

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, 1942-1949.

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.]

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

LANDLORD AND TENANT (CONTROL OF RENTS) ACT AMENDMENT
ACT, 1949, No. 9 OF 1949 [ASSENTED TO 13TH OCTOBER, 1949.]

AND

LANDLORD AND TENANT (CONTROL OF RENTS) ACT AMENDMENT
ACT (No. 2), 1949, No. 63 OF 1949 [ASSENTED TO 8TH DECEMBER, 1949.]

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, 1942-1949."

Short title
and com-
mencement.

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

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

PART I.

Arrangement
of Act.

Amended by
30, 1947,
s. 3, by 5,
1948, s. 2,
and by 4,
1949, ss.
16, 18.

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

PART I.—Preliminary.

PART II.—Administration.

PART III.—Control of rents.

PART IIIA.—Control of rents of caravans.

PART IIIB.—Recovery of possession of premises.

PART IIIC.—Protected persons.

PART IIID.—Control of rents of hotel 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(War Restrictions) Act Amendment Act, 1940, and the Increase of Rent (War Restrictions) Act Amendment Act, 1941, are repealed.

Interpreta-
tion.

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

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

“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:

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.

“lease” includes every contract for the letting or sub-letting 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 and also includes a contract for the letting or subletting of any premises together with the supply or provision of any domestic service, 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 (a) and by 9, 1949, s. 2 (a).

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

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

- (a) a mesne lessor and mesne lessee;
- (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 mortgagor 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—

Amended by 9, 1949, s. 2 (b).

- (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 or the supply or provision of any domestic service 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.

Inserted by
9, 1949,
s. 2 (c).

(2) For the purpose of this Act, “lessee” includes a person who remains in possession of premises after the termination of his lease of the premises, and “lessor” has a corresponding meaning.

Premises to
which Act is
to apply.

Substituted
by 5, 1948,
s. 4 (1).

Para. (a)
amended by 9,
1949, s. 3 (a).

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, vineyard, market garden, dairy farm, poultry farm, pig farm, or apiary;

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.

(a1) any dwelling-house situated on any land used as a grazing area, farm, orchard, vineyard, market garden, dairy farm, poultry farm, pig farm, or apiary and which is ordinarily used for the occupation of seasonal workers employed as such upon that land;

Inserted by 9, 1949, s. 3 (b).

* * * * *

Para. (b) repealed by 9, 1949, s. 3 (c).

(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: Provided further that if any premises are leased to any person and the letting continues for a period exceeding eight weeks the premises shall, whilst so let to that person after the expiration of the period of eight weeks, not be deemed to be premises ordinarily leased for holiday purposes;

Amended by 9, 1949, s. 3 (d).

(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.

(1a) The provisions of Part I. and Part IIID. of this Act shall apply to premises in respect of which a publican's licence is in force under the Licensing Act, 1932-1945, but no other provisions of this Act shall apply to those premises.

Inserted by 9, 1949, s. 3 (e).

(1b) This Act shall apply to any premises (including any part of any premises which is separately leased) in respect of which a billiard-table licence is in force under the Licensing Act, 1932-1945.

Inserted by 9, 1949, s. 3 (e).

(1c) Except as provided by subsections (1a) and (1b), this Act shall not apply to any premises licensed under the Licensing Act, 1932-1945.

Inserted by 9, 1949, s. 3 (e).

(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 proclamation 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

Amended by 9, 1949, s. 3 (f).

PART I.

paragraphs (a), (c), or (d) of subsection (1) of this section or of subsection (1c) 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.

Exemptions from Act.

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

(a) to any premises let by the Government of the Commonwealth or the State or any instrumentality of any such Government;

Inserted by 9, 1949, s. 4 (a).

(a1) to any premises let by any municipal council or district council; or

(b) to any premises let by the trust.

Amended by 9, 1949, s. 4 (c).

(1a) The provisions of this Act relating to the control of rents shall not apply 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).

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Construction of Act.

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.

PART II.

PART II.

ADMINISTRATION.

Administration of Act.

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

Protection of members of trust.

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

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.

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

Appointment of officers.

(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.

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.

Expenses of administration.

PART III.

PART III.

CONTROL OF RENTS.

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:—

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

- 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

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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.

Inserted by
5, 1948,
s. 5 (b), and
amended by
9, 1949, s. 5.

(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:—

- 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: Provided that if (whether before or after the said day) the lessor and the lessee of any such premises from time to time agree in writing that the rent of the premises shall be any other amount, the rent shall not exceed the amount of the rent so agreed upon;
- 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: Provided that if the lessor and the lessee of any such premises from time to time agree in writing that the rent of the premises shall be any other amount, the rent shall not exceed the amount of the rent so agreed upon.

(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.

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.

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

(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.

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.

Determination 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.

Notice of determination of rent.

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.

Objection to determination.

(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 determined 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.

Inserted by
9, 1949, s. 6.

(4) If the rent fixed in respect of any premises by any determination of the trust is not greater than any rent agreed to be paid by the lessee to the lessor under any lease in writing, then, notwithstanding the provisions of subsections (1) and (2) of this section, the date fixed by the trust as the date from which the determination is to take effect may be any date not earlier than the date from which under the lease in writing the rent was so agreed to be paid.

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

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.

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.

* * * * *

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.

(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.

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—

Matters to
be considered
in fixing
rent.

- (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;

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*.

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- (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 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;
- (i) any additions or improvements which have been made to the premises by the person who is the lessee of the premises at the time the rent is fixed and which have been made with the written consent of the lessor.

Inserted by
38, 1946,
s. 5.

Inserted by
9, 1949, s. 7.

(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 and, unless a lesser amount is, after the making of the determination or order, agreed to be paid, the rent fixed as aforesaid shall, notwithstanding the provisions of any other Part of this Act, be the rent payable in respect of the premises.

Effect of fixing rent. Amended by 9, 1949, s. 8.

(2) Any amount by which the rent charged in respect of the premises is in excess of the rent fixed as aforesaid shall, notwithstanding any agreement to the contrary, be irrecoverable.

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.

Recovery of overpaid rent.

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—

Variation of rents. Amended by 9, 1949, s. 9.

s. 23. DAVIES v. O'SULLIVAN (No. 2) (1949) S.A.S.R. 208, affirming 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.

PART III.

- (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 increased or 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 increased or 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.

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

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

“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.

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.

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

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.

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

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.

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.

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.

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

(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.

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

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

Landlord and Tenant (Control of Rents) Act, 1942-1949.

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.

Duty to give receipt for rent.

Inserted by 9, 1949, s. 10.

26ha. (1) Any person who, whether as principal or agent, receives any payment of any rent with respect to any caravan to the letting of which this Part applies or of any rent with respect to any land to which this Part applies shall, at the time of receiving the payment or within twenty-four hours of the making of the payment, give or cause to be given to the person making the payment a receipt (either by way of an entry in a rent book or by a separate document) for the payment specifying the amount paid, the period in respect of which the payment is made, and the caravan or land, as the case may be, in respect of which the payment is made.

(2) Any person who commits any contravention of this section shall be guilty of an offence and liable to a penalty not exceeding twenty pounds.

(3) If pursuant to any arrangement made between the person paying the rent and the person to whom it is payable, any rent payable as mentioned in subsection (1) is paid into a bank to the credit of the person to whom it is payable (whether as principal or agent), the provisions of subsection (1) shall not apply in respect of that payment of rent.

Penalty for recovering rent above that fixed.

Inserted by 30, 1947, s. 2, and amended by 9, 1949, s. 11.

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, or wilfully makes in any book or other document any false entry in a material particular with respect to the rent of any caravan or land to which this Part applies, 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.

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

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

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

Part IIIB. Section 22 of the Landlord and Tenant (Control of Rents) Act Amendment Act, 1949, provides that in any proceedings in any court which were commenced before the passing of that Act and in which the decision of the court was not announced before the passing of that Act, the provisions of that Act are to be construed as if those provisions had been enacted before the commencement of those proceedings.

s. 26m. Part IIIB 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

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;

s. 26n. landlord" and the exhibitor as "the tenant," and the agreement referred to
 (cont'd.) 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.

DANSIE v. JONES (1949) S.A.S.R. 131. Where a notice to quit was expressed in terms slightly different from the particular ground provided for in subsection (5), held that the notice complied with the requirements of section 26n (3).

HAYWARD v. CLARKE (1949) S.A.S.R. 140. Under this Act exclusive jurisdiction is vested in local courts to hear and determine proceedings for the recovery of possession of premises to which the Act applies, irrespective of the amount of the rent or the value of the premises concerned.

KIERNAN v. LAWSON (1949) S.A.S.R. 256. The provisions of Part III.B are applicable to the case of a tenant holding over after the expiration of a tenancy for a term certain. Since this decision subsection (2) of section 4 has been enacted.

- (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 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 needed by

Amended by
9, 1949,
s. 12 (a), (b).

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- 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*).
- 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.”
- DANSIE v. JONES* (1949) S.A.S.R. 131. Held that “required” in paragraph (*g*) meant “demanded” or “claimed” and did not mean “needed.” Since this decision the paragraph has been amended by the substitution of the word “needed” for “required.”

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 by a married son or married daughter of the lessor; or

- (ii.) not being a dwelling-house or a part of a dwelling-house leased as aforesaid—are reasonably needed 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 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—

Amended by
9, 1949,
s. 12 (c), (d).

- (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 needed 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 by a married son or married daughter of the purchaser; or
- (ii.) not being a dwelling-house or a part of a dwelling-house leased as aforesaid—are reasonably needed for occupation by the purchaser, or by a person associated or connected with the purchaser in his trade, profession, calling or occupation;
- (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;
- (p) that the premises were let as a shop or business premises and have been converted by the lessee, without the consent of the lessor either express or implied, from a shop or business premises into a dwelling-house and the premises are required by the lessor for re-conversion to a shop or business premises.

(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.

Inserted by
s. 1949,
s. 12 (e).

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.

(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.

(8) Notice to quit on a ground specified in paragraph (g) of subsection (5) shall not be given if the lessor is an alien unless he has continuously resided in the Commonwealth for at least three years immediately prior to the giving of the notice and notice to quit on a ground specified in paragraph (l) of subsection (5) shall not be given if the purchaser is an alien unless he has continuously resided in the Commonwealth for at least three years immediately prior to the giving of the notice.

Inserted by
9, 1949,
s. 12 (f).

26o. (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.

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

(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.

PART IIIB.

Notice to quit not to be given within six months after determination.

Inserted by 5, 1948, s. 6.

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 where dwelling-house sold.

Inserted by 5, 1948, s. 6, and amended by 9, 1949, s. 13.

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, transfer or assignment thereof (otherwise than in pursuance of a contract entered into before the first day of March, nineteen hundred and forty-seven) or of a lease thereof shall not, within a period of six months after the date of the agreement for the purchase or, as the case may be, the date of the lease, 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.

(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.

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.

s. 26s. *AMAD v. GRANT. GROSLICK 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.

OERTEL v. CROCKER (1947) S.A.S.R. 306. Held that where a tenant continued in

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.

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

(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.

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—

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

- (a) any hardship which would be caused to the lessee or any other person by the making of the order;

s. 26s. 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 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.

MCCARTHER AND ANOTHER V. BROAD (1949) S.A.S.R. 350. When the making or refusal of an order for delivering up of possession will involve equal hardship to the landlord and the tenant, the court will normally make the order. But the court, in its discretion, may take into account, as a ground for refusing to make an order, the fact that the hardship to the landlord has been created by his own act in voluntarily giving up possession of another dwellinghouse occupied by him.

PART IIIB.

Amended by
9, 1949,
s. 14 (a).

(b) any hardship which would be caused to the lessor or any other person by the refusal of the court to make the order;

(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;

Inserted by
9, 1949,
s. 14 (b).

(d) where the application is made under a ground specified in paragraph (g) of subsection (5) of section 26n—whether at the time the lessor acquired the premises the premises were let to the lessee and whether the lessee had any opportunity to acquire the premises and the reasons for the lessee failing to acquire the premises;

Inserted by
9, 1949,
s. 14 (b).

(e) where the application is made under a ground specified in paragraph (l) of subsection (5) of section 26n—whether at the time the premises were agreed to be sold to the purchaser the premises were let to the lessee and whether the lessee had any opportunity to acquire the premises and the reasons for the lessee failing to acquire the premises; and

Inserted by
9, 1949,
s. 14 (b).

(f) where the application is made under a ground specified in paragraph (g) of subsection (5) of section 26n—whether the lessee is the owner of another dwelling-house capable of being occupied by him and whether he has taken all necessary and proper steps to obtain possession thereof,

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.

Inserted by
9, 1949,
s. 14 (c).

The court, in exercising its discretion on the ground of the respective hardships of the lessor and the lessee shall estimate the respective hardships one with another and shall not take into account as a factor of hardship that the lessor, as such, is being deprived of possession of premises to which he would, but for this Act, have been entitled.

(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 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 ejectment specified in any such judgment or order; or
- (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—

Power to stay proceedings or orders.
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.

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- (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.

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

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 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.

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

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.

Appeal. 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.

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.

(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 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.

Court may order compensation for mis-representation. 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 ejection 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 ejection 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.

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

(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).

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

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.

Acceptance
of rent not
to waive
notice to
quit.
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—

(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.

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

26ae. (1) Where—

(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 ejectment 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 conditions 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 ejection 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

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.

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 mesne profits and the action was dismissed, held that the court had power to award costs of the proceedings.

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.

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

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

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

(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.

Exclusion of certain subdivided premises, etc., from operation of Part. Inserted by 5, 1948, s. 6.

(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

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(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—

- (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 ejection 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.

26al. The Governor may make regulations—

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

- (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.

PART IIIC.

PROTECTED PERSONS.

26am. (1) In this Part, unless the context otherwise requires—

Interpretation. Inserted by 9, 1949, s. 15.

“discharged member of the forces” means a person who, having been a member of the forces engaged on war service during any war in which His Majesty

Part IIIC. Section 22 of the Landlord and Tenant (Control of Rents) Act Amendment Act, 1949, provides that in any proceedings in any court which were commenced before the passing of that Act and in which the decision of the court was not announced before the passing of that Act, the provisions of that Act are to be construed as if those provisions had been enacted before the commencement of those proceedings.

