



ANNO TRICESIMO QUARTO

ELIZABETHAE II REGINAE

A.D. 1985

No. 19 of 1985

An Act to amend the Landlord and Tenant Act, 1936 and the Commercial Tribunal Act, 1982.

[Assented to 14 March 1985]

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

PART I

PRELIMINARY

1. This Act may be cited as the "Statutes Amendment (Commercial Tenancies) Act, 1985". Short title.
2. This Act shall come into operation on a day to be fixed by proclamation. Commencement.

PART II

AMENDMENT OF THE LANDLORD AND TENANT ACT, 1936

3. The Landlord and Tenant Act, 1936, is referred to in this Part as "the principal Act". Short title.
4. The long title of the principal Act is amended by inserting after the word "tenant" the passage " , to regulate certain aspects of the relationship of landlord and tenant under commercial tenancy agreements of prescribed classes; and for other purposes". Amendment of long title.
5. Sections 1 and 2 of the principal Act are repealed and the following section is substituted: Repeal of ss. 1 and 2 and substitution of new section.
 1. This Act may be cited as the "Landlord and Tenant Act, 1936". Short title.
6. Section 3 of the principal Act is amended by inserting after the item: Amendment of s. 3—
 - PART III—Miscellaneous provisions: sections 47-53 Division of Act.
 - PART IV—Commercial tenancy agreements: sections 54-75.

the item:

Insertion of new
s. 3b.

7. The following section is inserted after section 3a of the principal Act:

Application of
Act to Crown.

3b. This Act binds the Crown.

Insertion of new
Part IV.

8. The following Part is inserted after section 53 of the principal Act:

PART IV

COMMERCIAL TENANCY AGREEMENTS

DIVISION I—PRELIMINARY

Interpretation.

54. In this Part, unless the contrary intention appears—

“business” means an undertaking (whether or not carried on with a view to profit) involving the manufacture, sale or supply of goods or services:

“commercial tenancy” or “tenancy” means the right of occupancy under a commercial tenancy agreement:

“commercial tenancy agreement” means an agreement under which a person grants to another for valuable consideration a right to occupy, whether exclusively or otherwise, premises for the purpose of carrying on a business:

“the Commercial Tribunal” or “the Tribunal” means the Commercial Tribunal established under the Commercial Tribunal Act, 1982:

“landlord” means the grantor of a right of occupancy under a commercial tenancy agreement and includes his successors and assigns:

“licensed agent” means a licensed agent as defined in the Land and Business Agents Act, 1973:

“premises” includes—

(a) any part of premises;

(b) land and appurtenances appurtenant to premises;

and

(c) unimproved land:

“rent” means an amount payable by a tenant under a commercial tenancy agreement that—

(a) is the consideration or part of the consideration for the tenancy;

and

(b) is related to a period of the tenancy:

“security bond” means an agreement (whether included in or collateral to a commercial tenancy agreement) under which an amount is paid by a tenant as security for the perform-

ance of his obligations under a commercial tenancy agreement:

“shop premises” means business premises—

(a) at which goods are sold to the public by retail;

or

(b) to which the public is invited with a view to negotiating for the supply of services:

“tenant” means the grantee of a right of occupancy under a commercial tenancy agreement and includes his successors and assigns.

55. (1) Subject to this section, this Part applies to a commercial tenancy agreement if—

Application of Part.

(a) the premises to which the agreement applies are shop premises or premises of a prescribed kind (if any);

(b) the rent payable under the agreement does not exceed the prescribed limits;

(c) the tenancy created by the agreement is not of a kind excluded from the application of this Part by or under subsection (2);

and

(d) the commercial tenancy agreement is entered into, extended, renewed, assigned or otherwise transferred after the commencement of this Part.

(2) This Part does not apply in respect of a commercial tenancy—

(a) where the tenancy arises under an agreement for the sale and purchase of premises;

(b) where the tenancy arises under a mortgage in respect of the premises;

(c) where the tenancy arises by virtue of a scheme under which—

(i) a group of adjacent premises is owned by a company;

and

(ii) the premises comprising the group are let by the company to persons who jointly have a controlling interest in the company;

(d) where the tenancy arises under a prescribed agreement or an agreement of a prescribed class;

or

(e) where the premises are prescribed premises or premises of a prescribed class.

