

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, 9 December, 1964, A.M.*

New South Wales



ANNO TERTIO DECIMO

ELIZABETHÆ II REGINÆ

Act No. , 1964.

An Act 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 ; to validate certain matters ; 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, 1964".

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, 1948-1964.

5 2. (1) 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.—Preliminary.)

- 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"; Sec. 5A. (Certain premises excluded from operation of Act.)
- (ii) by inserting in paragraph (c) of subparagraph (v) of paragraph (b) of the same subsection 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 paragraph (c) of the same subsection after the word "solicitor" the words "or clerk of petty sessions";
- 25 (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 subparagraph (v) of paragraph (d) of the same subsection after the word "solicitor" the words "or clerk of petty sessions";
- (vii) by omitting from paragraph (e) of the same subsection the words "(not being a residential unit)";

(viii)

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- (viii) 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";
- 5 (ix) by inserting in paragraph (c) of subparagraph (iv) of paragraph (e) of the same subsection after the word "solicitor" the words "or clerk of petty sessions";
- 10 (x) by inserting in paragraph (d) of subparagraph (i) of paragraph (f) of the same subsection after the word "Act;" the word "and";
- (xi) by omitting subparagraph (ii) of paragraph (f) of the same subsection;
- 15 (xii) 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";
- (xiii) by inserting in paragraph (c) of subparagraph (iii) of paragraph (f) of the same subsection after the word "solicitor" the words "or clerk of petty sessions";
- 20 (xiv) by inserting in paragraph (c) of subparagraph (i) of paragraph (g) of the same subsection after the word "Act;" the word "and";
- 25 (xv) by omitting subparagraph (ii) of paragraph (g) of the same subsection;
- (xvi) 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";
- 30 (xvii) by inserting in paragraph (c) of subparagraph (iii) of paragraph (g) of the same subsection after the word "solicitor" the words "or clerk of petty sessions";
- 35 (xviii) 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

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any premises used for business or commercial purposes—

- 5 (a) (i) that were in existence on the twenty-seventh day of September, one thousand nine hundred and fifty-seven, or were commenced on or before and completed after that day;
- 10 (ii) that are not "special premises" for the purposes of this Act; and
- (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—
- 15 (a) that is registered in the office of the Rent Controller;
- 20 (b) the execution of which by the lessee is witnessed by a solicitor instructed and employed independently of the lessor or by a clerk of petty sessions; and
- 25 (c) that is certified by that solicitor or clerk of petty sessions as provided in subsection two of this section; or
- 30 (b) the erection of which commenced after the twenty-seventh day of September, one thousand nine hundred and fifty-seven.
- (1B) Where—
- 35 (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

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of this Act by reason of the provisions of paragraph (a) of subsection (1A) of this section ;

5 (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

10 (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 occupied,

15

then—

20 (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 ;

25 (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 ;

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35

(iii) any order for recovery of possession or for ejectment as aforesaid shall not be enforced against the sub-lessee ; and

(iv)

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- (iv) the sub-lessee shall on the hearing of any proceedings for such an order be entitled to be heard.
- 5 (xix) 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)";
- 10 (xx) by inserting at the end of the same subsection the following new paragraph:—
- 15 A certificate purporting to be signed by a solicitor or clerk of petty sessions for the purposes of subsection one or (1A) of this section shall be admissible in evidence in any proceedings and shall, in all courts and upon all occasions whatsoever, be prima facie evidence of the particulars certified in and by the certificate.
- 20 (xxi) 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)";
- 25 (xxii) by omitting from the same subsection the word "seventy-seven" and by inserting in lieu thereof the words "fifty-five, seventy-seven, ninety-two, ninety-three";
- 30 (xxiii) by omitting from the same subsection the word "dwelling-houses" and by inserting in lieu thereof the words "prescribed premises";
- (xxiv) by inserting in subsection four of the same section next before the definition of "Prescribed lease" the following new definition:—
- 35 "Dwelling-house" includes—
- (a) the premises of any lodging-house or boarding-house; and
 - (b) any part of premises that is used or has been designed for use

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use for the purposes of residence independently of any other part of the premises,

5 but does not include a part of premises that came into existence as such part by reason of alterations, or alterations and additions, to a dwelling-house made after the commencement of the
10 Local Government (Regulation of Flats) Act, 1955, or premises licensed for the sale of spirituous or fermented liquors.

(xxv) by omitting from the same subsection the definition of "Residential unit" and by inserting in lieu thereof the following definition :—

"Residential unit" means a part of a dwelling-house—

(a) that is used or has been designed for use for the purposes of residence independently of any other part of the dwelling-house; and

(b) that, at the time it came into existence as such part, complied with the requirements of section four of the Local Government (Regulation of Flats) Act, 1955, as in force at that time.

(xxvi) by inserting next after subsection five of the same section the following new subsection :—

(6) The provisions of—

(a) subparagraph (ii) of paragraph (e); or
35 (b) paragraph (b) of subparagraph (i) of paragraph (g),

of subsection one of this section shall not apply in the case of a dwelling-house or residential unit, as the case may be, that immediately
before

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before the date on which the lessee enters into, or is entitled to enter into, possession under the lease referred to in subparagraph (iv) of the said paragraph (e) or in subparagraph (iii) of the said paragraph (g), as the case may be—

- 5
- (c) was by virtue of this section exempt from the provisions of Parts II, III, IV and V of this Act to the extent provided by this section; or
- 10
- (d) was not so exempt, if the lessee under the lease next preceding the lease so referred to signified in writing to the lessor his intention to vacate the dwelling-house or residential unit on or before such date and, in fact, so vacated it on or before that date; or
- 15
- (e) was vacant or was occupied personally by the lessor.
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- (b) (i) 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";
- 25
- (ii) by omitting from subsection (1A) of the same section the words "sections one hundred and four to one hundred and ten, both inclusive, and".
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(2) The amendments made by subparagraphs (vii) and (xxiv) of paragraph (a) of subsection one of this section shall be deemed to have commenced on the tenth day of April, one thousand nine hundred and fifty-eight.

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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.)

5 (b) by inserting next before section eighteen the following new section : —
New sec. 17A.

10 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 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 a period of twelve months next after the day on and from which the fair rent is fixed by the agreement.
Fixing of fair rent of prescribed premises by agreement.

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

- 5 (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 sessions; and
- 10 (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 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;
- 20 (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, shall certify in writing upon the agreement that the agreement has been so explained, and that he has examined the lessee and is satisfied as hereinbefore required, and that the lessee has executed the agreement in his presence.
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A certificate purporting to be signed by a solicitor or clerk of petty sessions for the purposes of subsection two of this section shall be admissible in evidence in any proceedings and shall, in all courts and upon all occasions whatsoever, be prima facie evidence of the particulars certified in and by the certificate.

35 (4)

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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 witnessed, and the agreement to be certified, in the manner provided in this section shall be deemed to be omitted therefrom.

10 (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
15 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
20 of those 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
(b) the agreement was obtained by fraud, duress, intimidation or improper means.

30 (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.

- 35 (c) (i) by omitting from paragraph (j) of subsection one of section twenty-one 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
Sec. 21.
(Matters to be considered.)

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- 5 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";
- (ii) by inserting at the end of the same subsection the following new paragraph :—
- 10 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
- 15 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.
- (iii) by inserting next after subsection (1A) of the same section the following new subsection :—
- 20 (1B) 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
- 25 thereon should be carried out, make any allowance in respect of such repairs, maintenance or renewals, based on paragraph (c) of subsection one of this section.
- (iv) 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)";
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- (d) by inserting in subsection one of section twenty-four after the word "motion" the words "but subject to section 17A of this Act";
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- Sec. 24.
(Fair Rents Board may determine fair rent of its own motion.)
- (e)

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- (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 given to the lessee of the lessor's intention to seek an amendment of the application.

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- (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";

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

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- (g) (i) by inserting in paragraph (b) of subsection one of section thirty-two before the word "by" where firstly occurring the words "subject to section 17A of this Act,";

Sec. 32.
(Variation of determination.)

30 (ii) 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

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- 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, where it or he considers that any repairs, maintenance, or renewals of the premises or any fixtures thereon should be carried out, exclude from the rent as varied any allowance in respect of such repairs, maintenance or renewals, based on paragraph (c) of subsection one of section twenty-one of this Act";
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- 10
- 15 (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.)
- 20 (i) by inserting at the end of subsection two of section fifty-two the words "or by an agreement referred to in 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 section 17A of this Act"; Sec. 57. (Lessor to ascertain fair rent.)
- 25 (ii) by inserting in subsection (1A) of the same section after the word "determination" the words "or by an agreement referred to in section 17A of this Act";
- 30 (k) by inserting in subsection one of section fifty-eight after the words "or a Fair Rents Board)" the words "or, in the case of a certificate by the Controller, by an agreement referred to in section 17A of this Act". Sec. 58. (Certificate as to fair rent.)

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4. (1) 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.)

- 5 (a) (i) by omitting from subparagraph (i) of paragraph (g) of subsection five of section sixty-two the word “occupation” and by inserting in lieu thereof the words “personal occupation as a residence”;
- 10 (ii) by inserting in paragraph (h) of the same subsection after the word “occupation” the words “as a residence”;
- (iii) by inserting in paragraph (i) of the same subsection after the word “occupation” wherever occurring the words “as a residence”;
- 15 (iv) by inserting in paragraph (k) of the same subsection after the word “occupation” the words “as a residence”;
- (v) by omitting from subparagraph (i) of paragraph (l) of the same subsection the word “occupation” and by inserting in lieu thereof the words “personal occupation as a residence”;
- 20 (vi) by omitting from paragraph (t) of the same subsection the words “twenty-first day of July, one thousand nine hundred and forty-eight” and by inserting in lieu thereof the words “tenth day of April, one thousand nine hundred and fifty-eight”;
- 25 (b) (i) by omitting from subsection one of section 62A the words “judge of the District Court for the district” and by inserting in lieu thereof the words “court of petty sessions for the petty sessions district”;
- 30 (ii) by omitting from the same subsection the word “judge” where secondly occurring and by inserting in lieu thereof the word “court”;
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Sec. 62. (Restriction on eviction.)

Sec. 62A. (Judge may bar right to take proceedings where refusal to consent to assignment, etc., unreasonable.)

(iii)

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- (iii) by omitting from subsection (1A) of the same section the words "judge of the District Court" and by inserting in lieu thereof the words "court of petty sessions";
- 5 (iv) by omitting from the same subsection the word "judge" where secondly and thirdly occurring and by inserting in lieu thereof the word "court";
- 10 (v) by omitting from paragraph (a) of subsection two of the same section the words "District Court" where firstly occurring and by inserting in lieu thereof the words "court of petty sessions";
- 15 (vi) by omitting from the same paragraph the words "Supreme Court" and by inserting in lieu thereof the words "District Court";
- 20 (vii) by omitting from the same paragraph the words "judge of the District Court" and by inserting in lieu thereof the words "court of petty sessions";
- 25 (c) (i) by omitting from paragraph (a) of subsection one of section 62B the words "judge of the District Court for the district" and by inserting in lieu thereof the words "court of petty sessions for the petty sessions district"; Sec. 62B. (Power to assign certain tenancies at will.)
- (ii) by omitting from the same paragraph the word "judge" where secondly occurring and by inserting in lieu thereof the word "court";
- 30 (iii) by omitting from paragraph (a) of subsection two of the same section the words "District Court" where firstly occurring and by inserting in lieu thereof the words "court of petty sessions";
- 35 (iv) by omitting from the same paragraph the words "Supreme Court" and by inserting in lieu thereof the words "District Court";
- (v)

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- (v) by omitting from the same paragraph the words "judge of the District Court" and by inserting in lieu thereof the words "court of petty sessions";
- 5 (d) (i) by omitting from subsection one of section sixty-five the words "six months" and by inserting in lieu thereof the words "twelve months";
- 10 (ii) by omitting from the same subsection the word, letter and symbols "paragraph (g)" and by inserting in lieu thereof the words, letters and symbols "paragraph (g) or (m)";
- 15 (iii) by inserting in the same subsection after the word "purchase" where thirdly occurring the words "unless in the case of a notice to quit given on the ground specified in the said paragraph (m) he has first obtained the leave of a court having jurisdiction under this Part so to do";
- 20 (iv) by omitting the proviso to the same subsection;
- (v) by omitting from subsection (1A) of the same section the words "six months" and by inserting in lieu thereof the words "twelve months";
- 25 (vi) by omitting from the same subsection the word, letter and symbols "paragraph (g)" and by inserting in lieu thereof the words, letters and symbols "paragraph (g) or (m)";
- 30 (vii) by inserting in the same subsection after the words "as the case may be" where secondly occurring the words "; unless in the case of a notice to quit given on the ground specified in the said paragraph (m) he has first obtained the leave of a court having jurisdiction under this Part so to do";
- 35 (viii) by omitting the proviso to the same subsection;

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(e) by omitting from subsection one of section sixty-eight the word "six" and by inserting in lieu thereof the word "twelve"; Sec. 68.
(Notice to quit after failure of eviction proceedings.)

5 (f) (i) by omitting subsection two of section seventy and by inserting in lieu thereof the following subsections :— Sec. 70.
(Court to consider hardship.)