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became engaged on or after the third day of September, one thousand nine hundred and thirty-nine—

- (a) has been discharged from the forces, or has ceased to be engaged on war service, for a period not exceeding five years; or
- (b) having been discharged from the forces, or having ceased to be engaged on war service, for a period exceeding five years—
 - (i.) is receiving a pension from the Commonwealth; or
 - (ii.) is not receiving such a pension, but is receiving from the Commonwealth medical treatment of such a nature as to prevent him either wholly or partly from engaging in his occupation:

“female dependant of a member” means a female who is wholly or partly dependent for her support upon a member of the forces:

“female dependant of a discharged member” means—

- (a) a female who is wholly or partly dependent for her support upon a person who, having been a member of the forces engaged on war service during any war in which His Majesty became engaged on or after the third day of September, one thousand nine hundred and thirty-nine, has been discharged from the forces, or has ceased to be engaged on war service, for a period not exceeding five years;
- (b) a female who is wholly or partly dependent for her support upon a pension payable in consequence of the incapacity or the death of a person who has been a member of the forces;
- (c) the wife of a person who, having been a member of the forces engaged on war service during any war in which His Majesty became engaged on or after the third day of September, one thousand nine hundred and thirty-nine—

(i.) has been discharged from the forces;
or

(ii.) has ceased to be engaged on war
service,

and, although not receiving a pension, is receiving from the Commonwealth medical treatment of such a nature as to prevent him, either wholly or partly, from engaging in his occupation; and

(d) the widow of a member of the forces who died while engaged on war service during any war in which His Majesty became engaged on or after the third day of September, one thousand nine hundred and thirty nine:

“member of the forces” means a member of the Defence Force engaged on war service, and includes any person who is on active service with the Naval, Military, or Air Forces—

- (a) of the United Kingdom or of any other part of the King’s dominions (other than the Commonwealth of Australia);
- (b) of any foreign power allied or associated with His Majesty in any war in which His Majesty is engaged; or
- (c) maintained by any foreign authority recognized by His Majesty as competent to maintain Naval, Military, or Air Forces for service in association with His Majesty’s Forces:

“parent of a member” means a person who is a parent of, and is wholly or partly dependent for his support upon, a member of the forces:

“parents of a discharged member” means—

- (a) a person who is a parent of, and is wholly or partly dependent for his support upon, a person who, having been a member of the forces engaged on war service during any war in which His Majesty became engaged on or after the third day of September, one thousand nine hundred and thirty-nine, has been discharged from the forces, or has ceased to be engaged on war service, for a period not exceeding five years;

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(b) a person who is a parent of, and is wholly or partly dependent for his support upon a pension payable in consequence of the incapacity or death of, a person who has been a member of the forces;

(c) a parent of a person who, having been a member of the forces engaged on war service during any war in which His Majesty became engaged on or after the third day of September, one thousand nine hundred and thirty-nine—

(i.) has been discharged from the forces;
or

(ii.) has ceased to be engaged on war service,

and, although not receiving a pension, is receiving from the Commonwealth medical treatment of such a nature as to prevent him, either wholly or partly, from engaging in his occupation and upon whom that parent was, immediately prior to the discharge of that person, or immediately prior to that person ceasing to be engaged on war service, wholly or partly dependent for his support:

“pension” means a pension (including a service pension) under the Australian Soldiers’ Repatriation Act, 1920-1946, and includes a pension payable under any law of a country outside the Commonwealth providing for payment of pensions to members or former members of the naval, military, or air forces of that country:

“protected person” means, subject to subsection (2) of this section, a member of the forces, discharged member of the forces, female dependant of a member, female dependant of a discharged member, parent of a member, or parent of a discharged member:

“war service” means—

(a) the service of a member of the citizen forces when called up for war service under the Defence Act, 1903-1941, or during continu-

ous training under that Act, the Naval Defence Act, 1910-1934, or the Air Force Act, 1923-1941;

- (b) the continuous service under any of those Acts of any person who volunteers and is accepted for such service during war;
- (c) the continuous service of a person called upon to serve in the defence force in pursuance of any Act or of any regulations under an Act of the Commonwealth of Australia; and
- (d) the service during war of a member of the permanent forces.

(2) For the purposes of this Part, a person shall not be deemed to be a protected person unless such person is—

(a) a member of the forces who—

(i.) is; or

(ii.) was, for a total period of not less than twelve months during his period of war service,

required, by reason of his war service, to live in premises other than premises occupied by him, or by a member of the household to which he belongs as a home;

(b) a discharged member of the forces who was—

(i.) immediately prior to his discharge;

(ii.) for a continuous period of not less than three months during the period of six months immediately prior to his discharge; or

(iii.) for a total period of not less than twelve months during his period of war service, so required;

(c) a female dependant of a member of the forces or a parent of a member of the forces and that member—

(i.) is; or

(ii.) was, for a total period of not less than twelve months during his period of war service,

so required; or

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(d) a female dependant of a discharged member of the forces or a parent of a discharged member of the forces and that member was—

(i.) immediately prior to his discharge, ceasing to be engaged on war service or death, as the case may be;

(ii.) for a continuous period of not less than three months during the period of six months immediately prior to his discharge, ceasing to be engaged on war service or death, as the case may be; or

(iii.) for a total period of not less than twelve months during his period of war service,

so required.

(3) Any reference in this section to any Act of the Commonwealth shall be deemed to include a reference to any amendment thereof.

Rights of protected persons as to recovery of possession of premises.
Inserted by 9, 1949, s. 15.

26an. (1) The provisions of Part IIIB. of this Act relating to the termination of tenancies, the recovery of the possession of premises and the ejection of lessees from premises, and any provisions incidental to those provisions, shall extend to all premises to which this Act applies of which a protected person is the lessee but the said provisions shall be construed subject to the provisions of this section.

(2) The provisions of paragraph (c) of subsection (1) of section 26u shall not apply in relation to any premises of which a protected person is the lessor, unless the lessee of the premises is a protected person.

(3) In the application of the provisions of this Act to a lessee who is a protected person, section 26n shall be read as if for paragraph (a) of subsection (5) there were substituted the following paragraph:—

“(a) that the lessee has failed to pay the rent in respect of a period of not less than twenty-eight days.”

(4) Notwithstanding the provisions of Part IIIB. of this Act, an order shall not be made for the recovery of possession of any premises from a protected person, or for the ejection from any premises of a lessee (being a protected person) on any ground specified in paragraph (g), (h), (i), (j), (k), (l), or (m) of subsection (5) of section 26n unless the court making the order is satisfied—

- (a) that reasonably suitable alternative accommodation (in this section referred to as “the alternative accommodation”) is, or has been since the date upon which notice to quit was given, available for the occupation of the protected person in lieu of the premises in respect of which the order is sought (in this section referred to as “the premises at present occupied”); or
- (b) that within a period of twelve months of the bringing of the action the premises have been offered for sale to the protected person at a price approved by the principal administrative officer for the purposes of the administration of the provisions of the Prices Act, 1948, relating to land transactions or at a price which in the opinion of the court is a fair price for the premises, and the offer has not been accepted by the protected person; or
- (c) that the protected person has sub-let the premises in respect of which the order is sought and is permanently residing elsewhere.

(5) Where a tenancy has been lawfully determined and any person claiming under the lessee and actually in possession of the premises or any part thereof is a protected person, an order for the ejection of persons from those premises or for the recovery of possession of those premises shall, if the order is made on any ground specified in paragraph (g), (h), (i), (j), (k), (l), or (m), of subsection (5) of section 26n, not be enforced against the protected person unless the court is satisfied—

- (a) that reasonably suitable alternative accommodation (in this section referred to as “the alternative accommodation”) is, or has been since the date upon which notice to quit was given, available for the occupation of the protected person in lieu of the premises in respect of which the order is sought (in this section referred to as “the premises at present occupied”); or
- (b) that within a period of twelve months of the bringing of the action the premises have been offered for sale to the protected person at a price approved by the principal administrative officer for the pur-

s. 26an (5). DALBY V. GAZZARD 23 A.L.J. 290. The words “claiming under the lessee” do not extend to persons who are merely let into possession by a lessee whose tenancy has been determined. The possession of the person claiming under the tenant must be founded on a right or title good as against him and depending on the continued existence of his tenancy.

poses of the administration of the provisions of the Prices Act, 1948, relating to land transactions or at a price which in the opinion of the court is a fair price for the premises, and the offer has not been accepted by the protected person; or

- (c) that the protected person has sub-let the premises in respect of which the order is sought and is permanently residing elsewhere.

(6) For the purposes of subsection (4) and (5) accommodation shall not be deemed to be reasonably suitable unless—

- (a) the rent of the alternative accommodation does not exceed the rent of the premises at present occupied;
- (b) the floor area of the alternative accommodation is either equal to the floor area of the premises at present occupied or, in the opinion of the court, is sufficient for the needs of the lessee;
- (c) the conditions generally appertaining to the alternative accommodation are not, in the opinion of the court, inferior to the conditions appertaining to the premises at present occupied.

(7) The provisions of subsections (3), (4), (5), and (6) of this section shall not apply in relation to the premises of which a protected person is the lessor or of which the lessor is a person who, during any war in which His Majesty was engaged, served outside the Commonwealth in any of His Majesty's forces.

Letting of vacant houses to protected persons.

Inserted by 9, 1949, s. 15.

26a0. (1) A protected person may, if he thinks fit, apply in writing to a local court for a warrant authorizing and requiring the delivery of possession to the applicant of any dwelling-house which is unoccupied or about to become unoccupied.

(2) An application under subsection (1) may be made by the protected person personally or by some person authorized by him in writing to act as his agent for the purposes of this section.

(3) A copy of an application under subsection (1), together with a notice of hearing, shall be served on—

- (a) the owner of the dwelling-house; or
- (b) any person who ordinarily acts as an agent in relation to the dwelling-house or to whom the rent of the dwelling-house is ordinarily paid,

either personally or by registered letter sent to the place of business or abode of the owner or person.

(4) After service of the copy of the application and notice of hearing under subsection (3), and until the application has been heard and determined, or, if the court grants a warrant, until the warrant has been executed, the owner of the dwelling-house shall not, whether personally or by his agent, permit any person to enter into occupation of the dwelling-house or himself enter into occupation of the dwelling-house.

Any person who commits any contravention of this subsection shall be guilty of an offence and liable to a penalty not exceeding fifty pounds.

It shall be a defence to any proceedings against any owner for an offence against this section if the owner satisfies the court that the person permitted to enter into occupation of the dwelling-house is a protected person with whom an agreement was made in pursuance of paragraph (e) of subsection (5) of section 26aq.

(5) Where the owner of a dwelling-house or his agent has advertised the proposed sale by auction of the dwelling-house no person shall make an application under this section in respect of that dwelling-house until the expiration of three months after the day on which the advertisement is first published; and an application made in contravention of this subsection shall not be heard or determined by the court.

Inserted by
63, 1949, s. 3.

(6) In this section and the subsequent sections of this Part, the term "dwelling-house" includes any building which has been constructed or adapted for use as a place of habitation and whether or not the building is so used at the time an application is made under this section in respect thereof.

Inserted by
63, 1949, s. 3.

26ap. For the purposes of section 26ao—

(a) a dwelling-house shall be deemed to be unoccupied notwithstanding that the owner has permitted a person to enter into occupation of the dwelling-house in contravention of subsection (4) of that section and, in any such case, the court may grant the application notwithstanding that the person in occupation of the dwelling-house is not before the court on the hearing of the application;

Dwelling-house is to be deemed to be unoccupied in certain cases.

Inserted by
9, 1949, s. 15.

(b) a dwelling-house shall be deemed to be unoccupied notwithstanding that the owner has entered into

occupation of the dwelling-house in contravention of subsection (4) of that section;

- (c) a dwelling-house shall not be deemed to be occupied by reason only of the fact that it is furnished;
- (c1) a dwelling-house shall not be deemed to be occupied by reason only of the fact that it is used as a warehouse, store, office, shop, factory, or other business premises, unless the whole or a substantial part of it was so used at the passing of the Landlord and Tenant (Control of Rents) Act Amendment Act (No. 2), 1949, and was so used continuously from that time until the day on which the application was made;
- (d) a dwelling-house may be deemed by the court to be unoccupied if it is occupied irregularly and the court is satisfied that the dwelling-house is not used as the permanent and sole dwelling-house of the occupant and that another dwelling-house is occupied as the principal dwelling-house of the occupant;
- (e) a dwelling-house shall be deemed to be about to become unoccupied if the court is satisfied that the occupant of the dwelling-house, at the time of the service of the notice of application, is about to vacate the dwelling-house, notwithstanding any arrangement (other than an arrangement for the occupation of the dwelling-house by a protected person or by a person such as is referred to in subsection (5) of section 26aq) entered into, whether before or after the service of the notice, in respect of the occupation of the premises after the then existing occupancy ceases.

Inserted by
63, 1949, s. 4.

Hearing of
application.
Inserted by
9, 1949, s. 15,
and amended
by 63, 1949,
s. 5.

26aq. (1) Upon the hearing of an application under section 26ao the court shall take into consideration, in addition to all other relevant matters—

- (a) any hardship which would be caused to the owner or to any other person by the granting of the application;
- (b) any hardship which would be caused to the applicant or to any other person by the refusal to grant the application; and
- (c) the character of the applicant and his suitability as a tenant of the premises,

and, unless the court is satisfied that there is reasonable cause why the application should not be granted, the court shall grant the application.

(2) An averment in the application under section 26a0 that a dwelling-house is unoccupied shall be *prima facie* evidence of the fact so averred.

(3) If the dwelling-house is about to become unoccupied, the court may postpone the execution of the warrant until such time as it thinks fit.

(4) The fact that the dwelling-house is ordinarily leased for holiday purposes only shall not be a ground for refusing to grant the application.

(5) An application shall not be granted under this section—

(a) if the owner of the dwelling-house reasonably needs the dwelling-house for his own occupation or for the occupation of some married member of his family or of some married person who resides with him or is wholly or partly dependent on him for his support;

(b) if the dwelling-house was erected or acquired for the accommodation of a particular person or class of persons and the dwelling-house is reasonably needed for the occupation of that person or a person of that class;

(c) if the dwelling-house has not previously been occupied and is reasonably needed for the occupation of the owner of the dwelling-house;

(d) if the dwelling-house is a newly erected dwelling-house which—

(i.) was erected by the owner for the purposes of occupation by him or for the purposes of sale; and

(ii.) has not been unoccupied for a period exceeding two months; or

(e) if the owner of the dwelling-house has agreed to let the dwelling-house to a protected person and the agreement provides that the protected person shall take possession of the dwelling-house forthwith if unoccupied or forthwith upon it becoming unoccupied.

(6) The court shall specify in the warrant the person or persons by whom it may be executed.

PART III.

Provisions where several applications made in respect of same dwelling-house.

Inserted by 9, 1949, s. 15.