DIVISION II—JURISDICTION OF THE COMMERCIAL TRIBUNAL

56. (1) Subject to this section, the Commercial Tribunal has exclusive jurisdiction to hear and determine any claim that arises under or in respect of a commercial tenancy agreement to which this Part applies.

Jurisdiction of Commercial Tribunal under this Part.

(2) Where proceedings commenced before the Commercial Tribunal under this Part involve a monetary claim exceeding the prescribed amount, the Tribunal shall, upon application by a party to the proceedings, order that the proceedings be removed to a court competent to hear and determine a claim for the same amount founded on contract.

(3) A court to which proceedings are removed under subsection (2) may, in relation to those proceedings, exercise the jurisdiction and powers of the Tribunal under this Part.

(4) Section 13 of the Commercial Tribunal Act, 1982, shall not apply to the Tribunal in the exercise of its jurisdiction under this Part and, except where the provisions of this Part otherwise provide, the Tribunal shall determine a claim that is the subject of proceedings before it according to law.

(5) In this section—

“the prescribed amount” means five thousand dollars or such other amount as may be prescribed by regulation.

DIVISION III—SPECIAL PROVISIONS APPLYING TO COMMERCIAL TENANCIES

57. (1) Subject to subsection (2), a landlord shall not require or receive from a tenant or prospective tenant any monetary consideration for or in relation to entering into, extending or renewing a commercial tenancy agreement other than rent and a security bond.

Penalty: Four hundred dollars.

(2) Subsection (1) does not apply to—

- (a) an amount received as consideration for the landlord carrying out, in accordance with an agreement with the tenant, work on the premises before the tenant goes into occupancy of the premises;
- (b) an amount required or received as consideration for a right or option to enter into a commercial tenancy agreement if, upon a commercial tenancy agreement being entered into, the amount is refunded or applied towards the rent payable under that agreement;
- (c) an amount that is payable to a legal practitioner, land broker or licensed agent for attendances on the tenant or for the preparation of documents that are relevant to the tenancy;

or

- (d) any payment of a prescribed class.

58. (1) A person shall not before the tenant becomes entitled to go into occupancy of premises under a commercial tenancy agreement require, as rent under the agreement, an amount exceeding—

- (a) the amount payable under the agreement for one months occupancy of the premises;

or

Consideration for commercial tenancy agreement to be rent and security bond only.

Rent in advance.

- (b) one-twelfth of the amount payable under the agreement for one year's occupancy of the premises,

whichever is the lesser.

Penalty: Four hundred dollars.

(2) A person shall not require any payment of rent (other than the first payment) under a commercial tenancy agreement earlier than seven days before the commencement of the period of occupancy in respect of which the rent is payable.

Penalty: Four hundred dollars.

(3) An agreement that imposes obligations as to the time of payment of rent that are inconsistent with this section is, to the extent of the inconsistency, void.

59. (1) Subject to subsection (2), a person shall not in relation to a commercial tenancy agreement—

Regulation of security bonds.

(a) require more than one security bond;

or

(b) require the payment of, or receive, under a security bond, an amount exceeding—

(i) the rent payable for one month's occupancy of the premises to which the agreement relates;

or

(ii) one-twelfth of the rent for one year's occupancy of the premises to which the agreement relates,

whichever is the lesser.

Penalty: Four hundred dollars.

(2) Subsection (1) does not apply to a security bond under which a tenant agrees to pay to a landlord an amount as security for the payment of rates, taxes and government charges that are payable by the tenant under a commercial tenancy agreement.

60. A person who receives money paid under a security bond—

(a) shall forthwith give or cause to be given to the person paying the money a receipt specifying the date on which the bond was entered into, the name of the person by whom the money was paid, the amount paid and the premises in respect of which it is paid;

All amounts paid under security bonds to be receipted and paid to Tribunal.

and

(b) shall—

(i) if he is a licensed agent—pay the money to the Tribunal within twenty-eight days of its receipt;

(ii) in any other case—pay the money to the Tribunal within seven days of its receipt.

Penalty: Six hundred dollars.

61. (1) The Tribunal may, on application by a landlord or tenant for an order under this section, order that an amount paid under a security bond—

Payment of security bonds by Tribunal to landlord or tenant.

