



ANNO SECUNDO

ELIZABETHAE II REGINAE

A.D. 1953

No. 25 of 1953.

An Act to amend the Landlord and Tenant (Control of Rents) Act, 1942-1952.

[Assented to 3rd December, 1953.]

BE IT ENACTED by the Governor of the State of South Australia, with the advice and consent of the Parliament thereof, as follows :

1. (1) This Act may be cited as the " Landlord and Tenant (Control of Rents) Act Amendment Act, 1953 ". Short titles.

(2) The Landlord and Tenant (Control of Rents) Act, 1942-1952, as amended by this Act, may be cited as the " Landlord and Tenant (Control of Rents) Act, 1942-1953 ".

2. The Landlord and Tenant (Control of Rents) Act, 1942-1951, as reprinted pursuant to the Amendments Incorporation Act, 1937, and section 46 of the Landlord and Tenant (Control of Rents) Act Amendment Act, 1951, and as amended by the Landlord and Tenant (Control of Rents) Act Amendment Act, 1952, is hereinafter referred to as " the principal Act " and any reference in this Act to any provision of the principal Act shall be construed as a reference to that Act as so reprinted and amended. Reference to principal Act.

3. Section 5 of the principal Act is amended—

- (a) by inserting after the word " premises " in the first line thereof the words " being a dwelling-house " ;
- (b) by inserting after the word " any " second occurring in the second line thereof the word " such " ;
- (c) by striking out subsections (2) and (3) thereof ;

Amendment of principal Act, s. 5—
Premises to which Act is to apply.

- (d) by striking out the words " Except as provided by subsections (2) and (3) " in the first line of subsection (4) thereof ;
- (e) by inserting after the word " premises " in the second line of subsection (6) thereof the words " being dwelling-houses " ;
- (f) by inserting before the word " premises " occurring in the seventh and eighth lines of subsection (6) thereof in each case the word " such " ;
- (g) by inserting after the word " of " in the last line of subsection (6) thereof the words " any such " .

Amendment of
principal Act,
s. 6—
Exemptions
from Act.

4. Section 6 of the principal Act is amended—

- (a) by striking out subsection (2) thereof and by inserting in lieu thereof the following subsection :—

(2) The provisions of this Act shall not apply—

- (a) with respect to any lease entered into after the passing of the Landlord and Tenant (Control of Rents) Act Amendment Act, 1953, of any dwellinghouse the erection of which is completed after the said passing and which or any part of which has not been used for the purpose of residence at any time prior to the said passing ;
- (b) with respect to any lease entered into after the passing of the Landlord and Tenant (Control of Rents) Act Amendment Act, 1953, of the whole of any premises which or any part of which was not let for the purpose of residence at any time between the first day of September, nineteen hundred and thirty-nine, and the time of the said passing ;
- (c) with respect to any lease in writing of any dwellinghouse the term of which is for three years or more and which is entered into after the passing of the Landlord and Tenant (Control of Rents) Act Amendment Act, 1953.

- (b) by striking out subsection (5) thereof.

5. Section 13 of the principal Act is amended—
- (a) by striking out subsection (2) thereof ;
- (b) by striking out the passage “ or subsection (2) ” in the second line of subsection (3) thereof.
- Amendment of principal Act, s. 13—
Pegging of rents.
6. Section 21 of the principal Act is amended—
- (a) by striking out the passage “ (not being a dwelling-house) ” in the second line of subsection (3) thereof and by inserting in lieu thereof the words “ any part of which is used as a shop, storeroom, workshop, stable or for any similar purpose ” ;
- (b) by inserting after the word “ shall ” in the fifth line of subsection (3) thereof the words “ , with respect to the rent to be fixed with respect to the part of the premises so used, ” ;
- (c) by striking out subsection (4) thereof and by inserting in lieu thereof the following subsection :—
- (4) If any part of any premises to which this Act applies is a shop but is (whether with or without the consent of the lessor) used for the purpose of residence, then in fixing the rent of the premises the trust, or as the case may be, local court shall fix the rent with respect to that part of the premises which is a shop according to its rental value as a shop ascertained as provided by subsection (3) hereof.
- Amendment of principal Act, s. 21—
Matters to be considered in fixing rents.
7. Section 42 of the principal Act is amended—
- (a) by striking out the word “ married ” twice occurring in the penultimate line of subparagraph (i.) of paragraph (g) of subsection (6) thereof ;
- (b) by striking out the words “ not being a dwellinghouse or ” in the first line of subparagraph (ii.) of paragraph (g) of subsection (6) thereof and by inserting in lieu thereof the word “ being ” ;
- (c) by inserting after the word “ leased ” in the second line of subparagraph (ii.) of paragraph (g) of subsection (6) thereof the words “ other than ” ;
- (d) by inserting after paragraph (l) of subsection (6) thereof the following paragraph :—
- Amendment of principal Act, s. 42—
Restriction on eviction.