26ar. (1) Where more than one application is made under section 26ao in respect of the same dwelling-house, the person on whom the applications were served shall forthwith notify each other applicant of the other application or applications, together with the name and address of the other applicant or applicants, and the court shall hear and determine all the applications at the same time and for that purpose may adjourn the hearing of any application or applications.

(2) Where two or more applications are heard at the same time, the court shall take into consideration the degree of hardship which would be caused to each applicant or to any other person by the refusal to grant the application and, where the degree of hardship is the same in the case of two or more applicants or other persons, may in addition to the other matters referred to in section 26aq, take into consideration the priority of service of the applications under section 26ao of this Act.

Enforcement of warrants.
Inserted by 9, 1949, s. 15.

26as. A warrant granted by a court under section 26aq of this Act may be enforced in the same manner as a warrant of possession granted by that court may be enforced.

Rent of dwelling-house.
Inserted by 9, 1949, s. 15.

26at. (1) Upon delivery of possession of a dwelling-house to a protected person under a warrant granted under section 26aq the protected person shall be deemed to be a tenant of the owner of the dwelling-house.

(2) The rent to be paid for any dwelling-house of which possession has been so obtained shall be—

(a) where the rent is, as at the commencement of the tenancy, fixed or determined by or under this Act—that rent or such rent (not exceeding the rent so fixed or determined) as is agreed upon between the owner and the tenant; or

(b) in any other case—such rent as is agreed upon between the owner and the tenant or, in default of agreement, as is determined by the trust pursuant to Part III,

but nothing in this subsection shall be deemed to prevent the subsequent alteration, subject to this Act, of any rent so agreed upon or fixed.

Meaning of "owner."
Inserted by 9, 1949, s. 15.

26au. For the purposes of sections 26ao to 26at (inclusive) the expression "owner," in relation to the dwelling-house which is the subject of a lease or sub-lease, means—

(a) where the dwelling-house is unoccupied—the lessee or sub-lessee immediately entitled to possession of the dwelling-house; and

- (b) where the dwelling-house is about to become unoccupied—the person immediately entitled to possession of the dwelling-house upon its becoming unoccupied.

26av. (1) Any person (in this section referred to as “the claimant”) who desires to do, or to continue or complete the doing of, any act against any person (in this section referred to as “the respondent”) in respect of the possession of any premises may, if the respondent is resident in Australia and is not, to the knowledge of the claimant, a protected person, serve on the respondent, in the manner provided by this section, a notice in the prescribed form requiring the respondent to inform the claimant, within fourteen days after the receipt of the notice, whether or not the respondent is a protected person within the meaning of this Part.

Application
of Part.
Inserted by
9, 1949, s. 15.

(2) A notice under subsection (1) shall be served personally or by registered letter sent to the respondent’s last place of abode known to the claimant.

(3) If, within the period specified in subsection (1) of this section, a statutory declaration by the respondent or by some person having knowledge of the facts stating that the respondent is a protected person within the meaning of this Part is not furnished to the claimant, then notwithstanding that the respondent is, or at any subsequent time becomes, a protected person within the meaning of this Part, this Part shall not apply in respect of the doing, or in respect of the continuance or completion of the doing, of an act of the kind referred to in subsection (1) of this section, provided the claimant commences to do, or to continue or complete the doing of, the act within three weeks after the expiration of the period specified in that subsection.

(4) For the purposes of subsection (3) where the doing of any act is dependent on the completion of any preliminary act, the commencement of the doing or the continuance or completion of the doing, of the preliminary act shall be deemed to be the commencement of the doing of the first-mentioned act.

(5) If the claimant produces evidence (supported by statutory declaration) to the satisfaction of an officer thereto authorized in writing by the Attorney-General, that the respondent—

- (a) has abandoned the property in respect of which the claimant desires to do, or to continue or complete the doing of, any act; or
- (b) cannot be found and that the claimant has made reasonable efforts to ascertain his whereabouts.

PART III.

and that the claimant is not aware that the respondent is a protected person,

the officer may issue to the claimant a certificate to that effect and thereupon this Part shall not apply in respect of the doing, or in respect of the continuance or completion of the doing, of the act by the claimant.

(6) A certificate purporting to be issued in pursuance of subsection (5) shall, in the absence of proof to the contrary, be deemed to have been duly issued.

Exemptions
from
application
of Part.
Inserted by
9, 1949, s. 15.

26aw. Nothing in this Part shall apply to any dwelling-house in respect of which a certificate of exemption under section 26ai or section 26aj is in force.

PART IIID.

PART IIID.

CONTROL OF RENTS OF HOTEL PREMISES.

Interpreta-
tion.
Inserted by
9, 1949, s. 17.

26ax. In this Part—

“board” means the board constituted pursuant to section 26ay:

“hotel premises” means any premises in respect to which a publican’s licence is in force under the Licensing Act, 1932-1945:

“rent,” in addition to the matters mentioned in the definition of rent in section 4, includes any premium, bonus, foregift, or other sum of money paid or payable in consideration of, or in association with—

- (a) the grant or acceptance of any lease of hotel premises; or
- (b) the renewal of a lease or the continuance of a letting of hotel premises; or
- (c) any agreement for a lease or for the renewal of a lease of hotel premises.

Constitution
of board.
Inserted by
9, 1949, s. 17.

26ay. (1) A board shall be constituted for the purposes of this Part.

(2) The board shall consist of—

- (a) a special magistrate appointed by the Governor who shall be the chairman of the board;

(b) a member who shall be appointed by the Governor on the nomination of the committee of the South Australian Associated Brewers;

(c) a member to be appointed by the Governor on the nomination of the committee of the United Licensed Victuallers Association of the Commonwealth of Australia (South Australian Branch).

(3) The members of the board shall hold office for such term and upon such conditions and shall be entitled to such remuneration as the Governor from time to time determines.

(4) The chairman and one other member of the board shall be a quorum of the board. The chairman of the board shall have both a deliberative and a casting vote.

(5) No matter or thing done by the board or by the chairman or any member thereof or by any person whenever acting under the direction or authority of the board shall, if the matter or thing was done *bona fide* for the purpose of executing this Part, subject them or any of them personally to any action, liability, claim, or demand whatsoever.

(6) Any expenses incurred by the board shall be deemed to be an expense authorized by this Act.

26az. (1) Any lessee of any hotel premises who is of opinion that the rent provided to be paid under the lease of the premises is excessive, may from time to time make application in writing to the board requesting that the board determine the rent of the premises.

Application to board with respect to rent of hotel premises.

Inserted by 9, 1949, s. 17.

(2) If the South Australian Prices Commissioner is of opinion that the rent provided to be paid under any lease of hotel premises is excessive, he may from time to time make application in writing to the board requesting that the board determine the rent of the premises.

(3) If pursuant to this Part, the rent of any hotel premises is determined by the board, the lessor of those premises may from time to time make application in writing to the board requesting that the board should again determine the rent of the premises.

26ba. After application being made as aforesaid the board shall give notice in writing of a time and place for the consideration of the application to the lessor and the lessee of the hotel premises and to the South Australian Prices Commissioner each of whom shall be entitled to be heard (either personally or by counsel, solicitor, or agent) by the board.

Notice of proceedings of application.

Inserted by 9, 1949, s. 17.

PART III.

Onus in proceedings before board.
 Inserted by 9, 1949, s. 17.

26bb. If application is made as aforesaid by a lessee of hotel premises, the onus shall be on the applicant to satisfy the board that the rent payable under the lease is excessive.

Determination of rent by board.
 Inserted by 9, 1949, s. 17.

26bc. (1) The board shall hear and determine any application made to it and shall make a determination fixing the rent of the hotel premises.

(2) In its determination the board shall fix such rent as it considers to be fair and equitable after having regard to all relevant factors associated with the lease including the provisions of the lease and all benefits which could be derived from a proper and efficient use of the premises and the licence under the Licensing Act, 1932-1945, in force in respect thereof.

Board to have powers of Royal Commission.
 Inserted by 9, 1949, s. 17.

26bd. In the exercise of its functions under this Part the board shall have the powers of a royal commission under the Royal Commissions Act, 1917, and the provisions of that Act shall apply to and in respect of proceedings before the board.

Commencement of determination.
 Inserted by 9, 1949, s. 17.

26be. In any determination made by the board fixing the rent of any hotel premises, the board shall fix the day from which the rent so fixed shall be payable. The day aforesaid may be any day, whether before or after the making of the determination but other than a day prior to the day on which the application was made to the board, as the board considers proper.

Notice of determination.
 Inserted by 9, 1949, s. 17.

26bf. Forthwith upon the making of a determination in respect of any hotel premises, the board shall give to the lessor and the lessee of the premises and to the South Australian Prices Commissioner notice in writing setting out the determination.

Effect of determination.
 Inserted by 9, 1949, s. 17.

26bg. (1) During the continuance of this Act, as and from the day fixed by the determination of the board with respect to any hotel premises, the rent fixed by the determination shall (unless a lesser amount is, after the making of the determination, agreed to be paid) be the rent payable in respect of the premises and any rent in excess of that so fixed shall, notwithstanding any change in the ownership or occupation of the premises or any agreement to the contrary, be irrecoverable by the lessor.

(2) If any sum is or has been paid being a sum which by virtue of subsection (1) would have been irrecoverable by the lessor of any hotel premises, the sum so paid shall 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 by him to that lessor in respect of the said premises.

26bh. (1) The Treasurer may appoint any member of the public service to act as secretary of the board.

Secretary and officers.
Inserted by 9, 1949, s. 17.

(2) The Treasurer may direct that any officers of the public service shall perform such duties as are necessary to enable the board to exercise its functions under this Part.

26bi. The provisions of section 36, 37, and 38 shall apply to notices under this Part except that whenever in those sections there is reference to the trust that reference shall be construed as if it were a reference to the board.

Application of ss. 36, 37, 38.
Inserted by 9, 1949, s. 17.

26bj. Any application to the board under this Part may be made by delivering the application or by posting the application to the chairman or secretary of the board.

Mode of making application to board.
Inserted by 9, 1949, s. 17.

PART IV.

PART IV.

MISCELLANEOUS.

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.

Penalty for demanding rent in excess of that fixed.

(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.

s. 27. DAVIES v. O'SULLIVAN (No. 2) (1949) S.A.S.R. 208, affirming 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.

PART IV.

Duty to give
receipt for rent.
Inserted by
9, 1949, s. 19.

27a. (1) Any person who, whether as principal or agent, receives any payment of rent of any premises to which this Act applies shall, at the time of receiving the payment or within twenty-four hours of the making of the payment, give or cause to be given to the person making the payment a receipt (whether by way of an entry in a rent book or by a separate document) for the payment specifying the amount paid, the period in respect of which the payment is made, and the premises in respect of which the payment is made.

(2) Any person who commits any contravention of this section shall be guilty of an offence and liable to a penalty not exceeding twenty pounds.

(3) If pursuant to any arrangement made between the person paying the rent and the person to whom it is payable, any rent payable as mentioned in subsection (1) is paid into a bank to the credit of the person to whom it is payable (whether as principal or agent), the provisions of subsection (1) shall not apply in respect of that payment of rent.

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 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.

Penalty for
threats and
boycotts.

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.

(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.

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.

(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

(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.

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).

BISCHOP 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.

PART IV.

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.

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

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.

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

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.

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

(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.

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—

Powers of entry and inspection.

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 a question such as prescribed by the section has been required by an authorized person of a person of one of the classes specified therein as liable to be questioned; and (b) that person has refused to answer the question.

Landlord and Tenant (Control of Rents) Act, 1942-1949.

- (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.
- (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.

Penalty for refusing to disclose name of lessor.

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.

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.

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.

Notice to lessor or 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

Landlord and Tenant (Control of Rents) Act, 1942-1949.

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.

Supply of
particulars
as to rent
of premises.

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.

Exercise of
powers by
trust.

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.

Effect on
guarantee of
fixing rent.

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.

Regulations.

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.

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 IIIb of this Act and otherwise for carrying the said Part into effect.

Rules of Court.
Amended by 5, 1948, s. 8.

* * * * *

s. 44 repealed by 9, 1949, s. 10.

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.

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.

Premises used for purpose of residence.

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.

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

(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.

PART IV.

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, by 5,
1948, s. 9,
and by 9,
1949, s. 21.

49. This Act shall continue in operation until the thirty-first day of December, nineteen hundred and fifty, 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.



PUBLIC SERVICE ACT, 1936-1949.

BEING

PUBLIC SERVICE ACT, 1936, No. 2281 OF 1936
[ASSENTED TO 3RD SEPTEMBER, 1936]

AS AMENDED BY

PUBLIC SERVICE ACT AMENDMENT ACT, 1937, No. 2375 OF 1937
[ASSENTED TO 15TH DECEMBER, 1937]

PUBLIC SERVICE ACT AMENDMENT ACT (No. 2), No. 2377 OF 1937
[ASSENTED TO 15TH DECEMBER, 1937]

PUBLIC SERVICE ACT AMENDMENT ACT, 1938, No. 2423 OF 1938
[ASSENTED TO 19TH DECEMBER, 1938]

PUBLIC SERVICE ACT AMENDMENT ACT, 1940, No. 45 OF 1940
[ASSENTED TO 28TH NOVEMBER, 1940]

PUBLIC SERVICE ACT AMENDMENT ACT, 1941, No. 22 OF 1941
[ASSENTED TO 6TH NOVEMBER, 1941]

PUBLIC SERVICE ACT AMENDMENT ACT, 1942, No. 28 OF 1942
[ASSENTED TO 19TH NOVEMBER, 1942]

PUBLIC SERVICE ACT AMENDMENT ACT, 1945, No. 12 OF 1945
[ASSENTED TO 15TH NOVEMBER, 1945].

PUBLIC SERVICE ACT AMENDMENT ACT, 1946, No. 30 OF 1946
[ASSENTED TO 10TH DECEMBER, 1946.]

PUBLIC SERVICE ACT AMENDMENT ACT, 1947, No. 46 OF 1947
[ASSENTED TO 11TH DECEMBER, 1947.]

PUBLIC SERVICE ACT AMENDMENT ACT, 1948, No. 39 OF 1948
[ASSENTED TO 16TH DECEMBER, 1948.]

AND

PUBLIC SERVICE ACT AMENDMENT ACT, 1949, No. 20 OF 1949
[ASSENTED TO 27TH OCTOBER, 1949.]

An Act to consolidate certain Acts relating to the
Public Service.

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. This Act may be cited as the "Public Service Act, 1936-
1949". Short title.

PART I.

Commence-
ment.

2. This Act shall come into force on a date to be fixed by proclamation.

Arrangement
of Act.

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

PART I.—Preliminary.

PART II.—Administration.

PART III.—Departments, divisions, officers, and salaries in the public service.