10 (2) Notwithstanding anything contained in this section, an order for the recovery of possession of any prescribed premises, being a dwelling-house, from any person on any of the grounds specified in paragraph (g), (i), or (1) of subsection five of section sixty-two of this Act shall not be made unless the court is satisfied that the lessor had provided at the date of expiry of the notice to quit and has immediately available for the occupation of the persons occupying such dwelling-house reasonably suitable alternative accommodation :

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

25 (a) the lessor (not being himself a lessee of the dwelling-house under a concurrent lease) is a protected person within the meaning of Part V of this Act and the lessee is not a protected person within the meaning of that Part or is not a person in receipt of an age pension under the Social Services Consolidation Act 1947 (as amended by subsequent Acts) of the Parliament of the Commonwealth; or

30 (b) the court is satisfied that the lessee has sub-let or has parted with possession of the dwelling-house, and that he was not, at the date of the service of

the

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the notice to quit, a bona fide occupant of the dwelling-house or any part thereof; or

- 5 (c) (i) the lessor is of or above the age of sixty years or is a widow;
- (ii) the lessor or the deceased spouse of the lessor purchased or acquired the dwelling-house at least five years before the date of the issue of the notice to quit;
- 10 (iii) the lessor does not own and has not, within a period of five years before the date of the issue of the notice to quit, owned any other dwelling-house or, if the dwelling-house is one of a pair of semi-detached dwelling-houses that are owned by the lessor, the only other dwelling-house that the lessor owns, or has, within a period of five years before the date of the issue of the notice to quit owned, is the other one of that pair of semi-detached dwelling-houses; and
- 15 (iv) the lessor has resided in the Commonwealth for not less than ten years; or
- 20 (d) (i) (a) at the date on which proceedings for the recovery of possession of the dwelling-house are taken an order for the recovery of possession of some other dwelling-house occupied by the lessor is in force but has not been executed; or
- 25 (b)
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- 35

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- 5 (b) not more than six months
before the date on which
such proceedings are taken
an order for the recovery of
possession of some other
dwelling-house occupied by
the lessor has been exe-
cuted; and
- 10 (ii) the lessee is, and has been for at
least two years, lessor of some
other dwelling-house and in
proceedings for the recovery of
possession thereof on the ground
15 specified in paragraph (g) of
subsection five of section sixty-
two of this Act would not be
under any obligation pursuant to
this subsection to provide reason-
ably suitable alternative accom-
20 modation for the persons occupy-
ing that dwelling-house; or
- (e) (i) evidence is adduced to the court
by or on behalf of the lessor that
the means of the lessee (includ-
25 ing the means of any spouse,
parent and child of the lessee
ordinarily resident with such
lessee) are such that the lessee
is reasonably able to provide
reasonably suitable alternative
30 accommodation for the occupa-
tion of himself and the members
of his family ordinarily occupying
the prescribed premises;
- 35 (ii) the lessee fails to satisfy the court
on evidence as to his means
(including the means of any
spouse, parent and child of
40 the lessee ordinarily resident with
such lessee) that he is not
reasonably

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5 reasonably able to provide
reasonably suitable alternative
accommodation for the occupa-
tion of himself and the members
of his family ordinarily occupying
the prescribed premises; and

10 (iii) the court is satisfied on the evi-
dence before it as to the means
of the lessee and of the lessor
(including the means of any
spouse, parent and child of the
lessee or lessor, as the case may
be, ordinarily resident with such
lessee or lessor, as the case may
15 be) that the lessee is financially
better able to provide reasonably
suitable alternative accommoda-
tion for the occupation of him-
self and the members of his
20 family ordinarily occupying the
prescribed premises than is the
lessor; or

25 (f) the proceedings are for the recovery of
shared accommodation on the ground
specified in paragraph (g) of sub-
section five of section sixty-two of this
Act and the court is satisfied that—

30 (i) at the date on which the notice
to quit was given and during
the period of twelve months
immediately preceding that
date the lessor resided in the
dwelling-house of which the
shared accommodation forms
part; and

35 (ii) at the date on which the notice
to quit was given and during
the twelve months immediately
preceding

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preceding that date only one lease of shared accommodation in that dwelling-house was in force at any one time :

5 Provided further that this subsection shall
not apply in the case of proceedings for the
recovery of possession of prescribed premises,
10 being a dwelling-house, where the proceedings
are taken on the ground specified in paragraph
(g) of subsection five of section sixty-two of
this Act and the court is satisfied that the
refusal to make an order would prejudice any
15 claim or proposed claim by the lessor for a
pension under the Social Services Consolida-
tion Act 1947 (as amended by subsequent
Acts) of the Parliament of the Common-
wealth or the Australian Soldiers' Repatriation
Act 1920 (as amended by subsequent Acts)
of the Parliament of the Commonwealth.

20 (2A) Notwithstanding anything contained
in this section, an order for the recovery of
possession of any prescribed premises, being
a dwelling-house, on the ground specified in
25 paragraph (m) of subsection five of section
sixty-two of this Act shall not be made unless
the court is satisfied—

30 (a) that the lessor had provided at the
date of expiry of the notice to quit
and has immediately available for the
occupation of the persons occupying
such dwelling-house reasonably suit-
able alternative accommodation ;

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

(c)

Landlord and Tenant (Amendment).

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

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

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

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

20 (2B) 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 25 sixty-two of this Act and the lessor purchased or acquired the dwelling-house at least eight years before the date of issue of the notice to quit 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 30 one and two of this section.

35 (ii) by inserting at the end of subsection (4A) of the same section the words "or if the lessee is in receipt of an age pension under the Social Services Consolidation Act 1947 (as amended by subsequent Acts) of the Parliament of the Commonwealth";

(g)

Landlord and Tenant (Amendment).

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

10 " (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—

20 (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
(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,

10

15

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 section the words
“as if he” and by inserting in lieu thereof the
words “as if he or she”;

- (iv) by inserting at the end of the same section
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
exclusion of any other of those persons.

35

(i)

Landlord and Tenant (Amendment).

(i) (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 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

35 (d) where no person referred to in paragraph (a), (b) or (c) of this subsection was so residing or is so in possession,

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- 5 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”;
- 10 (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.”;
- 15 (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),
20 (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.
- 25 (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
30 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”;
- 35 (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

Landlord and Tenant (Amendment).

person having the right under subsection one of this section to continue in possession of the premises”;

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

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

- 20 (k) by omitting section eighty-four and by inserting in lieu thereof the following section : — Subst. sec. 84.

25 84. In any proceedings in relation to which this Part applies, not being proceedings in respect of an offence arising under this Part, the court may in its discretion order payment by the lessor to the lessee of such sum as it deems proper to meet his reasonable costs and the provisions of subsection three of section sixty-one of this Act shall apply mutatis mutandis to and in respect of any order allowing costs under this section. Costs to be allowed.

- 30 (l) (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.)
- 35 (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)

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

5 (m) (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.)

10 (2) The amendments made by paragraphs (b) and (c) of subsection one of this section shall commence upon a day to be appointed by the Governor and notified by proclamation published in the Gazette.

15 (3) Any proceedings commenced but not completed at the commencement of the amendments made by paragraphs (b) and (c) of subsection one of this section may be continued and completed in all respects as if those amendments had not been made.

20 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;

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

25 (ii) by inserting at the end of paragraph (b) of the same subsection the words "and, in addition, where the premises are sold at an auction sale, the vendor has given to the lessee not less than twenty-one days' notice in writing of the proposed auction sale";

(b)

Landlord and Tenant (Amendment).

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

Sec. 89.
(Contracting out prohibited.)

5 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) by inserting at the end of section ninety the following new paragraph :—

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

10 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.

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

Sec. 94.
(Proof of instruments.)

20 (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—

25 (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 ;

30 (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

35 the

Landlord and Tenant (Amendment).

- the certificate premises to which an order made under subsection one of section 6A of this Act applies or applied ;
- 5 (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 ;
- 10 (d) a lease or agreement, specified in the certificate, being a lease of, or an agreement in respect 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 ;
- 15 (e) the premises described in the certificate are or are not at the date of the certificate, or were or were not at any time or during any period specified in the certificate, premises in respect of which a certificate under section 6A, seven, eighty-six, 86A, eighty-seven or 87B of this Act is or was in force,
- 20 shall be admissible in evidence in any proceedings and shall, until the contrary is proved, be accepted as evidence of the matters therein certified to.
- 25

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

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

Further amendment of Act No. 25, 1948.

(Part V.—Protected Persons.)

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

(b)

Landlord and Tenant (Amendment).

- | | |
|---|--|
| (b) by omitting section one hundred and four ; | Sec. 104.
(Letting of unoccupied houses to protected persons.) |
| (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.) |
| (e) by omitting section one hundred and seven ; | Sec. 107.
(Provisions where several applications made in respect of same dwelling-house.) |
| 5 (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.) |

PROOF

No. , 1964.

A BILL

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 ; to validate certain matters ; and for purposes connected therewith.

[MR. MANNIX;—2 December, 1964.]

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, 1964".

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, 1948-1964.

5 2. (1) 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.—Preliminary.)

- 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 subparagraph (v) of paragraph (b) of the same subsection 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 paragraph (c) of the same subsection after the word "solicitor" the words "or clerk of petty sessions";
- 25 (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 subparagraph (v) of paragraph (d) of the same subsection after the word "solicitor" the words "or clerk of petty sessions";
- (vii) by omitting from paragraph (e) of the same subsection the words "(not being a residential unit)";
- (viii)

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

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- (viii) 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";
- 5 (ix) by inserting in paragraph (c) of subparagraph (iv) of paragraph (e) of the same subsection after the word "solicitor" the words "or clerk of petty sessions";
- 10 (x) by inserting in paragraph (d) of subparagraph (i) of paragraph (f) of the same subsection after the word "Act;" the word "and";
- (xi) by omitting subparagraph (ii) of paragraph (f) of the same subsection;
- 15 (xii) 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";
- (xiii) by inserting in paragraph (c) of subparagraph (iii) of paragraph (f) of the same subsection after the word "solicitor" the words "or clerk of petty sessions";
- 20 (xiv) by inserting in paragraph (c) of subparagraph (i) of paragraph (g) of the same subsection after the word "Act;" the word "and";
- 25 (xv) by omitting subparagraph (ii) of paragraph (g) of the same subsection;
- (xvi) 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";
- 30 (xvii) by inserting in paragraph (c) of subparagraph (iii) of paragraph (g) of the same subsection after the word "solicitor" the words "or clerk of petty sessions";
- 35 (xviii) 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

Landlord and Tenant (Amendment).

any premises used for business or commercial purposes—

- 5 (a) (i) that were in existence on the twenty-seventh day of September, one thousand nine hundred and fifty-seven, or were commenced on or before and completed after that day;
- 10 (ii) that are not “special premises” for the purposes of this Act; and
- (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—
- 15 (a) that is registered in the office of the Rent Controller;
- 20 (b) the execution of which by the lessee is witnessed by a solicitor instructed and employed independently of the lessor or by a clerk of petty sessions; and
- 25 (c) that is certified by that solicitor or clerk of petty sessions as provided in subsection two of this section; or
- 30 (b) the erection of which commenced after the twenty-seventh day of September, one thousand nine hundred and fifty-seven.
- (1B) Where—
- 35 (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

Landlord and Tenant (Amendment).

of this Act by reason of the provisions of paragraph (a) of subsection (1A) of this section ;

5

(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

10

(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 occupied,

15

then—

20

(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 ;

25

(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 ;

30

35

(iii) any order for recovery of possession or for ejectment as aforesaid shall not be enforced against the sub-lessee ; and

(iv)

Landlord and Tenant (Amendment).

- (iv) the sub-lessee shall on the hearing of any proceedings for such an order be entitled to be heard.
- 5 (xix) 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)";
- 10 (xx) by inserting at the end of the same subsection the following new paragraph:—
- 15 A certificate purporting to be signed by a solicitor or clerk of petty sessions for the purposes of subsection one or (1A) of this section shall be admissible in evidence in any proceedings and shall, in all courts and upon all occasions whatsoever, be prima facie evidence of the particulars certified in and by the certificate.
- 20 (xxi) 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)";
- 25 (xxii) by omitting from the same subsection the word "seventy-seven" and by inserting in lieu thereof the words "fifty-five, seventy-seven, ninety-two, ninety-three";
- 30 (xxiii) by omitting from the same subsection the word "dwelling-houses" and by inserting in lieu thereof the words "prescribed premises";
- (xxiv) by inserting in subsection four of the same section next before the definition of "Prescribed lease" the following new definition:—
- 35 "Dwelling-house" includes—
- (a) the premises of any lodging-house or boarding-house; and
 - (b) any part of premises that is used or has been designed for use

Landlord and Tenant (Amendment).

use for the purposes of residence independently of any other part of the premises,

5 but does not include a part of premises that came into existence as such part by reason of alterations, or alterations and additions, to a dwelling-house made after the commencement of the
10 Local Government (Regulation of Flats) Act, 1955, or premises licensed for the sale of spirituous or fermented liquors.

(xxv) by omitting from the same subsection the definition of "Residential unit" and by inserting in lieu thereof the following definition :—
15

"Residential unit" means a part of a dwelling-house—

(a) that is used or has been designed for use for the purposes of residence independently of any other part of the dwelling-house; and
20

(b) that, at the time it came into existence as such part, complied with the requirements of section four of the Local Government (Regulation of Flats) Act, 1955, as in force at that time.
25

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

(6) The provisions of—

(a) subparagraph (ii) of paragraph (e); or
35 (b) paragraph (b) of subparagraph (i) of paragraph (g),

of subsection one of this section shall not apply in the case of a dwelling-house or residential unit, as the case may be, that immediately before

Landlord and Tenant (Amendment).

