

and along 2 roods 39 2/10 perches acquired for Industrial Purposes on the north-east by a curved line of 12 feet 6½ inches north-westerly again along 2 roods 39 2/10 perches aforesaid to Gormanston Road aforesaid and thence on the south-west by 69 feet 0½ inches south-easterly along that Road to the point of commencement as the same is shown on survey plan number 404 filed and registered in the office of the Surveyor-General and Secretary for Lands at Hobart.

THE TENTH SCHEDULE.

TOWN OF MOONAH.

(Benjafield's Estate—Portion of Pear Avenue.)

32 4/10p. excluding roadway.

Commencing at a point on Brooker Avenue distant 162 feet 11½ inches south-easterly from the south-east angle of Lampton Estate acquired for the Erection of Homes and bounded on the north by 165 feet 2 inches westerly along part of an area surrendered to His Majesty the King for Industrial Purposes on the south-west and north-west by 52 feet 2½ inches south-easterly and south-westerly in several bearings along Pear Avenue on the south by 207 feet 4½ inches easterly again along part of an area surrendered to His Majesty the King for Industrial Purposes aforesaid to Brooker Avenue aforesaid and thence on the north-east by 65 feet 5½ inches north-westerly in two bearings along that Avenue to the point of commencement as the same is shown on survey plan number 404 filed and registered in the office of the Surveyor-General and Secretary for Lands at Hobart.

LANDLORD AND TENANT (No. 2).

No. 20 of 1954.

AN ACT to amend and continue the *Landlord and Tenant Act 1949*, and to modify its operation.
[28 April, 1954.]

BE it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:—

PART I.

PRELIMINARY.

1—(1) This Act may be cited as the *Landlord and Tenant Act (No. 2) 1954*.

(2) The *Landlord and Tenant Act 1949*, as subsequently amended, is in this Act referred to as the Principal Act.

(3) This Act shall commence on the first day of May 1954.

Short title,
citation, and
commence-
ment.

Interpreta-
tion.**2** In this Act, unless the contrary intention appears—

- (a) all expressions defined in the Principal Act have the same meaning in this Act; and
- (b) “business premises” means all prescribed premises other than dwelling-houses.

PART II.

CONTINUATION AND AMENDMENT OF THE LANDLORD AND
TENANT ACT 1949.Principal Act
to expire with
this Act.**3** Notwithstanding section eighty-eight of the Principal Act the Principal Act shall continue in force as amended by this or any Act passed after this Act until the expiry of this Act.Interpreta-
tion.**4**—(1) Section three of the Principal Act is amended by omitting the definition of “dwelling-house” and substituting therefor the following definition:—

“‘dwelling-house’ means any prescribed premises (including shared accommodation) leased principally for the purposes of residence, and includes—

- (a) any prescribed premises leased partly for the purposes of residence and partly for the purposes of—
- (i) a professional practice carried on by one of the residents;
 - (ii) a manufactory in which only the residents are engaged;
 - (iii) a trade not involving the sale of goods in which only the residents are engaged; and

(b) any boarding-house or lodging-house, but does not include any licensed premises.”.

(2) The omission from the definition amended by this section of the words “any part of any premises let separately for the purposes of residence” does not mean that in the Principal Act a part of prescribed premises let separately is not itself prescribed premises and if leased for the purposes of residence cannot be itself a dwelling-house under that definition.

PART III.

BUSINESS PREMISES.

Decontrol of
business
premises.**5** The Principal Act shall cease to apply to business premises at midnight between the thirty-first day of December 1954 and the first day of January 1955, which time is in this Part called the time of decontrol.

6—(1) Where a leased dwelling-house is part of premises which are not as a whole a dwelling-house, and which were leased to the lessor of the dwelling-house when the lease of the dwelling-house was made, upon the determination of the lease under which the lessor of the dwelling-house holds, the provisions of Part III of the Principal Act shall apply in respect of the dwelling-house as if the person entitled to recover possession from the lessor of the dwelling-house were a lessor of the premises as a whole to whom the lessor of the dwelling-house had surrendered his lease.

Protection of occupiers of dwelling-houses which are part of business premises.

(2) The person entitled to recover possession from the lessor of the dwelling-house may give the latter's lessee of the dwelling-house a six months' notice to quit under section nine and if that notice—

(a) will expire after the time of decontrol and after the person giving it will be entitled to possession of the premises as a whole; and

(b) would be effective under section nine if given by the lessor of the dwelling-house,

it shall have the same effect as it would have had if the person giving it had been at all material times the lessor of the dwelling-house.

