

Act reprinted pursuant to the Amendments Incorporation
Act, 1937

LANDLORD AND TENANT (CONTROL OF
RENTS) ACT, 1942-1948

With notes of judicial decisions affecting sections of the reprinted Act

The Landlord and Tenant (Control of Rents) Act, 1942-1951, including all amendments passed to the end of 1951 and notes of judicial decisions, is reprinted in the Annual Volume, 1951, at page 169.



LANDLORD AND TENANT (CONTROL OF RENTS) ACT, 1942-1948.

BEING

LANDLORD AND TENANT (CONTROL OF RENTS) ACT, 1942, No. 33 OF 1942 [ASSENTED TO 26TH NOVEMBER, 1942.]

AS AMENDED BY

LANDLORD AND TENANT (CONTROL OF RENTS) ACT AMENDMENT ACT, 1946, No. 38 OF 1946 [ASSENTED TO 19TH DECEMBER, 1946.]

LANDLORD AND TENANT (CONTROL OF RENTS) ACT AMENDMENT ACT, 1947, No. 30 OF 1947 [ASSENTED TO 4TH DECEMBER, 1947.]

AND

LANDLORD AND TENANT (CONTROL OF RENTS) ACT AMENDMENT ACT, 1948, No. 5 OF 1948 [ASSENTED TO 13TH AUGUST, 1948.]

An Act to provide for the control during the present war of the rents of premises used for the purposes of residence, and for incidental and other purposes.

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

PART I.

PART I.

PRELIMINARY.

1. (1) This Act may be cited as the "Landlord and Tenant (Control of Rents) Act, 1942-1948".

Short title and commencement.

(2) This Act shall come into operation on a day to be fixed by proclamation.

2. The provisions of this Act are arranged as follows:—

Arrangement of Act. Amended by 30, 1947, s. 3, and by 5, 1948, s. 2.

PART I.—Preliminary.

PART II.—Administration.

PART III.—Control of rents.

PART IIIA.—Control of rents of caravans.

s. 1. (2) This Act was proclaimed to commence on 1st January, 1943: *Gazette* 3rd December, 1942, p. 1089.

PART I.

PART IIB.—Recovery of possession of premises.

PART IV.—Miscellaneous.

Repealing provision.

3. The Increase of Rent (War Restrictions) Act, 1939, the Increase of Rent (War Restrictions) Act Amendment Act, 1940, and the Increase of Rent (War Restrictions) Act Amendment Act, 1941, are repealed.

Interpretation.

4. In this Act, unless the context otherwise requires—

Amended by 38, 1946, s. 2 (2), and by 5, 1948, s. 4 (2).

“dwelling-house” means any premises leased for the purpose of residence, and includes—

(a) any part of any premises leased separately for the purposes of residence;

(a1) any part of any premises leased separately for the purposes of residence the lease of which provides for the use by the lessee of any other part of the premises or any fittings therein;

(b) the premises of any lodging-house;

(c) any premises a substantial part of which is leased for the purpose of residence and the remaining part of which is leased for the purpose of being used as a shop, store-room, workshop, stable, or any similar purpose:

Amended by 5, 1948, s. 3 (a).

“lease” includes every contract for the letting or subletting of any premises, whether the contract is made orally, in writing, or by deed, and includes a contract for the letting or subletting of any premises together with the use of furniture or other goods but does not include any lease arising under an attornment clause in a mortgage or in an agreement for the sale and purchase of land:

Amended by 5, 1948, s. 3 (b), (c), and (d).

“lessor” and “lessee” mean the parties to a lease and respectively include—

(a) a mesne lessor and mesne lessee;

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- s. 4. H. A. WARNER PROPRIETARY LIMITED v. WILLIAMS AND OTHERS (1946) 73 C.L.R. 421. A tenancy at will at common law is sufficient to constitute a “lease” as defined in the corresponding regulation of the National Security (Landlord and Tenant) Regulations. If a person who is in fact a servant is in part remunerated for his services by being allowed to occupy a house, he is *prima facie* a tenant.
- A. E. TERRY’S MOTORS LTD. v. RINDER (1948) S.A.S.R. 167. Where approximately one-sixth of the area of premises was used as a residence and the remainder for business purposes, held that the part of the premises used as a residence was not a substantial part of the premises.
- PRICE v. MAYMAN (1948) S.A.S.R. 241. Held that, in the particular circumstances, a particular transaction could operate (if at all) only as an assignment.

- (b) a sub-lessor and a sub-lessee; and
- (c) in respect of premises which are subject to a mortgage, a mortgagee who enters or has entered into possession of the premises under the mortgage and a person who was the lessee of the premises under the mortgage immediately prior to the mortgagee entering into possession:

“local court” means a local court of full jurisdiction consisting solely of a Local Court Judge or a special magistrate: Amended by
5, 1948,
s. 3 (e).

“rates” means any charges levied by the Minister of Works or by any municipal council or district council: Amended by
38, 1946,
s. 2 (1).

“rent” means the actual rent payable under a lease, and includes—

- (a) the value to the lessor of any covenants, conditions or other provisions of, or relating to, the lease to be performed by the lessee other than covenants, conditions, and provisions usually entered into by a lessee;
- (b) any rates or taxes (other than excess water rates) payable by the lessee in respect of the premises to which the lease relates;
- (c) any amount payable by the lessee to the lessor for the use of any furniture or other goods in connection with the letting of the premises to which the lease relates;
- (d) any amount payable by the lessee to the lessor in respect of the supply of any electricity, gas, water, fuel, or other domestic commodity in connection with the letting of the premises to which the lease relates or in respect of any sanitary service for such premises;
- (e) any amount payable by the lessee to the lessor for the use of any fittings in the premises to which the lease relates or, if the lease relates to a part of any premises, any amount payable by the lessee to the lessor for the use of any fittings in any other part of the premises; and

(f) if the lease relates to a part of any premises, any amount payable by the lessee to the lessor for the use of any other part of the premises:

Inserted by
5, 1948,
s. 3 (f).

“shared accommodation” means any premises to which this Act applies which are leased, or intended to be leased, for the purpose of residence and forming part of other premises, but does not include any premises forming a complete residence in themselves:

“tax” includes any tax, whether on land or income derived from land, which is imposed by any Act of the State or the Commonwealth:

“trust” means the South Australian Housing Trust constituted under the South Australian Housing Trust Act, 1936-1940.

Premises to
which Act is
to apply.
Substituted
by 5, 1948,
s. 4 (1).

5. (1) This Act shall apply to any premises (including any part of any premises which is separately leased), other than—

(a) premises which are for the time being used, or which are ordinarily used, as any grazing area, farm, orchard, market garden, dairy farm, poultry farm, pig farm or apiary;

(b) any premises licensed under the Licensing Act, 1932-1945;

(c) any premises ordinarily leased for holiday purposes only: Provided that if any premises ordinarily leased for holiday purposes only are leased for other than holiday purposes, the premises shall, whilst so leased, not be deemed to be premises ordinarily leased for holiday purposes;

(d) any premises, or the premises included in any class of premises, declared by proclamation to be premises or a class of premises, as the case may be, to which this Act shall not apply.

(2) The Governor may from time to time by proclamation declare that this Act or any Part of this Act shall not apply to any premises or class of premises described in the proclamation and this Act or Part of this Act, as the case may be, shall not apply accordingly. The Governor may by procla-

s. 5. MARCH V. NEUMANN (1945) S.A.S.R. 167. Where farm property including a farmhouse was let and on the expiration of the term of the tenancy there was a holding over of the farmhouse only, held that there was a tenancy at sufferance and that the farmhouse was not “prescribed premises” within the meaning of the National Security (Landlord and Tenant) Regulations.

mation revoke or from time to time vary any such proclamation.

(3) In this Act, the term "premises to which this Act applies" shall include a reference to all premises other than premises to which this Act does not apply by virtue of paragraphs (a), (b), (c) or (d) of subsection (1) of this section or of subsection (1) of section 6. The term also includes a reference to any part of any premises which is separately leased and to any land or appurtenances leased with any premises or part of premises.

6. (1) The provisions of this Act shall not apply—

Exemptions from Act.

- (a) to any premises let by the Government of the Commonwealth or the State or any instrumentality of any such Government;
- (b) to any premises let by the trust; or
- (c) to any premises during the time any notice fixing the maximum rental thereof is in force under Part VII. of the Housing Improvement Act, 1940.

(2) Nothing in this Act shall be deemed to apply to or affect any covenant in any mortgage whereby the mortgagor attorns tenant to the mortgagee.

* * * * *

s. 7 repealed by 38, 1946, s. 8 (2).

8. This Act shall be read and construed subject to the Commonwealth of Australia Constitution Act, and so as not to exceed the legislative power of the State, to the intent that where any enactment of this Act would, but for this section, have been construed in excess of that power it shall, nevertheless, be a valid enactment to the extent to which it is not in excess of that power.

Construction of Act.

PART II.

PART II.

ADMINISTRATION.

9. The provisions of this Act shall be administered by the trust.

Administration of Act.

10. (1) No matter or thing done by the trust or by any member, officer, inspector, or servant of the trust or by any other person whomsoever acting under the direction or

Protection of members of trust.

PART II.

authority of the trust or of this Act shall, if the matter or thing was done *bona fide* for the purpose of executing this Act, subject them or any of them personally to any action, liability, claim or demand whatsoever.

(2) Any expense incurred by the trust or any such member, officer, inspector, servant or person acting as aforesaid shall be deemed to be an expense authorized by this Act.

Appointment
of officers.

11. (1) The trust may appoint such officers, inspectors, and servants as are necessary for the administration of this Act.

(2) Any such officer, inspector, or servant shall not, as such, be subject to the Public Service Act, 1936-1941.

(3) With the approval of the Minister administering any department of the public service, the trust may, for the purposes of the administration of this Act, employ or use the services of any person employed in that department upon any terms and conditions which are agreed upon between that Minister and the trust. Notwithstanding subsection (2), any such person shall continue for all purposes to be a member of the public service.

Expenses of
administration.

12. The moneys necessary for the administration and the expenses of this Act shall be paid out of moneys provided by Parliament for the purpose.

PART III.

PART III.

CONTROL OF RENTS.

Pegging of
rents.
Amended by
5, 1948,
s. 5.

