

South Australia

# Landlord and Tenant Act 1936

An Act to regulate the relationship of landlord and tenant under certain commercial tenancy agreements.

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**The Parliament of South Australia enacts as follows:**

## **Part A1—Preliminary**

### **1—Short title**

This Act may be cited as the *Landlord and Tenant Act 1936*.

### **3A—Act does not apply to residential tenancy agreements**

This Act shall not apply to or in relation to any residential tenancy agreement within the meaning of the *Residential Tenancies Act 1978* to which that Act applies.

### **3B—Application of Act to Crown**

This Act binds the Crown.

## **Part 1—Forfeiture and relief**

### **Division 1—Recovery of premises**

#### **4—Proceedings by landlord for non-payment of rent**

(1) In every case between a landlord and tenant, if—

- (a) one half-year's rent is in arrear; and
- (b) the landlord has by law the right to re-enter for non-payment thereof,

the landlord may bring an action for recovery of the demised premises without making any formal demand for the rent or any re-entry, and the service of the writ in that action shall have the effect of a demand and re-entry.

- (2) If the lessee or his assignees or other person claiming or deriving under the lease permits and suffers judgment to be recovered in the action and execution to be executed thereon without paying the rent and arrears together with full costs and without proceeding for relief on equitable grounds within six months after such execution executed, the said lessee, his assignees, and all other persons claiming under the lease shall be barred and foreclosed from all relief or remedy legal or equitable other than by appeal, and the landlord shall thereafter hold the demised premises discharged from the lease.
- (3) Nothing in this section shall bar the right of any mortgagee of the lease or any part thereof who is not in possession, if such mortgagee within six months after such execution executed pays all rent in arrear, and all costs and damages sustained by the landlord, and performs all the covenants and agreements which on the part and behalf of the first lessee are and ought to be performed.

#### **5—Tenant, paying all rent, proceedings to cease**

If the tenant or his assignee at any time before the hearing of the action for recovery of the land pays or tenders to the landlord, or his executors, or administrators, or his or their solicitor in the action or pays into the court all the rent and arrears due at the time of such payment, together with the costs, all further proceedings in the action shall thereupon cease and be discontinued.

## 6—Damages for mesne profits

- (1) On the hearing of any action brought by a landlord against a tenant for recovery of the demised premises the judge, if satisfied that the defendant has been served with due notice of the hearing, shall, whether the defendant appears on the trial or not, permit the plaintiff, after proof of his right to recover possession of the whole or of any part of the demised land, to adduce evidence of the mesne profits thereof, which accrued or might have accrued from the day of the expiration or determination of the tenant's interest in the land, down to the time of the judgment given in the action, or to some preceding day to be specially mentioned therein; and judgment shall be given upon the whole matter, both as to the recovery of the whole or any part of the land, and also as to the amount of the damages to be paid for such mesne profits; and in such case the landlord shall have judgment, not only for the recovery of possession and costs, but also for the mesne profits found.
- (2) Nothing in this section shall be construed to bar any landlord from bringing any action for the mesne profits which accrue from the time of the judgment or the day so specified therein, down to the day of the delivery of possession of the premises recovered in the action.

## 7—Saving of former remedies

Nothing in the preceding three sections shall prejudice or affect any other right of action or remedy which landlords possess in any of the cases provided for, in these sections, except as therein expressly enacted.

## 8—Notice of writs by lessee to landlord

Every tenant to whom there is delivered any writ for the recovery of the premises demised to or held by him, or to whose knowledge any such writ comes, shall (except where the landlord is the plaintiff named in the writ) forthwith give notice thereof to the landlord or his agent; and if he fails to do so shall be liable to forfeit to the person of whom he holds the premises an amount equal to the value of three years improved or rack rent of the premises, to be recovered by action in any court having jurisdiction in respect of claims for that amount.

## Division 2—Relief against forfeiture

### 9—Relief against forfeiture for non-payment of rent

- (1) In the case of any action in the Supreme Court for recovery of land on forfeiture for non-payment of rent, the court or a judge may, upon summons, give relief on equitable grounds in a summary manner, up to and within the same time after execution executed, and subject to the same terms and conditions in all respects as to payment of rent, costs, and otherwise, as would have applied in the Supreme Court in its equitable jurisdiction before the passing of the *Supreme Court Act 1878*.
- (2) If the lessee, his executors, administrators, or assigns are so relieved, they shall hold the demised lands according to the terms of the lease and without any new lease.
- (3) If such relief is granted, the court or judge shall direct a minute thereof to be made, by endorsement on the lease or otherwise.

## **10—No re-entry till notice to tenant to remedy breach**

A right of re-entry or forfeiture under any proviso or stipulation in a lease for a breach of any covenant or condition in the lease shall not be enforceable by action or otherwise, unless and until—

- (a) the lessor serves on the lessee a notice specifying the particular breach complained of, and, if the breach is capable of remedy, requiring the lessee to remedy the breach, and in any case requiring the lessee to make compensation in money for the breach; and
- (b) the lessee fails within a reasonable time thereafter to remedy the breach, if it is capable of remedy, and to make reasonable compensation in money to the satisfaction of the lessor for the breach.

## **11—Court or judge may grant relief**

- (1) Where a lessor is proceeding by action or otherwise to enforce such a right of re-entry or forfeiture the lessee may, in the lessor's action (if any), or in any action brought by himself, apply to the Supreme Court or a judge thereof for relief, and the court or judge may grant or refuse relief as such court or judge, having regard to the proceedings and conduct of the parties under the last preceding section and to all other circumstances, may think fit.
- (2) If the court or judge grants relief it or he may grant it on such terms (if any) as to costs, expenses, damages, compensation, penalty, or otherwise, including the granting of an injunction to restrain any like breach in the future, as the court or judge in the circumstances of each case thinks fit.

## **12—Interpretation and application of preceding sections**

- (1) For the purposes of the two preceding sections a lease includes an original lease or a derivative under-lease, or a grant securing a rent by condition, and a lessee includes an original lessee or derivative under-lessee, and the heirs, executors, administrators, and assigns of a lessee, also a grantee under such a grant as aforesaid, his heirs and assigns; and a lessor includes an original lessor or derivative under-lessor, and his heirs, executors, administrators, and assigns, also a grantor as aforesaid, and his heirs and assigns.
- (2) The said sections shall apply, although the provision or stipulation under which the right of re-entry or forfeiture accrues is inserted in the lease in pursuance of any Act.
- (3) For the purposes of the said sections a lease limited to continue as long only as the lessee abstains from committing a breach of covenant shall be and take effect as a lease to continue for any longer term for which it could subsist, but determinable by a proviso for re-entry on such a breach.
- (4) The said sections shall extend to a covenant or condition against assigning, under-letting, parting with the possession, or disposing of the land leased, when the consent of the lessor has been vexatiously or capriciously withheld.
- (5) The said sections shall not apply to Crown leases nor affect the law relating to re-entry and forfeiture for non-payment of rent.
- (6) The said sections shall apply to leases made either before or after the commencement of this Act, and shall have effect notwithstanding any stipulation to the contrary.

## Part 2—Distress for rent

### 13—Interpretation

In this Part, unless the context otherwise requires—

*rent* means any rent reserved upon or payable by virtue of any demise, lease, contract, or charge whatsoever for which a distress may lawfully be levied;

*goods* means any cattle, horses, livestock, furniture, goods, chattels, effects, or things which are by law liable to be distrained for rent, and includes lodgers' goods, but, except in sections subsequent to section 29, shall not include agisted cattle;

*landlord* means any person having power to distrain for rent due to him;

*immediate tenant* means the person owing or alleged to owe any rent, in respect of which a distress has been or is levied or threatened or authorised to be levied.

Note—

For definition of divisional penalties (and divisional expiation fees) see Appendix.

### 14—Mode of distress, and warrant, authority

- (1) No person to whom any rent is due shall distrain any goods for such rent except by himself personally, or by some person duly authorised by warrant under his hand, or the hand of his agent lawfully authorised.
- (2) Every such warrant shall be in duplicate, and in the form or to the effect of the form in Schedule 1, and shall be attested by a witness.

### 15—Exemption of warrants from stamp duty

Notwithstanding any other enactment, no warrant or authority to distrain shall be chargeable with any stamp duty.

### 16—Delivery of duplicate warrant

- (1) Every person distraining for rent on behalf of another shall, at the time of making the distress, deliver one duplicate of the warrant authorising him to distrain to the immediate tenant, or some person residing on the premises where the distress is levied.
- (2) If there is no person residing on the said premises with whom the duplicate can be left, the person distraining shall nail or affix the duplicate on some conspicuous part of the premises, and a copy of the affixed notice shall be posted to the tenant's last known address.

### 17—Distress for rent

- (1) Every person making a distress for rent shall do so between the hours of six in the morning and six in the afternoon.
- (2) Every person making a distress for rent shall forthwith make out a written inventory of the goods distrained in the form in Schedule 2, or in a form to the like effect.

- (3) The inventory shall be dated on the day of the distress, and shall be signed by the person making the distress, who shall thereupon deliver a copy thereof to the immediate tenant, or some person residing on the premises where the distress is levied.
- (4) If there is no person residing on the said premises with whom the copy can be left, the person distraining shall nail or affix the copy on some conspicuous part of those premises, and a copy of the affixed notice shall be posted to the tenant's last known address.

### **18—Delivery of copy warrant and inventory to claimant**

- (1) Every person distraining for rent shall on demand deliver one copy of the warrant (if any) under which the distress is levied, and a copy of the inventory in the last preceding section mentioned, to every person claiming an interest in the goods distrained, on payment of a charge at such rate or basis as may be prescribed from time to time by rules of court made under the *Local and District Criminal Courts Act 1926*, as amended.
- (2) Any person refusing or neglecting so to supply such copy shall be guilty of an offence, and liable to a penalty not exceeding ten dollars.