(3) This section does not affect the rights of a person entitled to possession of premises otherwise than as a person so entitled on the expiry of a lease.

PART IV.

DWELLING HOUSES.

7—(1) The Principal Act shall not apply in respect of a lease of a dwelling-house which is leased after the thirtieth day of April 1954, for the first time since its erection was begun.

Controls removed from houses newly let.

(2) In determining the first leasing of a dwelling-house since its erection was begun for the purposes of this section—

(a) no lease before the prescribed date shall be regarded unless it was running on that date; and

(b) a lease for a term certain which commenced before the prescribed date and is still running on the thirtieth day of April 1954, shall not be regarded as a lease.

(3) Part III of the Principal Act shall not apply in respect of a lease of a dwelling-house for a term certain which commenced before the prescribed date and has at least six months still to run at the commencement of this Act.

Restraint on
eviction
removed from
houses under
public housing
schemes.

8—(1) The provisions of Part III of the Principal Act shall not apply in respect of any notice to quit or any proceedings, judicial or extra-judicial, given or taken—

- (a) by the Director of Housing or the Board of Management of the Agricultural Bank of Tasmania, as the case may be, for the purpose of recovering possession of a dwelling-house of which he or it is the lessor under the *Homes Act 1935*, the *Casual Workers and Unemployed Persons Homes Act 1936*, the *Homes (Old Age Pensioners) Act 1940*, or the *Homes (Temporary Housing Accommodation) Act 1946*; or
- (b) by the corporation of a city or municipality for the purpose of recovering possession of a dwelling-house of which it is the lessor under the *Municipal Housing Act 1941*.

(2) For the purposes of this section every statutory tenant of a person named or referred to in subsection (1) of this section at the commencement of this Act in possession of a dwelling-house under an Act therein mentioned shall be deemed a tenant by sufferance.

Restraint on
eviction
limited.

9—(1) Notwithstanding anything contained in the Principal Act any lessor of a dwelling-house may give the lessee notice to quit expiring on a day—

- (a) not less than six months' after the giving of the notice; and
- (b) on which but for the Principal Act—
 - (i) the lessor might lawfully re-enter; or
 - (ii) such a notice would determine the tenancy.

(2) A notice in accordance with subsection (1) of this section is in this Act called a six months' notice, and the giving of it shall not prejudice or be prejudiced by the giving of any other notice to quit which might have been given if this section had not been enacted.

(3) On the expiry of a six months' notice Part III of the Principal Act shall cease to apply in respect of the tenancy in respect of which the notice is given and of all sub-tenancies and other rights thereunder.

(4) Where a lessor has given another notice to quit in accordance with section fifty-two of the Principal Act and a six months' notice, and he has not recovered possession under the other notice at the expiry of the six months' notice, he shall elect between proceeding on the other notice and proceeding on the six months' notice, and—

- (a) if he elects to proceed on the other notice, the six months' notice shall have effect only to exclude the operation of sections seventy and seventy-one of the Principal Act; and

(b) if he elects to proceed on the six months' notice, he shall discontinue any unfinished proceedings on the former notice.

(5) This section shall not apply to any lessor who—

(a) has committed a breach of any provision of the lease which has given rise to an obligation to the lessee for the time being undischarged to remedy or compensate for the breach;

(b) is under any liability to the lessee under section thirty-one or section thirty-two of the Principal Act; or

(c) has not resided in the Commonwealth for at least three years.

(6) For the purposes of this section every elector for the House of Representatives in the Parliament of the Commonwealth shall be deemed to have resided in the Commonwealth for at least three years.

10—(1) In any proceedings by a lessor who has given a six months' notice for the recovery of possession of the premises to which the notice applies or for the ejection of the lessee therefrom, the court may—

Lessee's
hardship.

(a) in the case of the Supreme Court, stay judgment or execution for as long;

(b) in the case of proceedings under section one hundred and seventeen of the *Local Courts Act* 1896 make the date by which possession is to be given as late; and

(c) in the case of proceedings under section sixty-nine of the *Landlord and Tenant Act* 1935, and notwithstanding anything contained in that section, name a day for possession to be given of the premises as long after the hearing of the complaint,

as it thinks fit, having regard to any evidence before it of the hardship that would be caused to any person by the delaying or not delaying of execution.

