

FIRST PRINT

**LANDLORD AND TENANT (PROTECTED TENANCIES)
AMENDMENT BILL 1985**

EXPLANATORY NOTE

(This Explanatory Note relates to this Bill as introduced into Parliament)

The object of this Bill is to amend the Landlord and Tenant (Amendment) Act 1948 so as—

- (a) to prevent the creation of new protected tenancies under that Act from 1 January 1986; and
- (b) to phase-out the arrangements for the registration of leases under section 5A of that Act (registration in some cases preventing the creation of protected tenancies).

Clause 1 specifies the short title of the proposed Act.

Clause 2 is a formal provision that gives effect to the Schedule of amendments.

Schedule 1 (1) inserts proposed sections 5AA and 5AB into the Principal Act. Proposed section 5AA will prevent the creation of new protected tenancies from 1 January 1986 by providing that the protected tenancy provisions of the Principal Act are not to apply to premises unless the premises are the subject of a lease immediately before 1 January 1986 and are to cease for all time to apply to such premises when the lessor lawfully obtains vacant possession of the premises on or after that date. Existing protected tenancies are therefore not affected by the Bill. Proposed section 5AB is an evidentiary provision whereby a statement signed by a lessee of premises which states that the lessee did not enter into possession of the premises until on or after 1 January 1986 shall be presumed to be correct unless evidence is given to the contrary. Such a statement will be relevant for the purposes of proposed section 5AA. The statement will only be of use to a person who becomes the lessor of the premises after the statement is signed by the lessee.

Schedule 1 (2) (a)–(c) and (3) make amendments which are consequential on the enactment of proposed section 5AA. The effect of the amendments will be that certain provisions of the Principal Act which continue to apply to premises exempt under section 5A will also continue to apply to premises exempt under proposed section 5AA. Section 95 (which provides for the penalty to be imposed for offences against the Principal Act, including past offences) and section 81A (which enables a Local Court to preserve a protected tenancy where vacant possession is obtained by unfair or improper means) are examples.

Schedule 1 (2) (d) amends section 5A of the Principal Act by inserting proposed subsections (9A)–(9C). The proposed subsections will have the effect of discontinuing the arrangements for the registration of leases under section 5A of the Principal Act after a phasing-out period. They provide that the Rent Controller shall not register a lease unless it was entered into before 1 January 1986 and lodged for registration on or before 30 June 1986. Provision is however made for the acceptance of applications after that date and up to 1 January 1989 if the applicant has a reasonable excuse for the delay. Under proposed section 5AA a protected tenancy will not be able to be created by a lease entered into on or after 1 January 1986. In such cases the proposed subsections will prevent the registration of a lease because registration would be of no practical effect. In those cases where the lease was entered into before 1 January 1986 any exemption from the protected tenancy provisions of the Principal Act which registration of the lease would have attracted will not operate where the application for registration is made out of time and rejected.

**LANDLORD AND TENANT (PROTECTED TENANCIES)
AMENDMENT BILL 1985**

No. , 1985

A BILL FOR

**An Act to amend the Landlord and Tenant (Amendment) Act 1948 in
relation to the classes of premises which are subject to the provisions
of that Act.**

Landlord and Tenant (Protected Tenancies) Amendment 1985

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

5 Short title

1. This Act may be cited as the "Landlord and Tenant (Protected Tenancies) Amendment Act 1985".

Amendment of Act No. 25, 1948

2. The Landlord and Tenant (Amendment) Act 1948 is amended in the 10 manner set forth in Schedule 1.

SCHEDULE 1

(Sec. 2)

AMENDMENTS TO THE LANDLORD AND TENANT (AMENDMENT)
ACT 1948

15 (1) Sections 5AA, 5AB—

After section 5, insert:

No new protected tenancies to be created from 1 January 1986

5AA. On and from 1 January 1986, the provisions of Parts II, III, IV and V—

20 (a) do not apply in respect of prescribed premises unless the premises were the subject of a lease immediately before 1 January 1986; and

25 (b) cease to apply, and shall not thereafter apply, to any such premises upon vacant possession of the premises being obtained or upon those provisions ceasing to apply to the premises by reason of the operation of section 5A or any other provision of this Act.

*Landlord and Tenant (Protected Tenancies) Amendment 1985*SCHEDULE 1—*continued*AMENDMENTS TO THE LANDLORD AND TENANT
(AMENDMENT) ACT 1948—*continued***Evidence of vacant possession**

5 5AB. (1) A statement, in or to the effect of the prescribed form, signed by the lessee of premises and stating that the lessee did not enter into possession of the premises until on or after 1 January 1986 is admissible in any proceedings arising out of or taken under this Act and, unless evidence is given to the contrary, shall be presumed to be correct.

10 (2) A statement under this section is not admissible in proceedings unless the lessor of the premises became the lessor after the statement was signed by the lessee.