13. (1) Notwithstanding any term, condition or covenant in any lease in force at any time after the passing of this Act, the rent payable by the lessee of any premises (being a dwelling-house) to which this Act applies, in respect of any period after the passing of this Act and during the continuance of this Act shall, unless the rent is fixed by the trust or a local court as provided by this Act, not exceed the following rent:—

- i. If the premises were let at the first day of August, nineteen hundred and forty-two, the rent shall not exceed the rent lawfully payable in respect thereof at the first day of August, nineteen hundred and forty-two:
- ii. If the premises were not let at the first day of August, nineteen hundred and forty-two, the rent

shall not exceed the rent lawfully payable in respect thereof under the lease whereby the premises were first let after the first day of August, nineteen hundred and forty-two.

(1a) Notwithstanding any term, condition, or covenant in any lease in force at any time after the passing of the Landlord and Tenant (Control of Rents) Act Amendment Act, 1948, the rent payable by the lessee of any premises (other than a dwelling-house) to which this Act applies, in respect of any period after the passing of the Landlord and Tenant (Control of Rents) Act Amendment Act, 1948, and during the continuance of this Act shall, unless the rent is fixed by the trust or a local court as provided by this Act, not exceed the following rent:—

Inserted by
5, 1948,
s. 5 (b).

- i. If the premises were let at the thirtieth day of June, nineteen hundred and forty-eight, the rent shall not exceed the rent lawfully payable in respect thereof at the thirtieth day of June, nineteen hundred and forty-eight:
- ii. If the premises were not let at the thirtieth day of June, nineteen hundred and forty-eight, the rent shall not exceed the rent lawfully payable in respect thereof under the lease whereby the premises were first let after the thirtieth day of June, nineteen hundred and forty-eight.

(2) Any rent in excess of the rent provided to be paid by subsection (1) or subsection (1a) shall, notwithstanding any change in the ownership or occupation of the premises or any agreement to the contrary, be irrecoverable.

(3) Where the rent of any premises is fixed by virtue of this section, the lessee may, by notice in writing given to the lessor, require him to furnish to the lessee a statement in writing as to what is the rent so fixed as aforesaid. If the lessor fails within fourteen days to furnish a statement as aforesaid he shall be guilty of an offence and liable to a penalty not exceeding ten pounds and if the lessor wilfully furnishes a statement which is false in any material particular, he shall be guilty of an offence and liable to a penalty not exceeding fifty pounds.

(4) Nothing in this section shall affect the operation of any determination of the trust or order of a local court under this Act fixing the rent of any premises to which this Act applies.

PART III.

Application
to fix rent.
Amended by
38, 1946,
s. 3.

14. (1) The lessor or the lessee under any lease of any premises to which this Act applies may, from time to time, make application in writing to the trust to fix the rent of the premises to which the lease relates.

(2) The trust shall thereupon cause the premises to be inspected for the purpose of fixing the rent thereof. The trust shall give prior notice to the lessor and the lessee or to his solicitor or agent of an occasion upon which the premises are to be so inspected and stating the day and approximate time at which the premises are to be so inspected.

(3) The trust may, of its own motion, and from time to time, cause any premises to which this Act applies to be inspected for the purpose of fixing the rent thereof.

Determina-
tion of
rent.

15. After inspection is made as aforesaid of any premises to which this Act applies and after making such inquiries and obtaining such reports as the trust considers necessary, the trust shall provisionally determine the rent of the premises.

Notice of
determina-
tion of rent.

16. After determining the rent of any premises as aforesaid the trust shall give notice in writing of its determination to the lessor and lessee of the premises.

Objection to
determina-
tion.

17. (1) Within fourteen days after notice as aforesaid is given to any lessor or lessee, the lessor or lessee, as the case may be, may give notice in writing to the trust that he objects to the amount of the rent determined by the trust. Particulars of the objection shall be given to the trust by the lessor or lessee making the objection within twenty-one days after notice is given to him pursuant to section 16, or within such further time as the trust considers necessary in the particular case. Any such particulars may be given to the trust in writing or, if the trust thinks fit, by representations made orally to the trust by the lessor or lessee, as the case may be, or some person on his behalf.

(2) The trust, on hearing or considering any objection, shall not be bound by any rules of evidence or procedure but may inform itself in such manner as it thinks fit.

(3) After considering any objection the trust shall finally determine the rent of the premises.

Publication
of deter-
mination of
trust.

18. (1) If no objection is made as provided by section 17, the trust shall, after the expiration of fourteen days after giving notice as provided by section 16, make a determination fixing the rent of the premises at the amount previously deter-

mined by the trust, and shall publish notice thereof in the *Gazette*.

Every such determination shall take effect from a date (which shall be a date not earlier than fourteen days after notice was given to the lessor and lessee under section 16) fixed by the trust and stated in the notice thereof.

(2) If any objection is made as provided by section 17, the trust shall, after considering every such objection, make a determination fixing the rent of the premises and shall publish notice thereof in the *Gazette*. Every such determination shall take effect from a date fixed by the trust and stated in the notice thereof. Such date may be any date not earlier than fourteen days after notice was given to the lessor and lessee under section 16.

(3) The trust shall give notice in writing to the lessor and the lessee of every determination made under this section.

19. (1) If objection is made as provided by section 17, and the rent of the premises is subsequently fixed by the trust, the lessor or lessee of the premises may, within fourteen days after the publication of the notice in the *Gazette* mentioned in subsection (2) of section 18, or within such extended time as the court for good cause may allow, appeal to the local court of full jurisdiction nearest to the premises from the determination of the trust.

Appeal to local court. Amended by 38, 1946, s. 4.

* * * * *

Subsec. (2) repealed by 38, 1946, s. 4 (c).

(3) Whilst any such appeal is pending, the determination of the trust shall continue in force.

20. (1) The local court shall hear and inquire into the appeal and shall, by its order, fix the rent of the premises. For the purpose of the appeal the local court may do all such matters and things relating thereto and in the same manner and to the same extent as it is empowered to do in the exercise of its ordinary jurisdiction, but no costs shall be allowed on any such appeal. The decision of the local court shall be final and conclusive.

Order by local court.

(2) The local court shall, by its order, fix the date from which the order is to take effect. Such date shall be the date from which the determination appealed against came into effect and the order shall take effect from such date.

s. 19. EX PARTE WHITTLE (1944) S.A.S.R. 205. A local court on an appeal from a ruling of the South Australian Housing Trust is entitled to assume that the rent fixed by the Trust is fair and equitable until the appellant shows that it is not.

(3) The clerk of the local court shall transmit a copy of the order to the trust.

(4) The trust shall forthwith publish in the *Gazette* notice of the order and shall give notice in writing of the order to the lessor and the lessee.

Matters to
be considered
in fixing
rent.

21. (1) In fixing the rent under this Act of any premises to which this Act applies, the trust or, as the case may be, local court shall fix such rent as the trust or, as the case may be, local court considers to be fair and equitable, and after having regard to—

- (a) the accommodation provided in the premises and the state of repair and the general condition thereof;
- (b) the neighbourhood in which the premises are situated;
- (c) if the lease relates to a part of any premises, the rent (if any) of the whole of the premises;
- (d) if the lease relates to a part of any premises, any rights conferred upon the lessee to the use of any other part of the premises or any fittings therein;
- (e) if the lease provides for payment for the use of furniture or other goods, the value, condition, and suitability of the furniture or goods;
- (f) if the lease provides for any amount to be payable by the lessee to the lessor for any electricity, gas, water, fuel, or other domestic commodity, the reasonable value of the electricity, gas, water, fuel, or other domestic commodity for which payment is to be made;
- (g) any amount which pursuant to the lease the lessee is required to pay or expend for the purposes of the

s. 21. R. v. LOCAL COURT OF PORT ADELAIDE. EX PARTE WOOD (1943) S.A.S.R. 285. Considerations entering into the fixing of rents on appeals discussed. It is the duty of the court when fixing rents to bring rents into line with the general level of rental values prevailing at the time of fixture of the rents paid. Evidence may be admitted of rents for comparable houses and of the rent obtainable prior to the date (1st September, 1939) when rents were first fixed by Statute and it may be assumed that rental values had been stabilized by the Increase of Rents (War Restrictions) Act, 1939-1941.

Semble, where buildings have been constructed or altered since 1939, it is fair and equitable to allow a fair return upon the capital actually and reasonably expended.

EX PARTE WHITTLE (1944) S.A.S.R. 205. Upon an appeal to a local court from a decision of the South Australian Housing Trust fixing the rent of a furnished flat, the court is entitled to fix a fair rent for the flat according to the rental at which it could have been let unfurnished in or about September, 1939, and then to make a fair allowance for the use of the furniture. The intentment of the Act does not preclude a valuation which brings the rent of furnished premises into line with those of unfurnished premises *mutatis mutandis*.

repair, renovation, or improvement of the premises;

- (h) any increased expenditure reasonably incurred by the lessor in the maintenance of the premises or in other costs in respect of the premises beyond the expenditure which would have been reasonably incurred for that purpose immediately prior to the third day of September, nineteen hundred and thirty-nine.

Inserted by
38, 1946,
s. 5.

(2) If the trust or, as the case may be, the local court is satisfied that by reason of the dirty, harmful, or careless habits or actions of the lessee of any premises to which this Act applies or of any members of his household greater expenditure upon the repair or renovation of the premises has been or will be likely to be necessary than would otherwise be the case, the trust or, as the case may be, the local court, in fixing the rent under this Act of the premises, shall have regard thereto.

(3) If under the lease of any premises to which this Act applies any amount is payable by the lessee to the lessor for the use of any furniture or other goods in connection with the letting of the premises, the trust or, as the case may be, the local court in fixing the rent of the premises shall fix the rent thereof which shall be payable in respect of the premises without the use of the furniture or other goods and shall also fix the rent thereof which shall be payable in respect of the premises including any amount payable for the use of the furniture or other goods.

22. Any determination or order under this Act fixing the rent of any premises may fix the rent to be so payable at an amount payable for every week, month, or other period.

Period for
which rent
may be
fixed.

23. (1) If the rent of any premises to which this Act applies has been fixed pursuant to this Act by a determination of the trust or an order of a local court, then during any time during which the determination or order fixing the rent is in force, and notwithstanding any change in ownership or occupation of the premises, the rent which shall be payable in respect of the premises shall not exceed that fixed as aforesaid.