(*l*) that the premises are reasonably needed for the permanent occupation as a dwelling-house in consequence of that employment by some person employed by, or about to be employed by, the lessor :

(*e*) by striking out the word " married " twice occurring in the penultimate line of subparagraph (*i*.) of paragraph (*m*) of subsection (6) thereof ;

(*f*) by striking out the words " not being a dwellinghouse or " in the first line of subparagraph (*ii*.) of paragraph (*m*) of subsection (6) thereof and by inserting in lieu thereof the word " being " ;

(*g*) by inserting after the word " leased " in the second line of subparagraph (*ii*.) of paragraph (*m*) of subsection (6) thereof the word " other than " ;

(*h*) by adding at the end of subsection (6) thereof the following paragraph :—

(*s*) that the lessee has without the consent or approval of the lessor not personally resided in the premises for a continuous period of at least six months.

Amendment of principal Act, s. 45—
Notice to quit where dwellinghouse sold.

8. Section 45 of the principal Act is amended—

(*a*) by striking out the proviso to subsection (1) thereof ;

(*b*) by striking out the proviso to subsection (2) thereof.

Amendment of principal Act, s. 46—
Grounds in notice to quit.

9. Section 46 of the principal Act is amended by adding at the end thereof the following passage :—

If in any proceedings the lessor relies upon any ground other than a ground specified in the notice to quit and if on the hearing of the proceedings the court makes an order for the recovery of possession of the premises or for the ejection of the lessee therefrom, that order shall be deemed to terminate the tenancy of the lessee as from the day on which the order takes effect.

Amendment of principal Act, s. 49—
Consideration by court.

10. Section 49 of the principal Act is amended—

(*a*) by inserting after the passage " (*j*) " in the third line of paragraph (*c*) of subsection (1) thereof the passage " (*l*1) " ;

(*b*) by inserting after paragraph (*i*) of subsection (1) thereof the following paragraph :—

- (j) where application is made on a ground specified in paragraph (s) of subsection (6) of section 42—whether the lessee had reasonable cause not to reside personally in the premises,
- (c) by inserting after the word “lessor” in the third line of subsection (6) the words “or the son or daughter of the lessor”;
- (d) by striking out the word “five” in the sixth line of subsection (6) thereof and by inserting in lieu thereof the word “two”;
- (e) by striking out the word “him” in the eleventh and seventeenth lines of subsection (6) and inserting in lieu thereof in each case the words “the lessor, or as the case may be, the son or daughter of the lessor”;
- (f) by striking out the word “lessor” in the first line of paragraph (a) of subsection (8) thereof and by inserting in lieu thereof the word “lessee”;
- (g) by adding at the end thereof the following subsection :—
- (9) If in any such proceedings where application is made on the ground that the premises (being premises part of which is used as a shop, store-room, workshop or stable or for a similar purpose) are reasonably needed for occupation by the lessor in connection with his trade, profession, calling or occupation, proof is given to the satisfaction of the court—
- (a) that the lessor has been the owner of the premises for at least two years before the giving of the notice to quit; and
- (b) that at the time of the giving of the notice to quit the lessor was not the owner of any other premises which were reasonably available to him for occupation by him in connection with his trade, profession, calling or occupation; and
- (c) that the lessor is a British subject or a body corporate incorporated or registered in accordance with any law of the State; and

(d) that the lessor has since the passing of the Landlord and Tenant (Control of Rents) Act Amendment Act, 1953, given notice to quit to the lessee for a period of not less than twelve months,

then the court shall not take into consideration any of the matters mentioned in subsection (1) of this section.

Nothing in this subsection shall limit any right of the lessor under any other provision of this Act.

Amendment of principal Act, s. 56—

Recovery of possession of dwellinghouse for occupation by employee.

11. Section 55 of the principal Act is amended by striking out the word "five" in the fourth line of subsection (2) thereof and by inserting in lieu thereof the word "two".

Enactment of s. 55a of principal Act—

12. The following section is enacted and inserted in the principal Act after section 55 thereof:—

Recovery of possession where alternative accommodation is offered to lessee.

55a. (1) Notwithstanding section 42 but subject to this section the lessor of any dwellinghouse may give notice to quit to the lessee of the dwellinghouse without specifying any ground therein.

(2) A notice to quit shall not be given under this section unless the lessor offers to make available to the lessee at the time the notice to quit is given reasonably suitable alternative accommodation (in this section referred to as "the alternative accommodation").

Every notice to quit given under this section shall describe the alternative accommodation and shall state where it is situated and the rent thereof.

(3) Section 45 shall not apply with respect to any notice to quit given under this section.