(2) For the purposes of subsection (1) of this section either party to the proceedings may tender evidence of hardship and any other person may appear at the hearing, if any, and give evidence and be heard on his own hardship, or if there is no hearing may apply to the court before the entry of the judgment or order to be heard on his own hardship, and shall be entitled to give evidence and be heard accordingly.

(3) Where a court hears a person other than a party under subsection (2) of this section where there is no hearing of the action, it shall give the parties reasonable notice and permit them to give evidence and be heard.

(4) The provisions of subsection (1) of this section shall not apply to or in respect of any proceedings taken by a lessor who, or by joint lessors one of whom, reasonably requires the premises for his own occupation.

(5) Where a lessee is not in actual occupation of the premises or where the lessee has sub-let some part of the premises by a sub-lease which the lessor has not consented to or approved, the court shall not in the exercise of the discretion vested in it by subsection (1) of this section, delay recovery of possession unless the court is satisfied that special circumstances exist by reason of which there should be a delay.

(6) The provisions of subsection (1) of this section shall not apply to or in respect of any proceedings taken by any lessor who is a member of the forces as defined in subsection (7) of this section, and was the owner of the premises on or immediately prior to the date on which he enlisted or was called-up for war service.

(7) In this section "member of the forces" means any person who—

(a) in the war which commenced on the third day of September 1939, was—

(i) engaged on full-time service outside this State as a member of any of the following services:—

The Permanent Forces of the Commonwealth;
 The Royal Australian Navy;
 The Australian Imperial Force;
 The Royal Australian Air Force;
 The Citizen Forces;
 The Royal Australian Naval Nursing Service;
 The Women's Royal Australian Naval Service;
 The Australian Women's Army Service;
 The Australian Army Medical Women's Service;
 The Royal Australian Air Force Nursing Service;
 The Women's Auxiliary Australian Air Force; or

(ii) a member of the naval, military, or air forces raised in any part of the British Empire other than Australia and was engaged on active service outside that part; or

(b) was engaged with either British Empire or United Nations forces in Japan, Malaya or Korea.

(8) The provisions of subsection (1) of this section shall not apply to or in respect of any proceedings where the lessor's reason for bringing the action or laying the complaint is that the premises are reasonably required by the lessor for occupation by himself (or in the case of joint lessors by one of themselves) by any lessor who, or in the case of joint lessors of whom one, is a person who is—

(a) of or over the age of sixty-five years, being a male, or sixty years, being a female; or

(b) in receipt of a pension under Part IV of the *Social Services Consolidation Act 1947-1953* of the Commonwealth, or any pension payable to a widowed mother, widow, or wife, pursuant to the provisions of the *Australian Soldiers' Repatriation Act 1920-1950* of the Commonwealth.

(9) In no case may a court exercise the powers conferred upon it by subsection (1) of this section to postpone recovery of possession by the lessor for more than twelve months after the date on which the six months' notice has been given.

11—(1) Notwithstanding anything contained in the Principal Act, where—

Contracting out of restraint on eviction.

(a) a lease made in writing, whether under seal or not; or

(b) the memorandum in writing signed by the lessee of a lease not made in writing,

manifests an agreement to exclude the operation of Part III of the Principal Act in respect of the tenancy thereby created, that Part shall not operate in respect of that tenancy, any sub-tenancy created thereunder, or any interest arising under section seventy-one of the Principal Act.

(2) Except where it is expressly excluded, a warranty shall be implied in every sub-lease of a dwelling-house by a mesne lessor that the head lease does not exclude the operation of Part III of the Principal Act in respect of the sub-lease.

(3) This section applies only to dwelling-houses not excluded from the operation of Part III of the Principal Act by sections seven and eight of this Act.

12—(1) Where the tenancy of a dwelling-house which is not leased for the purpose of sub-letting has been determined as provided in section fifty-seven or otherwise and the lessee

Remedy against excessive profit by subletting.

has, before or after the termination of his tenancy sub-let a portion of the demised premises, the lessee shall account to his lessor for the rent received under the sub-lease and pay over to him the balance after deducting—

- (a) so much of the head rent as is apportionable to the portion sub-let;
- (b) one hundred and ten per cent of the value of any benefit which the sub-lessee receives from the mesne lessee and which the mesne lessee does not receive from his lessor; and
- (c) one shilling in the pound on the balance which would be payable but for this paragraph.