Effect of
fixing rent.

(2) Any amount by which the rent charged in respect of the premises is in excess of the rent fixed as aforesaid shall,

s. 23. DAVIES v. O'SULLIVAN (1948) S.A.S.R. 297. A determination of the rent of unfurnished premises made by the South Australian Housing Trust remains applicable to the premises notwithstanding that they are subsequently let furnished.

notwithstanding any agreement to the contrary, be irrecoverable.

Recovery
of overpaid
rent.

24. Where any sum has been paid on account of any rent, being a sum which by virtue of section 13 or section 23 would have been irrecoverable by the lessor, the sum so paid shall, at any time within six months after the date of payment, be recoverable from the lessor who received the payment by the lessee by whom it was paid, and may, without prejudice to any other method of recovery, be deducted by that lessee from any rent payable within such six months by him to such lessor.

Variation
of rents.

25. (1) If the rent of any premises to which this Act applies has been fixed by the trust or a local court pursuant to this Act, no further proceedings under this Act for the fixing of the rent of those premises shall be commenced until after a period of six months from the time the rent was fixed as aforesaid except on the ground that—

- (a) by an error or omission, an injustice has been occasioned by the determination or order fixing the rent;
- (b) since the determination or order fixing the rent came into force, substantial alterations or additions have been made to the premises or, if the lease provides for the use of any furniture or other goods in connection with the letting of the premises, to the furniture or other goods; or
- (c) since the determination or order fixing the rent came into force, the accommodation provided in the premises has been materially decreased or, if the lease provides for the use of furniture or other goods in connection with the letting of the premises, the furniture or other goods to be so used have been substantially decreased.

(2) Any proceedings to fix the rent of any premises the rent of which has been previously fixed by the trust or a local court pursuant to this Act shall be had and determined in manner provided by this Act as if the rent had not been so previously fixed.

Power to
fix rent of
premises not
let at time of
application.

26. (1) Any person who is entitled to the rents and profits of any premises which if leased would be premises to which this Act applies may, notwithstanding that the premises are not leased, make application in writing to the trust to fix the rent of the premises.

(2) Upon such application the rent of the premises may be fixed in manner provided by this Act and the provisions of this Act shall, *mutatis mutandis*, apply accordingly. The person making the application shall be deemed to be the lessor of the premises.

PART IIIA.

PART IIIA.

CONTROL OF RENTS OF CARAVANS.

26a. In this Part, unless the context otherwise requires—

Interpretation.
Inserted by
30, 1947,
s. 2.

“caravan” means any vehicle without motive power constructed or adapted for the purposes of habitation; the term includes any such vehicle which is not at the time fitted with wheels but which is so constructed that it is capable of being fitted with wheels:

“hirer” with respect to a caravan, means the party to whom the caravan is let:

“letting” with respect to a caravan, includes any contract for the letting or hire of the caravan, whether the contract is made orally or in writing or otherwise, and includes a contract for the letting or hire of a caravan together with the use of furniture or other goods; and “let” has a corresponding meaning:

“owner”, with respect to a caravan, means the party by whom the caravan is let:

“owner”, with respect to land, means the person by whom, whether as owner, lessee, occupier or otherwise, any charge is made with respect to the use of any land upon which any caravan is placed for the purpose of habitation:

“rent”, with respect to a caravan, means any amount payable by the hirer to the owner of the caravan under any letting thereof, and includes any amount payable by the hirer to the owner for the use of any furniture or other goods in connection with the letting of the caravan:

“rent”, with respect to land, means any amount payable to the owner of the land by any person under any arrangement of any kind whereby that person is authorized to place a caravan upon that land for

the purpose of the habitation of the caravan (whether by the said person or otherwise), and includes—

- (a) any amount payable to the owner for the use of any buildings or goods;
- (b) any amount payable to the owner for the use of any sanitary, laundry or washing or like facilities;
- (c) any amount payable to the owner in respect of the supply of any electricity, gas, water, or fuel.

Fixation of rents in respect of letting of caravans. Inserted by 30, 1947, s. 2.

26b. (1) The trust from time to time may, by notice published in the *Gazette* and in a daily newspaper circulating throughout the State, declare that the maximum rents payable in respect of the letting of caravans within such part or parts of the State as are specified in the notice shall from a day or days to be specified in the notice, not exceed the rent or rents set out in the notice.

Any such notice may fix different maximum rents—

- (a) for different kinds or classes of caravans;
- (b) for different parts of the State.

(2) The trust may by notice published as aforesaid revoke or vary any declaration of rents made as aforesaid.

Payment of rent under letting of caravans. Inserted by 30, 1947, s. 2.

26c. (1) Notwithstanding any term or condition of any letting, the rent payable in respect of the letting of any caravan in respect of any period after the coming into operation of a declaration under section 26b shall, except in the circumstances mentioned in section 26d or 26l, not exceed the rent fixed by the declaration and appropriate to the caravan.

(2) Any rent in excess of the rent provided to be paid by subsection (1) shall, notwithstanding any agreement to the contrary, be irrecoverable.

Application to trust for special determination of rent of caravan. Inserted by 30, 1947, s. 2.

26d. (1) The owner or the hirer of any caravan, the maximum rent in respect of the letting of which has been determined pursuant to section 26b, may from time to time apply in writing to the trust for a determination of the maximum rent to be payable in respect of the letting of the caravan: Provided that no such application may be made in respect of any caravan by any person within six months after the making of a prior application by that person in respect of that caravan.

(2) The trust may thereupon from time to time determine the maximum rent which shall be payable in respect of the letting of the caravan from the day to be fixed by the trust.

(3) Notwithstanding the provisions of section 26c, the rent so determined shall, from the day fixed as aforesaid, be the maximum rent which shall be payable in respect of the letting of the caravan and any rent in excess of such maximum rent shall, notwithstanding any agreement to the contrary, be irrecoverable.

26e. (1) The trust from time to time may, by notice published in the *Gazette* and in a daily newspaper circulating throughout the State, declare that the maximum rents which shall be payable in respect of land within such part or parts of the State as are specified in the notice under any arrangements of any kind whereby persons are authorized to place caravans upon such land for the purpose of habitation, shall, from a day or days to be specified in the notice, not exceed the rents set out in the notice.

Fixation of rents of land for use for caravans. Inserted by 30, 1947, s. 2.

Any such notice may—

- (a) in respect of different items included in rent with respect to land, as defined in section 26a, fix different amounts as the maximum rents to be payable in respect of those items;
- (b) fix different maximum rents for different parts of the State.

(2) The trust may by notice published as aforesaid revoke or vary any declaration of rents made as aforesaid.

26f. (1) Notwithstanding any term or condition of any contract or arrangement, the rent payable in respect of any land under any arrangement of any kind whereby any person is authorized to place a caravan upon that land for the purpose of the habitation of the caravan (whether by the said person or otherwise) and in respect of any period after the coming into operation of a declaration under section 26e, shall, except in the circumstances mentioned in section 26g, not exceed the rent fixed by the declaration and appropriate to the land and the arrangement with respect thereto.

Payment of rent in respect of land. Inserted by 30, 1947, s. 2.

(2) Any rent in excess of the rent provided to be paid by subsection (1) shall, notwithstanding any agreement to the contrary, be irrecoverable.

PART IIIA.

Application to trust for special determination of rent of land.
 Inserted by 30, 1947, s. 2.

26g. (1) The owner of any land in respect of which a maximum rent has been determined pursuant to section 26f, may, from time to time, apply in writing to the trust for a determination of the maximum rent to be payable in respect of the land for the purposes referred to in section 26f: Provided that no such application may be made in respect of any land by the owner thereof within six months after the making of any prior application by that owner in respect of that land.

(2) The trust may thereupon from time to time determine the maximum rent which shall be so payable from a day to be fixed by the trust.

(3) Notwithstanding the provisions of section 26f, the rent so determined shall, from the day fixed as aforesaid, be the maximum rent which shall be payable in respect of the land for the purposes referred to in section 26f and any rent in excess of such maximum rent shall, notwithstanding any agreement to the contrary, be irrecoverable.

Display of maximum rent.
 Inserted by 30, 1947, s. 2.

26h. (1) If any rent is determined pursuant to section 26d or 26g in respect of any caravan or land, the trust shall supply to the owner of the caravan or land, as the case may be, a notice stating the maximum rent payable pursuant to this Part in respect of the caravan or land and the owner of the caravan or land, as the case may be, shall, within a time to be specified by the trust, cause the notice to be affixed to the caravan or, as the case may be, displayed on the land in manner directed by the trust.

(2) Any such owner who fails to affix or display or to keep affixed or displayed any such notice in accordance with the direction of the trust shall be guilty of an offence and liable to a penalty not exceeding twenty pounds.

(3) Any person who destroys, defaces or removes any such notice affixed or displayed as aforesaid shall be guilty of an offence and liable to a penalty not exceeding twenty pounds.

Penalty for recovering rent above that fixed.
 Inserted by 30, 1947, s. 2.

26i. (1) Any person who, whether as principal or agent or in any other capacity, in any book or other document wilfully makes any entry showing or purporting to show any person as being in arrear in respect of any sum which by virtue of this Part is irrecoverable, shall be guilty of an offence and liable to a penalty not exceeding fifty pounds.

(2) Any person who, whether as principal or agent or in any other capacity, wilfully demands or wilfully receives as rent in respect of any caravan or land any sum which by

virtue of this Part is irrecoverable, shall be guilty of an offence and liable to a penalty not exceeding fifty pounds.

26j. Where any sum has been paid to any owner on account of any rent, being a sum which by virtue of this Part would have been irrecoverable by the owner, the sum so paid shall, at any time within six months after the date of payment, be recoverable from the owner who received the payment by the person by whom it was paid, and may, without prejudice to any other method of recovery, be deducted by that person from any rent payable within such six months by him to such owner.

Recovery of overpaid rent. Inserted by 30, 1947, s. 2.

26k. (1) For the purposes of this Part, any member of the trust or any officer or inspector of the trust authorized in writing for the purpose by the trust—

Powers of entry and inspection. Inserted by 30, 1947, s. 2.

- (a) may enter upon any land upon which any caravan used for the purposes of habitation is situated, and may enter and inspect any such caravan;
- (b) may require any person being the owner or hirer of any caravan or being the owner of any land or being the agent of any such owner or hirer, to answer any question relating to the letting thereof or to any rent payable in respect of any caravan or land.