5 before the date on which the lessee enters into, or is entitled to enter into, possession under the lease referred to in subparagraph (iv) of the said paragraph (e) or in subparagraph (iii) of the said paragraph (g), as the case may be—

10 (c) was by virtue of this section exempt from the provisions of Parts II, III, IV and V of this Act to the extent provided by this section; or

15 (d) was not so exempt, if the lessee under the lease next preceding the lease so referred to signified in writing to the lessor his intention to vacate the dwelling-house or residential unit on or before such date and, in fact, so vacated it on or before that date; or

(e) was vacant or was occupied personally by the lessor.

20 (b) (i) by inserting in subsection one of section eight Sec. 8. (Definitions.) 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";

25 (ii) by omitting from subsection (1A) of the same section the words "sections one hundred and four to one hundred and ten, both inclusive, and".

35 (2) The amendments made by subparagraphs (vii) and (xxiv) of paragraph (a) of subsection one of this section shall be deemed to have commenced on the tenth day of April, one thousand nine hundred and fifty-eight.

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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.)

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

New sec. 17A.

10 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 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 a period of twelve months next after the day on and from which the fair rent is fixed by the agreement.

Fixing of fair rent of prescribed premises by agreement.

Landlord and Tenant (Amendment).

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

- 5 (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 sessions; and
- 10 (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 certifying to an agreement for the purposes of subsection two of this section—

- 15 (a) shall explain the agreement to the lessee;
- (b) shall examine the lessee touching his knowledge of the agreement;
- 20 (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, shall certify in writing upon the agreement that the agreement has been so explained, and that he has examined the lessee and is satisfied as hereinbefore required, and that
- 25 the lessee has executed the agreement in his presence.
- 30

A certificate purporting to be signed by a solicitor or clerk of petty sessions for the purposes of subsection two of this section shall be admissible in evidence in any proceedings and shall, in all courts and upon all occasions whatsoever, be prima facie evidence of the particulars certified in and by the certificate.

(4)

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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 witnessed, and the agreement to be certified, in the manner provided in this section shall be deemed to be omitted therefrom.

10 (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
15 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
20 of those 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
(b) the agreement was obtained by fraud, duress, intimidation or improper means.

30 (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.

- 35 (c) (i) by omitting from paragraph (j) of subsection one of section twenty-one 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
Sec. 21.
(Matters to be considered.)

Landlord and Tenant (Amendment).

5 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";

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

10 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
15 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 (iii) by inserting next after subsection (1A) of the same section the following new subsection : —

25 (1B) 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 in respect of such repairs, maintenance or renewals, based on paragraph (c) of subsection one of this section.

30 (iv) 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)";

35 (d) by inserting in subsection one of section twenty-four after the word "motion" the words "but subject to section 17A of this Act";

Sec. 24.
(Fair Rents 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.)

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 given to the lessee of the lessor's intention to seek an amendment of the application.

10

- (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";
- 25

- (g) (i) by inserting in paragraph (b) of subsection one of section thirty-two before the word "by" where firstly occurring the words "subject to section 17A of this Act,";

Sec. 32.
(Variation of determination.)

- 30 (ii) 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
- 35

Landlord and Tenant (Amendment).

- 5 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 Con-
troller in making the variation shall, where it
or he considers that any repairs, maintenance,
10 or renewals of the premises or any fixtures
thereon should be carried out, exclude from
the rent as varied any allowance in respect of
such repairs, maintenance or renewals, based
on paragraph (c) of subsection one of section
twenty-one of this Act";
- 15 (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";
- (h) Sec. 35.
(Premises
not to be let
at rent
exceeding
fair rent.)
- 20 (i) by inserting at the end of subsection two of section
fifty-two the words "or by an agreement referred
to in section 17A of this Act";
- (i) Sec. 52.
(Informa-
tion 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 section 17A
of this Act";
- (j) Sec. 57.
(Lessor to
ascertain
fair rent.)
- 25 (ii) by inserting in subsection (1A) of the same
section after the word "determination" the
words "or by an agreement referred to in
section 17A of this Act";
- 30 (k) by inserting in subsection one of section fifty-eight
after the words "or a Fair Rents Board)" the words
"or, in the case of a certificate by the Controller,
by an agreement referred to in section 17A of this
Act".
- (k) Sec. 58.
(Certificate
as to fair
rent.)

Landlord and Tenant (Amendment).

4. (1) 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.)

- 5 (a) (i) by omitting from subparagraph (i) of paragraph (g) of subsection five of section sixty-two the word “occupation” and by inserting in lieu thereof the words “personal occupation as a residence”;
- 10 (ii) by inserting in paragraph (h) of the same subsection after the word “occupation” the words “as a residence”;
- (iii) by inserting in paragraph (i) of the same subsection after the word “occupation” wherever occurring the words “as a residence”;
- 15 (iv) by inserting in paragraph (k) of the same subsection after the word “occupation” the words “as a residence”;
- (v) by omitting from subparagraph (i) of paragraph (l) of the same subsection the word “occupation” and by inserting in lieu thereof the words “personal occupation as a residence”;
- 20 (vi) by omitting from paragraph (t) of the same subsection the words “twenty-first day of July, one thousand nine hundred and forty-eight” and by inserting in lieu thereof the words “tenth day of April, one thousand nine hundred and fifty-eight”;
- 25 (b) (i) by omitting from subsection one of section 62A the words “judge of the District Court for the district” and by inserting in lieu thereof the words “court of petty sessions for the petty sessions district”;
- 30 (ii) by omitting from the same subsection the word “judge” where secondly occurring and by inserting in lieu thereof the word “court”;
- 35 (iii)

Sec. 62. (Restriction on eviction.)

Sec. 62A. (Judge may bar right to take proceedings where refusal to consent to assignment, etc., unreasonable.)

Landlord and Tenant (Amendment).

- (iii) by omitting from subsection (1A) of the same section the words "judge of the District Court" and by inserting in lieu thereof the words "court of petty sessions";
- 5 (iv) by omitting from the same subsection the word "judge" where secondly and thirdly occurring and by inserting in lieu thereof the word "court";
- 10 (v) by omitting from paragraph (a) of subsection two of the same section the words "District Court" where firstly occurring and by inserting in lieu thereof the words "court of petty sessions";
- 15 (vi) by omitting from the same paragraph the words "Supreme Court" and by inserting in lieu thereof the words "District Court";
- 20 (vii) by omitting from the same paragraph the words "judge of the District Court" and by inserting in lieu thereof the words "court of petty sessions";
- 25 (c) (i) by omitting from paragraph (a) of subsection one of section 62B the words "judge of the District Court for the district" and by inserting in lieu thereof the words "court of petty sessions for the petty sessions district"; Sec. 62B. (Power to assign certain tenancies at will.)
- 30 (ii) by omitting from the same paragraph the word "judge" where secondly occurring and by inserting in lieu thereof the word "court";
- (iii) by omitting from paragraph (a) of subsection two of the same section the words "District Court" where firstly occurring and by inserting in lieu thereof the words "court of petty sessions";
- 35 (iv) by omitting from the same paragraph the words "Supreme Court" and by inserting in lieu thereof the words "District Court";

(v)

Landlord and Tenant (Amendment).

- (v) by omitting from the same paragraph the words "judge of the District Court" and by inserting in lieu thereof the words "court of petty sessions";
- 5 (d) (i) by omitting from subsection one of section sixty-five the words "six months" and by inserting in lieu thereof the words "twelve months"; Sec. 65.
(Notice to quit where dwelling-house sold.)
- 10 (ii) by omitting from the same subsection the word, letter and symbols "paragraph (g)" and by inserting in lieu thereof the words, letters and symbols "paragraph (g) or (m)";
- 15 (iii) by inserting in the same subsection after the word "purchase" where thirdly occurring the words "unless in the case of a notice to quit given on the ground specified in the said paragraph (m) he has first obtained the leave of a court having jurisdiction under this Part so to do";
- 20 (iv) by omitting the proviso to the same subsection;
- (v) by omitting from subsection (1A) of the same section the words "six months" and by inserting in lieu thereof the words "twelve months";
- 25 (vi) by omitting from the same subsection the word, letter and symbols "paragraph (g)" and by inserting in lieu thereof the words, letters and symbols "paragraph (g) or (m)";
- 30 (vii) by inserting in the same subsection after the words "as the case may be" where secondly occurring the words ", unless in the case of a notice to quit given on the ground specified in the said paragraph (m) he has first obtained the leave of a court having jurisdiction under this Part so to do";
- 35 (viii) by omitting the proviso to the same subsection;
- 121—B (e)

Landlord and Tenant (Amendment).

(e) by omitting from subsection one of section sixty-eight the word "six" and by inserting in lieu thereof the word "twelve"; Sec. 68.
(Notice to quit after failure of eviction proceedings.)

5 (f) (i) by omitting subsection two of section seventy and by inserting in lieu thereof the following subsections :— Sec. 70.
(Court to consider hardship.)

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

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

25 (a) the lessor (not being himself a lessee of the dwelling-house under a concurrent lease) is a protected person within the meaning of Part V of this Act and the lessee is not a protected person within the meaning of that Part or is not a person in receipt of an age pension under the Social Services Consolidation Act 1947 (as amended by subsequent Acts) of the Parliament of the Commonwealth; or

30 (b) the court is satisfied that the lessee has sub-let or has parted with possession of the dwelling-house, and that he was not, at the date of the service of
35 the

Landlord and Tenant (Amendment).

the notice to quit, a bona fide occupant of the dwelling-house or any part thereof; or

- 5 (c) (i) the lessor is of or above the age of sixty years or is a widow;
- 10 (ii) the lessor or the deceased spouse of the lessor purchased or acquired the dwelling-house at least five years before the date of the issue of the notice to quit;
- 15 (iii) the lessor does not own and has not, within a period of five years before the date of the issue of the notice to quit, owned any other dwelling-house or, if the dwelling-house is one of a pair of semi-detached dwelling-houses that are owned by the lessor, the only other dwelling-house that the lessor owns, or has, within a period of five years before the date of the issue of the notice to quit owned, is the other one of that pair of semi-detached dwelling-houses; and
- 20 (iv) the lessor has resided in the Commonwealth for not less than ten years; or
- 25 (d) (i) (a) at the date on which proceedings for the recovery of possession of the dwelling-house are taken an order for the recovery of possession of some other dwelling-house occupied by the lessor is in force but has not been executed; or
- 30 (b)
- 35

Landlord and Tenant (Amendment).

- 5 (b) not more than six months before the date on which such proceedings are taken an order for the recovery of possession of some other dwelling-house occupied by the lessor has been executed; and
- 10 (ii) the lessee is, and has been for at least two years, lessor of some other dwelling-house and in proceedings for the recovery of possession thereof on the ground specified in paragraph (g) of subsection five of section sixty-two of this Act would not be under any obligation pursuant to this subsection to provide reasonably suitable alternative accommodation for the persons occupying that dwelling-house; or
- 15 (e) (i) evidence is adduced to the court by or on behalf of the lessor that the means of the lessee (including the means of any spouse, parent and child of the lessee ordinarily resident with such lessee) are such that the lessee is reasonably able to provide reasonably suitable alternative accommodation for the occupation of himself and the members of his family ordinarily occupying the prescribed premises;
- 20 (ii) the lessee fails to satisfy the court on evidence as to his means (including the means of any spouse, parent and child of the lessee ordinarily resident with such lessee) that he is not
- 25 reasonably
- 30
- 35
- 40

Landlord and Tenant (Amendment).

- 5 reasonably able to provide
reasonably suitable alternative
accommodation for the occupa-
tion of himself and the members
of his family ordinarily occupying
the prescribed premises; and
- 10 (iii) the court is satisfied on the evi-
dence before it as to the means
of the lessee and of the lessor
(including the means of any
spouse, parent and child of the
lessee or lessor, as the case may
be, ordinarily resident with such
lessee or lessor, as the case may
15 be) that the lessee is financially
better able to provide reasonably
suitable alternative accommoda-
tion for the occupation of him-
self and the members of his
family ordinarily occupying the
20 prescribed premises than is the
lessor; or
- 25 (f) the proceedings are for the recovery of
shared accommodation on the ground
specified in paragraph (g) of sub-
section five of section sixty-two of this
Act and the court is satisfied that—
- 30 (i) at the date on which the notice
to quit was given and during
the period of twelve months
immediately preceding that
date the lessor resided in the
dwelling-house of which the
shared accommodation forms
part; and
- 35 (ii) at the date on which the notice
to quit was given and during
the twelve months immediately
preceding

Landlord and Tenant (Amendment).

preceding that date only one
lease of shared accommodation
in that dwelling-house was in
force at any one time :

5 Provided further that this subsection shall
not apply in the case of proceedings for the
recovery of possession of prescribed premises,
being a dwelling-house, where the proceedings
10 are taken on the ground specified in paragraph
(g) of subsection five of section sixty-two of
this Act and the court is satisfied that the
refusal to make an order would prejudice any
claim or proposed claim by the lessor for a
15 pension under the Social Services Consolida-
tion Act 1947 (as amended by subsequent
Acts) of the Parliament of the Common-
wealth or the Australian Soldiers' Repatriation
Act 1920 (as amended by subsequent Acts)
of the Parliament of the Commonwealth.

20 (2A) Notwithstanding anything contained
in this section, an order for the recovery of
possession of any prescribed premises, being
a dwelling-house, on the ground specified in
25 paragraph (m) of subsection five of section
sixty-two of this Act shall not be made unless
the court is satisfied—

30 (a) that the lessor had provided at the
date of expiry of the notice to quit
and has immediately available for the
occupation of the persons occupying
such dwelling-house reasonably suit-
able alternative accommodation ;

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

(c)

Landlord and Tenant (Amendment).