### **19—Rights of owner of agisted cattle, under-tenant, or lodger**

- (1) If any landlord levies, or threatens to levy, or authorises to be levied, a distress on any cattle agisted on the demised premises, or on any goods being the property or in the lawful possession otherwise than as sub-tenant of any under-tenant other than the immediate tenant, or of any lodger, for arrears of rent due to such landlord by his immediate tenant, the owner of such agisted cattle, or his agent, or such under-tenant or lodger, or his agent, may serve the landlord or the person authorised by him to levy such distress, with a declaration in writing in or to the effect of the form in Schedule 3, signed by such owner or his agent, or such under-tenant or lodger or his agent.
- (2) The declaration shall—
  - (a) set forth that the immediate tenant has no right of property or beneficial interest in such cattle other than his lien for agistment, if any, or that he has no right of property or beneficial interest in such goods, and that such cattle are the property of such under-tenant or owner, or that such goods are the property of such lodger, or are, or immediately prior to being distrained were, in his lawful possession; and
  - (b) state whether any and what money is due for agistment, rent, or lodging, and for what period, from such owner, under-tenant, or lodger to the immediate tenant, and if no such money is due, then stating that fact; and
  - (c) have annexed thereto a correct inventory signed by the declarant of the cattle or goods referred to in the declaration.
- (3) And such owner, under-tenant, or lodger, may pay to the landlord, or to the person authorised by him as aforesaid, the amount so due for agistment, rent, or lodging, or so much thereof as shall be sufficient to discharge the claim of such landlord and his lawful charges.



## **20—Effect of payment to landlord**

Any payment made by an owner of agisted cattle, or an under-tenant, or lodger, pursuant to the last preceding section, shall be deemed a valid payment on account of any moneys due for agistment, rent, or lodging from him to the immediate tenant.

## **21—Duty of landlord after being served with declaration**

Subject to the provisions of section 26, if any landlord, or any person authorised by a landlord, after being served with the said declaration and inventory, and in case any money is at the time of making such declaration due for agistment, rent, or lodging, as mentioned in section 19 of this Act, after payment to him of the money which by such section the owner of the agisted cattle, or the under-tenant, or lodger, is authorised to pay, levies or proceeds with a distress on such cattle, being the property of the person by or on whose behalf they have been claimed, or on the goods of the under-tenant or lodger, or goods which immediately prior to being distrained were in his lawful possession, that landlord, and the person so authorised, if any, shall if the immediate tenant had at the time of the service of the said declaration and inventory no right of property or beneficial interest in such agisted cattle other than his lien for agistment, if any, or in such goods, be deemed guilty of an irregular distress, and shall be liable to an action on the application of such under-tenant or lodger, but shall not be deemed trespassers *ab initio*.

## **22—Rights of owners of goods in other cases**

If, in any case not coming within section 19 of this Act, any landlord levies, threatens to levy, or authorises to be levied, a distress on any goods being the property or in the lawful possession of any person other than the immediate tenant, such person or his agent may serve the landlord, or the person authorised by him to levy such distress, with a declaration in, or to the effect of, the form in Schedule 4, signed by the first mentioned person or his agent, setting forth that the immediate tenant has no right of property or beneficial interest in such goods, and that such goods are the property of such first mentioned person, or are, or immediately prior to being distrained were, in his lawful possession; and to such declaration shall be annexed an inventory, signed by the declarant, of the goods referred to in the declaration.

## **23—Duty of landlord after service of declaration**

Subject to the provisions hereinafter contained and to the person who claims the goods proceeding, as provided in the next section before the sale thereof, and obtaining a decision in his favour, if any landlord or any person authorised by a landlord, after being served with the declaration and inventory provided for by the last preceding section, levies or proceeds with a distress on the goods mentioned in the inventory, being the property of the person by whom or on whose behalf the declaration and inventory was served, or having been immediately prior to such distress in his lawful possession, that landlord, and the person so authorised, if any, shall, if the immediate tenant had at the time of such service no right of property or beneficial interest in the goods, be deemed guilty of an irregular distress, and be liable to an action therefor, but shall not be deemed trespassers *ab initio*.

## 24—Jurisdiction of Magistrates Court to hear adverse claims

- (1) When any claim is made by service of a declaration and inventory, by any person other than the immediate tenant, to or in respect of any agisted cattle or goods distrained, or threatened to be distrained, by any landlord for rent, any justice of the peace, upon complaint in writing by either the landlord or the claimant preferred before the sale of such goods under the distress (where the cattle or goods have been actually distrained) by the person making the claim, may—
  - (a) issue a summons in the form in Schedule 5, or in a form to the like effect, directed as well to the landlord as to the person making the claim; and
  - (b) in his discretion order such sale to be postponed until the summons has been disposed of.
- (2) The Magistrates Court has jurisdiction to hear a claim under subsection (1) and may make such orders, including an order as to costs, as the Court thinks fit.
- (3) Service of the summons or order on a person authorised by the landlord to distrain shall be deemed service on the landlord, and service of the summons or order on a person who has made a claim on behalf of another shall be deemed service on the principal.

## 25—Decision of Magistrates Court

If it appears upon the hearing of the complaint that—

- (a) the agisted cattle claimed were the property of the person alleged to be the owner thereof, or that the goods claimed, or part of them, were the property or in the lawful possession of the claimant, being an under-tenant or lodger; and
- (b) the immediate tenant had no right of property or beneficial interest in such cattle, other than his lien for agistment, if any, or in such goods; but
- (c) the claimant did not, before the complaint was preferred, pay to the landlord, or the person authorised by him to distrain, all moneys due by the owner of the cattle, or by the under-tenant or lodger to the immediate tenant for agistment, rent, or lodging, or so much thereof as was sufficient to discharge the claim of such landlord and his lawful charges,

the Magistrates Court must decide accordingly and the decision will be taken to be in favour of the landlord.

## 26—Power of landlord to hold goods

Where any complaint is preferred as in section 24 mentioned, the landlord may, at his option, where the agisted cattle or the goods have been distrained before the making of the claim, hold the cattle or goods claimed until the claim has been adjudicated upon; and the costs of such holding, and of holding possession from the making of the claim until the adjudication, or such part thereof as the Magistrates Court thinks fit, will, if the Court so orders, be added to the costs of the distress, or paid by the claimant to the landlord.

## **27—Power of landlord to sell goods if claim in his favour**

The landlord may seize or reseize any agisted cattle or any goods as to which the decision is in his favour wherever they may be found, and, if necessary, may, between sunrise and sunset only, break into any premises where those cattle or goods may be, or may reasonably be supposed to be, and may deal with any such cattle or goods as if no such claim had been made, although he may have previously sold other cattle or goods distrained at the same time, and no fresh claim has been made by the same claimant.

## **28—False declarations**

If any person wilfully makes or signs any false declaration or inventory under this Part he shall be guilty of an offence, punishable by imprisonment for any term not exceeding twelve calendar months.

## **29—Person entitled to take declarations**

A declaration under this Part may be made before a justice of the peace, notary public, commissioner for taking affidavits in the Supreme Court, or practitioner of the Supreme Court or clerk of a local court.

## **30—Sale of distrained goods**

Where goods are distrained for rent, and are not replevied within five days next after the delivery or affixing of the copy of the inventory provided for by section 17, the landlord may, at the expiration of those five days, subject to the provisions hereinafter contained, and unless payment or tender of the rent and the charges in respect of the distress be made to him by or on behalf of the tenant before sale, sell the goods distrained for the best price that can be obtained.

## **31—Power to distrain corn and hay**

Any landlord or his agent may distrain any sheaves of corn, or corn loose, or in the straw, or hay lying on the ground, or being in any barn, granary, hovel, stock, or rick, or otherwise upon any part of the land subject to the rent, and may deal therewith as he might have dealt with any other goods distrained for rent, except that corn or hay so distrained shall not be removed by the landlord or his agent out of the place where it was seized, if such removal would depreciate its value, but shall be kept there (as impounded) until it is replevied or sold.

## **32—Distress may be secured and sold on premises**

- (1) Any landlord or his agent may impound or otherwise secure goods distrained for rent, in such place, or on such part of the premises subject to the rent, as are most fit and convenient for impounding and securing them, and may sell and dispose of them upon the premises, or, where the goods cannot be advantageously disposed of upon the said premises, may remove them to some more convenient place for disposal.
- (2) Any other person or persons may, after the expiration of the five days hereinbefore mentioned, come and go to and from the place or part of the said premises where the goods are impounded and secured in order to view or buy the goods, or remove them on account of the purchaser thereof.

- (3) If any rescue or pound breach is made of any goods distrained, the person aggrieved thereby shall, in an action for the wrong sustained, recover damages and costs against the offender or offenders, or any or either of them, or against the immediate tenant or the owner of the goods distrained, if the goods afterwards have come to his use or possession.

### **33—Disposal of proceeds of sale**

The proceeds of any such sale shall be applied as follows: First, in payment of the costs of and incident to such distress and sale; and next, in satisfaction of the rent for which the distress was made; and the overplus (if any) of such proceeds shall be paid into the hands of the immediate tenant, or, in his absence, to the clerk of the local court nearest to the place where such distress is levied, for the use of such immediate tenant.

### **34—Sale to be by auction**

The sale of any goods distrained for rent shall be by public auction, of which full and reasonable notice shall be given; and such sale shall be conducted by a licensed auctioneer, or may, with the written consent of the immediate tenant, be made by the landlord or his agent.

### **35—Costs, charges etc of distress and sale**

In relation to any distress and sale under the provisions of this Part, such charges and costs as are appropriate and as may be prescribed in that behalf from time to time by rules of court which may be made under the *Local and District Criminal Courts Act 1926*, as amended, shall be payable in accordance with the rules.

### **36—No appraisalment necessary**

In no case of distress under this Part shall any appraisalment whatever be necessary, nor shall any costs or expenses be charged or allowed in respect thereof.

### **37—Double damages against wrongful distrainer**

If any distress and sale is made for rent alleged to be due where in truth no rent was due to the person by whom or in whose name or right the distress was levied, the owner of the goods distrained and sold, his executors or administrators, may, by action against that person, recover double the value of the goods so distrained and sold, together with costs as between solicitor and client.

### **38—Goods fraudulently or clandestinely removed**

If the immediate tenant, before, at, or within fourteen days after the expiration of his term or tenancy, fraudulently or clandestinely removes any goods from the premises in respect of which rent is due by him to prevent the landlord from distraining upon the goods for rent, it shall be lawful for the landlord or his agent, within the space of thirty days next after the removal of those goods, to take and seize them wherever they are found as a distress for the said rent, and to sell and dispose of them in like manner as if they had actually been distrained by the landlord in and upon such premises for such rent; but no landlord shall seize or take any such goods which, before such seizure, have been sold *bona fide* and for a valuable consideration to any person not privy to the fraud or clandestine removal.