(2) Any person who—

- (a) obstructs or hinders any such member, officer, or inspector in the exercise of any of the powers conferred by subsection (1) hereof; or
- (b) refuses to answer any question put by any such member, officer, or inspector as provided by paragraph (b) of subsection (1) hereof or who wilfully gives any false answer to any such question,

shall be guilty of an offence and liable to a penalty not exceeding twenty pounds.

26l. If any caravan is let to any person for holiday purposes only, this Part shall not apply with respect to the rent of that caravan whilst the caravan is so let but if any caravan is let to any person for holiday purposes and the letting continues for a period exceeding four weeks, this Part shall, after the expiration of four weeks from the commencement of the letting thereof, apply to the caravan whilst it is let to that person.

Exemption from operation of this Part. Inserted by 30, 1947, s. 2.

PART IIIB.

PART IIIB.

RECOVERY OF POSSESSION OF PREMISES.

Commence-
ment of
Part.
Inserted by
5, 1948,
s. 6.

Restriction
on eviction.
Inserted by
5, 1948,
s. 6.

26m. The provisions of this Part shall come into force on a day to be fixed by proclamation.

26n. (1) Except as provided by this Part, the lessor of any premises to which this Act applies shall not give any notice to terminate the tenancy or take or continue any proceedings to recover possession of the premises from the lessee or for the ejection of the lessee therefrom.

(2) A notice to quit given in contravention of this section shall not operate so as to terminate the tenancy in respect of which the notice was given.

(3) Subject to this Part, a lessor may take proceedings in a local court for an order for the recovery by him of any premises to which this Act applies (or of any furniture or other goods leased therewith) or for the ejection of the lessee therefrom if the lessor, before taking the proceedings, has given to the lessee, upon one or more of the prescribed grounds but upon no other ground, notice to quit in writing

s. 26m. Part III.B was proclaimed to commence on 16th August, 1948: *Gazette* 13th August, 1948, p. 703.

s. 26n. *ELDER'S TRUSTEE AND EXECUTOR COMPANY LIMITED AND ANOTHER v. SACH* (1944) S.A.S.R. 65. Where for many years the defendant had occupied as tenant at will a house and land for which the defendant paid no rent, held the defendant was not entitled to the protection of provisions of the National Security (Landlord and Tenant) Regulations relating to evictions.

INDEPENDENT ORDER OF ODDFELLOWS AND GRESHAM HOTEL LIMITED v. MALLAN, MATTERS, ROGERS, SMITH AND LEAN (1946) S.A.S.R. 234. Where, under an agreement between an owner of premises and the holder of an *interesse termini* that such owner should give notice to quit to other existing tenants of the premises to enable vacant possession to be given to the incoming lessee and that the owner should, either alone or jointly with such lessee, bring appropriate ejection proceedings if necessary, held that was sufficient for the purposes of the provision of the National Security (Landlord and Tenant) Regulations corresponding with section 26n that a notice to quit, otherwise complying with the regulations, be in fact given by the owner, such notice, by virtue of the agreement, operating as an effective notice to quit, both for the owner and holder of the *interesse termini*.

WRIGHT v. CURNOW (1947) S.A.S.R. 225. When the ground set out in a notice to quit was that the premises were required by the landlord's daughter G. for her own occupation and on a subsequent date the landlord agreed to let the house to M. (who had married another of his daughters), held that the notice to quit was ineffective because the ground relied on was different to that stated in the notice.

PEPPER v. DISTRICT COUNCIL OF STIRLING (1948) S.A.S.R. 344. Where by an agreement in writing the committee of an institute granted to a motion picture exhibitor the sole right of showing pictures in the institute hall for fifty-one Saturday nights in any year and the committee was described in the agreement as "the landlord" and the exhibitor as "the tenant," and the agreement referred to the payment of "rent" by the tenant and contained covenants by the parties similar to covenants normally found in a lease, held, that notwithstanding the use of terms which would have been appropriate if the document were an agreement for a lease, the agreement was merely the grant of a licence to show pictures in the hall, and did not give the exhibitor a tenancy of any part of the hall.

for a period determined in accordance with section 26o and that period of notice has expired.

(4) Service of the notice to quit may, without prejudice to any other mode of service, be effected by delivering the notice to—

- (a) some person apparently over the age of sixteen years and apparently residing in or in occupation of the premises; or
- (b) the person by whom the rent of the premises is customarily paid.

The provisions of sections 36, 37 and 38 shall not apply to the service of a notice to quit.

(5) The prescribed grounds shall be—

- (a) that the lessee has failed to pay the rent in respect of a period—
 - (i.) where the lessee's period of occupation does not exceed six months—of not less than seven days;
 - (ii.) where the lessee's period of occupation exceeds six months but does not exceed twelve months—of not less than fourteen days;
 - (iii.) in any other case—of not less than twenty-eight days;
- (b) that the lessee has failed to perform or observe some other term or condition of the lease and the performance or observance of that other term or condition has not been waived or excused by the lessor;
- (c) that the lessee has failed to take reasonable care of the premises, or of any furniture or other goods leased therewith or has committed waste;
- (d) that the lessee has been guilty of conduct which is a nuisance or annoyance to adjoining or neighbouring occupiers;
- (e) that the lessee or any other person has been convicted, during the currency of the lease, of any

s. 26n. (5) (d) *MERCANTILE INVESTMENTS LIMITED v. AUSTRALIAN OPTICAL COMPANY LIMITED* (1945) S.A.S.R. 129. Where premises were let to a tenant who covenanted to carry on a specified business in which noise necessarily occurs, held that the reasonable and ordinary use of the premises for the very purpose for which they were let is not conduct which is a nuisance or annoyance within the meaning of section 26n (5) (d).

offence arising out of the use of the premises for any illegal purpose or that a court has found or declared that the premises have, during the currency of the lease, been used for some illegal purpose;

(f) that the lessee has given notice of his intention to vacate the premises and, in consequence of that notice, the lessor has agreed to sell or let the premises or has taken any other steps as a result of which he would be seriously prejudiced if he could not obtain possession;

(g) that the premises—

(i.) being a dwelling-house or, in the case of a dwelling-house within the meaning of paragraph (c) of the definition of “dwelling-house” in section 4, the part thereof which is leased for the purposes of residence—are reasonably required by the lessor for occupation as a dwelling-house by himself or by some person who ordinarily resides with, and is wholly or partly dependent upon, him; or

(ii.) not being a dwelling-house or a part of a dwelling-house leased as aforesaid—are reasonably required for occupation by the lessor, or by a person associated or connected with the lessor in his trade, profession, calling or occupation;

(h) that the premises are used as, or have been acquired for use as, a parsonage, vicarage, presbytery or other like premises and are reasonably required for the personal occupation of a minister of religion (including a person who, although not

s. 26n. (5) (g) ARTHUR v. MARSH (1945) S.A.S.R. 31. Premises are reasonably required by the owners for their personal occupation if the owners, being persons in indigent circumstances, desire to obtain possession for the purpose of supplementing their means by making the premises income producing.

RETURNED SAILORS', SOLDIERS' AND AIRMEN'S IMPERIAL LEAGUE OF AUSTRALIA (HENLEY AND GRANGE SUB-BRANCH) INCORPORATED v. GRACE ABBOTT AND JOSEPH ERNEST ABBOTT (1946) S.A.S.R. 270. Where premises are part dwellinghouse and part business premises and the parcels are not capable of severance, a claim for possession must be supported in its totality under subparagraph (i.) or (ii.) of paragraph (g) of section 26n (5). It is not permissible to found the claim part under one and part under the other of such subparagraphs.

WILLIAMS v. COULTHARD AND OTHERS (1948) S.A.S.R. 183; 22 A.L.J. 431. Held that if premises were required by the trustees of an institute under the Libraries and Institutes Act, 1939, for the use of the institute, they were required “for the occupation of the lessor.” Subparagraph (ii.) of paragraph (g) does not require the premises to be required for occupation by the lessor himself “in his trade, profession, calling, or occupation.”

ordained, is performing all the duties of a minister of religion);

- (i) that the lessor is a trustee and the premises are reasonably required by a beneficiary under the trust for his personal occupation or for the occupation of some person who ordinarily resides with, and is wholly or partly dependent upon, him;
- (j) that the lessor is a person, body or authority carrying on a hospital, or a trustee for such a person, body or authority, and the use of the premises is reasonably required for the purposes of the hospital (including the accommodation of the staff of the hospital);
- (k) that the premises have been occupied, or are occupied in consequence of his employment by some person in the employ of the lessor and are reasonably required for the personal occupation in consequence of that employment of some other person employed by, or about to become employed by, the lessor;
- (l) that the lessor has agreed to sell the premises by an agreement which requires the purchaser to pay not less than one-fourth of the whole purchase-money within twelve months from the date thereof and by which the purchaser is entitled to vacant possession of the premises and the premises—
 - (i.) being a dwelling-house or, in the case of a dwelling-house within the meaning of paragraph (c) of the definition of “dwelling-house” in section 4, the part thereof which is leased for the purposes of residence—are reasonably required by the purchaser for occupation as a dwelling-house by himself or by some person who ordinarily resides with, and is wholly or partly dependent upon, him; or
 - (ii.) not being a dwelling-house or a part of a dwelling-house leased as aforesaid—are reasonably required for occupation by the purchaser, or by a person associated or connected with the purchaser in his trade, profession, calling or occupation;

s. 26n. (5) (*k*) *H. A. WARNER PROPRIETARY LIMITED v. WILLIAMS AND OTHERS* (1946) 73 C.L.R. 421. If a person who is in fact a servant is in part remunerated for his services by being allowed to occupy a house, then he is *prima facie* a tenant.

- (*m*) that the premises are reasonably required by the lessor for reconstruction or demolition;
- (*n*) that the lessee has become the lessee of the premises by virtue of an assignment or transfer which the lessor has not consented to or approved; or
- (*o*) that the lessee has sublet the premises or some part thereof by a sublease which has not been consented to or approved by the lessor.

(6) In subsection (5), unless the contrary intention appears, "lessor" includes, where there is more than one lessor, any one or more of the lessors, and "lessee" includes, where there is more than one lessee, any one or more of the lessees.

