraph (a) of subsection one of this section, of the premises, but this paragraph does not apply where the lessee has failed to comply with any obligation to maintain the premises in fair and tenantable repair; or~~

~~(b) if it is satisfied that the premises are in fair and tenantable repair, make any such allowance except an annual allowance not exceeding four per centum per annum of the said appropriate capital value.~~

make an allowance based on the appropriate capital value of the premises not exceeding six per centum per annum of the said appropriate capital value.

(1c)

Landlord and Tenant (Amendment).

(1c) A Fair Rents Board, in determining the fair rent of prescribed premises used in part for business or commercial purposes and in part for other purposes—

5 ~~(a)~~ shall not, unless it is satisfied that
the premises are in fair and tenant-
able repair, make any allowance
based on the appropriate capital
10 value, referred to in paragraph ~~(a)~~
of subsection one of this section, of
the premises, but this paragraph
does not apply where the lessee has
failed to comply with any obliga-
15 tion to maintain the part of the
premises used for business or com-
mercial purposes in fair and
tenantable repair; and

20 ~~(b)~~ shall, if it is satisfied that the pre-
mises are in fair and tenantable
repair—

~~(i)~~(a) determine which part of the premises
is at the date of the application for
the determination being used wholly
or primarily for business or com-
25 mercial purposes (such part being
referred to in this subsection as the
business part) and which part of the
premises is at such date being used
wholly or primarily for other pur-
30 poses (such part being referred to in
this subsection as the non-business
part); and

~~(ii)~~(b) determine the fair rent of the
premises at an amount equal to the
35 sum of—

~~(a)~~(i) an amount equal to the fair
rent of the non-business part
having regard to the appro-
40 priate capital value, referred
to in paragraph (a) of sub-
section one of this section,
of that part; and ~~(b)~~(ii)

(b)(ii) an amount equal to the fair
rent of the business part hav-
ing regard to the appropriate
capital value, referred to in
paragraph (a) of subsection
one of this section, of that
part, but shall not make any
allowance based on the said
appropriate capital value of
that part except an annual
allowance not exceeding
~~four~~ six per centum per
annum of the said appro-
priate capital value.

(1d) A Fair Rents Board, in determining the fair rent of any premises, shall not where it considers that any repairs, maintenance or renewals of the premises or any fixtures thereon should be carried out, make any allowance based on paragraph (c) of subsection one of this section, but this subsection does not apply in the case of premises, or part of any premises, used for business or commercial purposes where the lessee is obliged to carry out the repairs, maintenance or renewals.

(vi) by omitting from subsection two of the same section the words, symbols and letters “paragraphs (i) and (j)” and by inserting in lieu thereof the word, symbols and letter “paragraph (i)”;

(d) by inserting in subsection one of section twenty-four Sec. 24.
after the word "motion" the words "but subject to (Fair Rents
section 17A of this Act"; Board may determine.

(e) motion.)

Landlord and Tenant (Amendment).

- (e) by inserting at the end of section 31MB the following new paragraph :—

Sec. 31MB.
(Amendment of applications.)

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

- (f) (i) by inserting at the end of subsection one of section 31N the words "and particulars of how that amount is calculated. A notice setting out such amount and particulars shall be given to the lessee together with the notice given to him pursuant to subsection one of section nineteen of this Act.";

Sec. 31N.
(Application by lessor for fair rent determination to indicate assessment of rent sought.)

15 (ii) by omitting from subsection two of the same section the words "Notwithstanding anything" and by inserting in lieu thereof the words "Subject to section 31MB of this Act, but notwithstanding any other provision";

20 (iii) by inserting at the end of the same subsection the words "or the application as amended pursuant to section 31MB of this Act";

- (g) (i) by omitting from paragraph (i) of subsection two of section thirty-two the word "or";

Sec. 32.
(Variation of determination.)

30 (ii) by inserting at the end of paragraph (j) of subsection two of section thirty-two the following word and new paragraph :—

; or

35 (k) the lessor's liability in respect of the premises for annual rates has, since the determination, increased or decreased.

~~(iii)~~(h)

Landlord and Tenant (Amendment).

- (iii) by omitting from subsection four of the same section the words "and if it appears to the Board or the Controller, as the case may be, that the dwelling-house are not in fair and tenantable repair, no increase of rent shall be allowed by the Board or Controller, as the case may be, on account of any increase in the lessor's liability for repairs, renewals of the premises and fixtures thereon" and by inserting in lieu thereof the words "the Board or the Controller in making the variation shall not—
- (a) where the premises are used wholly or in part for business or commercial purposes, make any allowance based on the capital value, referred to in paragraph (a) of subsection one of section twenty-one of this Act, of the premises or part so used unless satisfied that the premises the subject of the application are in fair and tenantable repair, except where the lessee has failed to comply with any obligation to maintain the premises in fair and tenantable repair; and
- (b) where it or he considers that any repairs, maintenance, or renewals of the premises whether or not they or any part of them are used for business or commercial purposes) should be carried out, make any allowance based on paragraph (c) of subsection one of section twenty-one of this Act, except where in respect of any part of the premises used for business or commercial purposes, the lessee is obliged to carry out the repairs, maintenance or renewals";

(h)

Landlord and Tenant (Amendment).

- (h) by inserting in subsection one of section thirty-five after the word "not" the words ", whether as principal or agent or in any other capacity";
- 5 (i) by inserting at the end of subsection two of section fifty-two the words "or by an agreement referred to in subsection one of section 17A of this Act";
- 10 (j) (i) by inserting in subsection one of section fifty-seven after the word "Part" the words "or by an agreement referred to in subsection one of section 17A of this Act";
- (ii) by inserting in subsection (1A) of the same section after the word "determination" the words "or by an agreement referred to in subsection one of section 17A of this Act";
- 15 (k) by inserting in subsection one of section fifty-eight after the words "Fair Rents Board)" the words "or, in the case of a certificate by the Controller, by an agreement referred to in subsection one of section 17A of this Act".
- 20 4. Part III of the Landlord and Tenant (Amendment) Act, 1948, as amended by subsequent Acts, is amended : —
- (a) (i) ~~by omitting from subsection one of section sixty-five the words "six months" and by inserting in lieu thereof the words "two years";~~
- 25 (ii)
- Sec. 35.
(Premises not to be let at rent exceeding fair rent.)
- Sec. 52.
(Information as to fair rent.)
- Sec. 57.
(Lessor to ascertain fair rent.)
- Sec. 58.
(Certificate as to fair rent.)
- Further amendment of Act No. 25, 1948.
(Part III.—Recovery of Possession of Prescribed Premises.)
- Sec. 61.
(Notice to quit where dwelling-house sold.)

Landlord and Tenant (Amendment).

(ii)(a) (i) by omitting the proviso to the same subsection;

5 (iii) by omitting from subsection (1A) of the same section the words "six months" and by inserting in lieu thereof the words "two years;"

(iv)(ii) by omitting the proviso to the same subsection;

10 (b) (i) by inserting at the end of subparagraph (iii) of paragraph (d) of the first proviso to subsection two of section seventy the word "and"; Sec. 79.
(Count to
consider
hardship.)

15 (ii) by omitting from the same subsection the words "one thousand nine hundred and sixty-three" and by inserting in lieu thereof the words "one thousand nine hundred and sixty-six";

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

20 (2A) Subsection two of this section does not apply in any case where an order for the recovery of possession of any prescribed premises, being a dwelling house, from any person is sought on the ground
25 specified in paragraph (g) of subsection five of section sixty-two of this Act and the lessor has at the date of the notice to quit for a continuous period of not less than eight years, whether such period is
30 before or after or partly before and partly after the commencement of the Landlord and Tenant (Amendment) Act, 1962, been the owner of the premises and has, at the time of the service of the notice to quit,
35 served, where a form is prescribed, a notice in the prescribed form setting out the effect of the provisions of subsections one and two of this section.

Landlord and Tenant (Amendment).

(e)(b) by inserting in subsection one of section eighty-one after the word "not," the words "whether as principal or agent or in any other capacity,";

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

5 (d) (i) by omitting from section eighty three the following words:—

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

"(c) a person (not being a lodger or boarder) resided with the former lessee immediately prior to his death and is actually in possession of the premises immediately after the death of the former lessee,

that person"

and by inserting in lieu thereof the following paragraph and words:—

15 "(c) immediately before the death of the lessee—

(i) the wife or husband of the lessee resided with the lessee and is actually in possession of the premises immediately after the death of the lessee;

20 (ii) where the wife or husband of the lessee was not so residing or is not so in possession or the lessee was not married at the date of his death, a child of the lessee (being a child of or over the age of twenty one years) so resided and is so in possession;

25 (iii) where no person referred to in subparagraph (i) or (ii) of this paragraph was so residing or is so in possession, a brother or sister, or the father

or

Landlord and Tenant (Amendment).

- or mother, of the lessee so
resided and is so in possession;
or
- (iv) where no person referred to in
subparagraph (i), (ii) or
(iii) of this paragraph was so
residing or is so in possession,
any other person so resided
(otherwise than as a lodger or
boarder) and is so in pos-
session and had resided with
the lessee for a period of not
less than two years immedi-
ately before the death of the
lessee,
- the wife or husband, or such child,
brother or sister or the father or
mother, or other person, as the case
may be,";
- (ii) by omitting from the same section the words
"that person" where secondly occurring and
by inserting in lieu thereof the words "the
person having the right under this subsection
to continue in possession of the premises";
- (iii) by omitting from the same section the
words "as if he" and by inserting in lieu there-
of the words "as if he or she";
- (iv) by inserting at the end of the same section
the following new subsection : —
- (2) Where but for this subsection more
than one person would under subparagraph
(ii), (iii) or (iv) of paragraph (c) of sub-
section one of this section, have had a right
to continue in possession of any premises, the
elder or eldest of the persons so entitled under
such subparagraph shall have that right to the
exclusion of any other of those persons.
- (e)

Landlord and Tenant (Amendment).

(e) (i) by omitting from subsection one of section 83A the following words: —

Sec. 83A.
(Protection of member of the family of deceased lessee.)