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

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

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

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

20 (2B) 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 25 sixty-two of this Act and the lessor purchased or acquired the dwelling-house at least eight years before the date of issue of the notice to quit 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 30 one and two of this section.

35 (ii) by inserting at the end of subsection (4A) of the same section the words "or if the lessee is in receipt of an age pension under the Social Services Consolidation Act 1947 (as amended by subsequent Acts) of the Parliament of the Commonwealth";

(g)

Landlord and Tenant (Amendment).

(g) 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 (h) (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,

10

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

30

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
(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,

10

15

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 section the words
“as if he” and by inserting in lieu thereof the
words “as if he or she”;

- (iv) by inserting at the end of the same section
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
exclusion of any other of those persons.

35

(i)

Landlord and Tenant (Amendment).

(i) (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 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

35 (d) where no person referred to in paragraph (a), (b) or (c) of this subsection was so residing or is so in possession,

Landlord and Tenant (Amendment).

- 5 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”;
- 10 (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.”;
- 15 (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),
20 (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.
- 25 (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
30 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”;
- 35 (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

Landlord and Tenant (Amendment).

person having the right under subsection one of this section to continue in possession of the premises”;

- 5 (j) by inserting next after section 83A the following new sec. 83B. —

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.

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

- (k) by omitting section eighty-four and by inserting in lieu thereof the following section :—

25 84. In any proceedings in relation to which this Part applies, not being proceedings in respect of an offence arising under this Part, the court may in its discretion order payment by the lessor to the lessee of such sum as it deems proper to meet his reasonable costs and the provisions of subsection three of section sixty-one of this Act shall apply mutatis mutandis to and in respect of any order allowing costs under this section.

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Subst. sec. 84.
Costs to be allowed.

- 35 (1) (i) by omitting from subsection three of section eighty-six the word “five” and by inserting in lieu thereof the word “seven”;
- (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)

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

Landlord and Tenant (Amendment).

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

10 (2) The amendments made by paragraphs (b) and (c) of subsection one of this section shall commence upon a day to be appointed by the Governor and notified by proclamation published in the Gazette.

15 (3) Any proceedings commenced but not completed at the commencement of the amendments made by paragraphs (b) and (c) of subsection one of this section may be continued and completed in all respects as if those amendments had not been made.

20 **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 inserting at the end of paragraph (b) of the same subsection the words "and, in addition, where the premises are sold at an auction sale, the vendor has given to the lessee not less than twenty-one days' notice in writing of the proposed auction sale";

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

(b)

Landlord and Tenant (Amendment).

(b) by inserting at the end of section eighty-nine the following new paragraph :— Sec. 89.
(Contracting out prohibited.)

5 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) by inserting at the end of section ninety the following new paragraph :— Sec. 90.
(Contracts to evade Act prohibited.)

10 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) by inserting at the end of section ninety-four the following new subsection :— Sec. 94.
(Proof of instruments.)

15 (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—

20 (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;

25 (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

Landlord and Tenant (Amendment).

the certificate premises to which an order made under subsection one of section 6A of this Act applies or applied ;

5 (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 ;

10 (d) a lease or agreement, specified in the certificate, being a lease of, or an agreement in respect 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 ;

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

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

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.)

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

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

(b)

Landlord and Tenant (Amendment).

- (b) by omitting section one hundred and four ; Sec. 104.
(Letting of unoccupied houses to protected persons.)
- (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.)
- (e) by omitting section one hundred and seven ; Sec. 107.
(Provisions where several applications made in respect of same dwelling-house.)
- 5 (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—1964

LANDLORD AND TENANT (AMENDMENT) BILL, 1964.

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 extend paragraph (e) of section 5A (1) of the Act so as to apply it to residential units other than those created under the Local Government (Regulation of Flats) Act, 1955 ;
- (d) to remove the necessity in certain circumstances of a lessor obtaining vacant possession of a dwelling-house in order that the dwelling-house will be subject to section 5A (1) (e) and (g) of the Act ;
- (e) 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 ;
- (f) to permit a lessor and lessee of prescribed premises to enter into an agreement fixing the rent of any premises (other than shared accommodation) and to provide that such rent is as between the lessor and lessee deemed to be the fair rent of those premises ;
- (g) 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 ;
- (h) 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 ;
- (i) 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 ;
- (j) 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 ;
- (k) to require that notice to quit may only be given in respect of a dwelling-house on a ground referred to in paragraph (g), (h), (i) or (k) of section 62 (5) of the Act if the dwelling-house is required for personal occupation as a residence ;
- (l) to transfer the powers of District Courts under section 62A or 62B of the Act to courts of petty sessions ;
- (m) to extend to twelve months the period during which a lessor is prohibited from giving a notice to quit on the ground specified in paragraph (g) or (m) of section 62 (5) of the Act where the lessor has become the lessor by the purchase of the prescribed premises unless, in the case of paragraph (m), the lessor obtains the leave of the court ;

- (n) to vary section 62 (5) (t) of the Act so that premises in respect of which the notice to quit is given must have been purchased or acquired before 10th April, 1958 ;
- (o) to extend to twelve months the period within which a notice to quit may not be given after failure of eviction proceedings ;
- (p) to re-enact, with modifications, the provisions of section 70 (2) of the Act so as to require reasonably suitable alternative accommodation to be provided in certain circumstances ;
- (q) to remove the requirement under section 70 (2) of the Act requiring the provision of reasonably suitable alternative accommodation where notice to quit is given on the ground specified in section 65 (2) (g) (i) of the Act and 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 ;
- (r) 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 ;
- (s) 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 for a period of not less than two years immediately before his death ;
- (t) 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 ;
- (u) to empower the court to award costs against the lessor in eviction proceedings ;
- (v) 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 ;
- (w) to require that where prescribed premises, being a dwelling-house, are to be sold the lessee must be given first option to purchase and, in addition, if the premises are to be sold at an auction sale, 21 days' notice of the auction sale ;
- (x) 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 section 7, 86, 86A, 87 or 87B, or whether a lease or agreement is registered under section 5A or 17A of the Act ;
- (y) to repeal sections 104-110 of the Act relating to the letting of unoccupied dwelling-houses to protected persons ;
- (z) to make other provisions of a minor or ancillary character.

No. , 1964.

A BILL

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 ; to validate certain matters ; and for purposes connected therewith.

[MR. MANNIX ;—2 *December*, 1964.]

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, 1964".

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, 1948-1964.

5 **2.** (1) 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.—Preliminary.)

- 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"; Sec. 5A. (Certain premises excluded from operation of Act.)
- 15 (ii) by inserting in paragraph (c) of subparagraph (v) of paragraph (b) of the same subsection 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 paragraph (c) of the same subsection 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";
- (vi) by inserting in paragraph (c) of subparagraph (v) of paragraph (d) of the same subsection after the word "solicitor" the words "or clerk of petty sessions";
- (vii) by omitting from paragraph (e) of the same subsection the words "(not being a residential unit)";
- (viii)

Landlord and Tenant (Amendment).

- (viii) 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";
- 5 (ix) by inserting in paragraph (c) of subparagraph (iv) of paragraph (e) of the same subsection after the word "solicitor" the words "or clerk of petty sessions";
- 10 (x) by inserting in paragraph (d) of subparagraph (i) of paragraph (f) of the same subsection after the word "Act;" the word "and";
- (xi) by omitting subparagraph (ii) of paragraph (f) of the same subsection;
- 15 (xii) 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";
- (xiii) by inserting in paragraph (c) of subparagraph (iii) of paragraph (f) of the same subsection after the word "solicitor" the words "or clerk of petty sessions";
- 20 (xiv) by inserting in paragraph (c) of subparagraph (i) of paragraph (g) of the same subsection after the word "Act;" the word "and";
- 25 (xv) by omitting subparagraph (ii) of paragraph (g) of the same subsection;
- (xvi) 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";
- 30 (xvii) by inserting in paragraph (c) of subparagraph (iii) of paragraph (g) of the same subsection after the word "solicitor" the words "or clerk of petty sessions";
- 35 (xviii) 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

Landlord and Tenant (Amendment).

any premises used for business or commercial purposes—

- 5 (a) (i) that were in existence on the twenty-seventh day of September, one thousand nine hundred and fifty-seven, or were commenced on or before and completed after that day;
- 10 (ii) that are not “special premises” for the purposes of this Act; and
- (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—
- 15 (a) that is registered in the office of the Rent Controller;
- 20 (b) the execution of which by the lessee is witnessed by a solicitor instructed and employed independently of the lessor or by a clerk of petty sessions; and
- 25 (c) that is certified by that solicitor or clerk of petty sessions as provided in subsection two of this section; or
- 30 (b) the erection of which commenced after the twenty-seventh day of September, one thousand nine hundred and fifty-seven.
- (1B) Where—
- 35 (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

Landlord and Tenant (Amendment).

of this Act by reason of the provisions of paragraph (a) of subsection (1A) of this section ;

5 (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

10 (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
15 occupied,

then—

(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 ;

20
25 (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 ejection 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
30 that time ;

35 (iii) any order for recovery of possession or for ejection as aforesaid shall not be enforced against the sub-lessee ; and

(iv)

Landlord and Tenant (Amendment).

- (iv) the sub-lessee shall on the hearing of any proceedings for such an order be entitled to be heard.
- 5 (xix) 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)";
- 10 (xx) by inserting at the end of the same subsection the following new paragraph:—
- 15 A certificate purporting to be signed by a solicitor or clerk of petty sessions for the purposes of subsection one or (1A) of this section shall be admissible in evidence in any proceedings and shall, in all courts and upon all occasions whatsoever, be prima facie evidence of the particulars certified in and by the certificate.
- 20 (xxi) 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)";
- 25 (xxii) by omitting from the same subsection the word "seventy-seven" and by inserting in lieu thereof the words "fifty-five, seventy-seven, ninety-two, ninety-three";
- 30 (xxiii) by omitting from the same subsection the word "dwelling-houses" and by inserting in lieu thereof the words "prescribed premises";
- (xxiv) by inserting in subsection four of the same section next before the definition of "Prescribed lease" the following new definition:—
- 35 "Dwelling-house" includes—
- (a) the premises of any lodging-house or boarding-house; and
 - (b) any part of premises that is used or has been designed for use

Landlord and Tenant (Amendment).

use for the purposes of residence independently of any other part of the premises,

5 but does not include a part of premises that came into existence as such part by reason of alterations, or alterations and additions, to a dwelling-house made after the commencement of the
10 Local Government (Regulation of Flats) Act, 1955, or premises licensed for the sale of spirituous or fermented liquors.

(xxv) by omitting from the same subsection the definition of "Residential unit" and by inserting in lieu thereof the following definition :—
15

"Residential unit" means a part of a dwelling-house—

(a) that is used or has been designed for use for the purposes of residence independently of any other part of the dwelling-house; and
20

(b) that, at the time it came into existence as such part, complied with the requirements of section four of the Local Government (Regulation of Flats) Act, 1955, as in force at that time.
25

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

(6) The provisions of—

(a) subparagraph (ii) of paragraph (e); or
35 (b) paragraph (b) of subparagraph (i) of paragraph (g),

of subsection one of this section shall not apply in the case of a dwelling-house or residential unit, as the case may be, that immediately before

Landlord and Tenant (Amendment).

before the date on which the lessee enters into, or is entitled to enter into, possession under the lease referred to in subparagraph (iv) of the said paragraph (e) or in subparagraph (iii) of the said paragraph (g), as the case may be—

5

(c) was by virtue of this section exempt from the provisions of Parts II, III, IV and V of this Act to the extent provided by this section; or

10

(d) was not so exempt, if the lessee under the lease next preceding the lease so referred to signified in writing to the lessor his intention to vacate the dwelling-house or residential unit on or before such date and, in fact, so vacated it on or before that date; or

15

(e) was vacant or was occupied personally by the lessor.

20

(b) (i) 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.)

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(ii) by omitting from subsection (1A) of the same section the words "sections one hundred and four to one hundred and ten, both inclusive, and".

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(2) The amendments made by subparagraphs (vii) and (xxiv) of paragraph (a) of subsection one of this section shall be deemed to have commenced on the tenth day of April, one thousand nine hundred and fifty-eight.

Landlord and Tenant (Amendment).

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.)

5 (b) by inserting next before section eighteen the following new section :— New sec. 17A.

10 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 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 a period of twelve months next after the day on and from which the fair rent is fixed by the agreement. Fixing of fair rent of prescribed premises by agreement.

(2)

Landlord and Tenant (Amendment).

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

- 5 (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 sessions; and
- 10 (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 certifying to an agreement for the purposes of subsection two of this section—

- 15 (a) shall explain the agreement to the lessee;
- (b) shall examine the lessee touching his knowledge of the agreement;
- 20 (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, shall certify in writing upon the agreement that the agreement has been so explained, and that he has examined the lessee and is satisfied as hereinbefore required, and that the lessee has executed the agreement in his presence.
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- 30

A certificate purporting to be signed by a solicitor or clerk of petty sessions for the purposes of subsection two of this section shall be admissible in evidence in any proceedings and shall, in all courts and upon all occasions whatsoever, be prima facie evidence of the particulars certified in and by the certificate.

(4)

Landlord and Tenant (Amendment).

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 witnessed, and the agreement to be certified, in the manner provided in this section shall be deemed to be omitted therefrom.

10 (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
15 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
20 of those 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
(b) the agreement was obtained by fraud, duress, intimidation or improper means.

30 (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.

- 35 (c) (i) by omitting from paragraph (j) of subsection one of section twenty-one 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
Sec. 21.
(Matters to be considered.)

Landlord and Tenant (Amendment).