### **39—Damages or pound breach or rescue**

Upon any pound breach or rescue of goods distrained for rent, the person injured thereby shall, in an action upon the case for the wrong thereby sustained, recover treble damages with costs against the offender or against the owner of the goods distrained if they afterwards come into his use or possession.

### **40—Penalties, how recovered**

Penalties for offences against this Part may be recovered in a summary way on the complaint of any person.

### **41—Forms may be modified**

The forms in the Schedules may be modified according to circumstances.

### **42—Landlord's powers not abridged**

So far as consistent with this Part, nothing in the previous sections of this Part shall affect or abridge any right, remedy, or power of any landlord by statute, common law, or otherwise howsoever conferred upon or vested in him.

### **43—Exemption of cattle and vehicles**

Cattle and vehicles at livery, with all saddles, bridles, and other harness belonging or appertaining thereto are hereby exempted from distress for rent.

### **44—Exemption of sewing machines etc**

It shall not be lawful to distrain any sewing machine, typewriting machine, or mangle, the property of or under hire to any female person, whether belonging to the tenant or otherwise, for any rent claimed in respect of the premises or place in which such sewing machine, typewriting machine, or mangle may be: Provided that any such person shall not be entitled to have more than one sewing machine, one typewriting machine, and one mangle protected from distress under this section.

### **45—Exemption of wearing apparel and tools**

- (1) Wearing apparel, tools and implements of trade, and household requisites to the total value of twenty dollars shall be exempt from seizure under any distress for rent, and such goods are hereby protected from such seizure.
- (2) The word *value* as applied to goods in this section means value of such goods at a forced sale. The value of any article protected under the preceding section of this Act shall not be taken into account in computing the said sum of twenty dollars.

### **46—Application of preceding section**

- (1) The two last preceding sections shall not extend to any case where the lease, term, or interest of the tenant has expired, and where possession of the premises in respect of which the rent is claimed has been demanded in writing, and where the distress is made not earlier than seven days after such demand.
- (2) The said sections shall be taken as providing for and supplementing exemptions, and not limiting any exemption already existing.

## Part 3—Miscellaneous provisions

### 47—Effect of licences granted to lessees

- (1) Where a licence is granted to a lessee or his assigns to do any act which without the licence would create a forfeiture, or give a right to re-enter, the licence, unless otherwise expressed, shall extend only—
- (a) to the permission actually given; or
  - (b) to the specific breach of any proviso or covenant made or to be made; or
  - (c) to the actual assignment under lease or other matter specifically authorised by the licence to be done,
- and the licence shall not prevent any proceeding for any subsequent breach unless otherwise specified in the licence.
- (2) Notwithstanding any such licence—
- (a) all rights under covenants and powers of re-entry contained in the lease shall remain in full force, and be available as against any subsequent breach of covenant, or condition or assignment under lease or other matter not specifically authorised or waived, in the same manner as if no licence had been granted; and
  - (b) the condition or right of entry remains in force in all respects as if the licence had not been granted, save in respect of the particular matter authorised to be done.

### 48—Effect of restricted licence

Where in any lease there is a power or condition of re-entry on the lessee assigning, subletting, or doing any other specified act without a licence, and a licence is granted—

- (a) to one of two or more lessees or co-owners to do any act; or
- (b) to any lessee or owner, or to any one of two or more lessees or owners to assign or underlet part only of the property, or to do any act in respect of part only of the property;

the licence does not operate to extinguish the right of entry in case of any breach of covenant or condition by any co-lessee or owner of any other share or interest in the property, or by any lessee or owner of the rest of the property (as the case may be), in respect of such shares or interests or remaining property, but the right of entry remains in force in respect of the shares, interests, or property not the subject of the licence.

### 49—Application of preceding sections

The two preceding sections apply to licences granted after the first day of November, 1860, in respect of leases whether granted before or after that date.

## **50—Apportionment of conditions of re-entry in certain cases**

Where the reversion upon a lease is severed, and the rent or other reservation is legally apportioned, the assignee of each part of the reversion, shall, in respect of the apportioned rent or other reservation allotted or belonging to him have, and be entitled to the benefit of all conditions or powers of re-entry for non-payment of the original rent, or other reservation, in like manner as if such conditions or powers had been reserved to him as incident to his part of the reversion, in respect of the apportioned rent, or other reservation, allotted or belonging to him.

## **51—Protection of purchaser against forfeiture under covenant for insurance against fire in certain cases**

- (1) Where on the *bona fide* purchase of a leasehold interest, under a lease containing a covenant on the part of the lessee to insure against loss or damage by fire, the purchaser is furnished with the written receipt of the person entitled to receive the rent, or his agent, for the last payment of rent accrued due before the completion of the purchase, and there is subsisting at the time of the completion of the purchase an insurance in conformity with the covenant, the purchaser or any person claiming under him shall not be subject to any liability by way of forfeiture or damages, or otherwise, in respect of any breach of the covenant committed at any time before the completion of the purchase of which the purchaser had not notice before the completion of the purchase: but this provision is not to take away any remedy which the lessor or his legal representatives may have against the lessee or his legal representatives for breach of covenant.
- (2) This section applies to all purchases made after the first day of November, 1860.

## **52—Preceding provisions to apply to leases for a term of years absolute etc**

The preceding sections of this Part shall be applicable to leases for a term of years absolute or determinable on a life or lives or otherwise, and also to a lease for the life of the lessee, or the life or lives of any person or persons.

## **53—When the reversion on a lease is gone, the next estate to be deemed the reversion**

When the reversion expectant on a lease of any land is surrendered or merges, the estate which for the time being confers as against the tenant under that lease the next vested right to the land shall, to the extent necessary for the purpose of preserving those incidents to and obligations on the reversion, which but for the surrender or merger thereof would have subsisted, be deemed the reversion expectant on the lease.

## ***Part 4—Commercial tenancy agreements***

### *Note—*

*Part 4 has been repealed by section 81 of the Retail Shop Leases Act 1995 but continues to apply (with modifications prescribed by regulation) to retail shop leases entered into before 30 June 1995: see Legislative history.*

## ***Division 1—Preliminary***

### ***54—Interpretation***

*In this Part, unless the contrary intention appears—*

***administrative and management costs in relation to premises means—***

- (a) *costs associated with—*
  - (i) *managing the premises; or*
  - (ii) *providing amenities for the use or enjoyment of tenants or those who may resort to the premises; or*
  - (iii) *promoting the use of the premises by the public or promoting any business carried on at the premises; or*
  - (iv) *providing for the security of the premises; or*
  - (v) *providing caretaking services for the premises; or*
  - (vi) *any other prescribed matter; and*
- (b) *if the premises form part of a shopping complex—any such costs associated with the complex as a whole;*

***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;***

***government charges means—***

- (a) *any rates or taxes on land or premises;*
- (b) *any fees, charges or levies chargeable by the Crown, a council or a statutory authority for services provided to land or premises;*

***landlord means the grantor of a right of occupancy under a commercial tenancy agreement and includes his successors and assigns;***

***licensed agent means a person licensed as an agent under the Land Agents, Brokers and Valuers Act 1973;***

***licensed land broker means a person licensed as a land broker under the Land Agents, Brokers and Valuers Act 1973;***

***maintenance costs in relation to premises includes—***

- (a) *the costs of—*
  - (i) *operating, maintaining, repairing or renovating the premises; and*



- (ii) *providing, operating, maintaining, repairing or replacing plant or equipment associated with the premises; and*
- (b) *if the premises form part of a shopping complex—any such costs associated with the complex as a whole;*

**operating expenses** means expenses that may be recovered by or on behalf of the landlord from the tenant under a commercial tenancy agreement on account of—

- (a) *administrative and management costs; or*
- (b) *government charges; or*
- (c) *insurance costs; or*
- (d) *maintenance costs; or*
- (e) *any prescribed expenses,*

*but for the purposes of section 62A does not include any such expenses determined according to the level of the tenant's consumption or the degree of the tenant's use;*

**premises** includes—

- (a) *any part of premises; and*
- (b) *land and appurtenances appurtenant to premises; and*
- (c) *unimproved land;*

**registrable form** in relation to a lease means the form appropriate for registration of the lease in the Lands Titles Registration Office or if the land to which the lease applies (or is to apply) is not under the Real Property Act 1886 in the General Registry Office;

**related guarantee** in relation to a commercial tenancy agreement means a guarantee under which the guarantor guarantees the performance of obligations by the tenant under the commercial tenancy agreement;

**rent** means an amount payable by a tenant to a landlord under a commercial tenancy agreement in consideration of the right to occupy the premises to which the agreement relates (but does not include any amount payable by the tenant under the agreement in respect of operating expenses);

**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 performance 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*
- (ab) *at which services are supplied to the public; or*
- (b) *to which the public is invited with a view to negotiating for the supply of services;*

**shopping complex** means a set of two or more shop premises in the same building or in adjacent buildings subject to the same administration or control and includes any adjacent land subject to the same administration or control that is used in conjunction with those premises;

*small claim* means a small claim within the meaning of the Local and District Criminal Courts Act 1926;

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

## 55—Application of Part

- (1) Subject to this section, this Part applies to a commercial tenancy agreement if—
  - (a) the premises to which the agreement applies—
    - (i) are shop premises or premises of a prescribed kind; or
    - (ii) consist of shop premises and an adjacent dwelling; and
  - (b) the rent payable under the agreement does not exceed \$200 000 per annum; and
  - (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; or
  - (b) where the tenancy arises under a mortgage in respect of the premises; or
  - (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; or
  - (d) where the tenant is—
    - (i) a public company within the meaning of the Companies (South Australia) Code; or
    - (ii) a subsidiary of such a company (as defined by the Companies (South Australia) Code); or
  - (e) where the tenant is—
    - (i) a body corporate lawfully carrying on the business of banking; or
  - (f) where the tenant is a body corporate whose principal business is insurance; or
  - (g) where the tenant is—
    - (i) the Crown, or an agency or instrumentality of the Crown, in right of this State or any other State or Territory, or of the Commonwealth; or
    - (ii) a municipal or district council.