“(a) the spouse of the lessee resided with the lessee immediately before the death of the lessee and is actually in possession of the premises immediately after the death of the lessee; or

(b) where the spouse of the lessee was not so residing or is not so in possession or the lessee was not married at the date of his death, a child of the lessee (being a child of or over the age of twenty-one years) so resided and is so in possession,

such spouse or child”

and by inserting in lieu thereof the following paragraphs and words: —

“(a) the wife or husband of the lessee resided with the lessee immediately before the death of the lessee and is actually in possession of the premises immediately after the death of the lessee;

(b) where the wife or husband of the lessee was not so residing or is not so in possession or the lessee was not married at the date of his death, a child of the lessee (being a child of or over the age of twenty-one years) so resided and is so in possession;

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

(d)

Landlord and Tenant (Amendment).

- (d) where no person referred to in paragraph (a), (b) or (c) of this subsection was so residing or is so in possession, any other person so resided (otherwise than as a lodger or boarder) and is so in possession and had resided with the lessee for a period of not less than two years immediately before the death of the lessee,
- the wife or husband or such child, brother or sister or the father or mother, or other person, as the case may be”;
- (ii) by omitting from the same subsection the words “In this subsection ‘child of the lessee’ means, where more than one child of the lessee so resided and is so in possession, the elder or eldest of such children.”;
- (iii) by inserting next after the same subsection the following new subsection : —
- (1A) Where but for this subsection more than one person would, under paragraph (b), (c) or (d) of subsection one of this section, have had a right to continue in possession of any premises, the elder or eldest of the persons so entitled under such paragraph shall have that right to the exclusion of any other of those persons.
- (iv) by omitting from subsection two of the same section the words “such spouse or child, as the case may be,” and by inserting in lieu thereof the words “the person having the right under subsection one of this section to continue in possession of the premises”;
- (v) by inserting in the same subsection after the word “him” the words “or her”;
- (vi) by inserting in the same subsection after the word “he” the word “or she”;
- (vii)

Landlord and Tenant (Amendment).

- 5 ~~(vii)~~ by omitting from subsection three of the same section the words "such spouse or child" and by inserting in lieu thereof the words "the person having the right under subsection one of this section to continue in possession of the premises";

- ~~(f)~~(c) by inserting next after section 83A the following New sec. 83B.
new section :—

- 10 83B. Where a lessee of prescribed premises dies and during the period after his death and before probate or letters of administration of the estate of the deceased lessee are granted, a person is actually in possession of the premises, and an action of ejectment is during that period brought against such person in the Supreme Court or a District Court, or proceedings are during that period commenced under section seventeen or twenty-three of the Landlord and Tenant Act of 1899, as amended by subsequent Acts, for the recovery of the premises, such person shall not be entitled to raise as a defence to that action or those proceedings the fact that the deceased lessee's interest in the premises is deemed by section sixty-one of the Wills, Probate and Administration Act, 1898, as amended by subsequent Acts, to be vested in the Public Trustee. Public Trustee's title not a defence to recovery of possession of prescribed premises after death of lessee in certain cases.
- 15
- 20
- 25

- ~~(g)~~(d) (i) by omitting from subsection three of section eighty-six the word "five" and by inserting in lieu thereof the word "seven"; Sec. 86. (Exclusion of premises from Part III and Part V.)
- 30 (ii) by omitting from paragraph (b) of subsection four of the same section the word "five" and by inserting in lieu thereof the word "seven";
- (iii) by omitting from subsection five of the same section the word "five" wherever occurring and by inserting in lieu thereof the word "seven";
- ~~(h)~~(e)

Landlord and Tenant (Amendment).

- (h)(e) (i) by omitting from paragraph (a) of subsection three of section 87B the word "five" and by inserting in lieu thereof the word "seven";
- (ii) by omitting from subsection four of the same section the word "five" and by inserting in lieu thereof the word "seven".

Sec. 87B.
(Exclusion of certain premises from operation of Part III and Part V.)

5. Part IV of the Landlord and Tenant (Amendment) Act, 1948, as amended by subsequent Acts, is amended : —

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

- (a) (i) by omitting paragraph (a) of subsection one of section 88A;
- (ii) by omitting from the same subsection the words, symbols and letter "paragraph (b) of";

Sec. 81A.
(Dwelling-house not to be sold unless tenant given opportunity to purchase.)

- (b)(a) by inserting at the end of section eighty-nine the following new paragraph : —

Sec. 89.
(Contracting out prohibited.)

Nothing in this section shall apply to a covenant or agreement entered into for the purposes of paragraph (a) of subsection (1A) of section 5A of this Act nor to an agreement referred to in subsection one of section 17A of this Act.

- (c)(b) by inserting at the end of section ninety the following new paragraph : —

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

Nothing in this section shall operate to prohibit a person entering into or making a lease for the purposes of paragraph (a) of subsection (1A) of section 5A of this Act or an agreement referred to in subsection one of section 17A of this Act.

(d)(c)

Landlord and Tenant (Amendment).

(d)(c) by inserting at the end of section ninety-four the following new subsection :—

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

5 (3) A document purporting to be a certificate made or issued by the Controller or his delegate appointed under subsection two of section eleven of this Act and to be signed by the Controller or any such delegate certifying to the effect that—

10 (a) the premises described in the certificate are or are not at the date of the certificate or were or were not at any time or, during any period specified in the certificate, premises, or premises included in any class of premises, to which an order made under subsection one or two of section six of this Act applies or applied or to which a declaration continued in force and effect by subsection three of that section applies or applied;

20 (b) the premises, or part of any premises, described in the certificate are or are not, or is or is not, at the date of the certificate or were or were not, or was or was not, at any time or during any period specified in the certificate premises to which an order made under subsection one of section 6A of this Act applies or applied;

25 (c) the premises are or are not at the date of the certificate, or were or were not at any time or during any period specified in the certificate, premises of a class to which an order made under paragraph (b) of subsection three of section 6A of this Act applies or applied;

30 (d) a lease, specified in the certificate, of premises described in the certificate is or is not registered under the provisions of section 5A or 17A of this Act, and, if it is so registered, certifying the date on which it was so registered;

(e)

Landlord and Tenant (Amendment).

- 5 (e) the premises described in the certificate are
or are not at the date of the certificate, or
were or were not at any time or during any
period specified in the certificate, premises
in respect of which a certificate under sec-
tion 6A, seven, eighty-six, 86A, eighty-seven
or 87B of this Act is or was in force,

10 shall be received in evidence and shall, until the
contrary is proved, be accepted as evidence of the
matters therein certified to.

6. Part V of the Landlord and Tenant (Amendment) Act, 1948, as amended by subsequent Acts, is amended— Further amendment of Act No. 25, 1948. (Part V.— Protected Persons.)

- (a) by omitting section one hundred and three;

Sec. 103.
(Proviso to section 65 (1) not to apply in certain cases.)

- (b) by omitting section one hundred and four;

Sec. 104.
(Letting of unoccupied houses to protected persons.)

- 15 (c) by omitting section one hundred and five;

Sec. 105.
(Dwelling-house is to be deemed to be unoccupied in certain cases.)

- (d) by omitting section one hundred and six;

Sec. 106.
(Hearing of application.)

106—C

(e)

Landlord and Tenant (Amendment).

(e) by omitting section one hundred and seven;

Sec. 107.
(Provisions
where
several
applications
made in
respect of
same
dwelling-
house.)

(f) by omitting section one hundred and eight;

Sec. 108.
(Enforce-
ment of
warrants.)

(g) by omitting section one hundred and nine;

Sec. 109.
(Rent of
dwelling-
house.)

(h) by omitting section one hundred and ten.

Sec. 110.
(Interpre-
tation.)

BY AUTHORITY:

V. C. N. BLIGHT, GOVERNMENT PRINTER, SYDNEY, NEW SOUTH WALES—1967

No. , 1962.

A BILL

To make further provisions relating to fixing the fair rent of certain premises and otherwise to amend the law relating to landlord and tenant; for this and other purposes to amend the Landlord and Tenant (Amendment) Act, 1948, and certain other Acts; and for purposes connected therewith.

[MR. MANNIX;—4 December, 1962.]

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, 1962".

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, 1948-1962.

5 **2.** Part I of the Landlord and Tenant (Amendment) Act, 1948, as amended by subsequent Acts, is amended : —

Amendment
of Act No.
25, 1948.
(Part I.—
Prelimin-
ary.)

- 10 (a) (i) by inserting in paragraph (b) of subparagraph (v) of paragraph (b) of subsection one of section 5A after the word "lessor" the words "or by a clerk of petty sessions";
- 15 (ii) by inserting in paragraph (c) of the same subparagraph after the word "solicitor" the words "or clerk of petty sessions";
- 20 (iii) by inserting in subparagraph (ii) of paragraph (c) of the same subsection after the word "lessor" the words "or by a clerk of petty sessions";
- 25 (iv) by inserting in subparagraph (iii) of the same paragraph after the word "solicitor" the words "or clerk of petty sessions";
- (v) by inserting in paragraph (b) of subparagraph (v) of paragraph (d) of the same subsection after the word "lessor" the words "or by a clerk of petty sessions";
- 30 (vi) by inserting in paragraph (c) of the same subparagraph after the word "solicitor" the words "or clerk of petty sessions";
- (vii) by inserting in paragraph (b) of subparagraph (iv) of paragraph (e) of the same subsection after the word "lessor" the words "or by a clerk of petty sessions";
- (viii) by inserting in paragraph (c) of the same subparagraph after the word "solicitor" the words "or clerk of petty sessions";
- (ix)

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

Landlord and Tenant (Amendment).

- (ix) by inserting in paragraph (b) of subparagraph (iii) of paragraph (f) of the same subsection after the word "lessor" the words "or by a clerk of petty sessions";
- 5 (x) by inserting in paragraph (c) of the same subparagraph after the word "solicitor" the words "or clerk of petty sessions";
- (xi) by inserting in paragraph (b) of subparagraph (iii) of paragraph (g) of the same subsection after the word "lessor" the words "or by a clerk of petty sessions";
- 10 (xii) by inserting in paragraph (c) of the same subparagraph after the word "solicitor" the words "or clerk of petty sessions";
- 15 (xiii) by omitting subsection (1A) of the same section and by inserting in lieu thereof the following subsections :—
- (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—
- 20 (a) (i) that were in existence on the twenty-seventh day of September, one thousand nine hundred and fifty-seven, or were commenced before and completed after that day;
- 25 (ii) that are not "special premises"; and
- 30 (iii) that are the subject of a lease that contains a provision that the said Parts of this Act shall not apply in respect of such premises and—
- 35 (a) that is registered in the office of the Rent Controller;
- (b)

Landlord and Tenant (Amendment).