5 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";

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

10 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
15 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 (iii) by inserting next after subsection (1A) of the same section the following new subsection :—

(1B) 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
25 allowance in respect of such repairs, maintenance or renewals, based on paragraph (c) of subsection one of this section.

- 30 (iv) 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)";

- 35 (d) by inserting in subsection one of section twenty-four after the word "motion" the words "but subject to section 17A of this Act";

Sec. 24.
(Fair Rents 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.)

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 given to the lessee of the lessor's intention to seek an amendment of the application.

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- (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";
- 25

- (g) (i) by inserting in paragraph (b) of subsection one of section thirty-two before the word "by" where firstly occurring the words "subject to section 17A of this Act,";

Sec. 32.
(Variation of determination.)

- 30 (ii) 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
- 35

Landlord and Tenant (Amendment).

- 5 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, where it or he considers that any repairs, maintenance, or renewals of the premises or any fixtures thereon should be carried out, exclude from the rent as varied any allowance in respect of such repairs, maintenance or renewals, based on paragraph (c) of subsection one of section twenty-one of this Act";
- 10
- 15 (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.)
- 20 (i) by inserting at the end of subsection two of section fifty-two the words "or by an agreement referred to in 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 section 17A of this Act"; Sec. 57. (Lessor to ascertain fair rent.)
- 25 (ii) by inserting in subsection (1A) of the same section after the word "determination" the words "or by an agreement referred to in section 17A of this Act";
- 30 (k) by inserting in subsection one of section fifty-eight after the words "or a Fair Rents Board)" the words "or, in the case of a certificate by the Controller, by an agreement referred to in section 17A of this Act". Sec. 58. (Certificate as to fair rent.)

Landlord and Tenant (Amendment).

4. (1) 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.)

- 5 (a) (i) by omitting from subparagraph (i) of paragraph (g) of subsection five of section sixty-two the word “occupation” and by inserting in lieu thereof the words “personal occupation as a residence”;
- 10 (ii) by inserting in paragraph (h) of the same subsection after the word “occupation” the words “as a residence”;
- (iii) by inserting in paragraph (i) of the same subsection after the word “occupation” wherever occurring the words “as a residence”;
- 15 (iv) by inserting in paragraph (k) of the same subsection after the word “occupation” the words “as a residence”;
- (v) by omitting from subparagraph (i) of paragraph (l) of the same subsection the word “occupation” and by inserting in lieu thereof the words “personal occupation as a residence”;
- 20 (vi) by omitting from paragraph (t) of the same subsection the words “twenty-first day of July, one thousand nine hundred and forty-eight” and by inserting in lieu thereof the words “tenth day of April, one thousand nine hundred and fifty-eight”;
- 25 (b) (i) by omitting from subsection one of section 62A the words “judge of the District Court for the district” and by inserting in lieu thereof the words “court of petty sessions for the petty sessions district”;
- 30 (ii) by omitting from the same subsection the word “judge” where secondly occurring and by inserting in lieu thereof the word “court”;
- 35 (iii)

Sec. 62. (Restriction on eviction.)

Sec. 62A. (Judge may bar right to take proceedings where refusal to consent to assignment, etc., unreasonable.)

Landlord and Tenant (Amendment).

- (iii) by omitting from subsection (1A) of the same section the words "judge of the District Court" and by inserting in lieu thereof the words "court of petty sessions";
- 5 (iv) by omitting from the same subsection the word "judge" where secondly and thirdly occurring and by inserting in lieu thereof the word "court";
- 10 (v) by omitting from paragraph (a) of subsection two of the same section the words "District Court" where firstly occurring and by inserting in lieu thereof the words "court of petty sessions";
- 15 (vi) by omitting from the same paragraph the words "Supreme Court" and by inserting in lieu thereof the words "District Court";
- 20 (vii) by omitting from the same paragraph the words "judge of the District Court" and by inserting in lieu thereof the words "court of petty sessions";
- 25 (c) (i) by omitting from paragraph (a) of subsection one of section 62B the words "judge of the District Court for the district" and by inserting in lieu thereof the words "court of petty sessions for the petty sessions district"; Sec. 62B. (Power to assign certain tenancies at will.)
- 30 (ii) by omitting from the same paragraph the word "judge" where secondly occurring and by inserting in lieu thereof the word "court";
- (iii) by omitting from paragraph (a) of subsection two of the same section the words "District Court" where firstly occurring and by inserting in lieu thereof the words "court of petty sessions";
- 35 (iv) by omitting from the same paragraph the words "Supreme Court" and by inserting in lieu thereof the words "District Court";
- (v)

Landlord and Tenant (Amendment).

- (v) by omitting from the same paragraph the words "judge of the District Court" and by inserting in lieu thereof the words "court of petty sessions";
- 5 (d) (i) by omitting from subsection one of section sixty-five the words "six months" and by inserting in lieu thereof the words "twelve months"; Sec. 65. (Notice to quit where dwelling-house sold.)
- 10 (ii) by omitting from the same subsection the word, letter and symbols "paragraph (g)" and by inserting in lieu thereof the words, letters and symbols "paragraph (g) or (m)";
- 15 (iii) by inserting in the same subsection after the word "purchase" where thirdly occurring the words "unless in the case of a notice to quit given on the ground specified in the said paragraph (m) he has first obtained the leave of a court having jurisdiction under this Part so to do";
- 20 (iv) by omitting the proviso to the same subsection;
- (v) by omitting from subsection (1A) of the same section the words "six months" and by inserting in lieu thereof the words "twelve months";
- 25 (vi) by omitting from the same subsection the word, letter and symbols "paragraph (g)" and by inserting in lieu thereof the words, letters and symbols "paragraph (g) or (m)";
- 30 (vii) by inserting in the same subsection after the words "as the case may be" where secondly occurring the words ", unless in the case of a notice to quit given on the ground specified in the said paragraph (m) he has first obtained the leave of a court having jurisdiction under this Part so to do";
- 35 (viii) by omitting the proviso to the same subsection;

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(e) by omitting from subsection one of section sixty-eight the word "six" and by inserting in lieu thereof the word "twelve";

Sec. 68.
(Notice to quit after failure of eviction proceedings.)

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

Sec. 70.
(Court to consider hardship.)

10 (2) Notwithstanding anything contained in this section, an order for the recovery of possession of any prescribed premises, being a dwelling-house, from any person on any of the grounds specified in paragraph (g), (i), or (1) of subsection five of section sixty-two of this Act shall not be made unless the court is satisfied that the lessor had provided at the date of expiry of the notice to quit and has immediately available for the occupation of the persons occupying such dwelling-house reasonably suitable alternative accommodation :

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

25 (a) the lessor (not being himself a lessee of the dwelling-house under a concurrent lease) is a protected person within the meaning of Part V of this Act and the lessee is not a protected person within the meaning of that Part or is not a person in receipt of an age pension under the Social Services Consolidation Act 1947 (as amended by subsequent Acts) of the Parliament of the Commonwealth; or

30 (b) the court is satisfied that the lessee has sub-let or has parted with possession of the dwelling-house, and that he was not, at the date of the service of
35 the

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the notice to quit, a bona fide occupant of the dwelling-house or any part thereof; or

- 5 (c) (i) the lessor is of or above the age of sixty years or is a widow;
- (ii) the lessor or the deceased spouse of the lessor purchased or acquired the dwelling-house at least five years before the date of the issue of the notice to quit;
- 10 (iii) the lessor does not own and has not, within a period of five years before the date of the issue of the notice to quit, owned any other dwelling-house or, if the dwelling-house is one of a pair of semi-detached dwelling-houses that are owned by the lessor, the only other dwelling-house that the lessor owns, or has, within a period of five years before the date of the issue of the notice to quit owned, is the other one of that pair of semi-detached dwelling-houses; and
- 15 (iv) the lessor has resided in the Commonwealth for not less than
- 20 ten years; or
- 25 (d) (i) (a) at the date on which proceedings for the recovery of possession of the dwelling-house are taken an order for the recovery of possession of some other dwelling-house occupied by the lessor is in force but has not been executed; or
- 30 (b)
- 35

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- 5 (b) not more than six months
before the date on which
such proceedings are taken
an order for the recovery of
possession of some other
dwelling-house occupied by
the lessor has been exe-
cuted; and
- 10 (ii) the lessee is, and has been for at
least two years, lessor of some
other dwelling-house and in
proceedings for the recovery of
possession thereof on the ground
15 specified in paragraph (g) of
subsection five of section sixty-
two of this Act would not be
under any obligation pursuant to
this subsection to provide reason-
ably suitable alternative accom-
20 modation for the persons occupy-
ing that dwelling-house; or
- 25 (e) (i) evidence is adduced to the court
by or on behalf of the lessor that
the means of the lessee (includ-
ing the means of any spouse,
parent and child of the lessee
ordinarily resident with such
lessee) are such that the lessee
is reasonably able to provide
30 reasonably suitable alternative
accommodation for the occupa-
tion of himself and the members
of his family ordinarily occupying
the prescribed premises;
- 35 (ii) the lessee fails to satisfy the court
on evidence as to his means
(including the means of any
spouse, parent and child of
the lessee ordinarily resident with
40 such lessee) that he is not
reasonably

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- 5 reasonably able to provide
reasonably suitable alternative
accommodation for the occupa-
tion of himself and the members
of his family ordinarily occupying
the prescribed premises; and
- 10 (iii) the court is satisfied on the evi-
dence before it as to the means
of the lessee and of the lessor
(including the means of any
spouse, parent and child of the
lessee or lessor, as the case may
be, ordinarily resident with such
lessee or lessor, as the case may
15 be) that the lessee is financially
better able to provide reasonably
suitable alternative accommoda-
tion for the occupation of him-
self and the members of his
family ordinarily occupying the
prescribed premises than is the
lessor; or
- 20
- 25 (f) the proceedings are for the recovery of
shared accommodation on the ground
specified in paragraph (g) of sub-
section five of section sixty-two of this
Act and the court is satisfied that—
- 30 (i) at the date on which the notice
to quit was given and during
the period of twelve months
immediately preceding that
date the lessor resided in the
dwelling-house of which the
shared accommodation forms
part; and
- 35 (ii) at the date on which the notice
to quit was given and during
the twelve months immediately
preceding

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preceding that date only one
lease of shared accommodation
in that dwelling-house was in
force at any one time :

5 Provided further that this subsection shall
not apply in the case of proceedings for the
recovery of possession of prescribed premises,
being a dwelling-house, where the proceedings
10 are taken on the ground specified in paragraph
(g) of subsection five of section sixty-two of
this Act and the court is satisfied that the
refusal to make an order would prejudice any
claim or proposed claim by the lessor for a
15 pension under the Social Services Consolida-
tion Act 1947 (as amended by subsequent
Acts) of the Parliament of the Common-
wealth or the Australian Soldiers' Repatriation
Act 1920 (as amended by subsequent Acts)
of the Parliament of the Commonwealth.

20 (2A) Notwithstanding anything contained
in this section, an order for the recovery of
possession of any prescribed premises, being
a dwelling-house, on the ground specified in
25 paragraph (m) of subsection five of section
sixty-two of this Act shall not be made unless
the court is satisfied—

30 (a) that the lessor had provided at the
date of expiry of the notice to quit
and has immediately available for the
occupation of the persons occupying
such dwelling-house reasonably suit-
able alternative accommodation ;

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

(c)

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

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

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

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

20 (2B) 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 25 sixty-two of this Act and the lessor purchased or acquired the dwelling-house at least eight years before the date of issue of the notice to quit 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 30 one and two of this section.

35 (ii) by inserting at the end of subsection (4A) of the same section the words "or if the lessee is in receipt of an age pension under the Social Services Consolidation Act 1947 (as amended by subsequent Acts) of the Parliament of the Commonwealth";

(g)

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(g) 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 (h) (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—

20 (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

or

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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
10 (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
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 section the words
“as if he” and by inserting in lieu thereof the
words “as if he or she”;
- (iv) by inserting at the end of the same section
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.

(i)

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(i) (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 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

35

(d) where no person referred to in paragraph (a), (b) or (c) of this subsection was so residing or is so in possession,

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- 5 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”;
- 10 (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.”;
- 15 (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),
20 (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.
- 25 (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
30 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”;
- 35 (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

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person having the right under subsection one of this section to continue in possession of the premises”;

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

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

- 15 (k) by omitting section eighty-four and by inserting in lieu thereof the following section :— Subst. sec. 84.

25 84. In any proceedings in relation to which this Part applies, not being proceedings in respect of an offence arising under this Part, the court may in its discretion order payment by the lessor to the lessee of such sum as it deems proper to meet his reasonable costs and the provisions of subsection three of section sixty-one of this Act shall apply mutatis mutandis to and in respect of any order allowing costs under this section. Costs to be allowed.

- 35 (l) (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.)
- (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)

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

10 (2) The amendments made by paragraphs (b) and (c) of subsection one of this section shall commence upon a day to be appointed by the Governor and notified by proclamation published in the Gazette.

15 (3) Any proceedings commenced but not completed at the commencement of the amendments made by paragraphs (b) and (c) of subsection one of this section may be continued and completed in all respects as if those amendments had not been made.

20 **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; Sec. 88A. (Dwelling-house not to be sold unless tenant given opportunity to purchase.)
- (ii) by inserting at the end of paragraph (b) of the same subsection the words "and, in addition, where the premises are sold at an auction sale, the vendor has given to the lessee not less than twenty-one days' notice in writing of the proposed auction sale";

25

(b)

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- (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.
- (c) 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.
- (d) by inserting at the end of section ninety-four the following new subsection :—
- (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—
- (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;
- (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
- Sec. 89.
(Contracting out prohibited.)
- Sec. 90.
(Contracts to evade Act prohibited.)
- Sec. 94.
(Proof of instruments.)