- (3) *The regulations may exclude from the application of this Part or specified provisions of this Part (either unconditionally or subject to conditions)—*
- (a) *agreements or classes of agreements; or*
  - (b) *premises or classes of premises.*

## ***Division 2—Jurisdiction of the Commercial Tribunal***

### ***56—Distribution of jurisdiction between the Tribunal and the courts***

- (1) *Subject to this section, an action involving a claim arising under or in respect of a commercial tenancy agreement to which this Part applies or a related guarantee should be commenced before the Commercial Tribunal.*
- (2) *An action involving a claim arising under or in respect of a commercial tenancy agreement to which this Part applies or a related guarantee should be commenced before a court if—*
- (a) *the action involves a claim (other than a claim for costs, interest or other incidental relief) that is unrelated to the commercial tenancy agreement or related guarantee; or*
  - (b) *the action involves a small claim and no other claim (apart from a claim for costs, interest or both); or*
  - (c) *the action involves a claim for personal injury; or*
  - (d) *the action involves a monetary claim in excess of the prescribed amount; or*
  - (e) *it may be necessary to effect service on a party to the action outside the State.*
- (3) *If an action that should have been commenced before the Tribunal is commenced before a court, or an action that should have been commenced before a court is commenced before the Tribunal, the action is not a nullity but the Tribunal or the court should transfer the action to the appropriate forum where it will proceed as if commenced in that forum.*
- (4) *Subject to the regulations relating to the practice and procedure of the Tribunal, if an action is properly commenced before the Tribunal but the character of the action is subsequently changed by the addition or amendment of claims, or the introduction of cross claims, so that the action, if it had had that character at its inception, should have been commenced in a court, the Tribunal should transfer the action to a court.*
- (5) *The court in which an action should be commenced, or to which an action should be transferred, under this section is a court which would apart from this Act have jurisdiction to grant relief of the relevant kind or amount.*
- (6) *A court in which an action is commenced or to which an action is transferred in accordance with this section may exercise any of the powers conferred on the Tribunal under this Part in relation to a commercial tenancy agreement or a related guarantee.*
- (7) *In this section—*
- the prescribed amount means \$20 000.***
- (8) *This section prevails over any inconsistent provisions in any other Part of this Act.*

### ***Division 3—Special provisions applying to commercial tenancies***

#### ***57—Limitation on amounts payable with respect to entering into, extending or renewing a commercial tenancy agreement***

(1) *Subject to this Act, 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, any amount payable on account of operating expenses and a security bond.*

*Penalty: Division 9 fine.*

(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; or*
- (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; or*
- (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—Rent in advance***

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

*whichever is the lesser.*

*Penalty: Division 9 fine.*

(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: Division 9 fine.*

(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—Regulation of security bonds**

- (1) *Subject to subsection (2), a person shall not in relation to a commercial tenancy agreement—*
- (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: Division 9 fine.*

- (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 government charges that are payable by the tenant under a commercial tenancy agreement.*

### **60—All amounts paid under security bonds to be receipted and paid to Tribunal**

*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; and*
- (b) *shall—*
  - (i) *if the person receiving the money is a legal practitioner, a licensed agent or a licensed land broker acting on behalf of a landlord—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: Division 8 fine.*

### **61—Payment of security bonds by Tribunal to landlord or tenant**

- (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—*
- (a) *be paid in full to the tenant; or*
  - (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.*

#### **61A—Commercial tenancy agreements may be in registrable form**

- (1) *Where the tenant to a proposed commercial tenancy agreement requests that a lease embodying the terms of the agreement in registrable form be prepared, the landlord must, subject to subsection (2)—*
  - (a) *prepare a lease in accordance with the request; and*
  - (b) *on tender by the tenant of the appropriate amount for any fees or expenses for which the tenant is legally liable, have the lease registered.*
- (2) *Subsection (1) does not apply—*
  - (a) *if the term of the tenancy is to be for a period of one year or less; or*
  - (b) *if the commercial tenancy agreement will not confer an exclusive right of occupation; or*
  - (c) *if the landlord does not have a registered interest in the premises subject to the agreement; or*
  - (d) *in any other case of a prescribed kind.*
- (3) *A provision in a commercial tenancy agreement that purports to prevent registration of a commercial tenancy agreement in the Lands Titles Registration Office or in the General Registry Office is void.*

#### **61B—Costs associated with the preparation of a written agreement**

- (1) *Subject to subsection (2), where a landlord requires that a written commercial tenancy agreement, or a memorandum of such an agreement, be prepared by the landlord, or a legal practitioner or other person who may lawfully act for a fee on behalf of the landlord, the costs of the preparation of the document, and of any attendances to which subsection (3) applies, must be borne by the landlord.*
- (2) *Where—*
  - (a) *the tenant requests that a lease embodying the terms of the commercial tenancy agreement in registrable form be prepared; and*
  - (b) *the landlord requires that the lease be prepared by the landlord, or a legal practitioner or other person who may lawfully act for a fee on behalf of the landlord,*

*the costs of the preparation of the document, and of any attendances to which subsection (3) applies, must be shared equally between the landlord and the tenant.*

- (3) *This subsection applies to attendances on the tenant by the landlord, or a legal practitioner or other person acting on behalf of the landlord, in respect of—*
- (a) *the preparation or execution of any document that is intended to constitute the commercial tenancy agreement, or a memorandum of such an agreement, or of any lease; or*
  - (b) *any other prescribed matter,*
- other than attendances that are attributable to unreasonable and unjustifiable action on the part of the tenant.*

## **62—Provisions relating to written agreements prepared by or on behalf of landlords**

- (1) *This section applies to a document—*
- (a) *that is intended to constitute a commercial tenancy agreement (or part of such an agreement), or a memorandum of such an agreement; and*
  - (b) *that has been prepared by the landlord or a legal practitioner or other person acting on behalf of the landlord.*
- (2) *Where a document to which this section applies is presented to a tenant for execution—*
- (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; and*
  - (b) *with each document that is presented to the tenant, there must be an accompanying written statement in the prescribed form—*
    - (i) *setting out in a clear and concise manner the information required by the regulations; and*
    - (ii) *advising the tenant to read and sign the statement, and to read the document, before the tenant executes the document.*
- (3) *The tenant should sign the statement before executing the document.*
- (4) *When a tenant executes a document to which this section applies, a photocopy of the document, together with a photocopy of the statement provided under subsection (2)(b), must be given immediately to the tenant.*
- (5) *The landlord must, upon execution of the document by the tenant, if the landlord has not already done so, execute the document.*
- (6) *The landlord must comply with subsection (5) as soon as is reasonably practicable.*

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- (7) *A fully executed copy of the document (with the statement required under subsection (2)(b) attached) must be delivered to the tenant within 28 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 28 days after a copy is made available for collection from the Lands Titles Registration Office or the General Registry Office following registration (unless the tenant has undertaken responsibility to stamp and, if appropriate, register the document).*
- (8) *A landlord who fails to comply with a provision of this section is guilty of an offence. Penalty: Division 9 fine.*
- (9) *Subject to subsection (10), non-compliance with this section does not affect the validity of a commercial tenancy agreement.*
- (10) *If—*
- (a) a landlord—*
    - (i) fails to provide a written statement to a tenant under subsection (2); or*
    - (ii) provides a written statement that is not true and correct in a material respect; or*
    - (iii) fails to provide a copy of a document to a tenant under subsection (4); and*
  - (b) on the application of the tenant, the Tribunal is satisfied that, in the circumstances, an order under this subsection is justified,*
- the Tribunal may, by order, to such extent as may be appropriate and fair in the circumstances—*
- (c) avoid the commercial tenancy agreement, in whole or part;*
  - (d) vary the commercial tenancy agreement;*
  - (e) direct the landlord to refund money paid under the commercial tenancy agreement;*
  - (f) require the landlord to pay compensation to the tenant;*
  - (g) deal with any ancillary or incidental matter.*
- (11) *The Tribunal should, in considering an application under subsection (10), take into account—*
- (a) the gravity of, and the circumstances surrounding, the landlord's actions;*
  - (b) the conduct of both the landlord and the tenant in relation to the commercial tenancy agreement and any negotiations surrounding the making of the agreement;*
  - (c) the extent of any loss suffered, or likely to be suffered, by the tenant as a result of the landlord's actions;*
  - (d) the effect that making an order, or not making an order, would have on each party,*

*and may take into account such other matters as the Tribunal thinks fit.*



**62A—Landlord to provide a statement of operating expenses**

- (1) *Where a tenant is or is to be required to pay any amount in respect of operating expenses, the landlord must give to the tenant a written statement setting out—*
- (a) *the nature of those expenses; and*
  - (b) *estimates of the amount of the tenant's liability in respect of each separate category of those expenses over each accounting period.*

*Penalty: Division 9 fine.*

- (2) *The estimates referred to in subsection (1) must be given—*
- (a) *in relation to a commercial tenancy agreement entered into before the commencement of this section—within one month of the commencement of the first accounting period and thereafter at least one month before the commencement of each successive accounting period; or*
  - (b) *in relation to a commercial tenancy agreement entered into on or after the commencement of this section—before it is entered into and thereafter at least one month before the commencement of each successive accounting period.*
- (3) *A landlord must, within three months of the expiration of an accounting period, give the tenant a written statement, certified by the landlord or his or her agent to be correct, setting out, under each separate category of operating expenses, the amount actually incurred by the landlord, and the amount payable by the tenant, for that period.*

*Penalty: Division 9 fine.*

- (4) *Notwithstanding the provisions of a commercial tenancy agreement, a landlord is not at any particular time entitled to payment from the tenant on account of operating expenses in a particular accounting period of an amount in excess of—*

- (a) *an amount calculated in accordance with the following formula:*

$$a = \frac{(x+2)e}{y} \text{ or } e \text{ (whichever is the lesser)}$$

*where—*

*a is the amount*

*e is the landlord's estimate of aggregate operating expenses for the accounting period*

*x is the number of complete months to have elapsed since the commencement of the accounting period*

*y is the number of complete months in the accounting period; or*

- (b) *the amount of the reimbursement or contribution to which the landlord is entitled in respect of operating expenses that have fallen due for payment or for which an account has been rendered to the landlord.*

- (5) *Where a landlord receives from a tenant in respect of operating expenses for an accounting period an amount in excess of the expenses actually incurred for that period, the landlord must, within three months of the expiration of the period—*

- (a) *refund the excess to the tenant; or*

- (b) *with the consent of the tenant—credit the excess against future liabilities of the tenant in relation to operating expenses.*