- 5 (b) the execution of which is
witnessed by a solicitor
instructed and employed
independently of the
lessor or by a clerk of
petty sessions; and
- 10 (c) that is certified by a
solicitor or by a clerk of
petty sessions as provided
in subsection two of this
section; or
- 15 (b) the erection of which commenced after
the twenty-seventh day of September,
one thousand nine hundred and fifty-
seven.
- (1B) Where—
- 20 (a) any prescribed premises being premises
used for business or commercial
purposes cease to be subject to the
provisions of Parts II, III, IV and V
of the Act by reason of the provisions
of paragraph (a) of subsection (1A)
of this section;
- 25 (b) the premises or any part of the premises
were or was, under any sub-lease
consented to or approved by the lessor
and in force immediately before such
premises or part so ceased, occupied
by a sub-lessee; and
- 30 (c) the premises or part so occupied were
or was, immediately before such
premises or part so ceased, subject to
the said Parts of this Act as regards
the premises or part of the premises so
35 occupied,

then—

Landlord and Tenant (Amendment).

then—

- 5 (i) the premises or part of the premises so occupied shall continue to be prescribed premises and the provisions of the said Parts of this Act shall so far as applicable continue to apply to the premises or part of the premises so occupied;
- 10 (ii) if the lessee at any time ceases to be in possession of the premises because of the termination or surrender of his lease or the making of an order for the recovery of possession or for ejectment the sub-lessee shall become the

15 lessee from the lessor of the premises or part of the premises so occupied upon the same terms and conditions as the terms and conditions of the sublease as in force immediately before

20 that time;
- (iii) any order for recovery of possession or for the ejectment as aforesaid shall not be enforced against the sub-lessee; and
- 25 (iv) the sub-lessee shall on the hearing of any proceedings for such an order be entitled to be heard.
- 30 (xiv) by omitting from subsection two of the same section the words "certifying to a lease for the purposes of subsection one" and by inserting in lieu thereof the words "or clerk of petty sessions certifying to a lease for the purposes of subsection one or (1A)";
- 35 (xv) by inserting in subsection three of the same section after the words "subsection one" where firstly and lastly occurring the word, symbols, figure and letter "or (1A)";

(b)

Landlord and Tenant (Amendment).

- (b) by inserting in subsection one of section eight in the definition of "lease" after the word "land" the words "or any lease arising under a clause in a mortgage or in an agreement for the sale and purchase of land (however expressed and whenever executed) whereby in case of default the mortgagee or the vendor (as the case may be) is given the powers of a lessor with respect to the recovery of possession or ejectment, or any tenancy at will implied at law in any mortgage or agreement for the sale or purchase of land".

Sec. 8.
(Definitions.)

3. Part II of the Landlord and Tenant (Amendment) Act, 1948, as amended by subsequent Acts, is amended : —

Further amendment of Act No. 25, 1948.
(Part II.— Fair Rents.)

- (a) by omitting subsection three of section fifteen ;

Sec. 15.
(Rent of prescribed premises.)

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

New sec. 17A.

- 17A. (1) Where an agreement in writing is entered into by the lessor and lessee of any prescribed premises (other than shared accommodation) which are leased with or without goods and under that agreement the lessor and lessee agree as to the amount of the rent to be paid by the lessee to the lessor in respect of such premises, the amount specified in that agreement as the rent shall, without any determination or further determination being made, be for all purposes as between the lessor and the lessee the fair rent and the rent of the premises without goods or together with goods, as the case may be, as on and from the day specified in that behalf in the agreement not being earlier than the day on which the agreement is entered into and no proceedings for the determination of the fair rent of those premises by a Fair Rents Board and

Fixing of fair rent of prescribed premises by agreement.

no

Landlord and Tenant (Amendment).

no application for the assessment of the fair rent of those premises by the Rent Controller or a clerk of the Fair Rents Board, as the case may be, shall
5 subject to subsection five of this section but notwithstanding any other provision of this Act, be commenced or lodged by the lessor or lessee during the period for which the agreement is expressed to be in force or, if no such period is expressed, during a
10 period of twelve months next after the day on and from which the fair rent is fixed by the agreement.

(2) An agreement referred to in subsection one of this section shall have no force or effect unless—

15 (a) it is registered in the office of the Rent Controller within one month after the day on which it is entered into;

(b) its execution by the lessee is witnessed by a solicitor instructed and employed independently of the lessor or by a clerk of petty
20 sessions; and

(c) it is certified by that solicitor or clerk of petty sessions as provided in subsection three of this section.

25 (3) A solicitor or clerk of petty sessions certifying to an agreement for the purposes of subsection two of this section—

(a) shall explain the agreement to the lessee;

(b) shall examine the lessee touching his knowledge of the agreement;

30 (c) if he thinks fit may so examine the lessee separately and apart from any other person; and

(d) if he is satisfied that the lessee understands the true purport and effect thereof and
35 freely and voluntarily executes the same, shall certify in writing upon the agreement that the agreement has been so explained,
and

Landlord and Tenant (Amendment).

and that he has examined the lessee and is satisfied as hereinbefore required, and that the lessee has executed the agreement in his presence.

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

15 (5) A lessee of any prescribed premises the subject of any such agreement may, notwithstanding the provisions of subsection two of section thirty-two of this Act and during any period for which the agreement is expressed to be in force or, if no such period is expressed, during a period of
20 twelve months next after the day on and from which the fair rent is fixed by the agreement, make application to a Fair Rents Board for a determination of the fair rent of those premises and the Board shall make a determination of the fair rent of those premises or vary any such existing
25 determination in accordance with the provisions of this Act, where the lessee proves to the satisfaction of the Board that—

- (a) the rent fixed by the agreement is harsh or unconscionable; or
30 (b) the agreement was obtained by fraud, duress, intimidation or improper means.

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

(c)

Landlord and Tenant (Amendment).

- (c) (i) by omitting paragraph (a) of subsection one of section twenty-one and by inserting in lieu thereof the following paragraph :— Sec. 21.
(Matters
to be
considered.)

5 (a) the appropriate capital value of the premises;

10 (ii) by omitting from paragraph (f) of the same subsection the words "the rate" and by inserting in lieu thereof the words "except in the case of premises used for business or commercial purposes, the rate";

15 (iii) by omitting from paragraph (j) of the same subsection the words "including (but without limiting the generality of the word 'hardship') any loss which might be imposed upon the lessor by an order fixing the rent of the premises at an amount less than the lessor's liability under a mortgage of, or contract of sale in respect of, the premises, or under a hire purchase agreement or contract of sale in respect of any goods leased with the premises";

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

25 In determining the fair rent of any premises used for business or commercial purposes the Fair Rents Board shall not make any allowance based on the rate of interest charged upon overdrafts.

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

In

Landlord and Tenant (Amendment).

In paragraph (a) of this subsection
“appropriate capital value”—

- 5 (i) in respect of any prescribed premises,
not being premises used for business
or commercial purposes, means the
capital value of the premises at the
prescribed date, or, if the premises
were not in existence on that date, on
10 the date on which the erection of the
premises was completed; or
- 15 (ii) in respect of any prescribed premises
used for business or commercial
purposes, means the capital value of
the premises as shown in a valuation
made not earlier than one month
before the date of the application for
determination; or where—
- 20 (a) the premises consist partly of
land that is included in a valua-
tion list or supplementary list
under the Valuation of Land
Act, 1916, as amended by
subsequent Acts, or land that
25 is within an area within the
meaning of the Local Govern-
ment Act, 1919, as amended
by subsequent Acts, not being
land included in any such list,
and
- 30 (b) the Fair Rents Board is satis-
fied that there has been no
substantial alteration in the
value of the premises since the
date of the valuation of the
premises as shown on the
notice of valuation under the
Valuation of Land Act, 1916,
as amended by subsequent
35 Acts, last furnished in respect
of

Landlord and Tenant (Amendment).

5 of the premises before the date
of the application for deter-
mination, or as the case may
be, since the date of the
valuation and rate notice last
furnished under the Local
Government Act, 1919, as
amended by subsequent Acts,
10 before the date of the applica-
tion for determination,

means the capital value of the premises as
shown on such notice of valuation or valuation
and rate notice.

15 (v) by inserting next after subsection (1A) of the
same section the following new subsec-
tions : —

20 (1B) A Fair Rents Board shall not, in
determining the fair rent of prescribed
premises used for business or commercial
purposes,—

25 (a) unless it is satisfied that the premises
are in fair and tenantable repair, make
any allowance based on the appro-
priate capital value, referred to in
paragraph (a) of subsection one of
this section, of the premises, but this
paragraph does not apply where the
lessee has failed to comply with any
obligation to maintain the premises in
30 fair and tenantable repair; or

35 (b) if it is satisfied that the premises are
in fair and tenantable repair, make any
such allowance except an annual allow-
ance not exceeding four per centum
per annum of the said appropriate
capital value.

(1c)

Landlord and Tenant (Amendment).

(1c) A Fair Rents Board, in determining the fair rent of prescribed premises used in part for business or commercial purposes and in part for other purposes—

- 5 (a) shall not, unless it is satisfied that the premises are in fair and tenantable repair, make any allowance based on the appropriate capital value, referred to in paragraph (a) of subsection one
10 of this section, of the premises, but this paragraph does not apply where the lessee has failed to comply with any obligation to maintain the part of the premises used for business or commercial purposes in fair and tenantable
15 repair; and
- (b) shall, if it is satisfied that the premises are in fair and tenantable repair—
- 20 (i) determine which part of the premises is at the date of the application for the determination being used wholly or primarily for business or commercial purposes (such part being referred to in this subsection as the business part) and which part of the
25 premises is at such date being used wholly or primarily for other purposes (such part being referred to in this subsection as the non-business part); and
- 30 (ii) determine the fair rent of the premises at an amount equal to the sum of—
- 35 (a) an amount equal to the fair rent of the non-business part having regard to the appropriate capital value, referred to in paragraph (a) of subsection one of this section,
40 of that part; and (b)

Landlord and Tenant (Amendment).