PART IV.—Admission to the public service, alterations of staff, dismissals, etc.

PART V.—Rights, privileges, powers, and duties of officers of the public service.

PART VI.—Miscellaneous provisions.

Interpreta-
tion.

4. In this Act, unless some other meaning is clearly intended—

“ Association ” means the Public Service Association of South Australia :

“ the board ” means The Public Service Board appointed under this Act :

“ class ” means class of the public service :

“ Commissioner ” means the Public Service Commissioner for the time being in office under this Act :

“ department ” means any department of the public service continued in existence by this Act or declared by the Governor under this Act :

“ division ” means division of the public service :

“ General Secretary ” means the General Secretary of the Association or any other person appointed by the Council of the Association to act on his behalf :

“ grade ” includes office or position :

“ member ” where used to indicate a member of the board, includes the chairman of the board.

“ Minister ” means the Minister of the Crown for the time being administering the department in which the officer or person, in connection with whom the term is used, is employed or is proposed or seeks to be employed, or which comprises the office in connection with which the term is used :

Substituted by
39, 1948, s. 4.Substituted by
39, 1948, s. 4.

“ office ” includes any position in the public service :

“ officer ” means person employed in any capacity in the public service :

“ permanent head ” means the permanent head of the department wherein any officer or person, in connection with whom the term is used, is employed or is proposed or seeks to be employed, or which comprises the office in connection with which the term is used :

“ public service ” means the public service of the State as defined by section 6.

5. (1) The Acts mentioned in the first schedule are hereby repealed.

Repeal and saving provisions.

(2) Such repeal shall not affect any privileges or rights conferred by section 4 of the Civil Service Amendment Act, 1881 ; and in respect of any such officer as referred to in the said section, and his legal personal representative, the said section shall apply notwithstanding such repeal.

(3) All officers and persons appointed permanently or temporarily under any Act hereby repealed, or continued in office by any such Act, and holding office at the commencement of this Act, shall remain in office as if this Act had been in force at the time when they were appointed, and they had been appointed hereunder, and this Act shall apply to them accordingly.

(4) All regulations made by the Governor under any Act hereby repealed, or continued in force under any such Act, which are in force at the commencement of this Act shall continue in force until repealed by regulations made under this Act. Any references in any regulations to any enactment hereby repealed shall be construed as references to the corresponding provisions of this Act.

6. (1) The public service, within the meaning of this Act, comprises all persons employed in any capacity in the public service of the State, with the following exceptions (save where otherwise expressly provided), namely :—

Public service defined.
1259, 1916,
s. 6.
1453, 1920,
s. 3.

- (a) The Judges of the Supreme Court :
- (b) The Judge in Insolvency :
- (c) The President of the Industrial Court :
- (d) The Agent-General :
- (e) The Auditor-General :

Public Service Act, 1936-1949.

- (f) Any officer of either House of Parliament, or any person under the separate control of the President or the Speaker, or under their joint control :
- (g) The South Australian Railways Commissioner, and any person in the service of the South Australian Railways :
- (h) The Harbors Commissioners appointed under the Harbors Act, 1936-1943 :
- (i) Any teacher appointed under the Education Act, 1875, the Education Act, 1915, or any Act amending or substituted for any of those Acts :
- (j) Any member of the police force :
- (k) Any honorary officer :
- (l) Any officer remunerated by fees, allowances, or commissions only :
- (m) Any person employed at daily or weekly wages, or at piecework rates of payment :
- (n) Any person whose salary or remuneration is fixed by Act of Parliament :
- (o) Any officer or class of officers or any department to whom or to which it is provided by any Act that this Act, or the Acts hereby repealed, shall not apply :
- (p) Any officer or class of officers or department to whom or to which the Governor declares by proclamation that this Act shall not apply.

(2) Except so far as inconsistent with any Act for the time being in force, the Governor may declare by proclamation that this Act, or any specified provisions of this Act, shall, from the time specified in that behalf in such proclamation—

- I. apply to any of the persons or officers, classes, or departments, mentioned or referred to in this section ; or
- II. cease to apply to any persons or officers, classes, or departments to which by reason of a proclamation made under this section, the same applies or apply ;

and every such proclamation shall, except as aforesaid, have effect according to the tenor thereof ; and all persons to whom this Act, or any provision of this Act, applies by reason of a

s. 6. (1) (h) The expression "Harbors Act 1936-1943" has been substituted for "Harbors Act 1913" pursuant to the Amendments Incorporation Act, 1937.

proclamation under this section shall, so far as may be necessary to give effect to such proclamation, be in the public service within the meaning of this Act.

PART II.

PART II.

ADMINISTRATION.

The Public Service Board.

Heading amended by 39, 1948, s. 5.

7. (1) There shall be constituted a board to be called "The Public Service Board".

Appointment of Public Service Board. Substituted by 39, 1948, s. 5.

(2) Subject to section 8 of this Act, the board shall consist of—

- (a) a chairman appointed by the Governor after consultation by the Minister with the President and General Secretary of the Association;
- (b) a person appointed by the Governor;
- (c) a member of the Association appointed by the Governor upon the nomination of the Council of the Association.

(3) A casual vacancy on the board shall be filled in the same way as an ordinary vacancy.

8. (1) If the Public Service Commissioner is appointed as a member of the board (whether as the chairman or as an ordinary member) the Governor shall appoint a person as a fourth member of the board.

Appointment of member for hearing appeals. Substituted by 39, 1948, s. 5.

(2) The Public Service Commissioner shall not sit on the board on the hearing of any appeal under section 52 or section 69 of this Act against a decision given by himself but on the hearing of every such appeal the board shall be constituted of the two members other than the Public Service Commissioner, and the fourth member appointed under this section.

(3) If the Public Service Commissioner is chairman of the board, the fourth member shall sit as chairman on the hearing of the said appeals, and if the Public Service Commissioner is an ordinary member of the board the fourth member shall sit as an ordinary member on the hearing of those appeals.

(4) The fourth member of the board shall not act as a member except as provided in this section.

Term of office.
Substituted by
39, 1948, s. 5.

9. (1) Every member of the board shall hold office until the thirtieth day of June in the fourth year after the year in which he was appointed, and upon the expiration of his term shall be eligible for re-appointment: Provided that a person appointed to a casual vacancy on the board shall hold office only for the balance of the term of his predecessor.

(2) The office of a member of the board shall become vacant—

- (a) upon his death or resignation;
- (b) in the case of a member nominated by the Association, if he ceases to be a member of the Association;
- (c) in any case, if he is dismissed by the Governor for dishonourable conduct, neglect of duties, or mental or physical incapacity to perform his duties.

Temporary
members of
the board.
Substituted by
39, 1948, s. 5.

10. (1) If for any reason any member of the board is unable to act as such a temporary member may be appointed in the same way as an ordinary member.

Every temporary member shall hold the qualifications required by this Act for an ordinary member.

(2) The Governor shall by the minute of appointment of a temporary member, indicate the period during which, or the matters on which, the temporary member is to act, and the temporary member may act accordingly in the place of the member who is unable to act.

Remuneration.
Substituted by
39, 1948, s. 5.

11. Each member of the board shall receive such remuneration for his services as the Governor determines, which remuneration may, if the Governor so directs, be in addition to any salary received by the member as an officer of the public service.

Quorum and
majority
decisions.

Substituted by
39, 1948, s. 5.

12. (1) Two members of the board shall form a quorum thereof.

(2) A decision concurred in by two members of the board shall be regarded as a decision of the whole board.

(3) If at any meeting of the board only two members are present and they differ in opinion upon any matter, the determination of that matter shall be postponed until all the members are present.

Secretary and
officers of the
board.

Substituted by
39, 1948, s. 5.

13. (1) The Governor may appoint a secretary to the board and such other officers as may be necessary to assist the board.

(2) The secretary and other officers of the board shall discharge such duties and exercise such functions as the board requires.

14. (1) The board may, by writing under the hand of each member of the board, delegate to any member of the board or to any officer, any of the powers of the board under this Act (except this power of delegation) so that the delegated powers may be exercised by the delegate with respect to the matters or class of matters specified, or the place or locality defined, in the instrument of delegation.

Power of board to delegate.

Substituted by 39, 1948, s. 5.

(2) Every such delegation shall be revocable in writing at will, and no delegation shall prevent the exercise of any power by the board.

(3) If in pursuance of any delegation given to him any delegate of the board makes any recommendation, the permanent head of the department affected or the general secretary may request that the recommendation be referred to the board, and in that event the recommendation of the delegate shall not be deemed to be a recommendation of the board unless it is indorsed by the board.

14a. During the period between the passing of the Public Service Act Amendment Act, 1948, and the constitution of the board, the Classification and Efficiency Board in existence at the time of the passing of the Public Service Act Amendment Act, 1948, shall remain in office and continue to exercise the powers which it would have had if the said Act had not been passed.

Temporary powers of Classification and Efficiency Board.

Inserted by 39, 1948, s. 5.

The Public Service Commissioner.

15. (1) The Governor may, from time to time, appoint a Public Service Commissioner.

The Public Service Commissioner, his appointment and functions.

1259, 1916, s. 12.
1716, 1925, s. 6.

(2) The Commissioner shall have the powers and authorities, and shall discharge and exercise the duties and functions, by this Act vested in or imposed or conferred upon him.

16. In case of the illness or other incapacity, absence, or suspension of the Commissioner, or any vacancy in the office of Commissioner, the Governor may appoint a Deputy Public Service Commissioner, who during such illness, incapacity, absence, suspension, or vacancy shall have all the powers and authorities, and discharge and exercise all the duties and functions, of the Commissioner, including his powers, authorities, duties, and functions as a member of the board and as chairman thereof.

Deputy Public Service Commissioner.

1259, 1916, s. 13.

PART II.

Salary of
Commissioner.
1259, 1916,
s. 14.
Substituted
by 30, 1946,
s. 3.

17. (1) The salary of the Commissioner holding office at the time of the passing of the Public Service Act Amendment Act, 1946, shall be at the rate fixed by the Governor within three months after that time, and the salary of every subsequent Commissioner shall be at the rate fixed by the Governor at or before the commencement of the Commissioner's term of office. After being so fixed, the salary of the Commissioner shall not be altered during his term of office.

Inserted by
30, 1949, s. 3.

Provided that The Public Service Board may determine —

- (a) that additional salary, of such amount as the board deems just having regard to alterations in the cost of living and in the salaries paid to officers of the public service generally, shall be paid to the Commissioner as from such day as the board fixes;
- (b) that any such additional salary shall, as from such day as the board fixes, be increased or reduced by such amount as the board deems just having regard to the said alterations in the cost of living and salaries.

Any additional salary so determined shall be paid to the Commissioner as part of his salary under this Act, without further appropriation.

(2) A Deputy Commissioner shall receive such remuneration as is fixed by the Governor.

(3) The salaries of the Commissioner and any Deputy-Commissioner shall be a charge upon and be payable out of the general revenue of the State, which is hereby to the necessary extent appropriated accordingly.

Tenure of
office by Com-
missioner.
1259, 1916,
s. 15.

18. (1) The Commissioner shall be appointed for a term of seven years, and may, from time to time, be reappointed for further terms of seven years each; and save as provided by this section, the Commissioner shall not be removable from office during any term of appointment unless an address praying for his removal is presented to the Governor from both Houses of Parliament during one session of Parliament, or from one House during one session and from the other House during the next succeeding session, which sessions however need not be both during the same Parliament.

(2) The Commissioner may be removed from office in the following manner:—

- (a) The Governor may, at any time, suspend the Commissioner from office on the ground of incompetence or misbehaviour:
- (b) Whenever the Commissioner is so suspended a full statement of the cause thereof shall be laid before both Houses of Parliament within seven days after

the suspension if Parliament is in session, or, if not, within seven days after the commencement of the next session :

- (c) Unless within one month after the day when, and during the same session as, such statement is laid before Parliament, an address from either House of Parliament praying for the removal from office of the Commissioner is presented to the Governor, he shall be restored to office ; but if such address is so presented the Governor may remove him from office.

(3) The Commissioner shall be deemed to have vacated his office if he—

- (a) absents himself from duty for a period of fourteen days, except on leave granted by the Governor ;
- (b) resigns his office ;
- (c) is adjudicated bankrupt, or makes a composition for the benefit of his creditors for less than twenty shillings in the pound ;
- (d) except with the consent of the Governor, engages in any paid employment other than in connection with his duties as Commissioner ; or
- (e) becomes a member of either House of the Parliament of the State of the Commonwealth.

19. (1) The Governor may appoint a secretary to the Commissioner, and such (if any) other officers as may be necessary to assist the Commissioner in the administration of this Act.

Secretary and other officers of the Commissioner.
1259, 1916, s. 16.

(2) The secretary and all such other officers shall be under the direction and control of the Commissioner, and shall discharge and exercise such duties and functions as are imposed or conferred upon them respectively by the Commissioner.

20. (1) The Commissioner shall keep a record of all officers showing with regard to each officer—

- (a) his age and length of service ;
- (b) the office he holds ;
- (c) his division, and section ; and
- (d) his salary.

Record of officers to be kept and gazetted.
1259, 1916, s. 22.
1716, 1925, s. 10.

(2) The Commissioner shall in the month of August in each year forward to the Governor a list of all officers employed on the next preceding thirtieth day of June together with the particulars recorded as required by subsection (1) hereof with respect to them, and showing the dates of appointment of such officers.

(3) A copy of the list so published shall be laid before Parliament within fourteen days of publication, or if Parliament is not sitting, then within fourteen days after the commencement of the next session of Parliament.

Other functions
of
Commissioner.
Inserted by
33, 1943, s. 6.

20a. (1) In addition to the duties elsewhere in this Act imposed on him the Commissioner shall have the following duties :—

(a) To devise means for effecting economies and promoting efficiency in the management and working of departments by—

- (i.) improved organization and procedure ;
- (ii.) closer supervision ;
- (iii.) the simplification of the work of each department, and the abolition of unnecessary work ;
- (iv.) the co-ordination of the work of departments ;
- (v.) the limitation of the staff of each department to actual requirements, and the use of such staff to the best advantage ;
- (vi.) the improvement of the training of officers ;
- (vii.) the avoidance of unnecessary expenditure.

(b) To perform such other functions in relation to the public service as are prescribed.

(2) If the Commissioner is of opinion that any means ought to be adopted for achieving any of the objects mentioned in paragraph (a) of the last preceding subsection, he shall advise the permanent head of the department of his suggestions or proposals.

(3) If the permanent head does not concur in or adopt the suggestions or proposals he shall, within a reasonable time, inform the Commissioner of the reason therefor.