*Penalty: Division 9 fine.*

- (6) *A statement may be given to a tenant under this section—*
- (a) *personally; or*
  - (b) *by leaving the statement at the business premises of the tenant with a person apparently employed by the tenant; or*
  - (c) *by posting the statement to the tenant at his or her business addresses or last known residential address.*
- (7) *This section does not prevent a landlord from recovering any amount payable by the tenant in respect of operating expenses once the tenancy has come to an end.*
- (8) *In this section—*

**accounting period** *means—*

- (a) *in relation to a commercial tenancy agreement entered into before the commencement of this section—*
  - (i) *a period commencing on 1 January, 1988, and not exceeding 18 months, determined by the landlord as the first accounting period or, in the absence of such a determination, the period commencing on 1 January, 1988, and ending on 30 June, 1988; and*
  - (ii) *each successive period of 12 months; and*
- (b) *in relation to a commercial tenancy agreement entered into on or after the commencement of this section—*
  - (i) *a period running from the commencement of the tenancy and not exceeding 18 months, determined by the landlord as the first accounting period or, in the absence of such a determination, the period from the commencement of the tenancy to the following 30 June; and*
  - (ii) *each successive period of 12 months.*

### **62B—Landlord to bear cost of land tax**

- (1) *Subject to subsection (2), it will be a term of every commercial tenancy agreement entered into on or after the commencement of this section that the landlord will bear any tax imposed in respect of the premises under the Land Tax Act 1936.*
- (2) *Subsection (1) does not apply to a commercial tenancy agreement that arises from:*
- (a) *a renewal pursuant to an option to renew contained in a commercial tenancy agreement entered into before the commencement of this section; or*
  - (b) *an assignment or transfer of a commercial tenancy agreement entered into before the commencement of this section.*

### **63—Provision relating to payments on sale or assignment void unless approved by Tribunal**

- (1) *This section applies to a liability—*
  - (a) *that arises under an agreement between a landlord and a tenant (whether or not a commercial tenancy agreement)—*
    - (i) *upon or in respect of the sale or disposal of a business conducted in premises subject to a commercial tenancy agreement between the landlord and tenant; or*
    - (ii) *upon or in respect of the assignment of rights under a commercial tenancy agreement between the landlord and tenant 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 provision in an agreement 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 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 an 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.*

### **64—Right of tenant to assign or sublet**

- (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.*

### **65—Hours of business etc**

- (1) *In this section—*

**closing time** *in relation to a shop means the time at which shops generally in the shopping district, or part of the shopping district, in which the shop is situated must close under the Shop Trading Hours Act 1977 notwithstanding that under that Act the shop concerned is not required to close at all or is required to close at some time other than the general closing time;*

**core trading hours** means—

- (a) *in relation to a shop in an enclosed shopping complex—*
  - (i) *the hours specified in a resolution passed pursuant to subsection (5) as being the hours that the shopping complex should be open for business; or*
  - (ii) *if no such resolution is in force—standard trading hours;*
- (b) *in relation to a shop in any other shopping complex—standard trading hours;*

**enclosed shopping complex** means three or more shop premises that comprise the whole or part of a shopping complex and that share a common area that is locked when they are closed for business so as to prevent public access to any of them through that area;

**opening costs** in relation to a shopping complex means the cost of airconditioning, lighting, security and any other cost incurred in opening the shopping complex to the public;

**standard trading hours** in relation to a shop means—

- (a) *8.30 a.m. to closing time on a Monday, Tuesday, Wednesday, Thursday or Friday but not if the day is a public holiday;*
  - (b) *8.30 a.m. to 12.30 p.m. on a Saturday, but not if the Saturday is a public holiday.*
- (2) *Subject to this section, a term of a commercial tenancy agreement that purports to impose on the tenant an obligation to keep the premises open for business at particular times or during particular periods is void.*
  - (3) *A commercial tenancy agreement in relation to premises in an enclosed shopping complex may include a term requiring the tenant to keep the premises open for business at particular times, or during particular periods, that fall within core trading hours if it is lawful for those premises to be open at those times or during those periods.*
  - (4) *A term of a commercial tenancy agreement in relation to premises in an enclosed shopping complex that was in force immediately before the commencement of the Statutes Amendment (Shop Trading Hours and Landlord and Tenant) Act 1990 will only be void by virtue of subsection (2) to the extent that it requires the tenant to keep the premises open for business outside core trading hours.*
  - (5) *A resolution is passed in pursuance of this subsection if the following conditions are satisfied:*
    - (a) *the resolution must be put to a meeting of the tenants of the enclosed shopping complex (which the landlord of the shopping complex is entitled to attend) by one or more of the tenants; and*
    - (b) *the landlord and all the tenants occupying shop premises in the enclosed shopping complex must have received at least seven days notice of the meeting; and*
    - (c) *the notice must be in writing and must—*
      - (i) *state the time and place at which the meeting will be held; and*

- (ii) *set out the text of the resolution that is to be put to the meeting; and*
  - (d) *the resolution must not reduce the core trading hours to less than 50 hours per week; and*
  - (e) *the persons present at the meeting must appoint one of their number to preside at the meeting; and*
  - (f) *only the landlord and a tenant occupying shop premises in the enclosed shopping complex, or his or her proxy, is allowed to cast a vote at the meeting; and*
  - (g) *voting on the resolution must be by secret ballot on the basis of one vote for the landlord and one vote per tenancy; and*
  - (h) *the number of votes supporting the resolution must equal or exceed three-quarters of the number of votes cast at the meeting; and*
  - (i) *every person who cast a vote is entitled to scrutinise the counting of votes.*
- (6) *A resolution pursuant to subsection (5) may only be varied or revoked by a subsequent resolution passed pursuant to that subsection after the expiration of three months after the firstmentioned resolution was passed.*
- (7) *A term of a commercial tenancy agreement in respect of premises situated in a shopping complex that purports to impose on the tenant an obligation to pay for, or contribute to, opening costs is void to the extent that it relates to—*
- (a) *a time or period outside core trading hours when the tenant's premises are not open for trading; or*
  - (b) *a time or period during core trading hours when it is unlawful for the tenant to open his or her premises for trading.*

**66—Implied warranty that premises reasonably fit for business of tenant**

- (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 will, for the duration of the agreement, be 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.*
- (3) *Where—*
- (a) *a commercial tenancy agreement includes the warranty referred to in subsection (1); and*
  - (b) *the tenant assigns his or her rights under the agreement, or sublets the premises subject to the agreement; and*
  - (c) *the premises continue to be used for a business of the same kind,*
- the person who obtains a right to occupy the premises by virtue of the assignment or subletting may sue on the warranty in his or her own right.*

- (4) *In any proceedings for breach of the warranty referred to in subsection (1), it is a defence for the landlord to prove—*
- (a) *that the premises were structurally suitable for the relevant purpose at the time that the commercial tenancy agreement was entered into; and*
  - (b) *that any change in the structural suitability of the premises is not attributable to any act or omission of the landlord.*

**66A—Provision for five-year terms**

- (1) *Subject to this section, where—*
- (a) *the right of occupancy conferred by a commercial tenancy agreement is for a term of less than five years (not being a right that arises if the tenant holds over after the expiration of the term); and*
  - (b) *the agreement makes no provision for extension or renewal of the tenancy so that its aggregate term will equal or exceed five years,*
- this section applies to the agreement.*
- (2) *This section does not apply to a commercial tenancy agreement—*
- (a) *if the term of the tenancy is two months or less and the tenant has before entering into the agreement sought and received independent advice from a legal practitioner and the legal practitioner has signed a certificate in the prescribed form as to the giving of that advice; or*
  - (b) *if the tenant is the landlord's spouse, parent, grandparent, step-parent, child, grandchild, step-child, brother or sister, or the spouse of the landlord's child, grandchild, step-child, brother or sister; or*
  - (c) —
    - (i) *if the landlord is a body corporate and the tenant or tenants have a controlling interest in the body corporate; or*
    - (ii) *if the landlord and the tenant are both bodies corporate and the same person or persons have a controlling interest in both bodies corporate.*
- (3) *The tenant under a commercial tenancy agreement to which this section applies may apply in writing to the landlord for extension of the term of the tenancy so that the tenancy will expire—*
- (a) *on the fifth anniversary of the date of the commencement of the tenancy; or*
  - (b) *on some specified earlier date.*
- (4) *An application under subsection (3) should be made—*
- (a) *within 21 days after a notice served on the tenant by the landlord under subsection (5) takes effect; or*
  - (b) *if no such notice has been served—not later than three months before the expiration of the term of the tenancy conferred by the commercial tenancy agreement,*

*unless the Commercial Tribunal is satisfied that the failure to make the application within time was occasioned by mistake, absence from the State, or other reasonable cause.*

(5) *The landlord under a commercial tenancy agreement to which this section applies may serve on the tenant—*

- (a) *if the tenancy is for a term of six months or less—on or before the commencement of the tenancy;*
- (b) *in any other case—not earlier than six months, and not later than three months, before the expiration of the term of the tenancy,*

*a notice in the prescribed form requiring the tenant to decide whether or not the tenant will make an application under this section.*

(6) *A notice under subsection (5) takes effect—*

- (a) *if served before the commencement of the tenancy—on the commencement of the tenancy;*
- (b) *in any other case—at the time of service of the notice on the tenant.*

(7) *If—*

- (a) *a tenant applies to the landlord under subsection (3); and*
- (b) *at the expiration of one month from the date of the application the landlord and the tenant have not agreed to an extension of the tenancy on mutually agreed terms,*

*either may apply to the Commercial Tribunal.*

(8) *On an application under subsection (7), the Tribunal may extend the tenancy for such term (being a term that expires on or before the fifth anniversary of the date on which the tenancy first took effect) and on such terms and conditions as it considers just.*

(9) *The Tribunal should, in considering an application under subsection (7), take into account—*

- (a) *the relative bargaining positions of the landlord and tenant at the time the commercial tenancy agreement was entered into;*
- (b) *any proposals of the landlord for a new tenancy between the landlord and the tenant;*
- (c) *any plans of the landlord for the future use or development of the premises;*
- (d) *any prospect the tenant may have of obtaining other comparable premises;*
- (e) *any breaches by the tenant of the commercial tenancy agreement,*

*and may take into account such other matters as the Tribunal thinks fit.*

(10) *Where an application is made to the Commercial Tribunal under this section, the tenancy to which the application relates continues upon the same terms and conditions (subject to any modifications stipulated by the Tribunal) until the application is determined.*