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the certificate premises to which an order made under subsection one of section 6A of this Act applies or applied;

5 (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;

10 (d) a lease or agreement, specified in the certificate, being a lease of, or an agreement in respect 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;

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

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

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.)

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

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

(b)

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- | | |
|--|--|
| (b) by omitting section one hundred and four; | Sec. 104.
(Letting of unoccupied houses to protected persons.) |
| (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.) |
| (e) by omitting section one hundred and seven; | Sec. 107.
(Provisions where several applications made in respect of same dwelling-house.) |
| 5 (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—1964

New South Wales



ANNO TERTIO DECIMO

ELIZABETHÆ II REGINÆ

Act No. 62, 1964.

An Act 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 ; to validate certain matters ; and for purposes connected therewith. [Assented to, 16th December, 1964.]

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, 1964".

Short title
and
citation.

(2)

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(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, 1948-1964.

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

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

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

- (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 subparagraph (v) of paragraph (b) of the same subsection after the word "solicitor" the words "or clerk of petty sessions";
- (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";
- (iv) by inserting in subparagraph (iii) of paragraph (c) of the same subsection 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";
- (vi) by inserting in paragraph (c) of subparagraph (v) of paragraph (d) of the same subsection after the word "solicitor" the words "or clerk of petty sessions";
- (vii) by omitting from paragraph (e) of the same subsection the words "(not being a residential unit)";

(viii)

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- (viii) 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";
- (ix) by inserting in paragraph (c) of subparagraph (iv) of paragraph (e) of the same subsection after the word "solicitor" the words "or clerk of petty sessions";
- (x) by inserting in paragraph (d) of subparagraph (i) of paragraph (f) of the same subsection after the word "Act;" the word "and";
- (xi) by omitting subparagraph (ii) of paragraph (f) of the same subsection;
- (xii) 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";
- (xiii) by inserting in paragraph (c) of subparagraph (iii) of paragraph (f) of the same subsection after the word "solicitor" the words "or clerk of petty sessions";
- (xiv) by inserting in paragraph (c) of subparagraph (i) of paragraph (g) of the same subsection after the word "Act;" the word "and";
- (xv) by omitting subparagraph (ii) of paragraph (g) of the same subsection;
- (xvi) 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";
- (xvii) by inserting in paragraph (c) of subparagraph (iii) of paragraph (g) of the same subsection after the word "solicitor" the words "or clerk of petty sessions";
- (xviii) 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

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any premises used for business or commercial purposes—

(a) (i) that were in existence on the twenty-seventh day of September, one thousand nine hundred and fifty-seven, or were commenced on or before and completed after that day;

(ii) that are not “special premises” for the purposes of this Act; and

(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—

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

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

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

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

(1B) Where—

(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

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of this Act by reason of the provisions of paragraph (a) of subsection (1A) of this section ;

- (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
- (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 occupied,

then—

- (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 ;
- (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 ;
- (iii) any order for recovery of possession or for ejectment as aforesaid shall not be enforced against the sub-lessee ; and

(iv)

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- (iv) the sub-lessee shall on the hearing of any proceedings for such an order be entitled to be heard.
- (xix) 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)";
- (xx) by inserting at the end of the same subsection the following new paragraph:—
- A certificate purporting to be signed by a solicitor or clerk of petty sessions for the purposes of subsection one or (1A) of this section shall be admissible in evidence in any proceedings and shall, in all courts and upon all occasions whatsoever, be prima facie evidence of the particulars certified in and by the certificate.
- (xxi) 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)";
- (xxii) by omitting from the same subsection the word "seventy-seven" and by inserting in lieu thereof the words "fifty-five, seventy-seven, ninety-two, ninety-three";
- (xxiii) by omitting from the same subsection the word "dwelling-houses" and by inserting in lieu thereof the words "prescribed premises";
- (xxiv) by inserting in subsection four of the same section next before the definition of "Prescribed lease" the following new definition:—
- "Dwelling-house" includes—
- (a) the premises of any lodging-house or boarding-house; and
 - (b) any part of premises that is used or has been designed for use

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use for the purposes of residence independently of any other part of the premises,

but does not include a part of premises that came into existence as such part by reason of alterations, or alterations and additions, to a dwelling-house made after the commencement of the Local Government (Regulation of Flats) Act, 1955, or premises licensed for the sale of spirituous or fermented liquors.

- (xxv) by omitting from the same subsection the definition of "Residential unit" and by inserting in lieu thereof the following definition :—

"Residential unit" means a part of a dwelling-house—

- (a) that is used or has been designed for use for the purposes of residence independently of any other part of the dwelling-house; and
- (b) that, at the time it came into existence as such part, complied with the requirements of section four of the Local Government (Regulation of Flats) Act, 1955, as in force at that time.

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

(6) The provisions of—

- (a) subparagraph (ii) of paragraph (e); or
- (b) paragraph (b) of subparagraph (i) of paragraph (g),

of subsection one of this section shall not apply in the case of a dwelling-house or residential unit, as the case may be, that immediately before

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before the date on which the lessee enters into, or is entitled to enter into, possession under the lease referred to in subparagraph (iv) of the said paragraph (e) or in subparagraph (iii) of the said paragraph (g), as the case may be—

(c) was by virtue of this section exempt from the provisions of Parts II, III, IV and V of this Act to the extent provided by this section; or

(d) was not so exempt, if the lessee under the lease next preceding the lease so referred to signified in writing to the lessor his intention to vacate the dwelling-house or residential unit on or before such date and, in fact, so vacated it on or before that date; or

(e) was vacant or was occupied personally by the lessor.

Sec. 8.
(Defini-
tions.)

(b) (i) 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 ejection, or any tenancy at will implied at law in any mortgage or agreement for the sale or purchase of land";

(ii) by omitting from subsection (1A) of the same section the words "sections one hundred and four to one hundred and ten, both inclusive, and".

(2) The amendments made by subparagraphs (vii) and (xxiv) of paragraph (a) of subsection one of this section shall be deemed to have commenced on the tenth day of April, one thousand nine hundred and fifty-eight.

Landlord and Tenant (Amendment).

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 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 a period of twelve months next after the day on and from which the fair rent is fixed by the agreement.

Fixing of fair rent of prescribed premises by agreement.

Landlord and Tenant (Amendment).

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

- (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 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 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;
- (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, shall certify in writing upon the agreement that the agreement has been so explained, and that he has examined the lessee and is satisfied as hereinbefore required, and that the lessee has executed the agreement in his presence.

A certificate purporting to be signed by a solicitor or clerk of petty sessions for the purposes of subsection two of this section shall be admissible in evidence in any proceedings and shall, in all courts and upon all occasions whatsoever, be prima facie evidence of the particulars certified in and by the certificate.

Landlord and Tenant (Amendment).

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

(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) (i) by omitting from paragraph (j) of subsection one of section twenty-one 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
- Sec. 21.
(Matters to be considered.)

Landlord and Tenant (Amendment).

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";

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

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.

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

(1B) 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 in respect of such repairs, maintenance or renewals, based on paragraph (c) of subsection one of this section.

- (iv) 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 after the word "motion" the words "but subject to section 17A of this Act";

Sec. 24.
(Fair Rents 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 inserting in paragraph (b) of subsection one of section thirty-two before the word "by" where firstly occurring the words "subject to section 17A of this Act,";

Sec. 32.
(Variation of determination.)

- (ii) 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

Landlord and Tenant (Amendment).

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, where it or he considers that any repairs, maintenance, or renewals of the premises or any fixtures thereon should be carried out, exclude from the rent as varied any allowance in respect of such repairs, maintenance or renewals, based on paragraph (c) of subsection one of section twenty-one of this Act";

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

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

- (i) by inserting at the end of subsection two of section fifty-two the words "or by an agreement referred to in section 17A of this Act";

Sec. 57.
(Lessor to
ascertain
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 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 section 17A of this Act";

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

- (k) by inserting in subsection one of section fifty-eight after the words "or a Fair Rents Board)" the words "or, in the case of a certificate by the Controller, by an agreement referred to in section 17A of this Act".

Landlord and Tenant (Amendment).

4. (1) 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 subparagraph (i) of paragraph (g) of subsection five of section sixty-two the word “occupation” and by inserting in lieu thereof the words “personal occupation as a residence”;
- (ii) by inserting in paragraph (h) of the same subsection after the word “occupation” the words “as a residence”;
- (iii) by inserting in paragraph (i) of the same subsection after the word “occupation” wherever occurring the words “as a residence”;
- (iv) by inserting in paragraph (k) of the same subsection after the word “occupation” the words “as a residence”;
- (v) by omitting from subparagraph (i) of paragraph (l) of the same subsection the word “occupation” and by inserting in lieu thereof the words “personal occupation as a residence”;
- (vi) by omitting from paragraph (t) of the same subsection the words “twenty-first day of July, one thousand nine hundred and forty-eight” and by inserting in lieu thereof the words “tenth day of April, one thousand nine hundred and fifty-eight”;
- (b) (i) by omitting from subsection one of section 62A the words “judge of the District Court for the district” and by inserting in lieu thereof the words “court of petty sessions for the petty sessions district”;
- (ii) by omitting from the same subsection the word “judge” where secondly occurring and by inserting in lieu thereof the word “court”;
- (iii)

Sec. 62. (Restriction on eviction.)

Sec. 62A. (Judge may bar right to take proceedings where refusal to consent to assignment, etc., unreasonable.)

Landlord and Tenant (Amendment).

- (iii) by omitting from subsection (1A) of the same section the words "judge of the District Court" and by inserting in lieu thereof the words "court of petty sessions";
- (iv) by omitting from the same subsection the word "judge" where secondly and thirdly occurring and by inserting in lieu thereof the word "court";
- (v) by omitting from paragraph (a) of subsection two of the same section the words "District Court" where firstly occurring and by inserting in lieu thereof the words "court of petty sessions";
- (vi) by omitting from the same paragraph the words "Supreme Court" and by inserting in lieu thereof the words "District Court";
- (vii) by omitting from the same paragraph the words "judge of the District Court" and by inserting in lieu thereof the words "court of petty sessions";

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

- (c) (i) by omitting from paragraph (a) of subsection one of section 62B the words "judge of the District Court for the district" and by inserting in lieu thereof the words "court of petty sessions for the petty sessions district";
- (ii) by omitting from the same paragraph the word "judge" where secondly occurring and by inserting in lieu thereof the word "court";
- (iii) by omitting from paragraph (a) of subsection two of the same section the words "District Court" where firstly occurring and by inserting in lieu thereof the words "court of petty sessions";
- (iv) by omitting from the same paragraph the words "Supreme Court" and by inserting in lieu thereof the words "District Court";

(v)

Landlord and Tenant (Amendment).

- (v) by omitting from the same paragraph the words "judge of the District Court" and by inserting in lieu thereof the words "court of petty sessions";
- (d) (i) by omitting from subsection one of section sixty-five the words "six months" and by inserting in lieu thereof the words "twelve months"; Sec. 65.
(Notice to quit where dwelling-house sold.)
- (ii) by omitting from the same subsection the word, letter and symbols "paragraph (g)" and by inserting in lieu thereof the words, letters and symbols "paragraph (g) or (m)";
- (iii) by inserting in the same subsection after the word "purchase" where thirdly occurring the words "unless in the case of a notice to quit given on the ground specified in the said paragraph (m) he has first obtained the leave of a court having jurisdiction under this Part so to do";
- (iv) by omitting the proviso to the same subsection;
- (v) by omitting from subsection (1A) of the same section the words "six months" and by inserting in lieu thereof the words "twelve months";
- (vi) by omitting from the same subsection the word, letter and symbols "paragraph (g)" and by inserting in lieu thereof the words, letters and symbols "paragraph (g) or (m)";
- (vii) by inserting in the same subsection after the words "as the case may be" where secondly occurring the words " , unless in the case of a notice to quit given on the ground specified in the said paragraph (m) he has first obtained the leave of a court having jurisdiction under this Part so to do";
- (viii) by omitting the proviso to the same subsection;

(e)

Landlord and Tenant (Amendment).

Sec. 68.
(Notice to
quit after
failure of
eviction pro-
ceedings.)

- (e) by omitting from subsection one of section sixty-eight the word "six" and by inserting in lieu thereof the word "twelve";

Sec. 70.
(Court to
consider
hardship.)

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

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

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

- (a) the lessor (not being himself a lessee of the dwelling-house under a concurrent lease) is a protected person within the meaning of Part V of this Act and the lessee is not a protected person within the meaning of that Part or is not a person in receipt of an age pension under the Social Services Consolidation Act 1947 (as amended by subsequent Acts) of the Parliament of the Commonwealth; or
- (b) the court is satisfied that the lessee has sub-let or has parted with possession of the dwelling-house, and that he was not, at the date of the service of

the

Landlord and Tenant (Amendment).

the notice to quit, a bona fide occupant of the dwelling-house or any part thereof; or

- (c) (i) the lessor is of or above the age of sixty years or is a widow;
 - (ii) the lessor or the deceased spouse of the lessor purchased or acquired the dwelling-house at least five years before the date of the issue of the notice to quit;
 - (iii) the lessor does not own and has not, within a period of five years before the date of the issue of the notice to quit, owned any other dwelling-house or, if the dwelling-house is one of a pair of semi-detached dwelling-houses that are owned by the lessor, the only other dwelling-house that the lessor owns, or has, within a period of five years before the date of the issue of the notice to quit owned, is the other one of that pair of semi-detached dwelling-houses; and
 - (iv) the lessor has resided in the Commonwealth for not less than ten years; or
- (d) (i) (a) at the date on which proceedings for the recovery of possession of the dwelling-house are taken an order for the recovery of possession of some other dwelling-house occupied by the lessor is in force but has not been executed; or

(b)

Landlord and Tenant (Amendment).