(4) Thereupon the Commissioner may, if he thinks fit, report the matter to the Minister administering the department, and if the Commissioner's suggestions or proposals are not approved or adopted by the Minister within a reasonable time, the Commissioner shall report the matter to both Houses of Parliament either in a special report or in his annual report.

21. The Commissioner shall submit for the consideration of the Governor reports as to any matters which by this Act are required to be, or may be, dealt with by the Governor.

Commissioner
to make
reports for
assistance of
the Governor.
1259, 1916,
s. 23.

22. The Commissioner shall furnish to the Governor for presentation to the Parliament at least once in each year a report on the condition and efficiency of the public service; and in such report there shall be set forth any charges and measures which the Commissioner or the board considers necessary for improving the working of the public service, and especially for insuring efficiency and economy therein or in any department thereof. The Commissioner shall also in such report draw attention to any breaches or evasions of this Act which may have come under his notice.

Commissioner to report on state of public service to Governor. 1259, 1916, s. 24.

23. (1) The board or the Commissioner, or any person to whom any power or function of the board or the Commissioner is delegated under this Act, may at any time, in the performance of their duties, enter any department, or by writing signed by them or him, summon any person whose evidence appears to be material for the purpose of any application, inquiry, or investigation before them or him under this Act, to appear at the time and place specified in the summons and produce any official or public or other books, documents, or writings in his custody or under his control which may be material to such application, inquiry, or investigation.

Power of board and Commissioner to enter departments and summon witnesses. 1259, 1916, s. 65. 1716, 1925, s. 22.

(2) The board or any member thereof, or any person to whom any power or function of the board or Commissioner is delegated as aforesaid, may examine any witness upon oath or otherwise touching the matter of any such application, inquiry, or investigation.

(3) If, without reasonable cause, any person summoned as aforesaid, after being paid or tendered the prescribed allowance for expenses—

(a) fails to appear as required by the summons, or

(b) refuses to be sworn or to answer any question put to him by the board or any member thereof, or the Commissioner or any person to whom any power or function of the board or the Commissioner is delegated as aforesaid, or

(c) fails to produce any book, document, or writing pursuant to such summons,

he shall be liable to pay a penalty not exceeding twenty pounds, which shall be recoverable before any special magistrate or two justices of the peace: Provided that no person shall be compelled to answer any question the answer to which would tend to incriminate him.

PART II.

Procedure of board.
1716, 1925,
s. 28.

24. The board—

- (a) before determining any thing or matter over which it has jurisdiction, other than those specified in paragraph (a) of subsection (1) of section 13, shall notify the Association of the nature and purpose of the proceedings, and, if requested by the Association, fix a time and place for the hearing of any evidence, argument, or other relevant representations which the Association may submit ;
- (b) in the exercise of any such jurisdiction, shall not be bound by any rules or practice as to evidence, but may inform its mind on any matter in such manner as it thinks fit ; and
- (c) may conduct any or all of its proceedings in public or in private as it thinks fit.

PART III.

PART III.

DEPARTMENTS, DIVISIONS, OFFICES, AND SALARIES IN THE PUBLIC SERVICE.

Departments of the service and permanent heads.
1259, 1916,
s. 17.

25. (1) The departments of the public service shall, until other departments are declared under this Act, be those declared prior to and in existence at the commencement of this Act, and the head of each department shall, until other provision is made, be the holder for the time being of the office proclaimed in that behalf by proclamation made under section 17 of the Public Service Act, 1916.

(2) The Governor may from time to time, upon the recommendation of the Minister made upon a report from the Commissioner, by proclamation declare any additional departments in the public service or discontinue any department previously declared. Any additional department so declared may be formed by the severance thereof from an existing department or departments, or by the amalgamation of existing departments or parts thereof, or otherwise howsoever, as the Governor deems proper.

Divisions of the service.
1259, 1916,
s. 25.
1716, 1925,
s. 12.

26. The public service shall consist of four divisions, that is to say—

- (1) The First Division.
- (2) The Second Division.
- (3) The Third Division.
- (4) The Fourth Division.

27. (1) The first division shall include such officers as the Governor determines.

(2) The second division shall include officers who are required to exercise executive or professional functions in the more important offices of the public service, and whose offices the board directs to be included in that Division.

(3) The third division shall include all officers whom the board directs to be included in that division.

(4) The fourth division shall include all officers not included in the first, second, or third divisions.

Officers included in each division.
1259, 1916, s. 26.
1716, 1925, s. 12.

28. (1) Every officer of the first division shall be paid such salary as is determined by the Governor on the recommendation of the board : Provided that the board shall notify every such officer of its recommendation as to his salary by notice published in the *Gazette*, and the Governor shall not determine the salary of any such officer until after the expiration of fourteen days from the time such officer receives notice of the board's recommendation.

Salaries.
1259, 1916, s. 27.
1716, 1925, s. 12.

Any such officer may request the board to reconsider its recommendation as to his salary, and the board shall reconsider its recommendation accordingly.

(2) Every other officer shall be paid a salary not lower than the minimum which is fixed by the board in respect of the office held by such officer.

29. (1) For every office other than an office of the first division, the board shall have jurisdiction from time to time to make returns—

Jurisdiction of board.
Substituted by 45, 1940, s. 2.

- (a) classifying each office in the public service by assigning it to its appropriate section and division, namely, to the second, third, or fourth division, and to the professional, clerical or general section :
- (b) fixing the minimum and maximum salary payable to the holder of such office, the amount of the annual or other periodical increments of salary of such office, and the salary payable to the holder of such office at the time of the making of the return :
- (c) fixing any special payment or allowance for any special circumstances connected with the work of any office :

s. 28. DAY v. HUNKIN (1938) 61 C.L.R. 65; 12 A.L.J. 269, affirming DAY v. HUNKIN (1938) S.A.S.R. 121, which reversed DAY v. HUNKIN (1937) S.A.S.R. 453. Where an officer was appointed under subsection (1) for a fixed term of five years and the salary then fixed was subsequently reduced, held that the power contained in subsection (1) was not exhausted in the case of each officer by the first determination of his salary and that the first determination of the officer's salary did not fix it unalterably for the term of his appointment for five years.

- (d) determining the conditions upon which officers shall be entitled to increments in salary :
- (e) varying or adding to any return previously made by the board or rescinding any such return and making a new return in lieu thereof :
- (f) determining any other matter connected with the employment of officers if such matter is referred to the board by the Minister or the Commissioner :

Provided that, subject as mentioned in this section, every officer whose office is dealt with by the board in any return shall be entitled to receive an annual increment of salary of the amount fixed by the board in such return until the officer is receiving the maximum salary fixed by the board in respect to the office held by such officer.

Amended by
45, 1940,
s. 2.

(2) No officer shall be entitled to receive an increment of salary unless, in the opinion of the Commissioner, his conduct, diligence, and efficiency during the year previous to the granting of the increment have been satisfactory.

Amended by
45, 1940, s. 2.

(3) If, in the opinion of the Commissioner, an officer is not entitled to receive an increment of salary, he may issue an order in writing depriving the officer of the increment for such time as the Commissioner considers justified, and in that event the increment shall, subject to the succeeding provisions of this section, not be paid.

(4) Any officer affected by any such order may appeal to the board against the order.

(5) The permanent head shall forward the appeal with a report to the board, and the board shall, after full inquiry, determine the appeal, and its decision shall be final.

Inserted by
45, 1940,
s. 2.

(6) If any officer fails or omits to pass any examination prescribed by the board and by reason of such failure or omission the officer is not entitled to receive an increment of salary as provided by subsection (1) and if the Commissioner is of opinion that any special circumstances warrant him so doing, the Commissioner may direct that the officer shall from such time or times as is fixed by the Commissioner be entitled to receive the increment or increments of salary which he would have been entitled to receive if he had passed the examination.

Inserted by
45, 1940, s. 2.

(7) If any permanent officer is appointed to any vacant office or is appointed to act temporarily in any office, the Commissioner may direct that the first increment of salary to which the officer shall be entitled in respect of that office shall be from such time as is fixed by the Commissioner, notwithstanding that the officer has not held that office for any period fixed pursuant to subsection (1).

29a. (1) The Commissioner may transfer temporarily any officer from one office to any other office in the public service.

Officers temporarily performing duties in other offices.

Substituted by 28, 1942, s. 3.

(2) Where an officer performs for more than four weeks all or any of the duties of an office other than that on which his classification is based—

(a) the board may, and shall if the officer so requests, fix the salary to be paid to the officer while he so performs those duties ; and

(b) if the duties so performed constitute the whole or substantially the whole of the duties of a full time office, the salary so fixed, unless for special reasons the board otherwise determines, shall be not less than the minimum salary fixed for that office, and not less than the salary which the officer was receiving immediately before he commenced to perform the duties of that office.

any duties done hereafter see table 1710

30. (1) The return prepared by the board and published in the *Gazette* on the eighteenth day of October, 1926, shall, until it is rescinded and a new return is made pursuant to section 29, continue in force subject to any variations thereof or additions thereto made by the board under this Act or the Acts hereby repealed, and subject to any decision of the board given on an appeal under this Act or the Acts hereby repealed.

Continuance in force of classification made under repealed Acts.

Cf. 1259, 1916, ss. 11 (b), 11cc. 1710, 1925, s. 5. 2130, 1933, s. 4.

Amended by 45, 1940, s. 4.

* * * * *

Subsection (2) repealed by 45, 1940, s. 4.

(3) Any variation of or addition to any return and any new return shall be published forthwith in the *Gazette*, and shall come into operation upon the expiration of fourteen days from the date of such publication: Provided that if the board is satisfied by such evidence as it requires, that by reason of special circumstances it is equitable that any salary fixed by any return, or any variation of or addition to a return, should be payable as from a day earlier than the day when the return or variation, or addition, comes into operation, it may make an order that that salary shall be so payable ; but the day fixed by any such order shall not be earlier than the day on which the application for the fixation of the salary in question was made to the board.

Amended by 45, 1940, s. 4.

Proviso added by 39, 1948, s. 7.

(4) Before completing any return or variation of or addition to a return or determining any appeal under this Part the board shall send a copy of its proposed return or variation of or addition to a return or a written statement of its proposed decision on the appeal to the Chief Secretary, who may within twenty-one days after receiving the copy or statement submit to the

board any evidence, information, or opinion relevant to the proposed return or decision. The board shall, before completing the return or variation of or addition to a return, or finally determining the appeal, report in writing to the Chief Secretary on any matter so submitted to it.

Inserted by
39, 1948, s. 5.

(5) Any return in force immediately before the appointment of the board shall, subject to any variations and additions made by the board or to the rescission thereof, have effect as if it had been made by the board.

Validation of
certain returns.

Inserted by
2423, 1946,
s. 2.

30a. The returns prepared by the board for the classification of permanent officers in the public service and published in the *Gazette* on the fourth day of October, nineteen hundred and thirty, and on the nineteenth day of September, nineteen hundred and thirty-one, shall be deemed to have been validly made and to have full force and effect, and notwithstanding the provisions of section 11e of the Public Service Act, 1916 (as enacted by section 5 of the Public Service Act Amendment Act (No. 2), 1925) or any other Act, no person shall have any claim in law or equity by reason of any reduction made in the salary of any office under any such classification, or shall commence any proceedings to enforce any such claim.

Appeals
against the
board's classi-
fication.

1259, 1916,
s. 11c.
1716, 1925,
s. 5.

31. (1) Any officer dissatisfied with the classification of his office or the salary thereof, as set forth in any variation of or addition to the return mentioned in the next preceding section, may within thirty days after publication in the *Gazette* of the variation or addition appeal against that classification by sending to the board a notice of appeal in writing setting forth the grounds of his dissatisfaction.

(2) An appeal under this section shall be considered by the board in conference with the permanent head of the department in which the appellant works, and with the appellant, or if the appellant so desires, with the general secretary of the Association.

(3) Where the appellant does not attend the conference, or is not represented, the appeal shall be considered by the board in conference with the permanent head or his representative.

(4) After conferring as aforesaid, the board shall determine the appeal, and its decision shall be final: Provided that if upon appeal the board varies the decision appealed against, the variation shall take effect as from the date upon which the first decision would have come into operation.

Assessors.
1259, 1916,
s. 11d.

1716, 1925,
s. 5.
Substituted by
39, 1948, s. 8.

32. The board may appoint a properly qualified person to be an assessor to assist it in classifying such office.

33. Any decision of the board under this Part or the Acts repealed by this Act relating to the salaries payable to any officers or class of officers shall be subject to any award or order of the Industrial Court and to any industrial agreement filed in the said court.

Saving of industrial awards and orders.
1716, 1925, s. 27.

34. Nothing in this Part shall be so construed as to abridge any power of the Industrial Court under the Industrial Code, 1920, and the Acts amending the same.

Saving of power of Industrial Court.
1716, 1925, s. 27.

PART IV.

ADMISSION TO THE PUBLIC SERVICE, ALTERATIONS OF STAFF, AND DISMISSALS.

Admission to the service.

35. (1) Except as hereinafter provided, no person shall be admitted to the public service unless he is a natural born or naturalized subject of His Majesty and has successfully passed the entrance examination prescribed.

Eligibility for employment in public service.
1259, 1916, s. 31.
Cf. U.K. 9 & 10 Geo. 5 c. 92, s. 6.

(2) A naturalized subject, who before his naturalization was a subject of any foreign state, prescribed by regulation, shall not be admitted to the public service within five years of the date of his naturalization.

36. (1) The Governor may make regulations providing for the examination of persons desirous of admission into the public service. Such regulations, in addition to any other matter thereby prescribed, shall prescribe—

Entrance examinations and examiners.
1259, 1916, s. 52.

- (a) a preliminary medical examination or test as to the health of candidates ;
- (b) the nature and standards of the examinations to which candidates are required to submit themselves ; and
- (c) the manner of holding such examinations.

(2) Such examinations (other than medical) shall be competitive.

(3) The Governor, on the recommendation of the Commissioner, may from time to time appoint such examiners as may be necessary for the conduct of the prescribed examinations.

37. (1) The Commissioner shall hold or cause to be held such examinations as are necessary in order to test the efficiency and aptitude of candidates for employment in any branch of the public service.

Arrangement of times and places of examination.
1259, 1916, s. 33.
1716, 1925, s. 13.

(2) The Commissioner shall, as far as practicable, arrange the times and places of entrance examinations so that candidates shall have reasonable facilities in the localities in which they reside for competing at such examinations.

Public notice
of examina-
tions.
1259, 1916,
s. 34.

38. Whenever additions to the public service are required, the Commissioner shall give notice thereof in the manner prescribed, stating—

- (a) the number of new appointments which it is estimated will have to be made ; and
- (b) the division and class or grade thereof respectively ; and
- (c) the times and places of examinations.