5 (b) an amount equal to the fair
rent of the business part hav-
ing regard to the appropriate
capital value, referred to in
paragraph (a) of subsection
one of this section, of that
part, but shall not make any
allowance based on the said
appropriate capital value of
10 that part except an annual
allowance not exceeding four
per centum per annum of
the said appropriate capital
value.

15 A determination made in accordance with
this subsection shall not be regarded as creat-
ing separate premises or as apportioning the
rent except for the purposes of this subsection.

20 (1D) A Fair Rents Board, in determining
the fair rent of any premises, shall not where
it considers that any repairs, maintenance or
renewals of the premises or any fixtures
thereon should be carried out, make any
allowance based on paragraph (c) of subsec-
25 tion one of this section, but this subsection
does not apply in the case of premises, or part
of any premises, used for business or commer-
cial purposes where the lessee is obliged to
carry out the repairs, maintenance or renewals.

30 (vi) by omitting from subsection two of the same
section the words, symbols and letters "para-
graphs (i) and (j)" and by inserting in lieu
thereof the word, symbols and letter "para-
graph (i)";

35 (d) by inserting in subsection one of section twenty-four Sec. 24.
after the word "motion" the words "but subject to (Fair Rents
section 17A of this Act"; Board may
determine
fair rent
of its own
motion.)

(e)

Landlord and Tenant (Amendment).

- (e) by inserting at the end of section 31MB the following new paragraph :—

Sec. 31MB.
(Amendment of applications.)

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

- (f) (i) by inserting at the end of subsection one of section 31N the words "and particulars of how that amount is calculated. A notice setting out such amount and particulars shall be given to the lessee together with the notice given to him pursuant to subsection one of section nineteen of this Act.";

Sec. 31N.
(Application by lessor for fair rent determination to indicate assessment of rent sought.)

- (ii) by omitting from subsection two of the same section the words "Notwithstanding anything" and by inserting in lieu thereof the words "Subject to section 31MB of this Act, but notwithstanding any other provision";

- (iii) by inserting at the end of the same subsection the words "or the application as amended pursuant to section 31MB of this Act";

- (g) (i) by omitting from paragraph (i) of subsection two of section thirty-two the word "or";

Sec. 32.
(Variation of determination.)

- (ii) by inserting at the end of paragraph (j) of subsection two of section thirty-two the following word and new paragraph :—

; or

- (k) the lessor's liability in respect of the premises for annual rates has, since the determination, increased or decreased.

(iii)

Landlord and Tenant (Amendment).

- 5 (iii) by omitting from subsection four of the same
section the words “and it appears to the Board
or the Controller, as the case may be, that
the premises being a dwelling-house are not
in fair and tenantable repair, no increase of
rent shall be allowed by the Board or Con-
troller, as the case may be, on account of any
increase in the lessor’s liability for repairs,
maintenance and renewals of the premises
and fixtures thereon” and by inserting in
10 lieu thereof the words “, the Board or the
Controller in making the variation shall not—
- 15 (a) where the premises the subject of the
application are used wholly or in part
for business or commercial purposes,
make any allowance based on the
appropriate capital value, referred to
in paragraph (a) of subsection one
of section twenty-one of this Act, of
20 the premises or part so used unless
it or he is satisfied that the premises
the subject of the application are in
fair and tenantable repair, except
where the lessee has failed to comply
25 with any obligation to maintain the
premises in fair and tenantable repair;
and
- 30 (b) where it or he considers that any
repairs, maintenance, or renewals of
the premises (whether or not they or
any part of them are used for busi-
ness or commercial purposes) should
be carried out, make any allowance
based on paragraph (c) of subsection
one of section twenty-one of this Act,
35 except where, in respect of any part
of the premises used for business or
commercial purposes, the lessee is
obliged to carry out the repairs, main-
tenance or renewals”;
- 40

(h)

Landlord and Tenant (Amendment).

- (h) by inserting in subsection one of section thirty-five after the word "not" the words ", whether as principal or agent or in any other capacity"; Sec. 35. (Premises not to be let at rent exceeding fair rent.)
- 5 (i) by inserting at the end of subsection two of section fifty-two the words "or by an agreement referred to in subsection one of section 17A of this Act"; Sec. 52. (Information as to fair rent.)
- 10 (j) (i) by inserting in subsection one of section fifty-seven after the word "Part" the words "or by an agreement referred to in subsection one of section 17A of this Act"; Sec. 57. (Lessor to ascertain fair rent.)
- (ii) by inserting in subsection (1A) of the same section after the word "determination" the words "or by an agreement referred to in subsection one of section 17A of this Act";
- 15 (k) by inserting in subsection one of section fifty-eight after the words "Fair Rents Board)" the words "or, in the case of a certificate by the Controller, by an agreement referred to in subsection one of section 17A of this Act". Sec. 58. (Certificate as to fair rent.)
- 20 **4. Part III of the Landlord and Tenant (Amendment) Act, 1948, as amended by subsequent Acts, is amended :—** Further amendment of Act No. 25, 1948. (Part III.—Recovery of Possession of Prescribed Premises.)
- 25 (a) (i) by omitting from subsection one of section sixty-five the words "six months" and by inserting in lieu thereof the words "two years"; Sec. 65. (Notice to quit where dwelling-house sold.)
- (ii)

Landlord and Tenant (Amendment).

- (ii) by omitting the proviso to the same subsection ;
- (iii) by omitting from subsection (1A) of the same section the words "six months" and by inserting in lieu thereof the words "two years";
- (iv) by omitting the proviso to the same subsection ;
- (b) (i) by inserting at the end of subparagraph (iii) of paragraph (d) of the first proviso to subsection two of section seventy the word "and"; Sec. 70. (Court to consider hardship.)
- (ii) by omitting from the same subsection the words "one thousand nine hundred and sixty-three" and by inserting in lieu thereof the words "one thousand nine hundred and sixty-six";
- (iii) by inserting next after the same subsection the following new subsection : —
- (2A) Subsection two of this section does not apply in any case where an order for the recovery of possession of any prescribed premises, being a dwelling-house, from any person is sought on the ground specified in paragraph (g) of subsection five of section sixty-two of this Act and the lessor has at the date of the notice to quit for a continuous period of not less than eight years, whether such period is before or after or partly before and partly after the commencement of the Landlord and Tenant (Amendment) Act, 1962, been the owner of the premises and has, at the time of the service of the notice to quit, served, where a form is prescribed, a notice in the prescribed form setting out the effect of the provisions of subsections one and two of this section.

Landlord and Tenant (Amendment).

(c) by inserting in subsection one of section eighty-one after the word "not," the words "whether as principal or agent or in any other capacity,"; Sec. 81.
(Persons not to interfere with use or enjoyment of premises.)

5 (d) (i) by omitting from section eighty-three the following words :— Sec. 83.
(Protection of certain persons in possession of premises.)
 " (c) a person (not being a lodger or boarder) resided with the former lessee immediately prior to his death and is actually in possession of the premises immediately after the death of the former lessee,

that person"

and by inserting in lieu thereof the following paragraph and words :—

15 " (c) immediately before the death of the lessee—

(i) the wife or husband of the lessee resided with the lessee and is actually in possession of the premises immediately after the death of the lessee;

25 (ii) where the wife or husband of the lessee was not so residing or is not so in possession or the lessee was not married at the date of his death, a child of the lessee (being a child of or over the age of twenty-one years) so resided and is so in possession;

30 (iii) where no person referred to in subparagraph (i) or (ii) of this paragraph was so residing or is so in possession, a brother or sister, or the father
 35 or

Landlord and Tenant (Amendment).

or mother, of the lessee so
resided and is so in possession;
or

- 5 (iv) where no person referred to in
subparagraph (i), (ii) or
(iii) of this paragraph was so
residing or is so in possession,
any other person so resided
10 (otherwise than as a lodger or
boarder) and is so in pos-
session and had resided with
the lessee for a period of not
less than two years immedi-
ately before the death of the
15 lessee,

the wife or husband, or such child,
brother or sister or the father or
mother, or other person, as the case
may be,";

- 20 (ii) by omitting from the same section the words
"that person" where secondly occurring and
by inserting in lieu thereof the words "the
person having the right under this subsection
to continue in possession of the premises";
- 25 (iii) by omitting from the same subsection the
words "as if he" and by inserting in lieu there-
of the words "as if he or she";
- (iv) by inserting at the end of the same subsection
the following new subsection : —

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

(e)

Landlord and Tenant (Amendment).

- (e) (i) by omitting from subsection one of section 83A the following words :—

Sec. 83A.
(Protection
of member
of the family
of deceased
lessee.)

“(a) the spouse of the lessee resided with the lessee immediately before the death of the lessee and is actually in possession of the premises immediately after the death of the lessee; or

(b) where the spouse of the lessee was not so residing or is not so in possession or the lessee was not married at the date of his death, a child of the lessee (being a child of or over the age of twenty-one years) so resided and is so in possession,

such spouse or child”

and by inserting in lieu thereof the following paragraphs and words :—

“(a) the wife or husband of the lessee resided with the lessee immediately before the death of the lessee and is actually in possession of the premises immediately after the death of the lessee;

(b) where the wife or husband of the lessee was not so residing or is not so in possession or the lessee was not married at the date of his death, a child of the lessee (being a child of or over the age of twenty-one years) so resided and is so in possession;

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

(d)

Landlord and Tenant (Amendment).