**66AB—Ability of landlord to move tenant to other premises**

- (1) *Where—*
- (a) *the term of a tenancy is extended under section 66A; and*
  - (b) *the premises form part of a shopping complex,*
- the landlord is entitled, subject to this section, to require the tenant to move his or her business to other premises in the shopping complex.*
- (2) *Where—*
- (a) *a landlord proposes to require a tenant to move his or her business to other premises in pursuance of subsection (1); or*
  - (b) *a landlord has (apart from this section) the right under the commercial tenancy agreement to require the tenant to move his or her business to other premises and proposes to exercise that right,*
- then the landlord must, at least three months before the business is to be moved, notify the tenant of the requirement, of the premises to which the business is to be moved, and of the date on or before which the business is to be moved.*
- (3) *A tenant may, within one month after receiving notice under subsection (2) or such longer period as the Commercial Tribunal may allow, apply to the Tribunal for relief against the requirement.*
- (4) *On an application under subsection (3), the Tribunal may—*
- (a) *annul the requirement; or*
  - (b) *make any adjustment of rights between the landlord and tenant that may be just in view of the requirement (and for any proposed commercial tenancy agreement that is to take effect in substitution).*
- (5) *The Tribunal should in considering an application under subsection (3), take into account the interests of the landlord, the tenant, and the other tenants that have premises in the shopping complex.*
- (6) *The Tribunal cannot annul the requirement unless satisfied that the proposed move would have a seriously adverse, and enduring, effect on the tenant's business.*

**67—Tenancy to continue while extensions or renewals are negotiated**

- (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.*

### **67A—Abandoned goods**

- (1) *Where a commercial tenancy agreement is terminated and goods are left on the premises that were subject to the agreement, the landlord may, after the expiration of two days from the termination of the agreement, remove and destroy or dispose of the goods if—*
- (a) *the goods are perishable foodstuffs; or*
  - (b) *the value of the goods is less than the total estimated cost of the removal, storage and sale of the goods.*
- (2) *Where a commercial tenancy agreement is terminated, the landlord must store in a safe place and manner for a period of not less than 60 days any goods left on the premises that were subject to the agreement and not removed for destruction or disposal under subsection (1).*
- (3) *A landlord must before the expiration of seven days after he or she has stored goods under subsection (2)—*
- (a) *where the tenant has informed the landlord of a forwarding address—send a notice to the tenant at that address in the form prescribed for the purposes of this paragraph; and*
  - (b) *send to any other person who has to the knowledge of the landlord an interest in the goods and whose name and address are known to or reasonably ascertainable by the landlord, a notice in the form prescribed for the purposes of this paragraph; and*
  - (c) *cause a notice in the form prescribed for the purposes of this paragraph to be inserted in a newspaper circulated generally throughout the State.*
- (4) *A person who has a lawful right to goods removed and stored under subsection (2) may at any time before the goods are sold under subsection (5) reclaim the goods by paying to the landlord—*
- (a) *the reasonable costs of removing and storing the goods; and*
  - (b) *the reasonable costs of giving notice under subsection (3)(c); and*
  - (c) *any other reasonable costs incurred by the landlord as a result of the goods being left on the premises.*
- (5) *Where goods are stored under subsection (2) and have not been reclaimed within 60 days after the day on which they were removed and stored, the landlord must as soon as practicable after the expiration of that period cause them to be sold by public auction.*

- (6) *If goods are stored, removed and sold by public auction under this section, the landlord may retain out of the proceeds of sale—*
- (a) *the reasonable costs of removing, selling and storing the goods; and*
  - (b) *the reasonable costs of giving notice under subsection (3)(c); and*
  - (c) *any other reasonable costs incurred by the landlord as a result of the goods being left on the premises; and*
  - (d) *any amount owed by the tenant under the commercial tenancy agreement.*
- (7) *Where goods are sold under this section, the landlord must pay—*
- (a) *to the tenant; or*
  - (b) *if the landlord does not know the whereabouts of the tenant—to the Tribunal, the balance of the proceeds of sale remaining after deduction of the amounts that the landlord is entitled to retain under subsection (6).*
- (8) *The landlord must, when making a payment to the Tribunal under subsection (7), furnish the Tribunal with a notice containing the prescribed information.*
- (9) *Any money paid to the Tribunal under subsection (7) will be paid into the Fund.*
- (10) *Where an application is made to the Tribunal by a person claiming any amount paid into the Fund under this section, the Tribunal may, upon being satisfied that the person is entitled to the amount, order that the amount be paid to the person.*
- (11) *Where goods are sold by public auction under this section, the purchaser will, unless he or she has actual notice of any interest in the goods of any person other than the tenant, acquire a good title to the goods in defeasance of any such interest.*
- (12) *Where a dispute arises between a landlord and a tenant in respect of goods to which this section applies, the Tribunal may, upon application by either party to the dispute, order the payment of any amount or make such other order as the Tribunal considers appropriate in the circumstances.*

#### ***Division 4—Disputes arising under commercial tenancy agreements***

##### ***68—Power of Tribunal to act in any matter***

- (1) *Subject to this Part, an action for relief under this section may be commenced by application to the Tribunal by any party (or former party) to a commercial tenancy agreement to which this Part applies or to a related guarantee.*
- (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 any matter by agreement; or*
  - (b) *by order—*
    - (i) *restrain any action in breach of the agreement or a related guarantee, or in breach of any law; or*
    - (ii) *require any action in performance of the agreement or a related guarantee, or to ensure compliance with any law; or*

- (c) *order the payment of any amount payable under the agreement or a related guarantee; or*
  - (d) *order the payment of compensation for loss or damage caused by any breach of the agreement or a related guarantee; or*
  - (da) *grant relief from the operation of any provision of the agreement or a related guarantee; or*
  - (db) *where rights of occupation conferred by a commercial tenancy agreement have been forfeited or have otherwise terminated for a reason other than the expiration of the term of the agreement—order reinstatement of those rights on such terms as may be just; or*
  - (e) *authorise payment of the rent under the agreement into the Tribunal until the agreement has been performed or an application for compensation has been determined; or*
  - (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; or*
  - (h) *make such other order as the Tribunal thinks fit.*
- (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; and*
  - (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 5—Commercial Tenancies Fund***

### ***69—Commercial Tenancies Fund***

- (1) *The fund entitled the Commercial Tenancies Fund will be kept and administered by the Commissioner for Consumer Affairs.*
- (2) *An amount paid under a security bond must, on receipt by the Tribunal, be paid into the Fund.*

### **70—Investment of Fund**

- (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—*
  - (a) *towards the costs of administering this Part; or*
  - (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.*

### **71—Accounts**

- (1) *The Commissioner for Consumer Affairs 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 6—Miscellaneous**

### **72—Contract to avoid**

- (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.*

*Penalty: Division 7 fine.*

### **73—Tribunal may exempt tenancy agreement, class of agreement or premises from provisions of Part**

- (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; or*
  - (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.*

**73A—Annual reports**

- (1) *The Commissioner for Consumer Affairs must, on or before 30 September in each year, deliver to the Minister an annual report—*
  - (a) *containing a report on the application during the financial year ending on 30 June in that year of any income derived from the investment of the Commercial Tenancies Fund; and*
  - (b) *containing a copy of the accounts of the Commercial Tenancies Fund last audited by the Auditor-General.*
- (2) *The Registrar of the Tribunal must, on or before 30 September in each year, deliver to the Minister an annual report containing a report on—*
  - (a) *the work of the Tribunal and the Registrar under this Part during the financial year ending on 30 June in that year;*
  - (b) *the administration and enforcement of this Part during the financial year ending on 30 June in that year;*
  - (c) *any matters of general significance to landlords and tenants that, in the opinion of the Registrar, should be reported.*
- (3) *The Minister must, within 12 sitting days after the receipt of a report under this section, cause a copy of the report to be laid before each House of Parliament.*

**74—Summary proceedings**

- (1) *Offences against this Act are summary offences.*
- (2) *A prosecution for an offence against this Act must be commenced within two years after the date on which the offence is alleged to have been committed, or within such further period as the Minister may in a particular case, allow.*
- (3) *A document apparently signed by the Minister and stating that the Minister allows an extension of the period for commencing a particular prosecution will be accepted, in the absence of proof to the contrary, as proof of the fact so stated.*

**75—Regulations**

- (1) *The Governor may make such regulations as are contemplated by, or necessary or expedient for the purposes of, this Part.*
- (2) *Without limiting the generality of the foregoing, those regulations may—*
  - (a) *prescribe codes of practice to be complied with by landlords and tenants;*
  - (b) *impose penalties (not exceeding a division 10 fine) for breach of, or failure to comply with, the regulations.*

## Schedule 1—Warrant to distrain

I, AB, of \_\_\_\_\_ (draper), do hereby authorise CD, of \_\_\_\_\_, to distrain the goods in (*or on*) the dwelling (*or shop, or [as the case may be]*) of EF, situate at \_\_\_\_\_, for the sum of \$ \_\_\_\_\_, being the amount of rent due to me for the same from the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_, to the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_, and to proceed thereon for the recovery of the said rent and costs as the law directs.

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_

Witness \_\_\_\_\_ AB, *or*  
AB, by his agent, OK

## Schedule 2—Inventory

I have this day distrained the following goods in (*or on*) the [*mention premises distrained upon*] for \$ \_\_\_\_\_, being the amount of rent due and costs.

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_

AB, Landlord  
(*or DE, person levying*)  
on behalf of AB, Landlord

[*Set out goods*]

## Schedule 3—Declaration to be made by or on behalf of owner of agisted cattle or under-tenant or lodger

I, \_\_\_\_\_, of \_\_\_\_\_, do hereby declare that [*name of immediate tenant*] has no right of property or beneficial interest in the cattle set out in the inventory annexed hereto other than his lien for agistment if any (*or in the goods set out in the inventory annexed hereto*): And I further declare that the said cattle (*or goods*) are my property (*or the property of name of owner, under-tenant, or lodger*); *or (as to goods) are, or immediately prior to their being distrained were, in my lawful possession, or in the lawful possession of [name of under-tenant or lodger]; and that [state in what capacity possession held]*: And I further declare that the amount due by me (*or by the said name of owner, under-tenant, or lodger*) for agistment (*or rent, or lodging*) is \$ \_\_\_\_\_ for the period of \_\_\_\_\_ (*or nil, as the case may be*): And I make this declaration under the provisions of the *Landlord and Tenant Act 1936* conscientiously believing the same to be true.