Admissions to
public service
to be on
probation only.
1259, 1916,
s. 35,
1385, 1919,
s. 4.

39. (1) Except as hereinafter provided, every person admitted to the public service shall, in the first instance, be appointed on probation only, and may be continued on probation for a period of six months, but the services of any person appointed on probation may, at any time during his probation, be dispensed with by the Minister (or by the Governor, if such person was so appointed by the Governor) on the recommendation of the Commissioner made upon a report from the permanent head.

(2) After the period of six months on probation has expired, the Governor may, after reports on the matter by the Commissioner and the permanent head, confirm or annul the appointment.

(3) No probationer whose appointment has been annulled as aforesaid shall be eligible as a probationer at any time within twelve months from the date of the annulling of his appointment.

Appointments
in special
cases without
examination
or probation.
1259, 1916,
s. 36.
Amended by
2377, 1937,
s. 3.

40. (1) If at any time in a special case it appears expedient or desirable, in the interests of the public service, to appoint to any division a person who is not in the employ of the Government of the State, the Governor may, after considering the recommendation of the Commissioner on the matter, appoint such person as the Governor thinks suitable without examination, and, if the Governor thinks proper, without probation.

Amended by
2377, 1937, s. 3
and 30, 1946,
s. 4.

(2) No such appointment shall be made until the board has certified that in its opinion there is no person available in the public service who is capable of filling the position to which it is proposed that the appointment shall be made as the person proposed to be appointed.

41. No person under fourteen years of age shall be appointed to the public service.

Age of new appointees.
1259, 1916, s. 37.
1716, 1925, s. 14.

42. Notwithstanding any other provision of this Act, any person who is in the employ of the Government of the State but is not in the public service shall, subject to regulations made in that behalf, be eligible for appointment, upon the recommendation of the Commissioner, to any division and office in the public service; and such appointment may, if the Commissioner so recommends, be made without examination, and also if he so recommends, without probation.

Appointment of persons in Government employ to offices in the public service.
1259, 1916, s. 38.
1716, 1925, s. 15.
Amended by 2377, 1937, s. 4.

43. (1) Any person having at any time, either before or after the commencement of this Act, retired from any salaried office in the public service not being of a temporary or casual character shall, if not more than sixty years of age, be eligible for appointment to the public service without examination or probation.

Reappointment of retired officers.
1259, 1916, s. 39.

(2) In the case of any person who has received a sum of money as allowance on such retirement, no appointment shall be made until he has, if so required by the Governor, paid into the Treasury an amount equal to such allowance, or has arranged so to pay the same by instalments to the satisfaction of the Commissioner. Any sum so paid shall be refunded upon the subsequent retirement from the public service of the person so appointed.

43a. Notwithstanding any other Act, every appointment to an office in a department shall be made by the Governor or the Minister in accordance with this Act, and not by any other person or authority.

Appointment to Governmen. Department.
Inserted by 30, 1946, s. 5.

Commonwealth and State Officers.

44. The fact that any person is an officer of the public service of the Commonwealth shall not disqualify him from also executing the duties of an office in the public service of the State.

Service in Commonwealth not to disqualify for State service.
1259, 1916, s. 41.

45. (1) The Governor may arrange with the Governor-General of the Commonwealth for the performance by an officer in the public service of the Commonwealth, for the Government of the State, of any work or services, or for executing the duties of any office in the public service of the State.

Discharge of State functions by officer of Commonwealth.
1259, 1916, s. 42.

(2) In any such case the Governor may, by agreement with the Governor-General or otherwise make arrangements for determining—

Public Service Act, 1936-1949.

- (a) the rate of payment to be made by the Government of the State to the Government of the Commonwealth for the services performed or the work done for the State by such officer ; and
- (b) any matters which may require to be adjusted with regard to the performance of such duties or the execution of such work by such officer.

Arrangement
for perform-
ance of Com-
monwealth
duties by
State officer.
1259, 1916,
s. 43.

46. Where an officer of the State performs duties for the Government of the Commonwealth, the Governor may, by agreement with the Governor-General of the Commonwealth or otherwise, make arrangements for determining—

- I. the rate of payment to be made by the Government of the Commonwealth to the Government of the State for the services performed for the Commonwealth by such officer ; and
- II. any matters which may require to be adjusted with regard to the performance of such duties by such officer.

Arrangement
for perform-
ance of work
or serv

47. The Governor may, at the request of the Governor-General of the Commonwealth, authorize and cause any work or services to be performed for the Government of the Commonwealth ; and the Governor, by agreement with the Governor-General or otherwise, may make arrangements for determining—

- (a) the rate of payment to be made by the Government of the Commonwealth for the performance of such work or services ; and
- (b) any matters which may require to be adjusted with regard to the performance of such work or services.

Re-appoint-
ment from
Common-
wealth public
service.
1259, 1916,
s. 45.

48. (1) Every person who whether before or after the commencement of this Act has been or is appointed or transferred to the public service of the Commonwealth, and who at the time of appointment or transfer was or is employed permanently in the public service of the State, shall, subject to anything prescribed, be eligible for appointment to an office in the public service of the State ; and the Governor, on the recommendation of the Commissioner, may exempt such person from examination or probation or both.

(2) The expression “ public service of the State,” where firstly used in this section, has not the limited meaning assigned to it by sections 4 and 6.

Temporary Employment.

49. (1) Whenever, in the opinion of the Minister, the prompt dispatch of the business of any department renders temporary assistance necessary, and the Commissioner is unable to arrange for such assistance from other departments, the Commissioner may select such persons as appear to him to be best qualified for such work.

Temporary employment. 1259 1916, s. 46, 1516. 1922, s. 2.,

(2) The Minister may employ the persons so selected to supply such temporary assistance ; and they shall be paid at the rates determined from time to time by the Commissioner as applicable to the work performed.

(3) The services of any person temporarily employed may be dispensed with at any time by the Minister or by the permanent head.

(4) A person may be employed under this section for any period.

(5) Every person temporarily employed under this section shall be entitled to all the benefits and privileges of an officer under section 74 and section 75.

Amended by 2375, 1937, s. 3.

* * * * *

Subsection (6) repealed by 2375, 1937, s. 3.

49a. (1) Notwithstanding this or any other Act or law any person who being a male has attained the age of sixty-five years or being a female has attained the age of sixty years, may be employed temporarily in the employ of the Government of the State. This section shall, without restricting the effect of the foregoing provisions of this section, apply to any person who has previously retired from the employ of the Government of the State, whether such person retired on attaining the age of retirement or otherwise.

Temporary employment during the present war of persons over the age of retirement. Inserted by 22, 1941, s. 2.

(1a) Except as provided in subsection (1b) of this section a person who was not employed under this section on the tenth day of December, nineteen hundred and forty-six, shall not be employed under this section.

Substituted by 46, 1947, s. 3.

(1b) Any man who, before reaching the age of sixty-five, and any woman who, before reaching the age of sixty was employed by the Government of the State may be employed under and in accordance with this section for any period not extending beyond the thirty-first day of December, nineteen hundred and fifty-two, notwithstanding that the period of twelve months after the termination of the present war may have expired before that day.

Inserted by 46, 1947, s. 3.

Public Service Act, 1936-1949.

(2) If so temporarily employed in other than the service of the South Australian Railways or other than as a teacher in the Education Department, any such person shall be selected by the Commissioner and employed by the Minister and shall be paid at the rates determined from time to time by the Commissioner as applicable to the work performed and the services of any such person may be dispensed with at any time by the Commissioner or by the permanent head.

(3) If so temporarily employed in the service of the South Australian Railways, any such person shall be employed by the South Australian Railways Commissioner and shall be paid at the rates determined from time to time by the South Australian Railways Commissioner as applicable to the work performed and the services of any such person may be dispensed with at any time by the South Australian Railways Commissioner.

(4) If so temporarily employed as a teacher in the Education Department, any such person shall be employed by the Minister of Education and shall be paid at the rates determined by the Minister of Education as applicable to the work performed and the services of any such person may be dispensed with at any time by the Minister of Education or the Director of Education.

Inserted by
46, 1947, s. 3.

No such person shall be employed in any position higher than that of a temporary assistant.

(5) A person may be temporarily employed under this section during the present war and during the period of twelve months after the termination of the present war, but no longer, and shall not be so employed after attaining the age of seventy years, if a male, or sixty-five years, if a female.

(6) A person may be temporarily employed under this section notwithstanding that, at the time he is so employed, he is an officer on long leave of absence under section 75. In such a case the appointment of such person as such an officer shall be determined on his being temporarily employed under this section and the Minister shall pay to such person the balance of the salary which would be payable to him during the currency of the long leave of absence, but for the purposes of the Superannuation Act, 1926-1940, and the Public Service Superannuation Fund Acts, 1902 and 1919, such person shall not be deemed to have retired from the employ of the Government until the expiry of the period during which, but for this subsection, the long leave of absence would have continued.

(7) Every person temporarily employed under this section shall be entitled to leave of absence for recreation or sickness as provided by section 74 or by any regulation under this or any

other Act, but shall not by virtue of such temporary employment be entitled to any of the benefits or privileges of an officer under section 75.

(8) Every person temporarily employed under this section shall during such temporary employment continue to be entitled to receive payment of any pension on retirement to which he may be entitled under the Superannuation Act, 1926-1940, or the Public Service Superannuation Fund Acts, 1902 and 1919.

(9) In this section "the present war" means the war in which His Majesty is engaged and which commenced on the third day of September, nineteen hundred and thirty-nine; and for the purposes of this section the present war shall be deemed to continue until the day on which a proclamation is issued by the Governor-General declaring that that war has ceased.

49b. The powers granted by section 49a of this Act shall not be used so as to prevent or delay the making of permanent appointments to vacancies occurring in offices and positions under the Government of the State.

Filling of vacancies.
Inserted by
46, 1947, s. 4.

50. (1) Notwithstanding anything contained in this Act, the Governor may appoint to any office in the public service any person who has been on active service and who has been temporarily employed for a period of not less than six months in any department of the public service subject to the following conditions:—

Returned soldiers temporarily employed may be appointed to permanent offices in public service.
1885, 1919,
S. 11.

(a) That the permanent head of the department certifies that such person is of good character and satisfactorily performs his duties; and

(b) That the Commissioner is satisfied that such person is competent to perform the duties of such office.

(2) The provisions of this Act as to age at the time of appointment, and as to examinations for appointment, shall not apply to persons appointed under this section, nor shall the provisions as to probation apply except in cases where the Governor directs that such provisions shall apply.

(3) In this section "active service" means service outside Australia or in an area approved by the Governor as a "combat area", as a full-time paid member of a naval, military or air force of the Commonwealth, or of any country under the dominion of His Majesty, during any war in which the Commonwealth was engaged.

Substituted by
30, 1946, s. 7.

Alterations of Staff.

Power to create or abolish offices.
1259, 1916,
s. 47,
1716, 1925,
s. 16.

51. The Governor may, on the recommendation of the board—

- (a) create a new office in any department :
- (b) abolish any office in any department.

How vacancies to be filled by appointment of officers in the service.

1259, 1916,
s. 48,
1716, 1925,
s. 18.

Amended by
2377, 1937,
s. 5.

52. (1) Whenever a vacancy occurs in any office, if it is expedient to fill such vacancy, the Commissioner may recommend any person in the employ of the Government of the State for appointment to such vacancy, regard being had to the relative efficiency or, in the event of equality of efficiency of two or more applicants for the vacancy to the relative seniority of those applicants.

(2) "Efficiency" in this section means special qualifications and aptitude for the discharge of the duties of the office to be filled, together with merit and good and diligent conduct.

(3) Any recommendation made in pursuance of subsection (1) of this section shall be notified in the prescribed manner, and shall be subject to the right of appeal to the board.

(4) An appeal under this section shall be made in such manner and within such time as are prescribed, and may be made by any officer who at the time immediately prior to the making of the recommendation was senior in salary or length of service to the person recommended and who considers that he is more entitled to promotion to the vacant office than the person recommended on the ground of superior qualifications under subsection (1) hereof.

(5) An appeal under this section shall be considered, as prescribed, by the board in conference with the permanent head or a representative of the permanent head of the department in which the vacancy occurred, and with the appellant or, if he so desires, with the General Secretary of the Association, and after the conference the board shall determine the appeal.

(6) Where an appeal is upheld by the board it shall so inform the Commissioner, who shall thereupon recommend the appellant officer for appointment to the vacant position and cancel the provisional appointment.

(7) Where an appeal is disallowed in pursuance of this section, or no appeal is lodged within the prescribed time, the original recommendation shall be confirmed.

(8) The recommendation of the Commissioner shall be forwarded to the Governor, who may, upon receipt thereof, appoint a person in the employ of the Government to fill the vacancy.

(9) The provisions of this section shall apply in every case where a new office is created by the Governor, and it is proposed

Amended by
2377, 1937,
s. 5.

Amended by
2377, 1937,
s. 5.

to fill such office by the appointment thereto of some person in the employ of the Government, in the same way as they apply to the filling of a vacancy in an existing office.

(10) Nothing in this section shall be construed as derogating from the power conferred by section 40.

vt. 12 13 14 add see pg. 1950 act.
52a. (1) In this section the expressions "Australian seaman" and "member of a fighting force" have the meanings assigned to them in the War Service (Preference in Employment) Act, 1943.

Appointments of returned soldiers.
 Inserted by 30, 1946, s. 8.

(2) Whenever a member of a fighting force or an Australian seaman as well as other persons are applicants for an office, the Commissioner shall not recommend a person other than a member of a fighting force or an Australian seaman for appointment to that office, unless the board has certified that in its opinion reasonable and substantial cause exists for not appointing a member of a fighting force or an Australian seaman.

(3) In deciding whether to give a certificate under this section the board shall take into account the matters specified in subsection (2) of section 3 of the War Service (Preference in Employment) Act, 1943.

53. Any officer may decline an offer of promotion or appointment without prejudice to his right to future promotion or appointment.

Right of officers to decline promotion.
 1259, 1916, s. 50.

54. No officer shall refuse compliance with an order of the Governor, directing his removal from one office to another, at his existing salary, in any part of the State. Disregard of or disobedience to any such order shall be deemed to be a breach of this section.

Officer may not refuse to remove to another office.
 1259, 1916, s. 51.

55. When it appears to the Minister or the permanent head of any department necessary or expedient for the more economic, efficient, or convenient working of such department, or any branch thereof, that any particular disposition of officers and re-arrangement of work should be effected, the matter shall be referred to the Commissioner for consideration and report: Provided that nothing in this Act shall be construed as restricting the ordinary and necessary departmental authority of such Minister or permanent head with respect to the direction and control of officers and work.