- 5 (d) where no person referred to in paragraph (a), (b) or (c) of this subsection was so residing or is so in possession, any other person so resided (otherwise than as a lodger or boarder) and is so in possession and had resided with the lessee for a period of not less than two years immediately before the death of the lessee,
- 10 the wife or husband, or such child, brother or sister or the father or mother, or other person, as the case may be”;
- 15 (ii) by omitting from the same subsection the words “In this subsection ‘child of the lessee’ means, where more than one child of the lessee so resided and is so in possession, the elder or eldest of such children.”;
- (iii) by inserting next after the same subsection the following new subsection : —
- 20 (1A) Where but for this subsection more than one person would, under paragraph (b), (c) or (d) of subsection one of this section, have had a right to continue in possession of any premises, the elder or eldest of the persons
- 25 so entitled under such subparagraph shall have that right to the exclusion of any other of those persons.
- 30 (iv) by omitting from subsection two of the same section the words “such spouse or child, as the case may be,” and by inserting in lieu thereof the words “the person having the right under subsection one of this section to continue in possession of the premises”;
- 35 (v) by inserting in the same subsection after the word “him” the words “or her”;
- (vi) by inserting in the same subsection after the word “he” the words “or she”;
- (vii)

Landlord and Tenant (Amendment).

- 5 (vii) by omitting from subsection three of the same section the words "such spouse or child" and by inserting in lieu thereof the words "the person having the right under subsection one of this section to continue in possession of the premises";

- (f) by inserting next after section 83A the following new section :— New sec.
83B.

10 83B. Where a lessee of prescribed premises dies and during the period after his death and before probate or letters of administration of the estate of the deceased lessee are granted, a person is actually in possession of the premises, and an action of ejectment is during that period brought against such person in the Supreme Court or a District Court, or proceedings are during that period commenced under section seventeen or twenty-three of the Landlord and Tenant Act of 1899, as amended by subsequent Acts, for the recovery of the premises, such person shall not be entitled to raise as a defence to that action or those proceedings the fact that the deceased lessee's interest in the premises is deemed by section sixty-one of the Wills, Probate and Administration Act, 1898, as amended by subsequent Acts, to be vested in the Public Trustee. Public Trustee's title not a defence to recovery of possession of prescribed premises after death of lessee in certain cases.

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- (g) (i) by omitting from subsection three of section eighty-six the word "five" and by inserting in lieu thereof the word "seven"; Sec. 86.
(Exclusion of premises from Part III and Part V.)
- 30 (ii) by omitting from paragraph (b) of subsection four of the same section the word "five" and by inserting in lieu thereof the word "seven";
- (iii) by omitting from subsection five of the same section the word "five" wherever occurring and by inserting in lieu thereof the word "seven";
- (h)

Landlord and Tenant (Amendment).

- (h) (i) by omitting from paragraph (a) of subsection three of section 87B the word "five" and by inserting in lieu thereof the word "seven";
- 5 (ii) by omitting from subsection four of the same section the word "five" and by inserting in lieu thereof the word "seven".

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

5. Part IV of the Landlord and Tenant (Amendment) Act, 1948, as amended by subsequent Acts, is amended : —

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

- 10 (a) (i) by omitting paragraph (a) of subsection one of section 88A;
- (ii) by omitting from the same subsection the words, symbols and letter "paragraph (b) of";

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

- 15 (b) by inserting at the end of section eighty-nine the following new paragraph : —
- Nothing in this section shall apply to a covenant or agreement entered into for the purposes of paragraph (a) of subsection (1A) of section 5A of this Act nor to an agreement referred to in subsection one of section 17A of this Act.

Sec. 89.
(Contracting out prohibited.)

- 20 (c) by inserting at the end of section ninety the following new paragraph : —

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

- 25 Nothing in this section shall operate to prohibit a person entering into or making a lease for the purposes of paragraph (a) of subsection (1A) of section 5A of this Act or an agreement referred to in subsection one of section 17A of this Act.

(d)

Landlord and Tenant (Amendment).

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

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

- 5 (3) A document purporting to be a certificate made or issued by the Controller or his delegate appointed under subsection two of section eleven of this Act and to be signed by the Controller or any such delegate certifying to the effect that—
- 10 (a) the premises described in the certificate are or are not at the date of the certificate or were or were not at any time or, during any period specified in the certificate, premises, or premises included in any class of premises, to which an order made under subsection one or two of section six of this Act applies or applied or to which a declaration continued in force and effect by subsection three of that section applies or applied;
- 15 (b) the premises, or part of any premises, described in the certificate are or are not, or is or is not, at the date of the certificate or were or were not, or was or was not, at any time or during any period specified in the certificate premises to which an order made under subsection one of section 6A of this Act applies or applied;
- 20 (c) the premises are or are not at the date of the certificate, or were or were not at any time or during any period specified in the certificate, premises of a class to which an order made under paragraph (b) of subsection three of section 6A of this Act applies or applied;
- 25 (d) a lease, specified in the certificate, of premises described in the certificate is or is not registered under the provisions of section 5A or 17A of this Act, and, if it is so registered, certifying the date on which it was so registered;
- 30
- 35

(e)

Landlord and Tenant (Amendment).

5 (e) the premises described in the certificate are
or are not at the date of the certificate, or
were or were not at any time or during any
period specified in the certificate, premises
in respect of which a certificate under sec-
tion 6A, seven, eighty-six, 86A, eighty-seven
or 87B of this Act is or was in force,

10 shall be received in evidence and shall, until the
contrary is proved, be accepted as evidence of the
matters therein certified to.

6. Part V of the Landlord and Tenant (Amendment) Act, 1948, as amended by subsequent Acts, is amended—

Further
amendment
of Act No.
25, 1948.

(Part V.—
Protected
Persons.)

(a) by omitting section one hundred and three;

Sec. 103.
(Proviso to
section
65 (1) not
to apply in
certain
cases.)

(b) by omitting section one hundred and four;

Sec. 104.
(Letting of
unoccupied
houses to
protected
persons.)

15 (c) by omitting section one hundred and five;

Sec. 105.
(Dwelling-
house is to
be deemed
to be
unoccupied
in certain
cases.)

(d) by omitting section one hundred and six;

Sec. 106.
(Hearing of
applica-
tion.)

106—C

(e)

Landlord and Tenant (Amendment).

- | | |
|--|--|
| (e) by omitting section one hundred and seven; | Sec. 107.
(Provisions where several applications made in respect of same dwelling-house.) |
| (f) by omitting section one hundred and eight; | Sec. 108.
(Enforcement of warrants.) |
| (g) by omitting section one hundred and nine; | Sec. 109.
(Rent of dwelling-house.) |
| (h) by omitting section one hundred and ten. | Sec. 110.
(Interpretation.) |

BY AUTHORITY:

V. C. N. BLIGHT, GOVERNMENT PRINTER, SYDNEY, NEW SOUTH WALES—1962

LANDLORD AND TENANT (AMENDMENT) BILL, 1962.

EXPLANATORY NOTE.

THE objects of this Bill are—

- (a) to authorise Clerks of Petty Sessions to witness the execution of, and certify to, leases entered into for the purposes of section 5A of the Landlord and Tenant (Amendment) Act, 1948, as amended by subsequent Acts (hereinafter referred to as “the Act”);
- (b) to exempt from the provisions of Parts II, III, IV and V of the Act certain premises used for business or commercial purposes that are the subject of a lease excluding those provisions;
- (c) to amend the definition of “lease” in section 8 of the Act so as to exclude certain relationships arising out of mortgages or contracts of sale which, but for the exclusion, would be included in the definition;
- (d) to permit a lessor and lessee of prescribed premises to enter into an agreement fixing the rent of any premises and to provide that such rent is as between the lessor and lessee deemed to be the fair rent of those premises;
- (e) to vary the provisions of section 21 (1) of the Act so as to enable a Fair Rents Board in determining the fair rent of premises used for business or commercial purposes to have regard to the capital value of the premises at the date of the application for determination of the fair rent of those premises;
- (f) to amend section 21 (1) (j) of the Act so that the Fair Rents Board, in determining the rent of any premises, will not be entitled to have regard to any hardship to the lessor by reason of the rent being fixed at an amount less than the lessor’s liability under a mortgage of, or contract of sale in respect of, the premises, or under a hire purchase agreement or contract of sale in respect of any goods leased with the premises;
- (g) to prohibit a Fair Rents Board, in determining the fair rent of prescribed premises used for business or commercial purposes, from making any allowance in respect of the capital value of the premises unless the premises are in fair and tenantable repair and to limit the amount of that allowance where the premises are in fair and tenantable repair to an annual amount not exceeding 4 per cent per annum of the current capital value of the premises;
- (h) where premises are used partly for business or commercial purposes and partly for other purposes, to make provision to enable a Fair Rents Board to give effect to the provisions referred to in paragraph (g) above in relation to the part used for business or commercial purposes;
- (i) to prohibit a Fair Rents Board, in determining the fair rent of any premises, from making any allowance for repairs, maintenance or renewals of the premises or any fixtures thereon in any case where the Board considers any such repairs, maintenance or renewals should be carried out;
- (j) to prevent an amendment of an application for the determination of the fair rent of any premises as regards the amount of rent claimed unless reasonable notice has been given to the lessee of the proposed amendment;
- (k) to require particulars of how the amount of the rent claimed in an application for determination of the fair rent of any premises is calculated to be furnished to the lessee;

- (l) to permit a Fair Rents Board to vary a determination of the fair rent of any premises within twelve months after the determination is made on the ground of an increase or decrease in the lessor's liability for annual rates ;
- (m) to extend to two years the period during which a lessor is prohibited from giving a notice to quit on the grounds specified in section 62 (5) (g) of the Act where the lessor has become the lessor by the purchase of the prescribed premises ;
- (n) to extend the provisions of section 70 (2) of the Act (requiring suitable alternative accommodation to be provided in certain circumstances) so that they will expire on the 1st January, 1966 ;
- (o) to remove the requirement under section 70 (2) of the Act requiring the provision of suitable alternative accommodation where notice to quit is given on any of the grounds specified in section 65 (2) (g), (i), (l), (m) of the Act where the lessor has at the date of the notice to quit been the owner of the premises for a continuous period of not less than eight years ;
- (p) to provide that, where a tenancy of prescribed premises is terminated before the death of the lessee, the protection conferred by section 83 of the Act on a person who resided with the deceased lessee immediately before his death and is in possession after the death, shall extend only to the wife or husband, or the children, brothers or sisters, or the father or mother of the deceased lessee or to any person who resided with him for a period of not less than two years immediately before his death ;
- (q) to extend the protection conferred by section 83A of the Act on the spouse and children of a lessee who resided with the deceased lessee immediately before his death and remain in possession after his death, to brothers and sisters and the father and mother of the deceased lessee and to any person who resided with him not less than two years immediately before his death ;
- (r) to prevent a person in possession of premises after the death of a lessee and before probate or letters of administration of his estate are granted from relying on the Public Trustee's title to the tenancy conferred on him by section 61 of the Wills, Probate and Administration Act, 1898, as amended by subsequent Acts, in any action of ejectment or in proceedings to recover possession of the premises under the Landlord and Tenant Act of 1899, as amended by subsequent Acts ;
- (s) to extend from five years to seven years the period for which a certificate may be granted by the Rent Controller under section 86 or section 87B of the Act excluding premises from Part III and Part V of the Act ;
- (t) to remove the requirement that prescribed premises which are to be sold by auction must first be offered for purchase by the lessee ;
- (u) to extend the provisions of section 94 of the Act relating to proof of instruments, so that a certificate may be given by the Rent Controller as to whether premises are or were at any time or during any period affected by section 6 (1), (2), (3) or section 6A (1), (3) (b), or sections 7, 86, 86A, 87 or 87B, or whether a lease is registered under section 5A or 17A of the Act ;
- (v) to repeal sections 104-110 of the Act relating to the letting of unoccupied dwelling-houses to protected persons ;
- (w) to make other provisions of a minor or ancillary character.