- (b) not more than six months before the date on which such proceedings are taken an order for the recovery of possession of some other dwelling-house occupied by the lessor has been executed; and
- (ii) the lessee is, and has been for at least two years, lessor of some other dwelling-house and in proceedings for the recovery of possession thereof on the ground specified in paragraph (g) of subsection five of section sixty-two of this Act would not be under any obligation pursuant to this subsection to provide reasonably suitable alternative accommodation for the persons occupying that dwelling-house; or
- (e) (i) evidence is adduced to the court by or on behalf of the lessor that the means of the lessee (including the means of any spouse, parent and child of the lessee ordinarily resident with such lessee) are such that the lessee is reasonably able to provide reasonably suitable alternative accommodation for the occupation of himself and the members of his family ordinarily occupying the prescribed premises;
- (ii) the lessee fails to satisfy the court on evidence as to his means (including the means of any spouse, parent and child of the lessee ordinarily resident with such lessee) that he is not reasonably

Landlord and Tenant (Amendment).

reasonably able to provide reasonably suitable alternative accommodation for the occupation of himself and the members of his family ordinarily occupying the prescribed premises; and

- (iii) the court is satisfied on the evidence before it as to the means of the lessee and of the lessor (including the means of any spouse, parent and child of the lessee or lessor, as the case may be, ordinarily resident with such lessee or lessor, as the case may be) that the lessee is financially better able to provide reasonably suitable alternative accommodation for the occupation of himself and the members of his family ordinarily occupying the prescribed premises than is the lessor; or

- (f) the proceedings are for the recovery of shared accommodation on the ground specified in paragraph (g) of subsection five of section sixty-two of this Act and the court is satisfied that—

(i) at the date on which the notice to quit was given and during the period of twelve months immediately preceding that date the lessor resided in the dwelling-house of which the shared accommodation forms part; and

(ii) at the date on which the notice to quit was given and during the twelve months immediately preceding

Landlord and Tenant (Amendment)

preceding that date only one lease of shared accommodation in that dwelling-house was in force at any one time :

Provided further that this subsection shall not apply in the case of proceedings for the recovery of possession of prescribed premises, being a dwelling-house, where the proceedings are taken on the ground specified in paragraph (g) of subsection five of section sixty-two of this Act and the court is satisfied that the refusal to make an order would prejudice any claim or proposed claim by the lessor for a pension under the Social Services Consolidation Act 1947 (as amended by subsequent Acts) of the Parliament of the Commonwealth or the Australian Soldiers' Repatriation Act 1920 (as amended by subsequent Acts) of the Parliament of the Commonwealth.

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

- (a) that the lessor had provided at the date of expiry of the notice to quit and has immediately available for the occupation of the persons occupying such dwelling-house reasonably suitable alternative accommodation ;
- (b) that, where it is necessary to obtain the approval under any Act of any body to the carrying out of the work referred to in the notice to quit, that approval has been obtained ; and

(c)

Landlord and Tenant (Amendment).

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

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

- (a) the court is satisfied that the lessor is required by law to reconstruct or demolish the dwelling-house and possession thereof is sought by him for that purpose; or
- (b) the court is satisfied that the lessee has sub-let or has parted with the possession of the dwelling-house and that he was not, at the date of the service of the notice to quit, a bona fide occupant of the dwelling-house or any part thereof.

(2B) 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 purchased or acquired the dwelling-house at least eight years before the date of issue of the notice to quit 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.

- (ii) by inserting at the end of subsection (4A) of the same section the words "or if the lessee is in receipt of an age pension under the Social Services Consolidation Act 1947 (as amended by subsequent Acts) of the Parliament of the Commonwealth";

(g)

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

- (g) 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. 83.
(Protection of certain persons in possession of premises.)

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

~~"(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:—~~

~~"(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

- (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 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 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 thereof 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 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.

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

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

“(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) where no person referred to in paragraph (a), (b) or (c) of this subsection was so residing or is so in possession,

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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 words “or she”;
- (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

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person having the right under subsection one of this section to continue in possession of the premises”;

New sec.
83B.

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

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

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.

Subst.
sec. 84.

- (k) by omitting section eighty-four and by inserting in lieu thereof the following section :—

Costs to be
allowed.

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

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

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

Landlord and Tenant (Amendment).

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

(2) The amendments made by paragraphs (b) and (c) of subsection one of this section shall commence upon a day to be appointed by the Governor and notified by proclamation published in the Gazette.

(3) Any proceedings commenced but not completed at the commencement of the amendments made by paragraphs (b) and (c) of subsection one of this section may be continued and completed in all respects as if those amendments had not been made.

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; Sec. 88A.
(Dwelling-house not to be sold unless tenant given opportunity to purchase.)
- (ii) by inserting at the end of paragraph (b) of the same subsection the words "and, in addition, where the premises are sold at an auction sale, the vendor has given to the lessee not less than twenty-one days' notice in writing of the proposed auction sale";

(b)

Landlord and Tenant (Amendment).

Sec. 89.
(Contracting
out
prohibited.)

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

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

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

(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—

- (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 ;

- (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

Landlord and Tenant (Amendment).

the certificate premises to which an order made under subsection one of section 6A of this Act applies or applied;

- (c) the premises are or are not at the date of the certificate, or were or were not at any time or during any period specified in the certificate, premises of a class to which an order made under paragraph (b) of subsection three of section 6A of this Act applies or applied;
- (d) a lease or agreement, specified in the certificate, being a lease of, or an agreement in respect 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) the premises described in the certificate are or are not at the date of the certificate, or were or were not at any time or during any period specified in the certificate, premises in respect of which a certificate under section 6A, seven, eighty-six, 86A, eighty-seven or 87B of this Act is or was in force,

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

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)

Landlord and Tenant (Amendment).

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

(b) by omitting section one hundred and four;

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

(c) by omitting section one hundred and five;

Sec. 106.
(Hearing of application.)

(d) by omitting section one hundred and six;

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

(e) by omitting section one hundred and seven;

Sec. 108.
(Enforcement of warrants.)

(f) by omitting section one hundred and eight;

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

(g) by omitting section one hundred and nine;

Sec. 110.
(Interpretation.)

(h) by omitting section one hundred and ten.

BY AUTHORITY:

V. C. N. BLIGHT, GOVERNMENT PRINTER, SYDNEY, NEW SOUTH WALES—1965

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

ALLAN PICKERING,
Clerk of the Legislative Assembly.

*Legislative Assembly Chamber,
Sydney, 9 December, 1964.*

New South Wales



ANNO TERTIO DECIMO

ELIZABETHÆ II REGINÆ

Act No. 62, 1964.

An Act 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 ; to validate certain matters ; and for purposes connected therewith. [Assented to, 16th December, 1964.]

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, 1964".

Short title and citation.

(2)

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

HOWARD T. FOWLES,
Chairman of Committees of the Legislative Assembly.

Landlord and Tenant (Amendment).

(2) The Landlord and Tenant (Amendment) Act, 1948, as amended by subsequent Acts and by this Act, may be cited as the Landlord and Tenant (Amendment) Act, 1948-1964.

Amendment of Act No. 25, 1948. (Part I.—Preliminary.)

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

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

- (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 subparagraph (v) of paragraph (b) of the same subsection after the word “solicitor” the words “or clerk of petty sessions”;
- (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”;
- (iv) by inserting in subparagraph (iii) of paragraph (c) of the same subsection 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”;
- (vi) by inserting in paragraph (c) of subparagraph (v) of paragraph (d) of the same subsection after the word “solicitor” the words “or clerk of petty sessions”;
- (vii) by omitting from paragraph (e) of the same subsection the words “(not being a residential unit)”;

(viii)

Landlord and Tenant (Amendment).

- (viii) 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";
- (ix) by inserting in paragraph (c) of subparagraph (iv) of paragraph (e) of the same subsection after the word "solicitor" the words "or clerk of petty sessions";
- (x) by inserting in paragraph (d) of subparagraph (i) of paragraph (f) of the same subsection after the word "Act;" the word "and";
- (xi) by omitting subparagraph (ii) of paragraph (f) of the same subsection;
- (xii) 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";
- (xiii) by inserting in paragraph (c) of subparagraph (iii) of paragraph (f) of the same subsection after the word "solicitor" the words "or clerk of petty sessions";
- (xiv) by inserting in paragraph (c) of subparagraph (i) of paragraph (g) of the same subsection after the word "Act;" the word "and";
- (xv) by omitting subparagraph (ii) of paragraph (g) of the same subsection;
- (xvi) 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";
- (xvii) by inserting in paragraph (c) of subparagraph (iii) of paragraph (g) of the same subsection after the word "solicitor" the words "or clerk of petty sessions";
- (xviii) 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

Landlord and Tenant (Amendment).

any premises used for business or commercial purposes—

(a) (i) that were in existence on the twenty-seventh day of September, one thousand nine hundred and fifty-seven, or were commenced on or before and completed after that day;

(ii) that are not “special premises” for the purposes of this Act; and

(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—

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

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

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

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

(1B) Where—

(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

Landlord and Tenant (Amendment).

of this Act by reason of the provisions of paragraph (a) of subsection (1A) of this section;

- (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
- (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 occupied,

then—

- (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;
- (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;
- (iii) any order for recovery of possession or for ejectment as aforesaid shall not be enforced against the sub-lessee; and
- (iv)

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- (iv) the sub-lessee shall on the hearing of any proceedings for such an order be entitled to be heard.
- (xix) 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)";
- (xx) by inserting at the end of the same subsection the following new paragraph:—
 A certificate purporting to be signed by a solicitor or clerk of petty sessions for the purposes of subsection one or (1A) of this section shall be admissible in evidence in any proceedings and shall, in all courts and upon all occasions whatsoever, be prima facie evidence of the particulars certified in and by the certificate.
- (xxi) 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)";
- (xxii) by omitting from the same subsection the word "seventy-seven" and by inserting in lieu thereof the words "fifty-five, seventy-seven, ninety-two, ninety-three";
- (xxiii) by omitting from the same subsection the word "dwelling-houses" and by inserting in lieu thereof the words "prescribed premises";
- (xxiv) by inserting in subsection four of the same section next before the definition of "Prescribed lease" the following new definition:—
 "Dwelling-house" includes—
 (a) the premises of any lodging-house or boarding-house; and
 (b) any part of premises that is used or has been designed for use

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use for the purposes of residence independently of any other part of the premises,

but does not include a part of premises that came into existence as such part by reason of alterations, or alterations and additions, to a dwelling-house made after the commencement of the Local Government (Regulation of Flats) Act, 1955, or premises licensed for the sale of spirituous or fermented liquors.

(xxv) by omitting from the same subsection the definition of "Residential unit" and by inserting in lieu thereof the following definition :—

"Residential unit" means a part of a dwelling-house—

- (a) that is used or has been designed for use for the purposes of residence independently of any other part of the dwelling-house; and
- (b) that, at the time it came into existence as such part, complied with the requirements of section four of the Local Government (Regulation of Flats) Act, 1955, as in force at that time.

(xxvi) by inserting next after subsection five of the same section the following new subsection :—

(6) The provisions of—

- (a) subparagraph (ii) of paragraph (e); or
- (b) paragraph (b) of subparagraph (i) of paragraph (g),

of subsection one of this section shall not apply in the case of a dwelling-house or residential unit, as the case may be, that immediately before

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before the date on which the lessee enters into, or is entitled to enter into, possession under the lease referred to in subparagraph (iv) of the said paragraph (e) or in subparagraph (iii) of the said paragraph (g), as the case may be—

- (c) was by virtue of this section exempt from the provisions of Parts II, III, IV and V of this Act to the extent provided by this section; or
- (d) was not so exempt, if the lessee under the lease next preceding the lease so referred to signified in writing to the lessor his intention to vacate the dwelling-house or residential unit on or before such date and, in fact, so vacated it on or before that date; or
- (e) was vacant or was occupied personally by the lessor.

Sec. 8.
(Definitions.)

- (b) (i) 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";
- (ii) by omitting from subsection (1A) of the same section the words "sections one hundred and four to one hundred and ten, both inclusive, and".

(2) The amendments made by subparagraphs (vii) and (xxiv) of paragraph (a) of subsection one of this section shall be deemed to have commenced on the tenth day of April, one thousand nine hundred and fifty-eight.

Landlord and Tenant (Amendment).

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 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 a period of twelve months next after the day on and from which the fair rent is fixed by the agreement.

Fixing of fair rent of prescribed premises by agreement.

Landlord and Tenant (Amendment).

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

- (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 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 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;
- (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, shall certify in writing upon the agreement that the agreement has been so explained, and that he has examined the lessee and is satisfied as hereinbefore required, and that the lessee has executed the agreement in his presence.

A certificate purporting to be signed by a solicitor or clerk of petty sessions for the purposes of subsection two of this section shall be admissible in evidence in any proceedings and shall, in all courts and upon all occasions whatsoever, be prima facie evidence of the particulars certified in and by the certificate.

(4)

Landlord and Tenant (Amendment).

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

(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) (i) by omitting from paragraph (j) of subsection one of section twenty-one 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
- Sec. 21.
(Matters to be considered.)

Landlord and Tenant (Amendment).

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";

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

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.

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

(1B) 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 in respect of such repairs, maintenance or renewals, based on paragraph (c) of subsection one of this section.