Re-arrangement of officers and work.
 1259, 1916, s. 52.
 1716, 1925, s. 20.
 Amended by 39, 1948, s. 9.

56. If at any time the board finds that a greater number of officers is employed in any department or branch of a department than is necessary for the efficient working of that department or branch, any officer whom the board finds is in excess may be transferred by the Commissioner to such other position of equal classification and salary in the public

Transfer or retirement when excessive number of officers employed.
 1259, 1916, s. 21.
 1716, 1925 s. 9.

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service as the officer is competent to fill, and if no such position is available the officer may be so transferred to a position of lower classification and salary. If no position is available for the officer, the Governor may, upon the recommendation of the Commissioner, call upon such officer to retire from the public service; and if he does not retire he may be dismissed from the public service.

The Retiring Age.

57. (1) Every officer shall retire on attaining the age of sixty-five years in the case of a male officer and sixty years in the case of a female officer: Provided that—

- i. the Governor may, from time to time, direct that any officer competent and willing to do so shall remain in the public service after attaining the age of sixty-five years of age in the case of a male officer or sixty years in the case of a female officer for any period fixed by the Governor and not extending beyond the seventieth birthday of any such male officer or the sixty-fifth birthday of any such female officer:

Provided that no direction shall be given under the foregoing power as a result of which the service of any officer is extended beyond the thirty-first day of December, nineteen hundred and thirty-eight, and no such direction shall be given after the thirty-first day of December, nineteen hundred and thirty-eight, except upon the recommendation of the board:

- ii. if before the retirement of any officer there is power to grant him leave of absence under section 75 (except sick leave), or the whole or any portion of the period of such leave already granted to him has not expired, he shall, for the purposes only of that section, be deemed to be still in the public service; but his successor may, nevertheless, be appointed.

(2) Notwithstanding the provisions of any Act as to the tenure of office of any officers appointed thereunder this section shall apply to all persons in the employ of the Government of the State, except the Judges of the Supreme Court, the Judge in Insolvency, the President of the Industrial Court, and the Clerks of the Legislative Council and the House of Assembly.

57a. Where any Act provides that any office, to which appointments may be made by the Governor, is to be held for a fixed term of years, and the Governor desires to appoint to any such office a person who will attain the age of sixty-five years before the expiration of the fixed term, the Governor may, notwithstanding any enactment to the contrary, appoint

Retirement of officers.

1259, 1916,
s. 70.
2136, 1933,
s. 6.

Appointments for less than term fixed by Statutes.

Inserted by 2377, 1937,
s. 6.

that person to the office for any period shorter than the fixed term, but not extending beyond the time when the person so appointed attains the age of sixty-five years or any later time to which the Governor directs that his service shall be extended under proviso I. to subsection (1) of section 57 of this Act,

Dismissal and Disrating of Officers.

58. If any officer employed, otherwise than temporarily, in the public service is guilty of a breach of any provision of this Act, or—

Offences by officers.
1259, 1916,
s. 53.

- I. disobeys, disregards, or makes wilful default in carrying out any lawful order made or given by any person having authority to give such order, or by word or conduct displays insubordination ; or
- II. is negligent, careless, or indolent in the discharge of his duties ; or
- III. is inefficient or incompetent for the discharge of his duties, his inefficiency or incompetency arising from causes within his own control ; or
- IV. uses intoxicating beverages or drugs to excess ; or
- v. conducts himself in a disgraceful, improper, or unbecoming manner either in the discharge of his duties or in public ; or
- VI. otherwise than in the discharge of his duties, directly or indirectly discloses information acquired in the course of his duties except by the direction or with the permission of the Minister ; or
- VII. without the permission of the Minister, makes any communication or contribution, directly or indirectly, and whether anonymously or otherwise, to any newspaper or any publication of a like nature on any matter affecting the public service or any department, or the business or the officers of the public service or of any department, or on his own office or his own acts or duties as an officer,

Cf. U.K.
1 & 2 Geo. 5
c. 28 ;
10 & 11
Geo. 5 c. 75.

he shall be guilty of an offence, and shall be liable to such punishment as may be determined under section 59.

59. If any officer (not being a permanent head) is charged with the commission of any such offence as mentioned in section 58, he may be dealt with in the following manner :—

Investigation of and punishment for offences.
1259, 1916,
s. 54.
1385, 1919,
ss. 5 and 10.

- s. 58. HUNKIN v. SIEBERT (1934) S.A.S.R. 347; affirmed (on other grounds) by HUNKIN v. SIEBERT (1934) 57 C.L.R. 538; 8 A.L.J. 273. Section 58 does not apply where a felony is committed by an officer of the public service.
- ss. 58, 59. HUNKIN v. SIEBERT (1934) 51 C.L.R. 538; 8 A.L.J. 273; affirming HUNKIN v. SIEBERT (1934) S.A.S.R. 347. Sections 58 and 59 define exhaustively the occasions and mode of exercise of the Crown's power to suspend public servants. A public servant is entitled to salary during suspension.

- (a) He may be temporarily suspended by the permanent head, or, in cases of emergency, by any officer prescribed as having power to suspend officers in the office or place in which the officer charged is employed. If he is suspended otherwise than by the permanent head, the suspension shall be reported forthwith to the permanent head :
- (b) The permanent head, if satisfied that the charge is not of such a serious nature as to require a suspension, may permit the officer to continue in the performance of his duties pending the determination of the charge :
- (c) The permanent head or other suspending officer shall forthwith after suspension furnish the suspended officer with a statement in writing of the charge on which he is suspended, and require him forthwith to state in writing whether he admits or denies the truth of the charge, and to give any explanation in writing which he desires to furnish as to such charge, for consideration :
- (d) After consideration of the charge and the explanation in writing (if any) furnished by the suspended officer, and after such (if any) further investigation as he deems necessary, the permanent head—
- I. if he is of opinion that the alleged offence has not been committed, shall forthwith remove the suspension :
 - II. if he is of opinion that the alleged offence has been committed, but is not of a serious nature, may reprimand or caution the suspended officer and remove the suspension :
Provided that if the suspended officer is dissatisfied with any action of the permanent head under this subdivision he may, within seven days after such action has been taken, appeal in writing to the Commissioner stating the grounds of his dissatisfaction, and the Commissioner shall thereupon inquire into and consider the appeal and the grounds thereof and the charge, and shall give such decision as he deems just concerning the charge, and the decision of the Commissioner shall be final :

III. if he is of opinion that the alleged offence has been committed and is of a serious nature, shall forthwith refer the charge to the Commissioner, and the Commissioner shall thereupon, if he is of opinion that the charge is not of so serious a nature that an investigation thereof should be made by a board of inquiry, inquire into and consider the charge and shall give such decision as he deems just concerning it: Provided that if the suspended officer is dissatisfied with any action or decision of the Commissioner under this subdivision, he may, within seven days after such action has been taken or such decision has been given, appeal in writing to the board of inquiry hereinafter provided for, stating the ground of his dissatisfaction, and the said board shall thereupon inquire into and consider the appeal and the grounds thereof and the charge and shall give such decision as it deems just thereon, and the decision of the board shall be final:

(e) If the Commissioner is of opinion that such charge is of so serious a nature that an investigation thereof should be made by a board of inquiry, he shall forthwith refer the charge to a board of inquiry. The board of inquiry shall consist of—

- (1) a judge of the Supreme Court, or a special magistrate, appointed by the Governor for the purpose of the inquiry, who shall be the chairman;
- (2) a member (not being a member of the legal profession), appointed by the Commissioner for the purpose of the inquiry, who shall be an officer of the public service, but not of the department in which the suspended officer is employed; and
- (3) an officer of the division to which the suspended officer belongs, elected by the officers of such division in such manner as is prescribed by regulation, who shall hold office for such term, and subject to such conditions, as are so prescribed.

If the officer so elected is himself the suspended officer or is otherwise personally interested in the

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inquiry, or owing to illness or absence from the State or for any other reason is incapable of acting, the board of inquiry shall consist of the members mentioned in subdivisions (1) and (2) hereof, and the officer (if any) of the division to which the suspended officer belongs who at the last election of an officer of that division to serve on the board received the next highest number of votes to the officer elected, or if such officer is also personally interested in such inquiry or incapable of acting for any such reason as aforesaid, or there is no such officer, such other officer belonging to the said division as is appointed by the Governor on the recommendation of the Commissioner :

(f) If any charge is admitted, or is found by the Commissioner or the board of inquiry to be proved, the Minister may—

- I. deprive the suspended officer of his annual or other leave of absence during, or in respect of a specified period ; or
- II. further suspend such officer for such period as he thinks fit ; or
- III. according to the gravity of the offence, reduce such officer to a lower class or grade, or subdivision of a class or grade, with a corresponding reduction in salary or other remuneration, or transfer him to some other office, or both so reduce and transfer him ; or
- IV. dismiss such officer from the public service, or require him to resign within a specified time (in which case he may be dismissed by the Minister unless he so resigns) : Provided that, in the case of any office as to which it is so prescribed by regulation, the power to dismiss or call upon any officer to resign shall not be exercised except with the previous approval of the Governor ;

and the suspended officer, however dealt with under this paragraph, shall not, unless otherwise ordered by the Governor, be entitled to any salary or wages in respect of the period of his suspension :

(g) If no charge is admitted, and the Commissioner or the board of inquiry report that no charge has been proved, the Minister upon his being supplied with

the report of the Commissioner or the board, shall remove the suspension and the suspended officer shall be reinstated in his office without any loss of salary or wages in respect of the period of his suspension.

60. When the permanent head of a department is charged with any of the offences mentioned in section 58 the Minister may suspend him and, in such case, the provisions of paragraphs (c) to (g) inclusive of section 59, *mutatis mutandis*, shall apply, the word "Minister" being read instead of the words "permanent head" wherever they occur in those paragraphs, and the word "Governor" being read instead of the word "Minister" wherever it so occurs.

Offences by permanent heads.
1259, 1916,
s. 55.

61. The following provisions shall apply to and in respect of inquiries by the Commissioner or the board of inquiry under section 59 or 60 :—

Provisions as to inquiries by the Commissioner or the board of inquiry.

- (a) The officer against whom a charge is made may, with the approval in writing of the Minister, be represented upon the hearing by counsel or agent, who may examine witnesses and address the Commissioner or the board of inquiry on his behalf :
- (b) The Commissioner or the board of inquiry shall inquire as to the truth of the charges without regard to technicalities or legal forms, and shall direct himself or itself by the best evidence he or it can procure, or that is laid before him or it, whether it is such evidence or is tendered in such manner, as the law would require or admit in other cases, or not :
- (c) The inquiry shall, if the Commissioner or the board of inquiry so directs, be held in private :
- (d) If the Commissioner or the board of inquiry finds that a charge is not proved, he or it may recommend that the reasonable expenses, or any part thereof, incurred by the officer in meeting such charge, or if he has been suspended, any loss of salary incurred by him in consequence of such suspension (the amount recommended being specified in the recommendation), be paid by the Government. Every such recommendation shall be considered by the Governor :
- (e) A copy of any charge and of all documents intended to be used against the officer at the inquiry shall,

1259, 1916,
s. 56,
1385, 1919,
s. 6.

where practicable, be furnished to the officer at least seven days before the hearing of the inquiry is commenced.

Criminal offences by officers.
Substituted by 30, 1946, s. 9.

62. (1) If the Commissioner believes on reasonable grounds that an officer has committed an offence punishable by imprisonment—

- (a) the officer may (subject to paragraph (b) of this section) be dealt with under sections 59, 60, and 61 of this Act ;
- (b) if proceedings are taken in a court against the officer for the offence no proceedings for the offence shall be instituted or continued before the Commissioner or a board of inquiry until the proceedings in the court are disposed of ;
- (c) if in the proceedings in the court the defendant pleads guilty or is found guilty, action may be taken under section 99 or 60 of this Act, as if the officer had been found guilty of the offence by a board of inquiry.

(2) For the purposes of this section the expression “ offence punishable by imprisonment ” shall mean an offence punishable by imprisonment only, or by imprisonment and fine, or by imprisonment or fine at the option of the court.

Dismissal on bankruptcy.
1259, 1916, s. 58.

63. If any officer is adjudicated bankrupt, or makes a composition for the benefit of his creditors for less than twenty shillings in the pound, he shall report the matter at once to the Commissioner, and unless (whether he so reports or not) he satisfies the Commissioner that he has not been guilty of fraud, dishonourable conduct, or extravagance, such officer may, by order of the Governor, be dismissed from the public service, or be reduced to a lower class or grade, or be reprimanded or otherwise punished.

Services of incapable officer may be dispensed with.
1259, 1916, s. 59.
1385, 1919, s. 7.

64. (1) If an officer appears to the Commissioner, after a report from the permanent head or otherwise, to be unfit to discharge or incapable of discharging the duties of his office efficiently, the Minister may, on the recommendation of the Commissioner, call upon such officer to retire from the public service within the time specified by the Minister, or transfer him to some other office in a department under the Minister ; or such officer may be transferred by the Governor to an office in any department : Provided that in the case of any office as to which it is so prescribed by regulation, the power to call upon an officer to retire from the public service shall not be exercised except with the previous approval of the Governor.

(2) If any officer so called upon to retire does not retire within the time specified as aforesaid he may be dismissed from the public service by the Minister.

65. Nothing in this Act shall be construed or held to abrogate or restrict the right or power of the Crown, under any other Act or at common law, to dispense with the services of any person employed in the public service.

Saving of right of Crown to dispense with service of officers.
1259, 1916, s. 60.

66. (1) Nothing in this Act shall affect the mode of appointing and dismissing the associates to the judges of the Supreme Court which existed at the time of the passing of this Act.

Saving of power of Chief Justice to appoint and dismiss associates.
1259, 1916, s. 61.
Cf. U.K. 15 & 16 Geo. 5 c. 49, s. 114.

(2) Subject to subsection (1) hereof, all the provisions of this Act shall apply to such associates in the same manner as if they had been appointed by the Governor under section 40 upon the recommendation of the Commissioner.

PART V.

PART V.

RIGHTS, PRIVILEGES, POWERS, AND DUTIES OF OFFICERS OF THE PUBLIC SERVICE.

67. Where in or by any Act, order-in-Council, proclamation, rule, regulation, by-law, contract, or agreement any duty, obligation, right, or power is imposed or conferred upon any officer in His Majesty's service, whether in the public service as defined by sections 4 and 6 or not (other than a Minister of the Crown or a judicial officer) in his capacity as such officer, such duty, obligation, right, or power may, during his temporary absence or incapacity, be performed or exercised by any officer directed by the Governor to perform and exercise the duties, obligations, rights, and powers of the first-mentioned officer during such absence or incapacity, in the same manner and to the same extent in all respects as the same might have been respectively performed or exercised by such first-mentioned officer; and everything done under the provisions of this section shall be as good and effectual for all purposes and against all persons whatsoever as if done by such first-mentioned officer.