No. , 1962.

A BILL

To make further provisions relating to fixing the fair rent of certain premises and otherwise to amend the law relating to landlord and tenant; for this and other purposes to amend the Landlord and Tenant (Amendment) Act, 1948, and certain other Acts; and for purposes connected therewith.

[MR. MANNIX;—4 December, 1962.]

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, 1962".

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, 1948-1962.

- 5 **2.** Part I of the Landlord and Tenant (Amendment) Act, 1948, as amended by subsequent Acts, is amended : —

Amendment
of Act No.
25, 1948.
(Part I.—
Prelimin-
ary.)

- 10 (a) (i) by inserting in paragraph (b) of subparagraph (v) of paragraph (b) of subsection one of section 5A after the word "lessor" the words "or by a clerk of petty sessions";
- (ii) by inserting in paragraph (c) of the same subparagraph after the word "solicitor" the words "or clerk of petty sessions";
- 15 (iii) by inserting in subparagraph (ii) of paragraph (c) of the same subsection after the word "lessor" the words "or by a clerk of petty sessions";
- 20 (iv) by inserting in subparagraph (iii) of the same paragraph after the word "solicitor" the words "or clerk of petty sessions";
- (v) by inserting in paragraph (b) of subparagraph (v) of paragraph (d) of the same subsection after the word "lessor" the words "or by a clerk of petty sessions";
- 25 (vi) by inserting in paragraph (c) of the same subparagraph after the word "solicitor" the words "or clerk of petty sessions";
- 30 (vii) by inserting in paragraph (b) of subparagraph (iv) of paragraph (e) of the same subsection after the word "lessor" the words "or by a clerk of petty sessions";
- (viii) by inserting in paragraph (c) of the same subparagraph after the word "solicitor" the words "or clerk of petty sessions";

(ix)

Landlord and Tenant (Amendment).

- (ix) by inserting in paragraph (b) of subparagraph (iii) of paragraph (f) of the same subsection after the word "lessor" the words "or by a clerk of petty sessions";
- 5 (x) by inserting in paragraph (c) of the same subparagraph after the word "solicitor" the words "or clerk of petty sessions";
- 10 (xi) by inserting in paragraph (b) of subparagraph (iii) of paragraph (g) of the same subsection after the word "lessor" the words "or by a clerk of petty sessions";
- (xii) by inserting in paragraph (c) of the same subparagraph after the word "solicitor" the words "or clerk of petty sessions";
- 15 (xiii) by omitting subsection (1A) of the same section and by inserting in lieu thereof the following subsections :—
- (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—
- 20 (a) (i) that were in existence on the twenty-seventh day of September, one thousand nine hundred and fifty-seven, or were commenced before and completed after that day;
- 25 (ii) that are not "special premises"; and
- 30 (iii) that are the subject of a lease that contains a provision that the said Parts of this Act shall not apply in respect of such premises and—
- 35 (a) that is registered in the office of the Rent Controller;
- (b)

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- 5 (b) the execution of which is
witnessed by a solicitor
instructed and employed
independently of the
lessor or by a clerk of
petty sessions; and
- 10 (c) that is certified by a
solicitor or by a clerk of
petty sessions as provided
in subsection two of this
section; or
- 15 (b) the erection of which commenced after
the twenty-seventh day of September,
one thousand nine hundred and fifty-
seven.
- (1B) Where—
- 20 (a) any prescribed premises being premises
used for business or commercial
purposes cease to be subject to the
provisions of Parts II, III, IV and V
of the Act by reason of the provisions
of paragraph (a) of subsection (1A)
of this section;
- 25 (b) the premises or any part of the premises
were or was, under any sub-lease
consented to or approved by the lessor
and in force immediately before such
premises or part so ceased, occupied
by a sub-lessee; and
- 30 (c) the premises or part so occupied were
or was, immediately before such
premises or part so ceased, subject to
the said Parts of this Act as regards
the premises or part of the premises so
35 occupied,

then—

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then—

- 5 (i) the premises or part of the premises
so occupied shall continue to be
prescribed premises and the provi-
sions of the said Parts of this Act
shall so far as applicable continue
to apply to the premises or part of the
premises so occupied;
- 10 (ii) if the lessee at any time ceases to be
in possession of the premises because
of the termination or surrender of his
lease or the making of an order for
the recovery of possession or for eject-
ment the sub-lessee shall become the
15 lessee from the lessor of the premises
or part of the premises so occupied
upon the same terms and conditions as
the terms and conditions of the sub-
lease as in force immediately before
20 that time;
- (iii) any order for recovery of possession or
for the ejectment as aforesaid shall not
be enforced against the sub-lessee; and
- 25 (iv) the sub-lessee shall on the hearing of
any proceedings for such an order be
entitled to be heard.
- (xiv) by omitting from subsection two of the same
section the words “certifying to a lease for the
30 purposes of subsection one” and by inserting in
lieu thereof the words “or clerk of petty ses-
sions certifying to a lease for the purposes of
subsection one or (1A)”;
- (xv) by inserting in subsection three of the same
section after the words “subsection one” where
35 firstly and lastly occurring the word, symbols,
figure and letter “or (1A)”;

(b)

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- (b) by inserting in subsection one of section eight in the definition of "lease" after the word "land" the words "or any lease arising under a clause in a mortgage or in an agreement for the sale and purchase of land (however expressed and whenever executed) whereby in case of default the mortgagee or the vendor (as the case may be) is given the powers of a lessor with respect to the recovery of possession or ejectment, or any tenancy at will implied at law in any mortgage or agreement for the sale or purchase of land".
- 5
- 10
3. Part II of the Landlord and Tenant (Amendment) Act, 1948, as amended by subsequent Acts, is amended :—
- (a) by omitting subsection three of section fifteen ;
- 15 (b) by inserting next before section eighteen the following new section :—
- 20
- 25
- 30
- 17A. (1) Where an agreement in writing is entered into by the lessor and lessee of any prescribed premises (other than shared accommodation) which are leased with or without goods and under that agreement the lessor and lessee agree as to the amount of the rent to be paid by the lessee to the lessor in respect of such premises, the amount specified in that agreement as the rent shall, without any determination or further determination being made, be for all purposes as between the lessor and the lessee the fair rent and the rent of the premises without goods or together with goods, as the case may be, as on and from the day specified in that behalf in the agreement not being earlier than the day on which the agreement is entered into and no proceedings for the determination of the fair rent of those premises by a Fair Rents Board and no
- Sec. 8.
(Definitions.)
- Further amendment of Act No. 25, 1948.
(Part II.—Fair Rents.)
- Sec. 15.
(Rent of prescribed premises.)
- New sec. 17A.
- Fixing of fair rent of prescribed premises by agreement.

Landlord and Tenant (Amendment).

5 no application for the assessment of the fair rent
of those premises by the Rent Controller or a clerk
of the Fair Rents Board, as the case may be, shall
subject to subsection five of this section but notwith-
standing any other provision of this Act, be com-
menced or lodged by the lessor or lessee during the
period for which the agreement is expressed to be
in force or, if no such period is expressed, during a
10 period of twelve months next after the day on and
from which the fair rent is fixed by the agreement.

(2) An agreement referred to in subsection
one of this section shall have no force or effect
unless—

- 15 (a) it is registered in the office of the Rent
Controller within one month after the day
on which it is entered into;
- (b) its execution by the lessee is witnessed by a
solicitor instructed and employed independ-
20 dently of the lessor or by a clerk of petty
sessions; and
- (c) it is certified by that solicitor or clerk of
petty sessions as provided in subsection
three of this section.

25 (3) A solicitor or clerk of petty sessions
certifying to an agreement for the purposes of
subsection two of this section—

- (a) shall explain the agreement to the lessee;
- (b) shall examine the lessee touching his know-
ledge of the agreement;
- 30 (c) if he thinks fit may so examine the lessee
separately and apart from any other person;
and
- (d) if he is satisfied that the lessee understands
the true purport and effect thereof and
35 freely and voluntarily executes the same,
shall certify in writing upon the agreement
that the agreement has been so explained,
and

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and that he has examined the lessee and is satisfied as hereinbefore required, and that the lessee has executed the agreement in his presence.

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

15 (5) A lessee of any prescribed premises
the subject of any such agreement may, notwith-
standing the provisions of subsection two of section
thirty-two of this Act and during any period for
which the agreement is expressed to be in force or,
if no such period is expressed, during a period of
20 twelve months next after the day on and from
which the fair rent is fixed by the agreement, make
application to a Fair Rents Board for a determina-
tion of the fair rent of those premises and the
Board shall make a determination of the fair rent
of those premises or vary any such existing
25 determination in accordance with the provisions of
this Act, where the lessee proves to the satisfaction
of the Board that—

- (a) the rent fixed by the agreement is harsh or
unconscionable; or
30 (b) the agreement was obtained by fraud,
duress, intimidation or improper means.

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

(c)

Landlord and Tenant (Amendment).