Declared before me at  
this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_

[*Set out goods claimed, and annex inventory to declaration*]

## Schedule 4—Declaration under section 22

I, \_\_\_\_\_, of \_\_\_\_\_, do hereby declare that [*name of immediate tenant*] has no right of property or beneficial interest in the goods set out in the inventory annexed hereto, and I further declare that the said goods are my property (*or the property of [name of owner], or are, or immediately prior to being distrained were*) in my lawful possession (*or in the lawful possession of [name of owner]*), and that [*state in what capacity possession held*]: And I make this declaration under the provisions of the *Landlord and Tenant Act 1936* conscientiously believing the same to be true.

AB  
Declared at \_\_\_\_\_ before me this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_  
(Signed)

[*Set out inventory of goods*]

## Schedule 5—Summons in case of adverse claim to goods distrained

South Australia

(To wit)

To AB, of \_\_\_\_\_ etc and ZD, of \_\_\_\_\_ etc

Whereas complaint hath this day been made by the undermentioned AB (*or CD*) before the undersigned \_\_\_\_\_, one of His Majesty's

Justices of the Peace in and for the said State, for that AB, of \_\_\_\_\_ distrained (*or threatened to distrain*) certain agisted cattle (*or certain goods*), and that CD, of \_\_\_\_\_ (by his agent, OK) has claimed the said cattle (*or goods*): These are therefore to command you, the said AB and CD, in His Majesty's name, to be and appear on the \_\_\_\_\_ day of \_\_\_\_\_ at \_\_\_\_\_, in the said State, before such Justices of the Peace as may then be present, in order that they may adjudicate upon the said claim and make an order thereupon according to law.

Given under my hand and seal this \_\_\_\_\_ day of \_\_\_\_\_, in the said State.

JP

## Schedule 6—Order in case of adverse claim to agisted cattle or goods distrained

South Australia

(To wit)

Be it remembered that, on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, complaint was made for that AB, of \_\_\_\_\_, distrained (*or* threatened to distrain) certain agisted cattle (*or* certain goods, and that (by his agent OK), CD, of \_\_\_\_\_ had claimed the same, and now on this day AB (*or* CD) who made the said complaint, and the said CD (*or* AB) appear before us, the undersigned, (*two*) of His Majesty's Justices of the Peace in and for the said State [*if both do not appear state service of the summons and the non-appearance*], in order that we might adjudicate upon the said claim and make an order thereupon according to law: And now, having heard the matter of the said complaint, we do adjudge that [*here state the adjudication in one of the following forms*]:

The said cattle (*or* goods) were (*not*) at the time of the said distress thereof (*or* at the time when the said distress was threatened) the property (*or as to goods* in the lawful possession) of the said CD and that EF, the immediate tenant, had no right of property or beneficial interest in such cattle (*or* goods), (other than his lien for agistment) (*or* but that EF, the immediate tenant, had a right of property or beneficial interest in the same) (*or* in part thereof to wit) [*here set out items*].

Part of the said cattle (*or* goods), to wit [*here set out the items*], were at the time of the said distress (*or* at the time when the said distress was threatened) the property (*or as to goods* in the lawful possession) of the said CD, and that EF, the immediate tenant, had no right of property or beneficial interest in the same (other than his lien for agistment) [*or* but that EF the immediate tenant, had a right of property or beneficial interest in the same (*or* in part thereof to wit)], and that the residue of the said cattle (*or* goods) were not the property (*or as to goods* in the lawful possession) of the said CD.

[But we find that the said CD, [being an under-tenant (*or* lodger) of EF, the immediate tenant], did not, before the said complaint was preferred, pay to the said AB, or to the person authorised by him to distrain, all moneys due by the said CD to the said EF for agistment (*or* rent *or* lodging), or so much thereof as was sufficient to discharge the claim of the said AB and his lawful charges]; and we also adjudge the said CD (*or* AB) to pay to the said AB (*or* CD) forthwith (*or* on or before the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_) the sum of \$ \_\_\_\_\_ for his costs in this behalf [and that the sum of \$ \_\_\_\_\_ being the cost (*or* part of the costs) of the said AB of holding possession from the making of the said claim until this adjudication be added to the costs of the distress (*or* paid by the said CD to the said AB)].

Given under our hands and seals this \_\_\_\_\_ day of \_\_\_\_\_

JP  
JP



## Legislative history

### Notes

- Please note—References in the legislation to other legislation or instruments or to titles of bodies or offices are not automatically updated as part of the program for the revision and publication of legislation and therefore may be obsolete.
- Earlier versions of this Act (historical versions) are listed at the end of the legislative history.
- For further information relating to the Act and subordinate legislation made under the Act see the Index of South Australian Statutes or [www.legislation.sa.gov.au](http://www.legislation.sa.gov.au).

### Legislation repealed by principal Act

The *Landlord and Tenant Act 1936* repealed the following:

*An Act to amend the Law of Landlord and Tenant (No. 580 of 1893)*

*The Distress for Rent Amendment Act 1907*

### Legislation amended by principal Act

The *Landlord and Tenant Act 1936* amended the following:

*An Act to amend the law of Real Property (No. 25 of 1852)*

*Supreme Court Procedure Amendment Act (No. 5 of 1853)*

*The Property Act of 1860*

*The Common Law Procedure Act 1862*

*The Distress for Rent Act 1888*

### Principal Act and amendments

New entries appear in bold.

| Year | No   | Title  | Assent     | Commencement                                 |
|------|------|--|------------|--|
| 1936 | 2301 | <b><i>Landlord and Tenant Act 1936</i></b>                       | 5.11.1936  | 1.5.1937 ( <i>Gazette 25.3.1937 p645</i> )   |
| 1974 | 84   | <i>Statute Law Revision Act (No. 2) 1974</i>                     | 21.11.1974 | 21.11.1974                                   |
| 1978 | 24   | <b><i>Landlord and Tenant Act Amendment Act 1978</i></b>         | 30.3.1978  | 1.12.1978: s 2                               |
| 1985 | 19   | <b><i>Statutes Amendment (Commercial Tenancies) Act 1985</i></b> | 14.3.1985  | 1.1.1986 ( <i>Gazette 12.12.1985 p1802</i> ) |
| 1987 | 104  | <b><i>Landlord and Tenant Act Amendment Act 1987</i></b>         | 17.12.1987 | 1.1.1988 ( <i>Gazette 23.12.1987 p1916</i> ) |
| 1990 | 49   | <b><i>Landlord and Tenant Act Amendment Act 1990</i></b>         | 15.11.1990 | 15.11.1990                                   |

## Landlord and Tenant Act 1936—18.1.2007 to 6.8.2008

### Legislative history

|             |           |  |                   |   |
|-------------|-----------|--|-------------------|---|
| 1990        | 50        | <i>Statutes Amendment (Shop Trading Hours and Landlord and Tenant) Act 1990</i> as amended by 81/1993—s 11 impliedly repealed by 14/1995 s 81—the section amended was subsequently deleted | 22.11.1990        | s 10—22.11.1990 ( <i>Gazette 22.11.1990 p1581</i> )   |
| 1990        | 58        | <i>Landlord and Tenant Act Amendment Act (No. 2) 1990</i>  | 29.11.1990        | 11.3.1991 ( <i>Gazette 28.2.1991 p693</i> ) except ss 7, 10 & 11—1.9.1991 ( <i>Gazette 29.8.1991 p690</i> )   |
| 1993        | 81        | <i>Statutes Amendment (Landlord and Tenant) Act 1993</i>   | 27.10.1993        | 27.10.1993  |
| 1994        | 59        | <i>Criminal Law Consolidation (Felonies and Misdemeanours) Amendment Act 1994</i>  | 27.10.1994        | 1.1.1995 ( <i>Gazette 8.12.1994 p1942</i> )   |
| 1995        | 14        | <i>Retail Shop Leases Act 1995</i>   | 6.4.1995          | s 81—30.6.1995 ( <i>Gazette 29.6.1995 p2976</i> )   |
| 1999        | 33        | <i>Financial Sector Reform (South Australia) Act 1999</i>  | 17.6.1999         | Sch (item 32)—1.7.1999 being the date specified under s 3(16) of the <i>Financial Sector Reform (Amendments and Transitional Provisions) Act (No. 1) 1999</i> of the Commonwealth as the transfer date for the purposes of that Act: s 2(2) |
| 1999        | 55        | <i>Residential Tenancies (Miscellaneous) Amendment Act 1999</i>  | 12.8.1999         | 3.10.1999 ( <i>Gazette 30.9.1999 p1341</i> )  |
| 2003        | 44        | <i>Statute Law Revision Act 2003</i>   | 23.10.2003        | Sch 1—24.11.2003 ( <i>Gazette 13.11.2003 p4048</i> )  |
| 2005        | 56        | <i>Justices of the Peace Act 2005</i>  | 17.11.2005        | Sch 2 (cll 29—32)—1.7.2006 ( <i>Gazette 22.6.2006 p2012</i> )   |
| 2006        | 17        | <i>Statutes Amendment (New Rules of Civil Procedure) Act 2006</i>  | 6.7.2006          | Pt 43 (ss 147—151)—4.9.2006 ( <i>Gazette 17.8.2006 p2831</i> )  |
| <b>2006</b> | <b>44</b> | <b><i>Statutes Amendment (Justice Portfolio) Act 2006</i></b>  | <b>14.12.2006</b> | <b>Pt 17 (s 29)—18.1.2007 (<i>Gazette 18.1.2007 p234</i>)</b>   |

### Provisions amended since 3 February 1976

- Legislative history prior to 3 February 1976 appears in marginal notes and footnotes included in the consolidation of this Act contained in Volume 5 of The Public General Acts of South Australia 1837-1975 at page 538.

New entries appear in bold.