- (a) be paid in full to the tenant;
- (b) be paid—
 - (i) in part to the landlord to satisfy a liability of the tenant under the commercial tenancy agreement;
 - and
 - (ii) as to the remainder—to the tenant;

or

- (c) be paid in full to the landlord to satisfy, or towards satisfaction of, a liability of the tenant under the commercial tenancy agreement.

(2) Where both landlord and tenant agree that the amount paid under the security bond should be paid out in a stipulated manner and have expressed their agreement in the prescribed form, an order shall be made for payment in accordance with the agreement.

(3) Where notice of an application under this section has been given by the applicant to the other party to the agreement and that other party does not within ten days of receiving the notice lodge with the Tribunal a notice of his intention to dispute the application, an order for payment, in the terms sought in the application, shall be made.

(4) A tenant may not apply for an order under this section unless—

- (a) the tenancy has come to an end;
- and
- (b) the tenant has vacated the premises.

62. (1) Where a document intended to constitute a commercial tenancy agreement, a part of such an agreement, or a memorandum of such an agreement is presented by a landlord or an agent acting on his behalf for execution by a tenant—

- (a) the document must specify in a clear and concise manner—
 - (i) where the tenancy is for a fixed term—the term of the tenancy and any agreement that the parties may have made in relation to extension or renewal of the term;
 - (ii) the rent payable under the agreement or the method by which that rent is to be calculated and, if provision is made for review or alteration of rent during the term of the tenancy, the time and manner in which the review or alteration may be made;
 - (iii) the nature, and amount or method of calculation, of any payment (in addition to rent) that the tenant must make under the agreement;

and

- (b) a copy of the document must be given to the tenant at the time of execution by him.

(2) A landlord shall, upon execution of a commercial tenancy agreement or memorandum of such an agreement by the tenant—

(a) if he has not already done so, execute the agreement himself;

and

(b) present the document to the Commissioner of Stamps for assessment of stamp duty under the Stamp Duties Act, 1923.

(3) The landlord shall comply with the requirements of subsection (2) as expeditiously as possible.

(4) A fully executed copy of the document must be delivered to the tenant within twenty-eight days after the payment of any stamp duty chargeable on it under the Stamp Duties Act, 1923, or, if the document is to be registered under The Real Property Act, 1886, or the Registration of Deeds Act, 1935, within twenty-eight days after its registration.

(5) A landlord who fails to comply with a provision of this section shall be guilty of an offence and liable to a penalty not exceeding four hundred dollars.

63. (1) This section applies to a liability—

(a) that arises—

(i) upon or in respect of the sale or disposal of a business conducted in premises subject to a commercial tenancy agreement;

or

(ii) upon or in respect of the assignment of rights arising under a commercial tenancy agreement or the subletting of premises subject to such an agreement;

and

(b) that is calculated by reference to—

(i) the consideration, or any part of the consideration, to which the tenant is entitled in respect of the transaction referred to above;

or

(ii) the value of the goodwill or any other asset of the business conducted in the premises subject to the commercial tenancy agreement.

(2) A contractual provision that purports to create a liability to which this section applies is void and of no effect unless approved by the Tribunal.

(3) The Tribunal shall not approve a contractual provision under this section unless satisfied that the provision is, in the circumstances of the case, fair and reasonable.

(4) Where a tenant makes a payment to a landlord under a provision of a commercial tenancy agreement that is void by virtue of subsection (2), the amount of that payment may be recovered by the tenant from the landlord as a debt by application to the Tribunal.

Provision relating to payments on sale or assignment void unless approved by Tribunal.

Right of tenant to assign or sublet.

64. (1) It shall be a term of every commercial tenancy agreement that the tenant has the right, subject to the consent of the landlord, to assign his rights arising under the commercial tenancy agreement or to sublet the premises subject to the agreement and that the landlord will not—

(a) unreasonably withhold his consent;

or

(b) make any charge for giving his consent other than his reasonable incidental expenses.

(2) Where in any proceedings the question arises as to whether or not the landlord unreasonably withheld a consent referred to in this section, the burden shall be on the landlord to prove that he has not unreasonably withheld his consent.

Hours of business.