(7) Notice to quit on a ground specified in paragraph (*n*) or (*o*) of subsection (5)—

- (*a*) shall not be given—
 - (i.) where the lessee became the lessee by virtue of an assignment or transfer made before the first day of March, nineteen hundred and forty-seven, or the sub-lease was granted before that day;
 - (ii.) where the lease is for a fixed term—unless that term has expired; or
 - (iii.) in the case of a periodic lease—unless the period which was current at the date on which the assignment, transfer or sub-lease took effect has expired; and
- (*b*) may be given whether or not the assignment, transfer or sublease was in breach of any covenant or condition.

Period of
notice to quit.
Inserted by
5, 1948,
s. 6.

260. (1) The period for which notice to quit shall be given shall be not less than a period of seven days, together with an additional seven days for each completed period of six months of occupation.

s. 26n. (5) (*m*) INDEPENDENT ORDER OF ODDFELLOWS AND GRESHAM HOTEL LIMITED v. MALLAN, MATTERS, ROGERS, SMITH AND LEAN (1946) S.A.S.R. 234. Premises are "reasonably required by the lessee for reconstruction" where the reconstruction is not to be effected by the owner but by a lessee under a covenant in that behalf, and it need not be proved that a detailed scheme is in existence nor that the reconstruction can be commenced at once.

RETURNED SAILORS', SOLDIERS' AND AIRMEN'S IMPERIAL LEAGUE OF AUSTRALIA (HENLEY AND GRANGE SUB-BRANCH) INCORPORATED v. GRACE ABBOTT AND JOSEPH ERNEST ABBOTT (1946) S.A.S.R. 270. "Reconstruction" connotes some structural changes and transformations of the building and something more than mere repairs of the existing structure.

(2) Nothing in subsection (1) shall—

(a) require the giving of notice to quit for—

(i.) a period exceeding fourteen days if the notice is given on any ground specified in paragraphs (c), (d), (e) or (f) of subsection (5) of section 26n and not on any other ground;

(ii.) a period exceeding thirty days if the notice is given on any other ground; or

(iii.) in the case of shared accommodation—a period exceeding fourteen days; or

(b) allow the giving of notice to quit for a period shorter than the period which, but for this section, would be required.

26p. A lessor shall not, after the lessee has made an application to the trust under Part III. except with the consent of the trust, give a notice to quit on any ground specified in paragraph (f), (g), (h), (i), (j), (k) or (l) of subsection (5) of section 26n until after the expiration of six months after the making of a final determination on the application, but if a final determination has not been made within a period of six months after the date of the application, such a notice to quit may be given after the expiration of that period.

Notice to quit not to be given within six months after determination.
Inserted by 5, 1948, s. 6.

26q. (1) A person who becomes the lessor of premises to which this Act applies, being a dwelling-house or part of a dwelling-house, by purchase thereof (otherwise than in pursuance of a contract entered into before the first day of March, nineteen hundred and forty-seven) shall not, within a period of six months after the date of the agreement for the purchase, give a notice to quit on the ground specified in paragraph (g) of subsection (5) of section 26n to any person who was a lessee of the premises at the date of the agreement for the purchase.

Notice to quit where dwelling-house sold.
Inserted by 5, 1948, s. 6.

(2) A lessor of premises to which this Act applies, being a dwelling-house or part thereof, shall not give a notice to quit on the ground specified in paragraph (l) of subsection (5) of section 26n to any person who was a lessee of the premises at the date of the agreement referred to in that paragraph (whether the agreement was made before or after the commencement of this Part) within a period of six months after the date of the agreement.

PART III.

Notice to specify grounds. Inserted by 5, 1948, s. 6.

26r. A notice to quit shall specify the ground relied upon and shall give the particulars thereof and, in the proceedings, the lessor shall not be entitled to rely upon any ground not so specified.

Notice to quit to terminate lease. Inserted by 5, 1948, s. 6.

26s. A notice to quit given in accordance with the provisions of section 26n shall, if the tenancy in respect of which the notice was given has not otherwise terminated, operate so as to terminate the tenancy of the premises at the expiration of the period specified in the notice, but nothing in this section shall operate so as to determine any tenancy before the date on which it would have terminated if this section had not been enacted.

Notice to quit after failure of eviction proceedings. Inserted by 5, 1948, s. 6.

26t. (1) Where a lessor has taken proceedings in any court to recover possession of any premises to which this Act applies from the lessee or for the ejection of the lessee therefrom and the court has (whether before or after the commencement of this Part) refused to make an order in favour of the lessor, the lessor shall not give to the lessee any notice to quit (whether on the same ground as a previous notice to quit or on some other ground) within six months after the decision of the court unless he has first obtained the leave of a local court so to do.

(2) Where a court refuses to make an order in favour of a lessor it may, at the same time, grant leave for the purposes of this section.

Court to consider hardship. Inserted by 5, 1948, s. 6.

26u. (1) On the hearing of any proceedings by a lessor for an order for the recovery of possession of any premises to which this Act applies, or for the ejection of the lessee therefrom, the court shall take into consideration, in addition to all other relevant matters—

s. 26s. *AMAD v. GRANT. GROSGLUCK v. GRANT* (1946) 74 C.L.R. 327. To determine a periodic tenancy, whether it is yearly, quarterly, monthly or weekly, a notice to quit must (unless the parties have otherwise agreed) take effect at the end of a period of the tenancy. Held that Regulation 62 of the National Security (Landlord and Tenant) Regulations (which corresponded with section 26s) did not validate a notice to quit which would be invalid under the law apart from the regulation.

ORTEL v. CROCKER (1947) S.A.S.R. 306. Held that where a tenant continued in occupation of premises after the expiration of the term of a written lease, the tenancy was a tenancy at will subject to the statutory notice to quit required by the provisions then contained in the National Security (Landlord and Tenant) Regulations. An appeal to the High Court from this decision was struck out as incompetent, *Oertel v. Crocker* (1947) 75 C.L.R. 261.

s. 26u. *ARTHUR v. MARSH* (1945) S.A.S.R. 31. A case of hardship arises when the owners have to eke an existence on scanty means and the charity of their friends, when they are paying more rent for the premises in which they are living than they receive from the letting of the premises which they seek to recover.

INDEPENDENT ORDER OF ODDFELLOWS AND GRESHAM HOTEL LIMITED v. MALLAN, MATTER, ROGERS, SMITH AND LEAN (1946) S.A.S.R. 234. In the case of business premises, where the relative hardship between lessor and lessee appear equal, the claim of the owner must prevail. The basis for weighing relative hardship and

- (a) any hardship which would be caused to the lessee or any other person by the making of the order;
- (b) any hardship which would be caused to the lessor or any other person by the refusal of the court to make the order; and
- (c) where the application is made on any one or more of the grounds specified in paragraphs (g), (h), (i), (j), (k), (l) and (m) of subsection (5) of section 26n—whether reasonably suitable alternative accommodation in lieu of the premises is, or has been since the date upon which notice to quit was given, available for the occupation of the person occupying the premises or for the occupation of the lessor or other person by whom the premises would be occupied if the order were made,

and may, in its discretion, make the order or may, on such conditions (if any) as it thinks fit, refuse to make the order notwithstanding that one or more of the prescribed grounds has been established.

(2) Where the application is made on either of the grounds specified in paragraphs (n) and (o) of subsection (5) of section 26n, the court shall not refuse, in the exercise of the discretion vested in it by subsection (1), to make the order unless the court is satisfied—

- (a) that special circumstances exist by reason of which the order should not be made; or
- (b) without limiting the generality of the last preceding paragraph, in a case where the ground specified in paragraph (o) applies, that the subletting was in the course of a business of subletting carried on by the lessee.

(3) On the hearing of an application specified in the subsection (2), any assignee, sublessee or person in occupation

s. 26u. for testing the availability of reasonably suitable accommodation in lieu of the premises in issue considered.

RETURNED SAILORS', SOLDIERS' AND AIRMEN'S IMPERIAL LEAGUE OF AUSTRALIA (HENLEY AND GRANGE SUB-BRANCH) INCORPORATED v. GRACE ABBOTT AND JOSEPH ERNEST ABBOTT (1946) S.A.S.R. 270. The intention underlying paragraphs (a) and (b) of subsection (1) relating to the matters to be taken into account by the court in exercising its discretion on the ground of respective hardships, is the prevention of one person securing a privilege, however well he may be entitled thereto, if its exercise means little to him and at the same time its bestowal will cause harm of some magnitude to another.

LEWIS v. HUTTON (1946) S.A.S.R. 297. Held that, apart from the question of ownership, if the hardship of the tenant were not shown to be the greater, the added factor of hardship, that the owner was being kept out of the premises—was sufficient to resolve the question in favour of the landlord.

AUSTRALIAN RED CROSS SOCIETY v. BEAVER TRADING COMPANY PROPRIETARY LIMITED AND OTHERS (1947) 75 C.L.R. 320. The words "or any other person" in paragraphs (a) and (b) of subsection (1) include all individuals and ascertainable classes of the community who would be prejudiced by the tenant losing possession or the landlord failing to obtain possession.

of the premises or any part thereof shall be entitled to be heard.

26v. In respect of any proceedings referred to in section 26u the court may—

- (a) from time to time, subject to such conditions (if any) and for such period as it thinks fit—
- (i.) adjourn the proceedings;
 - (ii.) stay or suspend the execution of any judgment or order which has been made or given in the proceedings; or
 - (iii.) postpone the date for recovery of possession or for ejection specified in any such judgment or order;
- (b) subject to such conditions (if any) as it thinks fit, vary, discharge, or rescind any such judgment or order:
- (c) where a warrant of execution has been issued, and whether the warrant has expired or not, from time to time extend the period stated in the warrant for the execution thereof—
- (i.) if the court is satisfied that, because of the illness of the lessee or for other sufficient cause, it is or has been impracticable for the officer to whom the warrant is directed to execute the warrant within the period stated therein—for such period as it thinks fit; or
 - (ii.) if the court is not so satisfied—for a period not exceeding seven days from the date on which the extension is granted.

26w. (1) An application to stay or suspend the execution of, or to vary, discharge or rescind, any judgment or order referred to in section 26v, or to postpone the date for recovery of possession or for ejection specified in any such

Power to stay proceedings or orders.
Inserted by 5, 1948, s. 6.