- (iv) 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)";

Sec. 24.
(Fair Rents
Board may
determine
fair rent
of its own
motion.)

- (d) by inserting in subsection one of section twenty-four after the word "motion" the words "but subject to section 17A of this Act";

(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 inserting in paragraph (b) of subsection one of section thirty-two before the word "by" where firstly occurring the words "subject to section 17A of this Act,";

Sec. 32.
(Variation of determination.)

(ii) 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

Landlord and Tenant (Amendment).

- 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, where it or he considers that any repairs, maintenance, or renewals of the premises or any fixtures thereon should be carried out, exclude from the rent as varied any allowance in respect of such repairs, maintenance or renewals, based on paragraph (c) of subsection one of section twenty-one of this Act";
- Sec. 35. (Premises not to be let at rent exceeding fair rent.) (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. 52. (Information as to fair rent.) (i) by inserting at the end of subsection two of section fifty-two the words "or by an agreement referred to in section 17A of this Act";
- Sec. 57. (Lessor to ascertain 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 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 section 17A of this Act";
- Sec. 58. (Certificate as to fair rent.) (k) by inserting in subsection one of section fifty-eight after the words "or a Fair Rents Board)" the words "or, in the case of a certificate by the Controller, by an agreement referred to in section 17A of this Act".

Landlord and Tenant (Amendment).

4. (1) 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 subparagraph (i) of paragraph (g) of subsection five of section sixty-two the word “occupation” and by inserting in lieu thereof the words “personal occupation as a residence”;
- Sec. 62.
(Restriction on eviction.)
- (ii) by inserting in paragraph (h) of the same subsection after the word “occupation” the words “as a residence”;
- (iii) by inserting in paragraph (i) of the same subsection after the word “occupation” wherever occurring the words “as a residence”;
- (iv) by inserting in paragraph (k) of the same subsection after the word “occupation” the words “as a residence”;
- (v) by omitting from subparagraph (i) of paragraph (l) of the same subsection the word “occupation” and by inserting in lieu thereof the words “personal occupation as a residence”;
- (vi) by omitting from paragraph (t) of the same subsection the words “twenty-first day of July, one thousand nine hundred and forty-eight” and by inserting in lieu thereof the words “tenth day of April, one thousand nine hundred and fifty-eight”;
- (b) (i) by omitting from subsection one of section 62A the words “judge of the District Court for the district” and by inserting in lieu thereof the words “court of petty sessions for the petty sessions district”;
- Sec. 62A.
(Judge may bar right to take proceedings where refusal to consent to assignment, etc., unreasonable.)
- (ii) by omitting from the same subsection the word “judge” where secondly occurring and by inserting in lieu thereof the word “court”;
- (iii)

Landlord and Tenant (Amendment).

- (iii) by omitting from subsection (1A) of the same section the words "judge of the District Court" and by inserting in lieu thereof the words "court of petty sessions";
- (iv) by omitting from the same subsection the word "judge" where secondly and thirdly occurring and by inserting in lieu thereof the word "court";
- (v) by omitting from paragraph (a) of subsection two of the same section the words "District Court" where firstly occurring and by inserting in lieu thereof the words "court of petty sessions";
- (vi) by omitting from the same paragraph the words "Supreme Court" and by inserting in lieu thereof the words "District Court";
- (vii) by omitting from the same paragraph the words "judge of the District Court" and by inserting in lieu thereof the words "court of petty sessions";
- Sec. 62B.
(Power to assign certain tenancies at will.)
- (c) (i) by omitting from paragraph (a) of subsection one of section 62B the words "judge of the District Court for the district" and by inserting in lieu thereof the words "court of petty sessions for the petty sessions district";
- (ii) by omitting from the same paragraph the word "judge" where secondly occurring and by inserting in lieu thereof the word "court";
- (iii) by omitting from paragraph (a) of subsection two of the same section the words "District Court" where firstly occurring and by inserting in lieu thereof the words "court of petty sessions";
- (iv) by omitting from the same paragraph the words "Supreme Court" and by inserting in lieu thereof the words "District Court";
- (v)

Landlord and Tenant (Amendment).

- (v) by omitting from the same paragraph the words "judge of the District Court" and by inserting in lieu thereof the words "court of petty sessions";
- (d) (i) by omitting from subsection one of section sixty-five the words "six months" and by inserting in lieu thereof the words "twelve months"; Sec. 65.
(Notice to quit where dwelling-house sold.)
- (ii) by omitting from the same subsection the word, letter and symbols "paragraph (g)" and by inserting in lieu thereof the words, letters and symbols "paragraph (g) or (m)";
- (iii) by inserting in the same subsection after the word "purchase" where thirdly occurring the words "unless in the case of a notice to quit given on the ground specified in the said paragraph (m) he has first obtained the leave of a court having jurisdiction under this Part so to do";
- (iv) by omitting the proviso to the same subsection;
- (v) by omitting from subsection (1A) of the same section the words "six months" and by inserting in lieu thereof the words "twelve months";
- (vi) by omitting from the same subsection the word, letter and symbols "paragraph (g)" and by inserting in lieu thereof the words, letters and symbols "paragraph (g) or (m)";
- (vii) by inserting in the same subsection after the words "as the case may be" where secondly occurring the words ", unless in the case of a notice to quit given on the ground specified in the said paragraph (m) he has first obtained the leave of a court having jurisdiction under this Part so to do";
- (viii) by omitting the proviso to the same subsection;
- (e)

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Sec. 68.
(Notice to
quit after
failure of
eviction pro-
ceedings.)

- (e) by omitting from subsection one of section sixty-eight the word "six" and by inserting in lieu thereof the word "twelve";

Sec. 70.
(Court to
consider
hardship.)

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

(2) Notwithstanding anything contained in this section, an order for the recovery of possession of any prescribed premises, being a dwelling-house, from any person on any of the grounds specified in paragraph (g), (i), or (1) of subsection five of section sixty-two of this Act shall not be made unless the court is satisfied that the lessor had provided at the date of expiry of the notice to quit and has immediately available for the occupation of the persons occupying such dwelling-house reasonably suitable alternative accommodation :

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

- (a) the lessor (not being himself a lessee of the dwelling-house under a concurrent lease) is a protected person within the meaning of Part V of this Act and the lessee is not a protected person within the meaning of that Part or is not a person in receipt of an age pension under the Social Services Consolidation Act 1947 (as amended by subsequent Acts) of the Parliament of the Commonwealth; or
- (b) the court is satisfied that the lessee has sub-let or has parted with possession of the dwelling-house, and that he was not, at the date of the service of

the

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the notice to quit, a bona fide occupant of the dwelling-house or any part thereof; or

- (c) (i) the lessor is of or above the age of sixty years or is a widow;
- (ii) the lessor or the deceased spouse of the lessor purchased or acquired the dwelling-house at least five years before the date of the issue of the notice to quit;
- (iii) the lessor does not own and has not, within a period of five years before the date of the issue of the notice to quit, owned any other dwelling-house or, if the dwelling-house is one of a pair of semi-detached dwelling-houses that are owned by the lessor, the only other dwelling-house that the lessor owns, or has, within a period of five years before the date of the issue of the notice to quit owned, is the other one of that pair of semi-detached dwelling-houses; and
- (iv) the lessor has resided in the Commonwealth for not less than ten years; or
- (d) (i) (a) at the date on which proceedings for the recovery of possession of the dwelling-house are taken an order for the recovery of possession of some other dwelling-house occupied by the lessor is in force but has not been executed; or

(b)

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- (b) not more than six months before the date on which such proceedings are taken an order for the recovery of possession of some other dwelling-house occupied by the lessor has been executed; and
- (ii) the lessee is, and has been for at least two years, lessor of some other dwelling-house and in proceedings for the recovery of possession thereof on the ground specified in paragraph (g) of subsection five of section sixty-two of this Act would not be under any obligation pursuant to this subsection to provide reasonably suitable alternative accommodation for the persons occupying that dwelling-house; or
- (e) (i) evidence is adduced to the court by or on behalf of the lessor that the means of the lessee (including the means of any spouse, parent and child of the lessee ordinarily resident with such lessee) are such that the lessee is reasonably able to provide reasonably suitable alternative accommodation for the occupation of himself and the members of his family ordinarily occupying the prescribed premises;
- (ii) the lessee fails to satisfy the court on evidence as to his means (including the means of any spouse, parent and child of the lessee ordinarily resident with such lessee) that he is not reasonably

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reasonably able to provide reasonably suitable alternative accommodation for the occupation of himself and the members of his family ordinarily occupying the prescribed premises; and

- (iii) the court is satisfied on the evidence before it as to the means of the lessee and of the lessor (including the means of any spouse, parent and child of the lessee or lessor, as the case may be, ordinarily resident with such lessee or lessor, as the case may be) that the lessee is financially better able to provide reasonably suitable alternative accommodation for the occupation of himself and the members of his family ordinarily occupying the prescribed premises than is the lessor; or
- (f) the proceedings are for the recovery of shared accommodation on the ground specified in paragraph (g) of subsection five of section sixty-two of this Act and the court is satisfied that—
 - (i) at the date on which the notice to quit was given and during the period of twelve months immediately preceding that date the lessor resided in the dwelling-house of which the shared accommodation forms part; and
 - (ii) at the date on which the notice to quit was given and during the twelve months immediately preceding

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preceding that date only one lease of shared accommodation in that dwelling-house was in force at any one time :

Provided further that this subsection shall not apply in the case of proceedings for the recovery of possession of prescribed premises, being a dwelling-house, where the proceedings are taken on the ground specified in paragraph (g) of subsection five of section sixty-two of this Act and the court is satisfied that the refusal to make an order would prejudice any claim or proposed claim by the lessor for a pension under the Social Services Consolidation Act 1947 (as amended by subsequent Acts) of the Parliament of the Commonwealth or the Australian Soldiers' Repatriation Act 1920 (as amended by subsequent Acts) of the Parliament of the Commonwealth.

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

- (a) that the lessor had provided at the date of expiry of the notice to quit and has immediately available for the occupation of the persons occupying such dwelling-house reasonably suitable alternative accommodation;
- (b) that, where it is necessary to obtain the approval under any Act of any body to the carrying out of the work referred to in the notice to quit, that approval has been obtained; and

(c)

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

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

- (a) the court is satisfied that the lessor is required by law to reconstruct or demolish the dwelling-house and possession thereof is sought by him for that purpose; or
- (b) the court is satisfied that the lessee has sub-let or has parted with the possession of the dwelling-house and that he was not, at the date of the service of the notice to quit, a bona fide occupant of the dwelling-house or any part thereof.

(2B) 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 purchased or acquired the dwelling-house at least eight years before the date of issue of the notice to quit 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.

- (ii) by inserting at the end of subsection (4A) of the same section the words "or if the lessee is in receipt of an age pension under the Social Services Consolidation Act 1947 (as amended by subsequent Acts) of the Parliament of the Commonwealth";

(g)

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Sec. 81.
(Persons
not to inter-
fere with
use or enjoy-
ment of
premises.)

(g) 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. 83.
(Protection
of certain
persons
in posses-
sion of
premises.)

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

“(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 :—

“(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

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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 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 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 thereof 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 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.

(i)

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

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

“(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) where no person referred to in paragraph (a), (b) or (c) of this subsection was so residing or is so in possession,

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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 words “or she”;
- (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

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person having the right under subsection one of this section to continue in possession of the premises”;

New sec.
83B.

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

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

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.

Subst.
sec. 84.

- (k) by omitting section eighty-four and by inserting in lieu thereof the following section :—

Costs to be
allowed.

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

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

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

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

(2) The amendments made by paragraphs (b) and (c) of subsection one of this section shall commence upon a day to be appointed by the Governor and notified by proclamation published in the Gazette.

(3) Any proceedings commenced but not completed at the commencement of the amendments made by paragraphs (b) and (c) of subsection one of this section may be continued and completed in all respects as if those amendments had not been made.

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; Sec. 88A.
(Dwelling-house not to be sold unless tenant given opportunity to purchase.)
- (ii) by inserting at the end of paragraph (b) of the same subsection the words "and, in addition, where the premises are sold at an auction sale, the vendor has given to the lessee not less than twenty-one days' notice in writing of the proposed auction sale";

(b)

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Sec. 89.
(Contracting
out
prohibited.)

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

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

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

(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—

- (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;
- (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
- the

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the certificate premises to which an order made under subsection one of section 6A of this Act applies or applied;

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

(d) a lease or agreement, specified in the certificate, being a lease of, or an agreement in respect 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) the premises described in the certificate are or are not at the date of the certificate, or were or were not at any time or during any period specified in the certificate, premises in respect of which a certificate under section 6A, seven, eighty-six, 86A, eighty-seven or 87B of this Act is or was in force,

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

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)

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- Sec. 104. (b) by omitting section one hundred and four;
(Letting of unoccupied houses to protected persons.)
- Sec. 105. (c) by omitting section one hundred and five;
(Dwelling-house is to be deemed to be unoccupied in certain cases.)
- Sec. 106. (d) by omitting section one hundred and six;
(Hearing of application.)
- Sec. 107. (e) by omitting section one hundred and seven;
(Provisions where several applications made in respect of same dwelling-house.)
- Sec. 108. (f) by omitting section one hundred and eight;
(Enforcement of warrants.)
- Sec. 109. (g) by omitting section one hundred and nine;
(Rent of dwelling-house.)
- Sec. 110. (h) by omitting section one hundred and ten.
(Interpretation.)

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

E. W. WOODWARD,
Governor.

*Government House,
Sydney, 16th December, 1964.*