- (c) (i) by omitting paragraph (a) of subsection one of section twenty-one and by inserting in lieu thereof the following paragraph : — Sec. 21.
(Matters
to be
considered.)

5 (a) the appropriate capital value of the premises;

10 (ii) by omitting from paragraph (f) of the same subsection the words "the rate" and by inserting in lieu thereof the words "except in the case of premises used for business or commercial purposes, the rate";

15 (iii) by omitting from paragraph (j) of the same subsection the words "including (but without limiting the generality of the word 'hardship') any loss which might be imposed upon the lessor by an order fixing the rent of the premises at an amount less than the lessor's liability under a mortgage of, or contract of sale in respect of, the premises, or under a hire purchase agreement or contract of sale in respect of any goods leased with the premises";

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

25 In determining the fair rent of any premises used for business or commercial purposes the Fair Rents Board shall not make any allowance based on the rate of interest charged upon overdrafts.

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

In

Landlord and Tenant (Amendment).

In paragraph (a) of this subsection
“appropriate capital value”—

- 5 (a) in respect of any prescribed premises,
not being premises used for business
or commercial purposes, means the
capital value of the premises at the
prescribed date, or, if the premises
10 were not in existence on that date, on
the date on which the erection of the
premises was completed; or
- 15 (b) in respect of any prescribed premises
used for business or commercial
purposes, means the capital value of
the premises as shown in a valuation
made not earlier than one month
before the date of the application for
determination; or where—
- 20 (i) the premises consist partly of
land that is included in a valua-
tion list or supplementary list
under the Valuation of Land
Act, 1916, as amended by
subsequent Acts, or land that
25 is within an area within the
meaning of the Local Govern-
ment Act, 1919, as amended
by subsequent Acts, not being
land included in any such list,
and
- 30 (ii) the Fair Rents Board is satis-
fied that there has been no
substantial alteration in the
value of the premises since the
date of the valuation of the
premises as shown on the
35 notice of valuation under the
Valuation of Land Act, 1916,
as amended by subsequent
Acts, last furnished in respect
of

Landlord and Tenant (Amendment).

5 of the premises before the date
of the application for deter-
mination, or as the case may
be, since the date of the
valuation and rate notice last
furnished under the Local
Government Act, 1919, as
amended by subsequent Acts,
10 before the date of the applica-
tion for determination,

means the capital value of the premises as
shown on such notice of valuation or valuation
and rate notice.

15 (v) by inserting next after subsection (1A) of the
same section the following new subsec-
tions :—

(1B) A Fair Rents Board shall not, in
determining the fair rent of prescribed
premises used for business or commercial
20 purposes,—

(a) unless it is satisfied that the premises
are in fair and tenantable repair, make
any allowance based on the appro-
25 priate capital value, referred to in
paragraph (a) of subsection one of
this section, of the premises, but this
paragraph does not apply where the
lessee has failed to comply with any
obligation to maintain the premises in
30 fair and tenantable repair; or

(b) if it is satisfied that the premises are
in fair and tenantable repair, make any
such allowance except an annual allow-
35 ance not exceeding four per centum
per annum of the said appropriate
capital value.

(1c)

Landlord and Tenant (Amendment).

(1c) A Fair Rents Board, in determining the fair rent of prescribed premises used in part for business or commercial purposes and in part for other purposes—

5 (a) shall not, unless it is satisfied that the premises are in fair and tenantable repair, make any allowance based on the appropriate capital value, referred to in paragraph (a) of subsection one
10 of this section, of the premises, but this paragraph does not apply where the lessee has failed to comply with any obligation to maintain the part of the premises used for business or com-
15 mercial purposes in fair and tenantable repair; and

(b) shall, if it is satisfied that the premises are in fair and tenantable repair—

20 (i) determine which part of the premises is at the date of the application for the determination being used wholly or primarily for business or com-
25 mercial purposes (such part being referred to in this subsection as the business part) and which part of the premises is at such date being used wholly or primarily for other pur-
30 poses (such part being referred to in this subsection as the non-business part); and

(ii) determine the fair rent of the premises at an amount equal to the sum of—

35 (a) an amount equal to the fair rent of the non-business part having regard to the appropriate capital value, referred to in paragraph (a) of sub-
40 section one of this section, of that part; and (b)

Landlord and Tenant (Amendment).

- 5 (b) an amount equal to the fair
rent of the business part hav-
ing regard to the appropriate
capital value, referred to in
paragraph (a) of subsection
one of this section, of that
part, but shall not make any
allowance based on the said
appropriate capital value of
10 that part except an annual
allowance not exceeding four
per centum per annum of
the said appropriate capital
value.

15 A determination made in accordance with
this subsection shall not be regarded as creat-
ing separate premises or as apportioning the
rent except for the purposes of this subsection.

20 (1D) A Fair Rents Board, in determining
the fair rent of any premises, shall not where
it considers that any repairs, maintenance or
renewals of the premises or any fixtures
thereon should be carried out, make any
allowance based on paragraph (c) of subsec-
25 tion one of this section, but this subsection
does not apply in the case of premises, or part
of any premises, used for business or commer-
cial purposes where the lessee is obliged to
carry out the repairs, maintenance or renewals.

30 (vi) by omitting from subsection two of the same
section the words, symbols and letters "para-
graphs (i) and (j)" and by inserting in lieu
thereof the word, symbols and letter "para-
graph (i)";

35 (d) by inserting in subsection one of section twenty-four Sec. 24.
after the word "motion" the words "but subject to (Fair Rents
section 17A of this Act"; Board may
determine
fair rent
of its own
motion.)

(e)

Landlord and Tenant (Amendment).

- (e) by inserting at the end of section 31MB the following new paragraph :—

Sec. 31MB.
(Amendment of applications.)

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

- (f) (i) by inserting at the end of subsection one of section 31N the words "and particulars of how that amount is calculated. A notice setting out such amount and particulars shall be given to the lessee together with the notice given to him pursuant to subsection one of section nineteen of this Act.";

Sec. 31N.
(Application by lessor for fair rent determination to indicate assessment of rent sought.)

- (ii) by omitting from subsection two of the same section the words "Notwithstanding anything" and by inserting in lieu thereof the words "Subject to section 31MB of this Act, but notwithstanding any other provision";

- (iii) by inserting at the end of the same subsection the words "or the application as amended pursuant to section 31MB of this Act";

- (g) (i) by omitting from paragraph (i) of subsection two of section thirty-two the word "or";

Sec. 32.
(Variation of determination.)

- (ii) by inserting at the end of paragraph (j) of subsection two of section thirty-two the following word and new paragraph :—

; or

- (k) the lessor's liability in respect of the premises for annual rates has, since the determination, increased or decreased.

(iii)

Landlord and Tenant (Amendment).

- (iii) by omitting from subsection four of the same section the words "and it appears to the Board or the Controller, as the case may be, that the premises being a dwelling-house are not in fair and tenantable repair, no increase of rent shall be allowed by the Board or Controller, as the case may be, on account of any increase in the lessor's liability for repairs, maintenance and renewals of the premises and fixtures thereon" and by inserting in lieu thereof the words "the Board or the Controller in making the variation shall not—
- (a) where the premises the subject of the application are used wholly or in part for business or commercial purposes, make any allowance based on the appropriate capital value, referred to in paragraph (a) of subsection one of section twenty-one of this Act, of the premises or part so used unless it or he is satisfied that the premises the subject of the application are in fair and tenantable repair, except where the lessee has failed to comply with any obligation to maintain the premises in fair and tenantable repair; and
- (b) where it or he considers that any repairs, maintenance, or renewals of the premises (whether or not they or any part of them are used for business or commercial purposes) should be carried out, make any allowance based on paragraph (c) of subsection one of section twenty-one of this Act, except where, in respect of any part of the premises used for business or commercial purposes, the lessee is obliged to carry out the repairs, maintenance or renewals";

(h)

Landlord and Tenant (Amendment).

- (h) by inserting in subsection one of section thirty-five after the word "not" the words ", whether as principal or agent or in any other capacity"; Sec. 35. (Premises not to be let at rent exceeding fair rent.)
- 5 (i) by inserting at the end of subsection two of section fifty-two the words "or by an agreement referred to in subsection one of section 17A of this Act"; Sec. 52. (Information as to fair rent.)
- (j) (i) by inserting in subsection one of section fifty-seven after the word "Part" the words "or by an agreement referred to in subsection one of section 17A of this Act"; Sec. 57. (Lessor to ascertain fair rent.)
- 10 (ii) by inserting in subsection (1A) of the same section after the word "determination" the words "or by an agreement referred to in subsection one of section 17A of this Act";
- 15 (k) by inserting in subsection one of section fifty-eight after the words "Fair Rents Board)" the words "or, in the case of a certificate by the Controller, by an agreement referred to in subsection one of section 17A of this Act". Sec. 58. (Certificate as to fair rent.)
- 20 **4. Part III of the Landlord and Tenant (Amendment) Act, 1948, as amended by subsequent Acts, is amended :—** Further amendment of Act No. 25, 1948. (Part III.—Recovery of Possession of Prescribed Premises.)
- (a) (i) by omitting from subsection one of section sixty-five the words "six months" and by inserting in lieu thereof the words "two years"; Sec. 65. (Notice to quit where dwelling-house sold.)
- 25 (ii)

Landlord and Tenant (Amendment).

- (ii) by omitting the proviso to the same subsection;
- (iii) by omitting from subsection (1A) of the same section the words "six months" and by inserting in lieu thereof the words "two years";
- (iv) by omitting the proviso to the same subsection;
- (b) (i) by inserting at the end of subparagraph (iii) of paragraph (d) of the first proviso to subsection two of section seventy the word "and";
- (ii) by omitting from the same subsection the words "one thousand nine hundred and sixty-three" and by inserting in lieu thereof the words "one thousand nine hundred and sixty-six";
- (iii) by inserting next after the same subsection the following new subsection :—
- (2A) Subsection two of this section does not apply in any case where an order for the recovery of possession of any prescribed premises, being a dwelling-house, from any person is sought on the ground specified in paragraph (g) of subsection five of section sixty-two of this Act and the lessor has at the date of the notice to quit for a continuous period of not less than eight years, whether such period is before or after or partly before and partly after the commencement of the Landlord and Tenant (Amendment) Act, 1962, been the owner of the premises and has, at the time of the service of the notice to quit, served, where a form is prescribed, a notice in the prescribed form setting out the effect of the provisions of subsections one and two of this section.