(2) A lessor may by notice in writing require any lessee whose tenancy has been determined of a dwelling-house not leased for the purpose of sub-letting to deliver to him with the next rent due not less than eight days after the giving of the notice a written statement signed by the lessee or his agent setting forth—

- (a) that no sub-lease exists of any part of the demised premises; or
- (b) a statement of—
 - (i) the rent paid by the sub-lessee to the mesne lessee and the rent period for it;
 - (ii) how much of the head rent is apportionable to the portion sub-let; and
 - (iii) the value of any benefit which the sub-lessee receives from the mesne lessee and which the mesne lessee does not receive from his lessor calculated at so much per rent period of the sub-lessee.

(3) If a mesne lessee or his agent—

- (a) makes a wilfully false statement; or
- (b) fails to make any statement,

under subsection (2) of this section, he shall be deemed to have committed an offence against the Principal Act.

(4) If the parties do not agree upon the amount payable under subsection (1) of this section, the lessor may bring an action against the mesne lessee in a Court of Requests in the nature of an action of account.

(5) In an action under this section the court—

- (a) shall have similar jurisdiction and powers to those of the Supreme Court to enforce a duty to account and pay the amount found due arising at common law;

- (b) may cause the defendant to attend and be examined by the plaintiff with respect to any matter in dispute;
- (c) may apportion the head-rent between the portion sub-let and the rest of the premises;
- (d) may assess any benefit received by the mesne lessee under his tenancy or by the sub-lessee under the sub-lease;
- (e) may order the statutory tenant to make a fixed periodic payment to the lessor in commutation of future obligations under this section;
- (f) may give liberty to apply by motion on notice to vary the judgment of the court; and
- (g) shall, so far as its own rules do not extend or are inept, be subject to the rules of the Supreme Court with all necessary modifications and such other convenient modifications as the court may in any particular case direct.

(6) Where a dwelling-house which is not leased for the purposes of sub-letting, is held by a lessee under a periodic lease, the lessor may give the lessee a notice requiring him to account under this section.

(7) If a notice under subsection (6) of this section is given so that if it were a notice to quit it would but for section fifty-two of the Principal Act determine the tenancy, the tenancy shall be deemed for the purposes of this section to have been determined by the notice.

13—(1) Subject to the express covenants and agreements in any lease, the lessor of a dwelling-house shall have the following rights:—

- (a) a right by himself or his servant or agent to enter and inspect the premises at any reasonable time on not more than four occasions in any year and for not more than one hour on each such occasion after not less than seven days' notice in writing has been given to the lessee;
- (b) a right by himself, his agents, servants, workmen, or contractors to enter the premises at any reasonable time for the purpose of effecting necessary repairs or maintenance after reasonable notice, whether verbal or in writing, has been given to the lessee; and
- (c) a right to have the premises entered and inspected, during a period of not more than two days in any two months of which not less than fourteen days' notice in writing has been given to the lessee, by any prospective purchasers, duly authorized in writing in that behalf by the lessor or his agent at any reasonable time and after reasonable notice, whether verbal or in writing, in respect of each such inspection has been given to the lessee.

Right of
lessor to
inspect.
No. 5780
(Vic.),
section 9.

(2) Any lessee who refuses entry to or obstructs or impedes or interferes with the lessor, his servant, agent, workmen, contractor, or any prospective purchaser in the exercise of any right under this section or who fails to take such reasonable steps as are necessary to allow the exercise of any such right shall be guilty of an offence against the Principal Act.

PART V.

MISCELLANEOUS.

Expiry of Act. **14** This Act shall expire on the thirty-first day of December 1955.

RACING AND GAMING.

No. 21 of 1954.

AN ACT to amend the *Racing and Gaming Act* 1952.
[28 April, 1954.]

BE it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:—

Short title
and citation.

1—(1) This Act may be cited as the *Racing and Gaming Act* 1954.

(2) The *Racing and Gaming Act* 1952, as subsequently amended, is in this Act referred to as the Principal Act.

Betting
premises.

2 Section sixty-six of the Principal Act is amended by omitting from paragraph (b) of subsection (14) the numerals "1954" and substituting therefor the numerals "1956".

Raffles, &c.

3 Section eighty-eight of the Principal Act is amended by omitting from subsection (5) the word "Attorney-General" (twice occurring) and substituting therefor, in each case, the word "Minister".

4 After section eighty-eight of the Principal Act the following section is inserted:—

Permits to
conduct
certain
games.

"88A—(1) Subject to this section, upon application being made by or on behalf of any organization, institution, or body of persons (whether incorporated or unincorporated), the