65. (1) Subject to subsection (2), any provision of a commercial tenancy agreement that purports to impose on a tenant an obligation to have his premises open for business at particular times, or during particular periods, is void and of no effect.

(2) This section does not apply where the premises to which the commercial tenancy agreement relates form part of a group of premises constructed or adapted to accommodate six or more separate businesses.

Implied warranty that premises reasonably fit for business of tenant.

66. (1) Where a landlord had, before entering into a commercial tenancy agreement, notice from the tenant that the premises were required for carrying on a particular business, the agreement shall subject to subsection (2) be deemed to include a warranty that the premises are structurally suitable for that purpose.

(2) The warranty referred to in subsection (1) is excluded if the landlord gives notice of the exclusion, in the prescribed manner and form, before execution of the agreement by the tenant.

Tenancy to continue while extensions or renewals are negotiated.

67. (1) Where—

(a) a commercial tenancy agreement makes provision for extension or renewal of the term of the tenancy upon its expiration (other than provision for the case where a tenant holds over after its expiration);

(b) the tenant gives written notice to the landlord within the period provided in the agreement, or, if no such period is provided, not later than three months before the expiration of the term of the tenancy, that he desires an extension or renewal of the term of the tenancy;

but

(c) at the expiration of the term agreement has not been reached between the parties in relation to an extension or renewal,

the tenancy shall be deemed to continue upon the same terms and conditions until the matter is resolved by the parties or by determination of the Tribunal made having regard to the terms of the agreement.

(2) Where, on the extension or renewal of a commercial tenancy agreement that is continued after its expiration under subsection (1), there is a variation in the rent that is payable under the agreement, that variation shall be deemed to have applied from the date of expiration of the agreement and, where the rent is increased, the amount of the increase shall be payable by the tenant to the landlord and, where the rent decreased, the landlord shall refund to the tenant any amount overpaid.

DIVISION IV—DISPUTES ARISING UNDER COMMERCIAL TENANCY AGREEMENTS

68. (1) Where—

(a) a party to a commercial tenancy agreement claims that a breach of the agreement has occurred;

or

(b) a dispute arises between the parties to a commercial tenancy agreement,

a party to the agreement may apply to the Tribunal for relief under this section.

(2) Upon an application under subsection (1), the Tribunal may, as the case requires—

(a) conciliate between the parties and attempt to achieve settlement of the claim or matters in dispute by agreement;

(b) by order—

(i) restrain any action in breach of agreement;

or

(ii) require any action in performance of the agreement;

(c) order the payment of any amount payable under the agreement;

(d) order the payment of compensation for loss or damage, other than personal injury, caused by any breach of the agreement;

(e) authorize payment of the rent under the agreement into the Tribunal until the agreement has been performed or an application for compensation has been determined;

(f) where appropriate, order that the rent paid into the Tribunal be paid out towards the cost of remedying the breach or towards the amount of the compensation;

or

(g) upon a termination of the agreement, order the tenant to surrender possession of the premises to the landlord.

(3) Where the Tribunal exercises its power of conciliation on an application under subsection (1)—

(a) nothing said or done during the course of the conciliation proceedings shall subsequently be given in evidence before the Tribunal;

Power to act in relation to breaches and disputes.

(b) a member of the Tribunal who acted in the conciliation proceedings shall not be disqualified from constituting the Tribunal in other proceedings that may subsequently occur in relation to the application;

and

(c) if the proceedings are settled, the Tribunal may embody the terms of the settlement in an order.

(4) The Tribunal may make an order under subsection (2) in the nature of an injunction or order for specific performance.

(5) The Tribunal may, in relation to the determination of an application under subsection (1), make such ancillary or incidental orders as the Tribunal considers appropriate in the circumstances.

DIVISION V—COMMERCIAL TENANCIES FUND

Commercial
Tenancies Fund.

69. (1) The Registrar of the Tribunal shall establish and maintain a fund entitled the "Commercial Tenancies Fund".

(2) Any amount paid under a security bond shall, on receipt by the Registrar, be paid into the Fund.

Investment of
Fund.

70. (1) Any moneys standing to the credit of the Fund that are not immediately required for the purposes of this Part may be invested in such manner as may be approved by the Minister.