Sec. 70.
(Court to consider hardship.)

Landlord and Tenant (Amendment).

(c) by inserting in subsection one of section eighty-one after the word "not," the words "whether as principal or agent or in any other capacity,"; Sec. 81.
(Persons not to interfere with use or enjoyment of premises.)

5 (d) (i) by omitting from section eighty-three the following words :— Sec. 83.
(Protection of certain persons in possession of premises.)

"(c) a person (not being a lodger or boarder) resided with the former lessee immediately prior to his death and is actually in possession of the premises immediately after the death of the former lessee,

that person"

and by inserting in lieu thereof the following paragraph and words :—

15 "(c) immediately before the death of the lessee—

(i) the wife or husband of the lessee resided with the lessee and is actually in possession of the premises immediately after the death of the lessee;

(ii) where the wife or husband of the lessee was not so residing or is not so in possession or the lessee was not married at the date of his death, a child of the lessee (being a child of or over the age of twenty-one years) so resided and is so in possession;

(iii) where no person referred to in subparagraph (i) or (ii) of this paragraph was so residing or is so in possession, a brother or sister, or the father or

Landlord and Tenant (Amendment).

or mother, of the lessee so
resided and is so in possession;
or

- 5 (iv) where no person referred to in
subparagraph (i), (ii) or
(iii) of this paragraph was so
residing or is so in possession,
any other person so resided
10 (otherwise than as a lodger or
boarder) and is so in pos-
session and had resided with
the lessee for a period of not
less than two years immedi-
ately before the death of the
15 lessee,

the wife or husband, or such child,
brother or sister or the father or
mother, or person, as the case may
be,";

- 20 (ii) by omitting from the same section the words
"that person" where secondly occurring and
by inserting in lieu thereof the words "the
person having the right under this subsection
to continue in possession of the premises";
- 25 (iii) by omitting from the same subsection the
words "as if he" and by inserting in lieu there-
of the words "as if he or she";
- (iv) by inserting at the end of the same subsection
the following new subsection : —

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

(e)

Landlord and Tenant (Amendment).

- (e) (i) by omitting from subsection one of section 83A the following words :—

Sec. 83A.
(Protection
of member
of the family
of deceased
lessee.)

5 “(a) the spouse of the lessee resided with
the lessee immediately before the death
of the lessee and is actually in possession
of the premises immediately after
the death of the lessee; or

10 (b) where the spouse of the lessee was not
so residing or is not so in possession
or the lessee was not married at the
date of his death, a child of the lessee
(being a child of or over the age of
twenty-one years) so resided and is so
in possession,

15 such spouse or child”

and by inserting in lieu thereof the following
paragraphs and words :—

20 “(a) the wife or husband of the lessee
resided with the lessee immediately
before the death of the lessee and is
actually in possession of the premises
immediately after the death of the
lessee;

25 (b) where the wife or husband of the lessee
was not so residing or is not so in
possession or the lessee was not
married at the date of his death, a child
of the lessee (being a child of or over
the age of twenty-one years) so resided
and is so in possession;

30 (c) where no person referred to in para-
graph (a) or (b) of this subsection
was so residing or is so in possession,
a brother or sister, or the mother or
father, of the lessee so resided and is
so in possession; or

(d)

Landlord and Tenant (Amendment).

- (d) where no person referred to in paragraph (a), (b) or (c) of this subsection was so residing or is so in possession, any other person so resided (otherwise than as a lodger or boarder) and is so in possession and had resided with the lessee for a period of not less than two years immediately before the death of the lessee,
- the wife or husband, or such child, brother or sister or the father or mother, or person, as the case may be”;
- (ii) by omitting from the same subsection the words “In this subsection ‘child of the lessee’ means, where more than one child of the lessee so resided and is so in possession, the elder or eldest of such children.”;
- (iii) by inserting next after the same subsection the following new subsection :—
- (1A) Where but for this subsection more than one person would, under paragraph (b), (c) or (d) of subsection one of this section, have had a right to continue in possession of any premises, the elder or eldest of the persons so entitled under such subparagraph shall have that right to the exclusion of any other of those persons.
- (iv) by omitting from subsection two of the same section the words “such spouse or child, as the case may be,” and by inserting in lieu thereof the words “the person having the right under subsection one of this section to continue in possession of the premises”;
- (v) by inserting in the same subsection after the word “him” the words “or her”;
- (vi) by inserting in the same subsection after the word “he” the words “or she”;
- (vii)

Landlord and Tenant (Amendment).

5 (vii) by omitting from subsection three of the same section the words "such spouse or child" and by inserting in lieu thereof the words "the person having the right under subsection one of this section to continue in possession of the premises";

(f) by inserting next after section 83A the following new section :—

10 83B. Where a lessee of prescribed premises dies and during the period after his death and before probate or letters of administration of the estate of the deceased lessee are granted, a person is actually in possession of the premises, and an action of ejection is during that period brought against such person in the Supreme Court or a District Court, or proceedings are during that period commenced under section seventeen or twenty-three of the Landlord and Tenant Act of 1899, as amended by subsequent Acts, for the recovery of the premises, such person shall not be entitled to raise as a defence to that action or those proceedings the fact that the deceased lessee's interest in the premises is deemed by section sixty-one of the Wills, Probate and Administration Act, 1898, as amended by subsequent Acts, to be vested in the Public Trustee.

(g) (i) by omitting from subsection three of section eighty-six the word "five" and by inserting in lieu thereof the word "seven";

30 (ii) by omitting from paragraph (b) of subsection four of the same section the word "five" and by inserting in lieu thereof the word "seven";

(iii) by omitting from subsection five of the same section the word "five" wherever occurring and by inserting in lieu thereof the word "seven";

(h)

New sec. 83B.

Public Trustee's title not a defence to recovery of possession of prescribed premises after death of lessee in certain cases.

Sec. 86. (Exclusion of premises from Part III and Part V.)

Landlord and Tenant (Amendment).

- (h) (i) by omitting from paragraph (a) of subsection three of section 87B the word "five" and by inserting in lieu thereof the word "seven";
- (ii) by omitting from subsection four of the same section the word "five" and by inserting in lieu thereof the word "seven".

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

5. Part IV of the Landlord and Tenant (Amendment) Act, 1948, as amended by subsequent Acts, is amended : —

Further amendment of Act No. 25, 1945.
(Part IV.—Miscellaneous.)

- (a) (i) by omitting paragraph (a) of subsection one of section 88A;
- (ii) by omitting from the same subsection the words, symbols and letter "paragraph (b) of";

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

- (b) by inserting at the end of section eighty-nine the following new paragraph : —
- Nothing in this section shall apply to a covenant or agreement entered into for the purposes of paragraph (a) of subsection (1A) of section 5A of this Act nor to an agreement referred to in subsection one of section 17A of this Act.

Sec. 89.
(Contracting out prohibited.)

- (c) by inserting at the end of section ninety the following new paragraph : —

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

- Nothing in this section shall operate to prohibit a person entering into or making a lease for the purposes of paragraph (a) of subsection (1A) of section 5A of this Act or an agreement referred to in subsection one of section 17A of this Act.

(d)

Landlord and Tenant (Amendment).

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

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

5 (3) A document purporting to be a certificate made or issued by the Controller or his delegate appointed under subsection two of section eleven of this Act and to be signed by the Controller or any such delegate certifying to the effect that—

10 (a) the premises described in the certificate are or are not at the date of the certificate or were or were not at any time or, during any period specified in the certificate, premises, or premises included in any class of premises, to which an order made under subsection one or two of section six of this Act applies or applied or to which a declaration continued in force and effect by subsection three of that section applies or applied;

20 (b) the premises, or part of any premises, described in the certificate are or are not, or is or is not, at the date of the certificate or were or were not, or was or was not, at any time or during any period specified in the certificate premises to which an order made under subsection one of section 6A of this Act applies or applied;

25 (c) the premises are or are not at the date of the certificate, or were or were not at any time or during any period specified in the certificate, premises of a class to which an order made under paragraph (b) of subsection three of section 6A of this Act applies or applied;

30 (d) a lease, specified in the certificate, of premises described in the certificate is or is not registered under the provisions of section 5A or 17A of this Act, and, if it is so registered, certifying the date on which it was so registered;

35

(e)

Landlord and Tenant (Amendment).

5 (e) the premises described in the certificate are
or are not at the date of the certificate, or
were or were not at any time or during any
period specified in the certificate, premises
in respect of which a certificate under sec-
tion 6A, seven, eighty-six, 86A, eighty-seven
or 87B of this Act is or was in force,

10 shall be received in evidence and shall, until the
contrary is proved, be accepted as evidence of the
matters therein certified to.

6. Part V of the Landlord and Tenant (Amendment) Further
Act, 1948, as amended by subsequent Acts, is amended— amendment
of Act No.
25, 1948.
(Part V.—
Protected
Persons.)

(a) by omitting section one hundred and three; Sec. 103.
(Proviso to
section
65 (1) not
to apply in
certain
cases.)

(b) by omitting section one hundred and four; Sec. 104.
(Letting of
unoccupied
houses to
protected
persons.)

15 (c) by omitting section one hundred and five; Sec. 105.
(Dwelling-
house is to
be deemed
to be
unoccupied
in certain
cases.)

(d) by omitting section one hundred and six; Sec. 106.
(e) (Hearing of
applica-
tion.)

Landlord and Tenant (Amendment).

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| (e) by omitting section one hundred and seven; | Sec. 107.
(Provisions
where
several
applications
made in
respect of
same
dwelling-
house.) |
| (f) by omitting section one hundred and eight; | Sec. 108.
(Enforce-
ment of
warrants.) |
| (g) by omitting section one hundred and nine; | Sec. 109.
(Rent of
dwelling-
house.) |
| (h) by omitting section one hundred and ten. | Sec. 110.
(Interpre-
tation.) |

BY AUTHORITY:

V. C. N. BLIGHT, GOVERNMENT PRINTER, SYDNEY, NEW SOUTH WALES—1962