Entries that relate to provisions that have been deleted appear in italics.

| Provision  | How varied   | Commencement      |
|------------|--|-------------------|
| Long title | amended by 19/1985 s 4   | 1.1.1986          |
|            | substituted by 44/2003 s 3(1) (Sch 1)                              | 24.11.2003        |
| Pt A1      | heading inserted by 44/2003 s 3(1) (Sch 1)                         | 24.11.2003        |
| s 1        | substituted by 19/1985 s 5   | 1.1.1986          |
| s 2        | <i>deleted by 19/1985 s 5</i>                                      | <i>1.1.1986</i>   |
| s 3        | <i>amended by 19/1985 s 6</i>                                      | <i>1.1.1986</i>   |
|            | <i>omitted under Legislation Revision and Publication Act 2002</i> | <i>24.11.2003</i> |

|                        |  |                  |
|------------------------|--|------------------|
| s 3A                   | inserted by 24/1978 s 3  | 1.12.1978        |
| s 3B                   | inserted by 19/1985 s 7  | 1.1.1986         |
| Pt 1 Div 1             | heading preceding s 4 deleted and Div 1 heading inserted by 44/2003 s 3(1) (Sch 1) | 24.11.2003       |
| s 6                    |  |                  |
| s 6(1)                 | s 6 amended and redesignated as s 6(1) by 44/2004 s 3(1) (Sch 1)                   | 24.11.2003       |
| s 6(2)                 | s 6 amended and redesignated as s 6(2) by 44/2004 s 3(1) (Sch 1)                   | 24.11.2003       |
| Pt 1 Div 2             | heading preceding s 9 deleted and Div 2 heading inserted by 44/2003 s 3(1) (Sch 1) | 24.11.2003       |
| s 9                    |  |                  |
| s 9(1)                 | amended by 17/2006 s 147   | 4.9.2006         |
| s 14                   |  |                  |
| s 14(2)                | amended by 44/2003 s 3(1) (Sch 1)  | 24.11.2003       |
| s 17                   |  |                  |
| s 17(2)                | amended by 44/2003 s 3(1) (Sch 1)  | 24.11.2003       |
| s 19                   |  |                  |
| s 19(1)                | amended by 44/2003 s 3(1) (Sch 1)  | 24.11.2003       |
| s 21                   | amended by 17/2006 s 148   | 4.9.2006         |
| s 22                   | amended by 44/2003 s 3(1) (Sch 1)  | 24.11.2003       |
| s 24                   |  |                  |
| s 24(1)                | amended by 44/2003 s 3(1) (Sch 1)  | 24.11.2003       |
| s 24(2)                | amended by 44/2003 s 3(1) (Sch 1)  | 24.11.2003       |
|                        | substituted by 56/2005 Sch 2 cl 29   | 1.7.2006         |
| s 25                   | amended by 56/2005 Sch 2 cl 30   | 1.7.2006         |
| s 26                   | amended by 56/2005 Sch 2 cl 31   | 1.7.2006         |
| s 28                   | amended by 59/1994 Sch 2   | 1.1.1995         |
|                        | <b>amended by 44/2006 s 29</b>   | <b>18.1.2007</b> |
| s 32                   |  |                  |
| s 32(3)                | amended by 17/2006 s 149   | 4.9.2006         |
| s 37                   | amended by 17/2006 s 150   | 4.9.2006         |
| s 39                   | amended by 17/2006 s 151   | 4.9.2006         |
| s 41                   | amended by 44/2003 s 3(1) (Sch 1)  | 24.11.2003       |
| heading preceding s 43 | deleted by 44/2003 s 3(1) (Sch 1)  | 24.11.2003       |
| Pt 4                   | inserted by 19/1985 s 8  | 1.1.1986         |
|                        | amended by 104/1987 ss 3—11  | 1.1.1988         |
|                        | amended by 49/1990 s 2   | 15.11.1990       |
|                        | amended by 50/1990 s 10  | 22.11.1990       |
|                        | amended by 58/1990 ss 3—6, 8, 9, 12—16 (Sch)                                       | 11.3.1991        |
|                        | amended by 58/1990 ss 7, 10, 11  | 1.9.1991         |
|                        | amended by 81/1993 ss 3—6  | 27.10.1993       |
|                        | deleted by 14/1995 s 81(1)   | 30.6.1995        |

|              |   |                   |
|--------------|---|-------------------|
|              | <i>amended by 33/1999 Sch (item 32)</i>                     | <i>1.7.1999</i>   |
|              | <i>amended by 55/1999 s 8</i>                               | <i>3.10.1999</i>  |
| Schs 1—6     | Schs A—F redesignated as Schs 1—6 by 44/2003 s 3(1) (Sch 1) | 24.11.2003        |
| <i>Sch J</i> | <i>deleted by 44/2003 s 3(1) (Sch 1)</i>                    | <i>24.11.2003</i> |

## **Transitional etc provisions associated with Act or amendments**

### ***Landlord and Tenant Act Amendment Act 1987***

#### **12—Savings provision**

A provision of a commercial tenancy agreement entered into before the commencement of this Act is not invalidated or affected in any other way by any inconsistency with, or failure to comply with, section 62(1)(a)(iii) of the principal Act as in force before the commencement of this Act.

### ***Landlord and Tenant Act Amendment Act (No. 2) 1990***

#### **18—Transitional provisions**

The amendments effected by sections 4, 6, 7, 9 and 10 apply only in relation to commercial tenancy agreements entered into on or after the commencement of this Act.

### ***Retail Shop Leases Act 1995 as amended by section 17 of the Retail Shop Leases Amendment Act 1997***

#### **81—Amendment of the Landlord and Tenant Act**

- (1) Part 4 of the *Landlord and Tenant Act 1936* (the *former legislation*) is repealed.
- (2) However—
  - (a) the former legislation continues to apply, subject to modifications prescribed by regulation,<sup>1</sup> to retail shop leases entered into before the commencement of this Act (including such a lease that is renewed after the commencement of this Act under a right or option of renewal conferred before the commencement of this Act); but
  - (b) if the retail shop lease creates a periodic tenancy, this Act applies to the lease as from the beginning of the first period after the first anniversary of the commencement of this Act as if there were a novation of the lease on that date.
- (3) The regulations made for the purposes of subsection (2)(a) may provide that specified provisions of this Act apply to a retail shop lease entered into before the commencement of this Act.
- (4) The Fund established under the former legislation is dissolved and the money constituting that Fund at the commencement of this Act is incorporated in the Fund established under this Act.
- (5) References in the former legislation to the Fund established under that legislation are to be construed (so far as the relevant provisions give rights or impose obligations on parties to leases) as references to the Fund under this Act.

**Note—**

- 1 Regulations have been made for the purposes of s 81(2)(a) of the *Retail Shop Leases Act 1995* (see *Gazette 29.6.1995 p3101*) as follows:

**13—Issues associated with Landlord and Tenant Act**

- (1) For the purposes of section 81(2)(a) of the Act, the following modifications to the *Landlord and Tenant Act 1936* (the *former legislation*) are prescribed:
- (a) a reference to the Commercial Tribunal (including through the use of the definition *the Tribunal*) is to be construed as a reference to the Civil (Consumer and Business) Division of the Magistrates Court;
- (b) section 56 of the former legislation will be taken to have been replaced by the following provision:

**56—Substantial monetary claims**

- (1) An action involving a claim arising under or in respect of a commercial tenancy agreement to which this Part applies or a related guarantee should be commenced before the Magistrates Court.
- (2) An action before the Magistrates Court that involves a monetary claim for \$10 000 or less will be taken to be a minor statutory proceeding under the *Magistrates Court Act 1991*.
- (3) If an action before the Magistrates Court involves a monetary claim for an amount exceeding \$30 000, the Magistrates Court must on the application of a party to the proceeding refer the proceeding to the District Court.
- (4) If a proceeding is referred to the District Court, the Court has, in addition to the powers that it has apart from this section, the powers that the Magistrates Court has under this Part.
- (5) In this section—  
*Magistrates Court* means the Civil (Consumer and Business) Division of the Magistrates Court.;
- (c) sections 59, 60, 61 and 65 of the former legislation will be taken to have been repealed;
- (d) the following sections will be taken to be inserted after section 72 of the former legislation:

**72A—Unlawful threats**

A landlord or an agent of a landlord must not make threats to the effect that the landlord will not renew or extend the term of tenancy if the tenant exercises a right under this Act.

Penalty: Division 5 fine.

**72B—Vexatious acts**

A party to a commercial tenancy agreement must not, in connection with the exercise of a right or power under this Act or the agreement, engage in conduct that is, in all the circumstances, vexatious.

Penalty: Division 6 fine.

- (2) Pursuant to section 81(3) of the Act, the following provisions of the Act apply to a retail shop lease entered into before the commencement of the Act:
- (a) section 12 (Lessee to be given disclosure statement);
  - (b) section 13 (Lessee not required to pay undisclosed contributions);
  - (c) section 19 (Security bond);
  - (d) section 20 (Repayment of security);
  - (e) section 52 (Statistical information to be made available to lessee);
  - (f) section 61 (Trading hours).
- (3) Subregulations (1) and (2) do not affect any determination of core trading hours under the former legislation before the commencement of the Act and such a determination will have effect for the purposes of section 61 of the Act.

***Justices of the Peace Act 2005, Sch 2***

**32—Transitional provision**

An amendment made by Schedule 2 of the *Justices of the Peace Act 2005* to the *Landlord and Tenant Act 1936* does not apply in respect of proceedings commenced before the commencement of the amending provision (and those proceedings may continue as if the amending provision had not been enacted).

**Historical versions**

Reprint No 1—1.10.1991

Reprint No 2—27.10.1993

Reprint No 3—1.1.1995

Reprint No 4—30.6.1995

Reprint No 5—3.10.1999

Reprint No 6—24.11.2003

1.7.2006

4.9.2006

## Appendix—Divisional penalties and expiation fees

At the date of publication of this version divisional penalties and expiation fees are, as provided by section 28A of the *Acts Interpretation Act 1915*, as follows:

| Division | Maximum imprisonment | Maximum fine | Expiation fee |
|----------|----------------------|--------------|---------------|
| 1        | 15 years             | \$60 000     | —             |
| 2        | 10 years             | \$40 000     | —             |
| 3        | 7 years              | \$30 000     | —             |
| 4        | 4 years              | \$15 000     | —             |
| 5        | 2 years              | \$8 000      | —             |
| 6        | 1 year               | \$4 000      | \$300         |
| 7        | 6 months             | \$2 000      | \$200         |
| 8        | 3 months             | \$1 000      | \$150         |
| 9        | —                    | \$500        | \$100         |
| 10       | —                    | \$200        | \$75          |
| 11       | —                    | \$100        | \$50          |
| 12       | —                    | \$50         | \$25          |

*Note: This appendix is provided for convenience of reference only.*