(2) Any income derived from the investment of the Fund may be applied, at the direction of the Minister after consultation with the Tribunal—

(a) towards the costs of administering this Part;

(b) towards programmes designed to improve the management of businesses in this State;

or

(c) for the benefit of landlords or tenants in such other manner as may appear desirable.

Accounts.

71. (1) The Registrar of the Tribunal shall cause proper accounts of receipts and payments to be kept in relation to the Fund.

(2) The Auditor-General may at any time, and shall at least once in every year, audit the accounts of the Fund.

DIVISION VI—MISCELLANEOUS

Contract to avoid.

72. (1) An agreement or arrangement that is inconsistent with a provision of this Part or purports to exclude, modify or restrict the operation of this Part is to that extent void and of no effect.

(2) Any purported waiver of a right conferred by or under this Part is void and of no effect.

(3) Any person who enters into any agreement or arrangement with intent either directly or indirectly to defeat, evade or prevent the operation of this Part is guilty of an offence and liable to a penalty not exceeding one thousand dollars.

73. (1) The Tribunal may, upon application by any interested person, grant an exemption from all or any of the provisions of this Part—

- (a) in relation to a particular commercial tenancy agreement or proposed commercial tenancy agreement;
- (b) in relation to a particular class of commercial tenancy agreements;
- or
- (c) in relation to particular premises.

(2) An exemption under this section may be granted on such conditions as the Tribunal thinks fit.

74. Proceedings in respect of an offence against this Part shall be disposed of summarily.

75. The Governor may make such regulations as are contemplated by, or necessary or expedient for the purposes of, this Part.

PART III

AMENDMENT OF COMMERCIAL TRIBUNAL ACT, 1982

9. The Commercial Tribunal Act, 1982, is in this Part referred to as “the principal Act”.

10. Section 3 of the principal Act is amended by inserting after the item:

PART III— MISCELLANEOUS

the item:

SCHEDULE.

11. Section 6 of the principal Act is amended—

(a) by inserting in subsection (6) after the word “Where” the passage “other provisions of this Act or”;

and

(b) by striking out from subsection (6) the passage “under that Act” and substituting the passage “under a relevant Act”.

12. The following schedule is inserted after section 26 of the principal Act:

SCHEDULE

SPECIAL PROVISIONS RELATING TO CONSTITUTION OF TRIBUNAL

COMMERCIAL TENANCIES

1. In this schedule—

“commercial tenancy agreement” means a commercial tenancy agreement within the meaning of Part IV of the Landlord and Tenant Act, 1936.

Tribunal may exempt tenancy agreement, class of agreement or premises from provisions of Part.

Summary proceedings.

Regulations.

Short title.

Amendment of s. 3—
Arrangement of Act.

Amendment of s. 6—
Constitution of the Tribunal.

Insertion of schedule.

Interpretation.

Constitution of Tribunal when exercising jurisdiction under Landlord and Tenant Act.

2. (1) Subject to this clause, the Tribunal shall, for the purpose of exercising its jurisdiction under Part IV of the Landlord and Tenant Act, 1936, be constituted of—

- (a) the Chairman or a Deputy Chairman of the Tribunal;
- (b) a member of the appropriate panel constituted under clause 3 (a) and selected from time to time by the Chairman or a Deputy Chairman of the Tribunal to be a member of the Tribunal;

and

- (c) a member of the appropriate panel constituted under clause 3 (b) and selected from time to time by the Chairman or Deputy Chairman of the Tribunal to be a member of the Tribunal.

(2) The membership of the Tribunal may if the Chairman or a Deputy Chairman, in a particular case, so determines include one or more members of a panel constituted under section 8 (3).

(3) Where the regulations so provide, the Tribunal may be constituted solely of the Chairman or a Deputy Chairman.

Constitution of panels.

3. (1) The Governor may, for the purposes of clause 2—

- (a) establish a panel consisting of members who, in the opinion of the Governor, are suitable persons to represent the interests of landlords under commercial tenancy agreements;
- (b) establish a panel consisting of members who, in the opinion of the Governor, are suitable persons to represent the interests of tenants under commercial tenancy agreements.

(2) The provisions of Part II shall, subject to this schedule, apply in relation to members of the panels established under this clause as if they were members of panels established under that Part.

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

D. B. DUNSTAN, Governor