Certain applications to operate as stay of execution.
Inserted by 5, 1948, s. 6.

s. 26v. *BOYLE AND ANOTHER V. JUKES* (1944) S.A.S.R. 184. Where there had been a slip in the original order suspending the issue of a warrant for possession of premises made by a local court, held that there was power to amend this slip both under the inherent jurisdiction of the court and under the provision of the National Security (Landlord and Tenant) Regulations corresponding to section 26v (b).

BURLING V. CHAS. STEELE AND COMPANY PROPRIETARY LIMITED (1948) 76 C.L.R. 485. Where a notice to quit was given on the grounds that the premises were reasonably required for occupation by the landlord and an order for possession was made by consent, and in proceedings under a provision of the National Security (Landlord and Tenant) Regulations corresponding to section 26v, an application to rescind the order was refused, held that, assuming the ground stated in the notice to quit was erroneous, in view of the consent by the tenant to the original order, the refusal of the application should not be disturbed.

judgment or order, shall, when filed with the proper officer of the court, stay the execution of any warrant and operate to postpone the date for recovery of possession of the premises or for the ejection of the lessee until the court has heard the application.

(2) Notwithstanding anything contained in paragraph (c) of section 26v, the court may, on the hearing of any such application, extend for such period as it thinks fit the period stated in any warrant for the execution thereof (whether the warrant has expired or not).

(3) Where, in respect of any proceedings referred to in section 26u the court has refused to grant an application of any of the kinds referred to in subsection (1) of this section, no further application of any of those kinds shall be made in respect of those proceedings except with the leave of the court.

26x. Proceedings for the recovery of possession of premises to which this Act applies or for the ejection of a lessee therefrom may, with the consent of all parties, be disposed of in chambers but nothing in this section shall affect the power of the court to dispose of any such proceedings in chambers otherwise than under this section.

Hearing in chambers.
Inserted by 5, 1948, s. 6.

26y. (1) Except as provided in subsection (2), there shall be no appeal in proceedings under this Part from a judgment or order of a local court.

Appeal.
Inserted by 5, 1948, s. 6.

(2) There shall be an appeal, as to questions of law only, to the Supreme Court from any judgment or order of a local court in proceedings under this Part.

26z. Notwithstanding any other Act or law to the contrary, no order, other than an order made under this Part or under the National Security (Landlord and Tenant) Regulations made by any court for the recovery by the lessor of possession of any premises to which this Act applies (or of any furniture or other goods leased therewith), or for the ejection of the lessee, shall be enforceable.

Ejection orders not enforceable unless made under Act.
Inserted by 5, 1948, s. 6.

26aa. Where a lessor has obtained an order for the recovery of possession of any premises to which this Act applies or for the ejection therefrom of a lessee and it is subsequently proved that the order was obtained by a fraudulent representation or the concealment of material facts, the

Court may order compensation for misrepresentation.
Inserted by 5, 1948, s. 6.

s. 26y. WILLIAMS V. COULTHARD AND OTHERS (1948) S.A.S.R. 183; 22 A.L.J. 431. An appeal to the Supreme Court may be instituted in manner provided by sections 58 to 60 of the Local Courts Act, 1926-1947, notwithstanding that the appeal under section 58 of that Act is an appeal both on questions of law and of fact, but the grounds of appeal must be confined to questions of law.

Landlord and Tenant (Control of Rents) Act, 1942-1948.

court which made the order may order the lessor to pay to the former lessee such sum as appears to the court to be sufficient as compensation for damage or loss sustained by the lessee as the result of the order, and the like proceedings may be taken upon the order as if the order had been a judgment of the court in favour of the former lessee.

Premises
not to be sold
or re-let in
certain cases.
Inserted by
5, 1948,
s. 6.

26ab. (1) If a notice to quit is given on the ground specified in paragraph (*g*), (*h*), (*i*), (*j*) or (*k*) of subsection (5) of section 26n and the premises in respect of which the notice is given are vacated in accordance with the notice, or if an order for the recovery of possession of the premises or for the ejectment therefrom of the lessee is made on any such ground, the premises shall not, without the consent of a local court, be again leased or sold, or agreed to be leased or sold until after the expiration of the period of twelve months immediately succeeding the date on which the premises were vacated, possession of the premises was recovered, or the ejectment effected. Any person who commits any contravention of this subsection shall be guilty of an offence and liable to a penalty not exceeding fifty pounds.

(2) Nothing in subsection (1) shall prevent—

- (a) the letting of any portion of the premises to which this Act applies which is not reasonably required by the lessor or purchaser, as the case may be, provided that the total rent obtained is not greater than a reasonable rent for the whole of the premises less a reasonable deduction for the portion of the premises not so let; or
- (b) where notice to quit has been given on the ground specified in paragraph (*h*), (*i*) or (*k*) of subsection (5) of section 26n the letting of the premises—
 - (i.) to a minister of religion;
 - (ii.) to a beneficiary under the trust; or
 - (iii.) to some person in the employ of, or about to become an employee of, the lessor in consequence of his employment,
 respectively.

(3) A transaction entered into in contravention of subsection (1) of this section shall not thereby be invalidated, but nothing in this subsection shall affect the liability of any person to any penalty in respect of any contravention of subsection (1).

26ac. An order for the recovery of possession of any premises to which this Act applies (or of any furniture or other goods leased therewith) or for the ejection of a lessee therefrom made by a court under this Part may be enforced in the same manner as a like order if made by that court otherwise than under this Part, might be enforced.

Enforcement of orders. Inserted by 5, 1948, s. 6.

26ad. Where notice to quit any premises to which this Act applies has been given, whether before or after the commencement of this Part—

Acceptance of rent not to waive notice to quit. Inserted by 5, 1948, s. 6.

- (a) any demand by the lessor for payment of rent, or of any sum of money as rent, in respect of any period within six months after the giving of the notice;
- (b) the commencement of proceedings by the lessor to recover rent, or any sum of money as rent, in respect of any such period; or
- (c) the acceptance of rent, or of any sum of money as rent, by the lessor in respect of any such period,

shall not of itself constitute evidence of a new tenancy or operate as a waiver of the notice.

26ae. (1) Where—

Protection of sub-lessee. Inserted by 5, 1948, s. 6.

- (a) a lessor has consented to or approved a sublease of any premises to which this Act applies or any part thereof by the lessee, or a lessee has sub-let any premises to which this Act applies or any part thereof in the course of a business of subletting carried on by the lessee; and
- (b) the lessee ceases to be in possession of the premises, following upon—
 - (i.) the obtaining of an order by the lessor for the recovery of possession of the premises from the lessee or for the ejection of the lessee from the premises on any of the grounds specified in paragraphs (a) to (f) of subsection (5) of section 26n; or
 - (ii.) the surrender of his lease by the lessee,

the sublessee shall (if he is in possession of the whole or portion of the premises sublet to him) be deemed to become the lessee thereof from the lessor upon the same terms and con-

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ditions as the terms and conditions of the sublease, as in force immediately prior to—

- (c) the date on which the lessor gave notice to quit to the lessee; or
- (d) the date on which the lessee notified the lessor of his intention to surrender the lease (or, if he did not so notify the lessor, the date on which the lessee surrendered the lease),

as the case may be.

(2) In a case to which subparagraph (i.) of paragraph (b) of subsection (1) applies, the order shall not be enforced against the sublessee.

(3) Where, prior to the lessor of any premises to which this Act applies giving notice to quit to the lessee upon any of the grounds specified in subsection (5) of section 26n, the lessee of the premises has sublet the whole or any part thereof—

- (a) the lessee shall, upon service of the notice to quit, forthwith notify the lessor in writing of the name and address of each person to whom he has so sublet and who is a sublessee of the premises or any part thereof at the date of service of the notice to quit;
- (b) the lessor shall, upon taking proceedings for the recovery of possession of the premises or for the ejectment of the lessee therefrom, file the notice given to him under this section with the proper officer of the court in which the proceedings are taken; and
- (c) the proper officer of the court shall thereupon give notice by registered post to each person specified in the notice, at the address so specified, of the date of hearing of the proceedings by the court.

(4) On the hearing of any proceedings by a lessor for an order for the recovery of possession of any premises to which this Act applies or for the ejectment of the lessee therefrom, every person who is a sublessee of such premises or any part thereof shall be entitled to be heard.

(5) Any lessee who fails to give notice as required by paragraph (a) of subsection (3) shall be guilty of an offence and liable to a penalty not exceeding twenty pounds.

26af. Where—

- (a) the tenancy of any premises to which this Act applies is terminated by virtue of the provisions of this Part or the National Security (Landlord and Tenant) Regulations;
- (b) the person who was the lessee immediately prior to the termination of the tenancy (in this section referred to as “the former lessee”) dies after the termination of the tenancy; and
- (c) a person (not being a lodger or boarder) resided with the former lessee immediately prior to his death and is actually in possession of the premises immediately after the death of the former lessee,

that person shall have the like right to continue in possession of the premises as the former lessee would have had if he had not died, but proceedings may be taken against that person for the ejection of that person from the premises or for the recovery of possession of the premises from that person in accordance with the provisions of this Part as if he were a lessee of the premises.

26ag. (1) No costs shall be allowed in any proceedings in relation to which this Part applies, not being proceedings in respect of an offence arising under this Part, unless it appears to the court that the conduct of the party in bringing or resisting the proceedings or in relation to the subject matter has been unreasonable, vexatious or oppressive.

(2) Notwithstanding subsection (1) the costs of any appeal to the Supreme Court shall be in the discretion of the Supreme Court.

26ah. The trust may, at any stage of any proceedings in relation to which this Part applies, intervene by counsel, solicitor or agent and may examine witnesses and address the court.

26ai. (1) The lessor or former lessor under a lease, or the proposed lessor under a proposed lease, of any premises to which this Act applies for a fixed term not exceeding six months may, at any time while the lessee or former lessee is in occupation of the premises, or prior to the commencement of the term of the proposed lease, make application in

Protection of certain persons in possession of premises. Inserted by 5, 1948, s. 6.

Costs not to be allowed. Inserted by 5, 1948, s. 6.

Intervention of trust. Inserted by 5, 1948, s. 6.

Exclusion of premises let for a short term from operation of Part. Inserted by 5, 1948, s. 6.

s. 26ag. *CLOTHIER v. PIERCY* (1945) S.A.S.R. 45. Where an action was brought for the recovery of possession of a dwellinghouse and for arrears of rent and income profits and the action was dismissed, held that the court had power to award costs of the proceedings.