(2) (a) Section 5A (7)—

After “subsection (1)” where firstly occurring, insert “and section 5AA”.

(b) Section 5A (8)—

15 After “subsection (1)” where firstly occurring, insert “and section 5AA”.

(c) Section 5A (8)—

20 Omit “the classes of prescribed premises referred to in subsection (1)”, insert instead “premises exempted from the operation of provisions of the Act by subsection (1) or section 5AA”.

(d) Section 5A (9A)–(9C)—

After section 5A (9), insert:

(9A) On and after 1 January 1986, the Rent Controller shall not register a lease under this section unless—

25 (a) the lease was executed by the lessee before 1 January 1986; and

*Landlord and Tenant (Protected Tenancies) Amendment 1985*SCHEDULE 1—*continued*AMENDMENTS TO THE LANDLORD AND TENANT
(AMENDMENT) ACT 1948—*continued*

(b) the application for registration was made on or before 30 June 1986, or a Fair Rents Board has recommended under subsection (9C) that the application be dealt with.

5 (9B) Where an application for the registration of a lease under this section is made to the Rent Controller after 30 June 1986, but before 1 January 1989, the Rent Controller may refer the application to a Fair Rents Board if of the opinion that the Board could make a recommendation under subsection (9C) that the application be dealt with.

10 (9C) A Fair Rents Board may, if satisfied that in the particular circumstances of an application for registration referred to it under subsection (9B) there is a reasonable excuse for the delay in the making of the application, recommend to the Rent Controller that the application be dealt with.

15 (3) (a) Section 81A (1)—

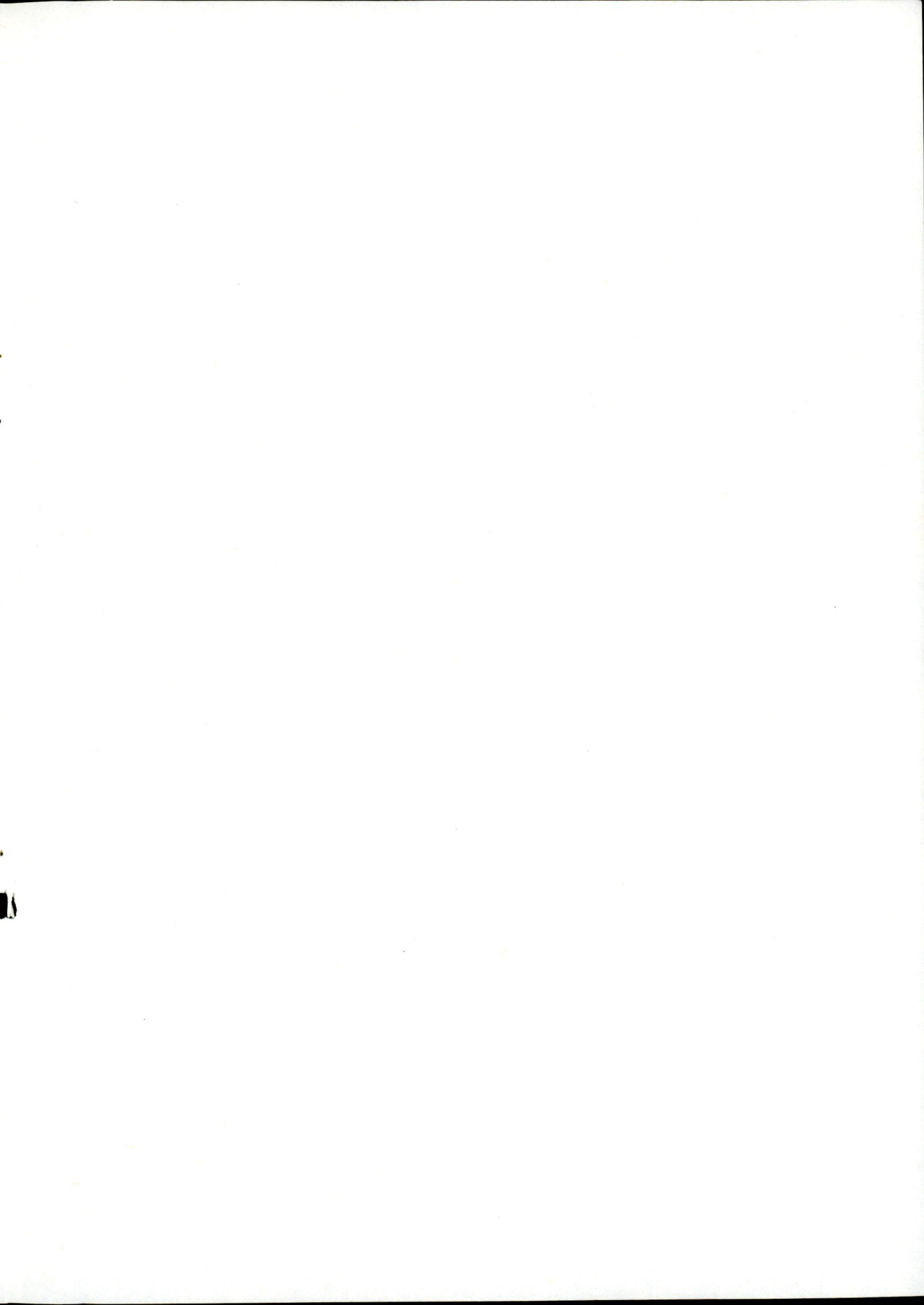
Omit “section 5A” where firstly occurring, insert instead “section 5AA or 5A”.