(4) On the hearing of any proceedings by the lessor for an order for the recovery of possession of the dwellinghouse or the ejection of the lessee therefrom if proof is given (the onus of which proof shall be on the lessor) to the court that the lessor has, at the time of the giving of notice to quit, offered the alternative accommodation to the lessee and if the court is satisfied that the alternative accommodation is reasonably comparable with the dwellinghouse leased by the tenant and that the rent thereof is reasonably comparable with that of the said dwellinghouse and that it is situated at a place reasonably convenient for the

needs of the lessee, the court shall make the order without taking into consideration any of the matters mentioned in subsection (1) of section 49.

13. Section 60 of the principal Act is amended—

- (a) by inserting after the passage “ (l) ” in the second line thereof the passage “ , (l1) ” ;
- (b) by inserting after the passage “ section 42 ” in the third line thereof the passage “ or in subsection (1) of section 55 ” ;
- (c) by striking out the passage “ or (l) ” in the second line of paragraph (b) of subsection (2) thereof and by inserting in lieu thereof the passage “ , (l) or (l1) ” ;
- (d) by inserting after the passage “ section 42 ” in the third line of paragraph (b) of subsection (2) thereof the passage “ or in subsection (1) of section 55 ” .

Amendment of principal Act, s. 60—
Premises not to be sold, etc., in certain cases.

14. Section 73 of the principal Act is amended—

- (a) by inserting after the passage “ (l) ” in the sixth line of subsection (4) thereof the passage “ (l1), ” ;
- (b) by inserting after the passage “ (l) ” in the seventh line of subsection (5) thereof the passage “ (l1), ” .

Consequential amendment of principal Act, s. 73—
Rights of protected persons.

15. (1) Part VII. of the principal Act is hereby repealed.

(2) Section 2 of the principal Act is amended by striking out the passage “ Part VII.—Control of rents of hotel premises ” .

Repeal of Part VII. of principal Act—
Control of rents of hotel premises.

16. Section 100 of the principal Act is amended by inserting therein after subsection (1) thereof the following subsection :—

(1a) This section shall not apply with respect to any sum of money which is required, given or received or offered, promised or agreed to be given or received on the sale of any goods comprising the stock in trade of any business and which is substantially equal to the fair value of those goods.

Amendment of principal Act, s. 100—
Premiums, etc., on grant of lease.

17. Section 105 of the principal Act is amended—

- (a) by inserting after the word “ lessee ” in the first line of paragraph (b) of subsection (1) thereof the words “ or a former lessor or lessee ” ;
- (b) by inserting after the word “ lessee ” in the first line of paragraph (c) of subsection (1) thereof the words “ or a former lessor or lessee ” .

Amendment of principal Act, s. 105—
Powers of examination.

Amendment of s. 109a of principal Act—

Provisions applicable to premises to which Act does not apply.

18. The following section is enacted and inserted in the principal Act after section 109 thereof :—

109a. (1) In this section “ business premises ” means any premises other than—

- (a) any premises which pursuant to subsection (6) of section 5 are premises to which this Act applies ;
- (b) any premises of any kind such as is described in subsection (1) or subsection (2) of section 6 ;
- (c) any premises leased for the purpose of residence.

(2) If any notice to quit in respect of any business premises is given by the lessor of the premises to the lessee thereof and if any proceedings are taken pursuant to any Act or law before the Supreme Court or any local court by the lessor or any person claiming through the lessor to recover possession from the lessee of the premises or for the ejection of the lessee therefrom, and if on the hearing of the proceedings the court is satisfied that an order for the recovery of the possession of the premises from the lessee or, as the case may be, for the ejection of the lessee therefrom should be made, then, unless on the hearing of the proceedings proof (the onus of which proof shall be on the lessor or, as the case may be, the person claiming through the lessor) is given to the court that the notice to quit was given by reason—

- (a) that the lessee has failed to pay any rent due and payable under the lease ; or
- (b) that the lessee has committed any act such as is specified in paragraph (b), (c), or (e) of subsection (6) of section 42 ; or
- (c) that the premises are reasonably needed for occupation by the lessor,

then, notwithstanding any Act or law to the contrary, the order of the court shall specify that the order is to take effect on a date which is six months after the day upon which the order is made and the order shall take effect accordingly, and no proceedings for the execution of the order shall be competent to be taken before such date.

Amendment of principal Act, s. 119—
Facilitation of proof.

19. Section 119 of the principal Act is amended by adding at the end thereof the following subsection :—

(4) If in any prosecution under this Act or in any proceedings to recover possession of any premises from the lessee or for the ejection of the lessee therefrom (whether the proceedings are taken under this Act or otherwise),

proof is given that the premises or a substantial part of the premises is leased for the purpose of residence, the premises shall be presumed to be premises to which this Act applies and this Act shall be presumed to apply to the lease thereof unless sufficient evidence is given to the contrary.

20. Section 123 of the principal Act is amended by striking out the word "fifty-three" in the second line thereof and by inserting in lieu thereof the word "fifty-four".

Amendment of
principal Act,
s. 123—
Duration of
Act.

In the name and on behalf of Her Majesty, I hereby assent to this Bill.

R. A. GEORGE, Governor.