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writing to the trust to exclude the premises from the operation of this Part.

(2) The applicant shall furnish such information in relation to the application as the trust requires.

(3) The trust may, in its discretion, issue a certificate excluding the premises, for such period as is specified in the certificate, from the operation of the provisions of this Part and the premises shall be excluded accordingly.

(4) The trust may at any time revoke or vary any certificate issued under subsection (3).

(5) Every certificate issued pursuant to regulation 78 of the National Security (Landlord and Tenant) Regulations before the commencement of this Part shall have the same effect as if issued by the trust under this section, and may be revoked or varied by the trust.

26aj. (1) The provisions of this Part shall not apply to or in relation to any premises to which this Act applies in respect of which a certificate under this section is in force.

(2) Where the owner of any premises to which this Act applies is desirous of making the whole or any part of those premises available for accommodation, he may apply to the trust for a certificate that the premises are premises to which this Part does not apply.

(3) The trust may—

(a) grant the application and issue the certificate, either unconditionally or subject to such conditions as it thinks fit and for such period as it thinks fit; or

(b) refuse the application.

(4) A certificate issued under this section in respect of premises to which this Act applies being any part of a dwelling-house or of a residential unit in any building shall not have any force or effect in respect of any person who immediately prior to the issue of the certificate was the lessee of the dwelling-house or of any part of the dwelling-house or of the residential unit or of any other residential unit in the building.

(5) The trust may revoke or vary any certificate issued under this section.

(6) This section shall apply only in relation to premises to which this Act applies, being—

Exclusion of certain subdivided premises, etc., from operation of Part.

Inserted by 5, 1948, s. 6.

- (a) a dwelling-house which is not in whole or in part leased to any person;
- (b) a dwelling-house which the owner or lessee has converted, or intends to convert, into two or three, but not more, residential units;
- (c) a dwelling-house or part of a dwelling-house which is leased to any person and which is about to become vacant;
- (d) a part of a dwelling-house which has been leased by the owner but is not for the time being leased to any person; or
- (e) a residential unit in a building which the owner of the building proposes to lease or to permit to be leased for residential purposes separately from the remainder of the building and which has not previously been so separately leased,

but shall not apply in relation to any building containing more than three residential units or in relation to any residential unit in any such building.

(7) In this section "residential unit" means any part of a building which is or has been designed, whether originally or otherwise, for occupation as a residence independently of any other part of the building.

(8) Every certificate issued pursuant to regulation 79 of the National Security (Landlord and Tenant) Regulations before the commencement of this Part shall have the same effect as if issued by the trust under this section, and may be revoked or varied by the trust.

26ak. (1) All proceedings before any court under the National Security (Landlord and Tenant) Regulations which were pending at the commencement of this Part for the recovery of possession of any premises to which this Act applies or for the ejectment of any lessee therefrom may be continued as if those proceedings had been commenced under this Part.

Continuance
of existing
proceedings.
Inserted by
5, 1948,
s. 6.

(2) Any notice to quit in respect of premises to which this Act applies which was given before the commencement of this Part pursuant to Part III. of the National Security (Landlord and Tenant) Regulations shall have the same force and effect as if given under this Part.

(3) All rules of court made pursuant to the Local Courts Act, 1926-1947, with respect to proceedings under the

National Security (Landlord and Tenant) Regulations shall *mutatis mutandis* apply to proceedings under this Part.

Regulations.
Inserted by
5, 1948,
s. 6.

26a1. The Governor may make regulations—

- (a) prescribing grounds upon which notices to quit premises to which this Act applies may be given by lessors, and for that purpose may vary or delete any of the prescribed grounds set out in section 26n and may prescribe additional grounds;
- (b) prescribing any period for which any notice to quit shall be given and for that purpose may prescribe periods different to those prescribed by section 26o.

MISCELLANEOUS.

Penalty for
demanding
rent in excess
of that fixed.

27. (1) Any person who, whether as principal or agent or in any other capacity, in any rent book or similar document wilfully makes any entry showing or purporting to show any lessee as being in arrear in respect of any sum which by virtue of this Act is irrecoverable, shall be guilty of an offence and liable to a penalty not exceeding fifty pounds.

(2) Any person who, whether as principal or agent or in any other capacity, wilfully demands or wilfully receives as rent in respect of any premises to which this Act applies any sum which by virtue of this Act is irrecoverable, shall be guilty of an offence and liable to a penalty not exceeding fifty pounds.

(3) Any person who is knowingly a party to any contract or arrangement under which any sum is paid or agreed to be paid to that person as rent for any premises to which this Act applies shall, if that sum is, by virtue of this Act, irrecoverable, be guilty of an offence and liable to a penalty not exceeding fifty pounds.

Record
of rents.

28. (1) Any lessor of any premises to which this Act applies who fails, by himself or his agent, to keep or cause to be kept, a record showing the rent received in respect of those

s. 27. DAVIES v. O'SULLIVAN (1948) S.A.S.R. 297. Meaning of the word "wilfully" as used in subsection (2) discussed. There is no burden on the prosecution to prove affirmatively that the defendant knew he was breaking the law in recovering a sum which by virtue of the Act is irrecoverable.

premises shall be guilty of an offence and liable to a penalty not exceeding twenty pounds.

(2) Any lessor of any premises to which this Act applies or any agent of any such lessor who wilfully makes or wilfully allows to be retained, in any record showing the rent of those premises, any false entry in a material particular shall be guilty of an offence and liable to a penalty not exceeding fifty pounds.

29. (1) Any person who, by any threat, endeavours to dissuade or prevent a lessor or lessee from making or prosecuting any application to the trust or appeal to the local court under this Act, shall be guilty of an offence and liable to a penalty not exceeding fifty pounds.

Penalty for threats and boycotts.

(2) Any owner of any premises to which this Act applies, and the agent of any such owner, who refuses, or procures any person to refuse, to lease those premises to any other person who desires to lease the same, shall be guilty of an offence and liable to a penalty not exceeding fifty pounds, if the reason for that refusal was that that other person had made an application to the trust under this Act or had prosecuted an appeal to the local court under this Act.

(3) Any person who does or procures to be done, any act or thing for the purpose of imposing any detriment or disadvantage upon a lessor or lessee because the lessor or lessee has made an application to the trust under this Act or has prosecuted an appeal to a local court under this Act, shall be guilty of an offence and liable to a penalty not exceeding fifty pounds.

30. (1) Any person who, whether as principal or agent or in any other capacity—

Provisions relating to purchase of furniture, etc.

(a) requires, gives or receives, or offers, promises or agrees to give or receive, any bonus, premium or sum of money other than rent in consideration of, or in association with—

(i.) the grant or acceptance of any lease; or

(ii.) the renewal of a lease or the continuance of a letting; or

s. 29. WRIGHT v. CURNOW (1947) S.A.S.R. 225. Held that an assignment of a lease was not an act or thing done for the purpose of imposing a detriment or disadvantage on a landlord within the meaning of a provision of the National Security (Landlord and Tenant) Regulations corresponding with subsection (3) of section 29.

s. 30. WRIGHT v. CURNOW (1947) S.A.S.R. 225. Held that an assignment was not a "sub-lease" within the meaning of subsection (1).

BISCHOF v. TROTTER (1948) 76 C.L.R. 520. The provisions of section 30 (1) (a) (i.) apply not only to a transaction which is completed by the grant of a lease, but also to a proposed transaction or one not so completed.

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(iii.) any agreement for a lease or for the renewal of a lease; or

(iv.) his consenting to a sublease,

of any premises to which this Act applies; or

(b) makes it a condition of the granting of any lease of any premises to which this Act applies, that the lessee shall purchase any furniture or other goods; or

(c) pays, gives, or recovers any consideration for obtaining or making available a key of any premises to which this Act applies,

shall be guilty of an offence and liable to a penalty not exceeding fifty pounds.

(2) Any amount paid in contravention of this section may, at any time within six months after the date of payment, be recovered by the person who paid it from the person to whom it was paid, or if the person to whom it was paid is the lessor of the premises and the person by whom it was paid is the lessee of the premises may, without prejudice to any other method of recovery, be deducted by the lessee from any rent payable within such six months by him to such lessor.

Refusal to let premises to applicant with family. Amended by 38, 1946, s. 6.

31. (1) Any person who refuses or causes any person to refuse to let any dwelling-house to any person on the ground that it is intended that a child shall live in the dwelling-house shall be guilty of an offence and liable to a penalty not exceeding fifty pounds.

(2) Any person who states his intention, whether by advertisement or otherwise, not to let any dwelling-house to any person if it is intended that a child shall live in the dwelling-house shall be guilty of an offence and liable to a penalty not exceeding fifty pounds.

(3) In any proceedings for an offence against this section, where it is proved that a person has refused, or caused any person to refuse, to let any dwelling-house to any person, it shall lie upon the first-mentioned person to prove that the refusal was for some reason other than that it was intended that a child should live in the dwelling-house.

Inserted by 38, 1946, s. 6 (g).

(4) Notwithstanding the definition of "dwelling-house" in section 4, in this section "dwelling-house" means any premises (other than premises such as are described in paragraph (c), (d), or (e) of the said definition) which are constructed or adapted for use for the purpose of residence.

31a. (1) Any person who, without the consent of the lessee of premises to which this Act applies, or without reasonable cause (proof whereof shall lie upon the defendant), does, or causes to be done, any act, or omits, or causes to be omitted, any act whereby the ordinary use or enjoyment by the lessee of the premises or of any furniture or other goods leased therewith, or of any conveniences usually available to the lessee, or of any service supplied to, or provided in connection with the premises is interfered with or restricted, shall be guilty of an offence and liable to a penalty not exceeding fifty pounds.

Persons not to interfere with use or enjoyment of premises. Inserted by 5, 1948, s. 7.

(2) Where the lessor, or any agent or servant of the lessor, has been convicted of an offence arising under subsection (1), the court may order the lessor to do such things as are necessary to enable the lessee to resume the ordinary use or enjoyment of the premises, furniture, goods, conveniences, or service, and the lessor shall comply with the provisions of the order.