(b) Section 81A (1)—

20 Omit “section 5A” where secondly occurring, insert instead “section 5AA or 5A, as the case may be,”.

BY AUTHORITY

D. WEST, GOVERNMENT PRINTER, NEW SOUTH WALES—1985



**LANDLORD AND TENANT (PROTECTED TENANCIES)
AMENDMENT ACT 1985 No. 121**

New South Wales



ANNO TRICESIMO QUARTO

ELIZABETHÆ II REGINÆ

* * * * *

Act No. 121, 1985

An Act to amend the Landlord and Tenant (Amendment) Act 1948 in relation to the classes of premises which are subject to the provisions of that Act. [Assented to, 6th November, 1985.]

Landlord and Tenant (Protected Tenancies) Amendment 1985

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:

Short title

1. This Act may be cited as the "Landlord and Tenant (Protected Tenancies) Amendment Act 1985".

Amendment of Act No. 25, 1948

2. The Landlord and Tenant (Amendment) Act 1948 is amended in the manner set forth in Schedule 1.

SCHEDULE 1

(Sec. 2)

AMENDMENTS TO THE LANDLORD AND TENANT (AMENDMENT)
ACT 1948

(1) Sections 5AA, 5AB—

After section 5, insert:

No new protected tenancies to be created from 1 January 1986

5AA. On and from 1 January 1986, the provisions of Parts II, III, IV and V—

- (a) do not apply in respect of prescribed premises unless the premises were the subject of a lease immediately before 1 January 1986; and
- (b) cease to apply, and shall not thereafter apply, to any such premises upon vacant possession of the premises being obtained or upon those provisions ceasing to apply to the premises by reason of the operation of section 5A or any other provision of this Act.

Landlord and Tenant (Protected Tenancies) Amendment 1985

SCHEDULE 1—*continued*

AMENDMENTS TO THE LANDLORD AND TENANT
(AMENDMENT) ACT 1948—*continued*

Evidence of vacant possession

5AB. (1) A statement, in or to the effect of the prescribed form, signed by the lessee of premises and stating that the lessee did not enter into possession of the premises until on or after 1 January 1986 is admissible in any proceedings arising out of or taken under this Act and, unless evidence is given to the contrary, shall be presumed to be correct.

(2) A statement under this section is not admissible in proceedings unless the lessor of the premises became the lessor after the statement was signed by the lessee.

(2) (a) Section 5A (7)—

After “subsection (1)” where firstly occurring, insert “and section 5AA”.

(b) Section 5A (8)—

After “subsection (1)” where firstly occurring, insert “and section 5AA”.

(c) Section 5A (8)—

Omit “the classes of prescribed premises referred to in subsection (1)”, insert instead “premises exempted from the operation of provisions of the Act by subsection (1) or section 5AA”.

(d) Section 5A (9A)–(9C)—

After section 5A (9), insert:

(9A) On and after 1 January 1986, the Rent Controller shall not register a lease under this section unless—

- (a) the lease was executed by the lessee before 1 January 1986; and

Landlord and Tenant (Protected Tenancies) Amendment 1985

SCHEDULE 1—*continued*

AMENDMENTS TO THE LANDLORD AND TENANT
(AMENDMENT) ACT 1948—*continued*

- (b) the application for registration was made on or before 30 June 1986, or a Fair Rents Board has recommended under subsection (9C) that the application be dealt with.

(9B) Where an application for the registration of a lease under this section is made to the Rent Controller after 30 June 1986, but before 1 January 1989, the Rent Controller may refer the application to a Fair Rents Board if of the opinion that the Board could make a recommendation under subsection (9C) that the application be dealt with.

(9C) A Fair Rents Board may, if satisfied that in the particular circumstances of an application for registration referred to it under subsection (9B) there is a reasonable excuse for the delay in the making of the application, recommend to the Rent Controller that the application be dealt with.

- (3) (a) Section 81A (1)—

Omit “section 5A” where firstly occurring, insert instead “section 5AA or 5A”.

- (b) Section 81A (1)—

Omit “section 5A” where secondly occurring, insert instead “section 5AA or 5A, as the case may be,”.