(3) For the purpose of this section, conveniences shall be deemed to be usually available to the lessee where, prior to the use of the conveniences having been interfered with or restricted without his consent, he has been allowed, at all times during the tenancy to use those conveniences as he desired or he has been allowed to use those conveniences at times agreed to by the lessor and lessee or at times equivalent to those times.

(4) In this section the term "premises to which this Act applies", in addition to having the meaning ascribed to it by section 5, includes any caravan (within the meaning of Part IIIA) the maximum rent (within the meaning of Part IIIA) of which is fixed pursuant to Part IIIA and any land with respect to which the maximum rent (within the meaning of Part IIIA) is fixed pursuant to Part IIIA.

For the purposes of this section the hirer of any such caravan shall be deemed to be the lessee thereof and the owner of any such caravan or of any such land shall be deemed to be the lessor thereof respectively and the letting (within the meaning of Part IIIA) of any such caravan and any arrangement with respect to land such as is referred to in the definition of "rent" with respect to land in section 26a shall be deemed to be a tenancy.

31b. (1) No person shall levy or make any distress for rent of a dwelling-house.

Suspension of right to distrain for rent. Inserted by 5, 1948, s. 7.

(2) Any person who commits any contravention of subsection (1) shall, without limitation of any other liability occa-

sioned thereby, be guilty of an offence and liable to a penalty not exceeding fifty pounds.

Notice of rent, etc., to be displayed in certain cases.

32. (1) If the rent of any part of a dwelling-house which is separately leased is fixed under this Act, the trust may from time to time give notice in writing to the lessor directing that during such time as is stated in the notice, the amount of the rent so fixed shall be shown on a notice or placard kept displayed in the said part of the dwelling-house.

(2) If any lessor to whom notice is given as aforesaid wilfully fails to comply with any such direction he shall be guilty of an offence and liable to a penalty not exceeding ten pounds.

Powers of entry and inspection.

33. (1) For the purposes of this Act, any member of the trust or any officer or inspector of the trust authorized in writing for the purpose by the trust—

(a) may enter into and upon any premises to which this Act applies at any reasonable time for the purpose of examining the premises;

(b) may require any person being the lessor or lessee of any premises to which this Act applies or being the agent of any such lessor or lessee, to answer any question relating to any lease thereof, or to the accommodation provided under any such lease, or to the rent payable under or any conditions of any such lease, or to the rent payable in respect of the premises at the first day of August, nineteen hundred and forty-two, or at any other date;

(c) may require any person being the lessor or lessee of any premises to which this Act applies or being the agent of any such lessor or lessee, to produce any rent book, receipt, or other document in his possession or power for the purpose of ascertaining the rent paid under any lease thereof or the rent payable in respect of the premises at the first day of August, nineteen hundred and forty-two, or at any other date, and may examine and make copies of any such rent book, receipt, or document.

s. 33. *PELHAM v. HARRIS* (1944) S.A.S.R. 224. Held, (1) that the telephone may be used by an officer of the South Australian Housing Trust for the purpose of requiring answers to questions; (2) that the requirements of section 33 that an officer must be authorized in writing is descriptive of the person qualified to ask the questions, and that there was no obligation to produce the written authority to the person questioned; (3) that the person questioned had been "required" to answer notwithstanding that the questions were put in a precatory way and not an informative form. An offence under section 33 is complete if it is established that (a) an answer to question such as prescribed by the section has been required by an authorized person of one of the classes specified therein as liable to be questioned; and (b) that person has refused to answer the question.

(2) Any person who—

- (a) refuses admission to any premises to which this Act applies to any member of the trust or any officer or inspector of the trust authorized as aforesaid or who obstructs or hinders any such member, officer, or inspector; or
- (b) refuses to answer any question put by any such member, officer, or inspector as provided by paragraph (b) of subsection (1) hereof or who wilfully gives any false answer to any such question; or
- (c) refuses or omits to produce any rent book, receipt, or document in his possession or power when required by any such member, officer, or inspector so to do as provided by paragraph (c) of subsection (1) hereof,

shall be guilty of an offence and liable to a penalty not exceeding twenty pounds.

34. If the occupier of any premises to which this Act applies when requested by any member of the trust or any officer or inspector of the trust authorized in writing for the purpose by the trust, to state the name of the lessor of the premises, refuses or wilfully omits to disclose or wilfully misstates the same, he shall be guilty of an offence and liable to a penalty not exceeding twenty pounds.

Penalty for refusing to disclose name of lessor.

35. Any contract or arrangement, whether oral or in writing, the purpose or effect of which is either directly or indirectly to defeat, evade, or prevent the operation of this Act, shall be null and void.

Contract to avoid Act.

36. (1) Any notice required by this Act to be given to or served upon any person may be given or served—

Service of notices.

- (a) by delivering the same to such person; or
- (b) by leaving the same at his usual or last known place of abode or business with some person thereat who is apparently over the age of fourteen years; or
- (c) by sending the same by post to such person at his usual or last known place of abode or business.

(2) Any notice required by this Act to be given to or served upon any person may, if the person is a company or body corporate or the trust, be given or served—

- (a) by delivering the same to the manager or secretary thereof; or

(b) by leaving the same at the office or place of business thereof with some person thereat who is apparently over the age of fourteen years; or

(c) by sending the same by post to the company or body corporate or the trust at its office or place of business.

(3) Where any notice by the trust is required by this Act to be given to or served upon a person whose address is unknown to the trust, it may be given or served by publishing it or a notice substantially to the same effect once in the *Gazette* and once in a daily newspaper circulating generally in South Australia.

Notice to
lessor or
lessee.

37. (1) Any notice required by this Act to be given to or served upon a lessor under the lease of any premises to which this Act applies shall be deemed to have been duly given or served if it is given to or served upon the person to whom the rent payable under the lease is customarily paid by or on behalf of the lessee.

(2) Any notice required by this Act to be given to or served upon a lessee under the lease of any premises to which this Act applies shall be deemed to have been duly given or served if it is given to or served upon the person by whom the rent payable under the lease is customarily paid on behalf of the lessee.

(3) If two or more persons are lessors under any lease of any premises to which this Act applies, it shall be a sufficient compliance with any provision of this Act requiring any notice to be given to or served upon such lessors, if such notice is given to or served upon any one of such lessors.

(4) If two or more persons are lessees under any lease of any premises to which this Act applies, it shall be a sufficient compliance with any provision of this Act requiring any notice to be given to or served upon such lessees, if such notice is given to or served upon any one of such lessees.

Continued
operation
of notice.

38. Any notice required by this Act to be given to or served upon any lessor or lessee shall, if the same has once been duly given to or served upon such lessor or lessee, be binding on all persons claiming by, from, or under such lessor or lessee and all subsequent lessors or lessees to the same extent as if given to or served upon such person claiming as aforesaid or subsequent lessors or lessees respectively.

PART IV.

39. Upon application in writing describing any premises, and upon payment of a fee of one shilling, the trust shall give or send by post to the person so applying a statement in writing as to whether any determination or order fixing the rent of the premises is in force and the amount and other particulars of such rent.

Supply of particulars as to rent of premises.

40. Notwithstanding the provisions of the South Australian Housing Trust Act, 1936-1940, any of the powers conferred by this Act upon the trust may be exercised by any three members of the trust if one of those members is the chairman or a deputy chairman of the trust.

Exercise of powers by trust.

41. If the payment of the rent of any premises to which this Act applies is guaranteed and subsequently to the giving of the guarantee, the rent of the premises is fixed under this Act, then, if the rent so fixed is less than the amount so guaranteed, the guarantee shall be construed as if the amount guaranteed to be paid was the amount fixed as the rent under this Act; but in any other case the fixing of the rent under this Act shall not affect the guarantee.

Effect on guarantee of fixing rent.

42. The Governor may make regulations providing for the execution of any matter or thing arising under and consistent with this Act and not expressly provided for in this Act, and for more fully carrying out the objects and purposes of this Act, and for guarding against evasions and violations of this Act.

Regulations.

43. The powers conferred by section 28 of the Local Courts Act, 1926-1936, shall include power to frame rules for carrying into effect or supplementing the provisions of this Act relating to appeals to local courts and for regulating the procedure to be followed in proceedings under Part III B of this Act and otherwise for carrying the said Part into effect.

Rules of Court. Amended by 5, 1948, s. 3.

44. (1) The trust may direct, either generally or in any particular case, proceedings to be taken in respect of breaches of or offences against this Act.

Power of trust to authorize proceedings.

(2) A prosecution for any breach of or offence against this Act shall be instituted by a member of the trust, an officer or inspector of the trust, a member of the police force, or a person authorized in that behalf by the trust.

45. (1) In any prosecution or other legal proceedings under this Act no proof shall be required—

Facilitation of proof.

(a) of the persons constituting or the proper constitution of or the extent of the jurisdiction of the trust;

(b) of any authority to prosecute;

(c) of the particular or general appointment of any officer or inspector of the trust,

unless evidence is given to the contrary.

(2) If any determination is made by the trust fixing the rent of any premises and notice thereof is published in the *Gazette* all notices required to be given and all other matters required to be done before the making of the determination shall, unless the contrary is shown, be deemed to have been given or done.

Premises
used for
purpose of
residence.

46. If any premises to which any lease relates are used for the purpose of residence, then for the purposes of this Act, the premises shall, unless the contrary is shown, be deemed to have been let for the purpose of residence.

Documents
of trust.
Amended by
38, 1946,
s. 7.

47. (1) All documents purporting to be issued or written by or under the direction of the trust and to be signed by the chairman, deputy chairman, secretary, assistant secretary or acting secretary of the trust shall be received as evidence in all courts of law, and shall be deemed to be issued or written by or under the direction of the trust without further proof, unless the contrary is shown.

(2) All courts shall take judicial notice of the signature of the chairman, deputy chairman, secretary, assistant secretary or acting secretary of the trust where such signature is attached for the purpose of verifying any document whatsoever under this Act.

Summary
proceedings
for offences.

48. All proceedings for offences against this Act shall be disposed of summarily.

Duration
of Act.
Inserted by
38, 1946,
s. 8 (1), and
amended by
30, 1947,
s. 4 and by
5, 1948,
s. 9.

49. This Act shall continue in operation until the thirty-first day of December, nineteen hundred and forty-nine, but the expiration of this Act shall not render recoverable any rent which during the continuance of this Act was irrecoverable nor affect the right of any lessee to recover any sum which during the continuance of this Act was under this Act recoverable by him.