Performance of duties and exercise of powers of officer in his absence.
1259, 1916, s. 62.

68. The permanent head of a department shall be held responsible for its discipline, general working, and efficiency, and shall advise the Minister controlling such department in matters relating thereto, and shall, in addition to the duties of his office, perform such other duties as such permanent head as the Governor directs.

Responsibility of permanent heads.
1259, 1916, s. 18.

s. 65. HUNKIN v. SIEBERT (1934) 51 C.L.R. 538; 8 A.L.J. 273; affirming HUNKIN v. SIEBERT (1934) S.A.S.R. 347. Section 65 does not preserve the prerogative power to suspend. The power to suspend is now restricted to the occasions and modes of exercise prescribed in the Public Service Act, 1936.

PART V.

Grievances.
1259, 1916,
s. 64.
1716, 1925,
s. 21.

Amended by
89, 1948, 2. 10.

69. (1) Any person employed under this Act having any grievance relating to his employment, or affected by any report or recommendation made by the Commissioner under this Act may, in such manner and within such time as are prescribed, appeal to the Commissioner to consider or reconsider the matter. The Commissioner shall thereupon consider the appeal and advise the appellant of his decision. If the appellant is not satisfied with the decision of the Commissioner, he may, within fourteen days of the receipt of notification of that decision, appeal to the board.

(2) An appeal under this section shall be considered as prescribed by the board in conference with the permanent head or a representative of the permanent head of the department to which the appellant belongs, and with the appellant, or, if he so desires, with the general secretary of the Association, and after the conference the board shall transmit the evidence taken, together with the recommendation thereon, to the Commissioner, who shall thereupon confirm the same, and so determine the appeal.

Officers
contesting
elections for
Parliament.
1668, 1925,
s. 3.

70. (1) If any officer desires to offer himself for election by any constituency as a member of the Parliament of the State or of the Commonwealth, he shall make application to the Governor that the provisions of this section shall apply to him. The Governor may, in any case where application is made as aforesaid, order that the provisions of this section shall apply to the officer, and thereupon the officer shall resign his office in the public service.

Inserted by
2377, 1937,
s. 7.

(1a) Upon or after the resignation of an officer under subsection (1) of this section, the Governor may pay to him the whole or any part of the salary which would have been payable to him during the currency of any leave of absence which, had he not resigned, could have been granted to him under section 75 of this Act at the time of his resignation. This subsection shall apply in relation to any officer who has resigned or resigns after the first day of October, nineteen hundred and thirty-seven.

(2) If the officer is not so elected he shall, upon application, if the period of his absence from the public service for the purposes of the election has not exceeded two months, be re-appointed to the office in the public service from which he resigned pursuant to subsection (1) of this section.

(3) Notwithstanding anything contained in this Act the re-appointment shall be made without examination or probation.

(4) The service of any such officer shall not be deemed not to be continuous by reason of any such absence, but he shall not be entitled to be paid any sum by way of salary or allowance in respect of the period of his absence.

(5) The said period of absence shall not be taken into account for the purposes of computing the length of the continuous service of the officer for the purposes of section 75 of this Act.

(6) For the purposes of this section all persons in the employ of the Government of the State shall be deemed to be officers in the public service, and the public service shall, for the said purposes, be deemed to comprise the said persons.

71. No officer shall be deemed to be entitled to any compensation by reason of any reduction of his salary or other remuneration, or any alteration of the limits of salary of his class or grade, or any alteration in the scale of his allowances or expenses, made by or under the Acts repealed by this Act or by or under this Act, or any Act amending this Act or by regulation.

No compensation in consequence of operation of Act.

1259, 1916, s. 73.

72. (1) Except pursuant to such arrangement as authorized by section 46 or 47, or with the express permission of the Minister, given upon the recommendation of the Commissioner, which permission may at any time be withdrawn, no officer shall—

Officer not to engage in duties unconnected with his office.

1259, 1916, s. 74.
1385, 1919, s. 9.

- I. accept or continue to hold an office in or under the Government of the Commonwealth :
- II. accept or continue to hold or discharge the duties of or be employed in a paid office in connection with any banking, insurance, mining, mercantile, or other commercial business, whether the same is carried on by any corporation, company, firm, or individual :
- III. engage in or undertake any such business, whether as principal or agent :
- IV. engage or continue in the private practice of any profession, trade, or business :
- V. accept or engage in any paid employment other than in connection with the duties of his office or offices in the public service.

(2) Nothing herein contained shall be deemed to prevent an officer from becoming a member or shareholder of any incorporated company or of any company or society of persons registered under any Act in this State or elsewhere.

73. (1) No action or suit shall be brought or maintained against any person or body for any misfeasance or non-feasance in connection with the carrying out, or attempted carrying out, of any provision of this Act.

No action to lie in respect of discharge of the Act.

1259, 1916, s. 66.
1716, 1925, s. 23.

(2) Except so far as expressly provided by this Act, no action, suit, or other proceeding shall lie, nor shall any costs be payable, in respect of any proceeding before the board or any member thereof, or before the Commissioner or any person to whom any power or function of the board or the Commissioner is delegated under this Act.

Provisions as to Leave of Absence.

74. (1) The Commissioner may at such times as he deems convenient grant to any officer who has been not less than one year continuously in the public service, leave of absence for recreation not exceeding three weeks or, in the case of an officer whose ordinary duties require him to work on more than six days in the week, four weeks, for each financial year during which the officer has been in the public service, and a proportionate period of such leave for any part of a financial year during which the officer has been in the public service: Provided that the Commissioner may, if he thinks fit, permit such leave to accumulate to an extent not exceeding six weeks:

Provided also that where the ordinary duties of an employee require him to work on more than six days in the week and—

- i. the employee is paid at penalty rates for time worked in excess of six days a week; or
- ii. the fact that the ordinary duties of the employee require him to work on more than six days a week was taken into account in fixing the salary of the employee,

work done by that employee on days in excess of six days a week shall not be taken into account in reckoning the period of leave under this section, unless the Commissioner by reason of special circumstances otherwise determines.

Where any person employed by the Government of the State, otherwise than as an officer of the public service, is appointed to an office in the public service, his service under the Government before the appointment, if continuous with his service as an officer of the public service, shall be counted as service in the public service for purposes of this subsection.

(2) In the case of illness, or other pressing necessity, the Minister may grant to any officer leave of absence not exceeding sixteen days on full pay during any one year: Provided that, subject to such conditions as are prescribed, the Minister may permit such leave to accumulate to an extent not exceeding sixteen weeks in the case of officers whose continuous service does not exceed ten years, and not exceeding thirty-two weeks in the case of officers whose continuous service exceeds ten years:

Leave of absence for recreation and sickness.

1259, 1916, s. 67.

1716, 1925, s. 24.

2136, 1933, s. 5.

Amended by 28, 1942, s. 4. and 30, 1946, s. 10.

Added by 28, 1942, s. 4.

Substituted by 30, 1946, s. 10.

Provided that, where any person employed by the Government of the State, otherwise than as an officer of the public service, is appointed to an office in the public service, his service under the Government before the appointment, if continuous with his service as an officer of the public service shall, if the Governor so directs, be counted as continuous service in the public service for purposes of this subsection. When such a direction is given any leave of absence granted to the officer on account of ill-health or pressing necessity while he was an employee of the Government of the State and before his appointment as an officer shall for the purpose of computing the leave of absence which may be granted to him under this subsection, be deemed to have been granted to him under this subsection.

Substituted by
30, 1946, s. 10.

75. (1) Subject to this section, the Governor may grant to any officer who has been continuously in the public service for not less than ten years, the following leave of absence :—

Long leave
of absence.
Substituted
by 28, 1942,
s. 5.

- (a) in respect of the first ten years of service, not more than ninety days leave on full salary or one hundred and eighty days on half salary :
- (b) in respect of each complete year of service in excess of ten, not more than nine days leave on full pay, or eighteen days leave on half pay.

(1a) Where an officer entered the public service before the ninth day of December, nineteen hundred and five, or was on or before the first day of November, nineteen hundred and thirty-eight, appointed to any of the offices mentioned in the second schedule to this Act, the leave which may be granted to him under this section shall be—

Inserted by 28,
1942, s. 5.

- (a) if the officer has been continuously in the public service for at least ten years, not more than eight months leave on half salary or four months leave on full salary ; or
- (b) if the officer has been continuously in the public service for not less than twenty years, not more than eight months on full salary ;
- (c) in respect of each complete year of service in excess of twenty years not more than nine days leave on full pay, or eighteen days leave on half pay.

Inserted by
39, 1948, s. 11.

s. 75. (3) and (4) Pursuant to the Amendments Incorporation Act, 1937, the following changes have been made in section 75 (3) and (4):—(a) The expression "any provision of the South Australian Railways Commissioner's Act, 1936," has been substituted for "section 4 or any other provision of The South Australian Railways Commissioners Act, 1887". (b) The expression "section 132 of the South Australian Railways Commissioner's Act, 1936," has been substituted for "section 29 of The South Australian Railways Commissioners Act, 1887. "

PART V.

Subsection (1b) repealed by 12, 1945, s. 4.

* * * * *

Substituted by 39, 1948, s. 11.

(1c) An officer shall not be entitled under this section to more than three hundred and sixty-five days' leave on full salary, or the equivalent of such leave.

For the purposes of this subsection two days' leave on half salary shall be deemed to be equal to one day's leave on full salary.

Inserted by 28, 1942, s. 5.

(1d) An officer shall not be entitled to take leave of absence in respect of any service in excess of ten years, except at the following times—

- (a) immediately before the officer resigns or retires from the public service ; or
- (b) after the officer has completed fifteen years of continuous service ; or
- (c) immediately after the officer has taken any leave of absence which he has been granted in respect of the first ten years of his continuous service ; or
- (d) when, in the Governor's opinion, the officer requires the leave because of invalidity.

(2) The Governor may, in case of illness or other pressing necessity, grant such extension as he thinks fit of the leave of absence granted under this section, on such terms as he thinks fit.

Subsection (3) repealed by 28, 1942, s. 5.

* * * * *

(4) The power to make regulations conferred by section 132 of the South Australian Railways Commissioner's Act, 1936, shall not extend to regulations as to the granting to employees of such leave of absence as is provided for by this section.

(5) For the purposes of this section, all persons in the employ of the Government of the State (except any officers or class of officers or the officers of any department, to whom or to which it is provided by any Act that this section shall not apply) shall be deemed to be officers in the public service, and shall be entitled to all the privileges conferred by this section as if they had been officers in the public service from the time of the commencement of their employment by the Government of the State.

(6) For the purposes of this section, the length of service of an officer shall be computed from the commencement of his continuous service or probationary appointment, and service shall be deemed "continuous" notwithstanding absence on any leave with or without pay.

s 75 (1a) and (1c) The amendments made to these subsections by Act 39, 1948, apply only to leave which commenced after 16th December, 1948.

(6a) Where a person who has retired on a pension under section 40 or section 47 of the Superannuation Act, 1926, is subsequently re-employed in the public service, his continuous service before the period during which he was in receipt of pension and his continuous service after that period shall, in determining the length of his service for purposes of this section, be taken into account as if all such service were continuous ; but the period during which he was in receipt of pension shall not be taken into account.

Inserted by
2377, 1937,
s. 8.

This subsection applies in relation to all long service leave granted after the enactment thereof, notwithstanding that the retirement on pension, the re-employment, or the service in respect of which the leave is granted, or any of them, may have taken place before the enactment of this subsection.

(6b) Where a person—

Inserted by
28, 1942, s. 5.

- (a) being temporarily employed by the Government of the State leaves that employment for the purpose of becoming a member of a fighting force ; and
- (b) serves as a member of a fighting force ; and
- (c) after the termination of that service is again employed by the Government of the State,

the period between the time when he left his employment and the time when he was re-employed shall be regarded as service under the Government of the State for the purpose of this section, unless the Governor, upon the report of the Commissioner, is satisfied that during a substantial part of that period the said person was not serving as a member of a fighting force.

In this subsection “ fighting force ” means a naval, military or air force of the Commonwealth or any other country under the dominion of His Majesty.

(7) If an officer pursuant to any arrangement operating in his department does not work on every working day, but works at least three days in every week, or six days in every fortnight, his service shall nevertheless be deemed to be continuous ; but in such a case in computing his service for the purpose of leave under this section he shall be credited with one week's service for every six days on which he actually works, although the said days may be spread over two or more weeks. Saturday shall be regarded as a full day for the purpose of computing the said leave.

This subsection applies to any employee who has worked part time under any such arrangement since the nineteenth day of May, nineteen hundred and thirty.

(8) If any person to whom there is power to grant leave of absence under this section dies—

(a) before the commencement or during the currency of any leave so granted ; or

(b) before such leave has been granted,

the Governor may, in respect of the period of the leave so granted or the unexpired portion thereof, or in respect of the period of the leave which might have been granted (according to the circumstances of the case), pay to the dependants (if any) of such person the amounts of salary which would have been payable to such person himself if he had survived.

Inserted by
30, 1946, s. 11.

If the said person died without leaving any dependants, the Governor may pay the said amounts of salary to his personal representatives.

Any question as to—

i. whether there are any dependants in any particular case, or who are the dependants :

ii. what dependant or dependants shall be entitled to the benefit of payments made under this subsection, and in what proportions if more than one dependant,

shall be settled by the Governor, as he deems proper.

In this subsection the term—

“dependants” means those members of the family of a person who were wholly or in part dependant upon his earnings at the time of his death :

“members of the family” includes wife or husband, parents, grand-parents, step-parents, children, grand-children, step-children, brothers, sisters, half-brothers, and half-sisters.

(9) The provisions of section 72 shall not apply to any officer to whom long leave of absence has been granted under this section and who is on long leave of absence, if the Governor is satisfied that that officer intends upon the expiry of his long leave of absence to retire from the public service.

(10) Where leave is granted to any officer under this section, the Minister may, at the commencement of such leave, pay to that officer the total salary which would be payable to him during the currency of the leave.

(11) If at the time any officer commences long leave of absence he has attained the age of retirement within the meaning of the Superannuation Act, 1926, or if during the time he is on long leave of absence, the officer attains such age of retirement,

Inserted by
2423, 1938,
s. 3

the officer, for the purpose of determining when he shall be entitled to any pension on retirement under the said Act, shall not, for the purposes of the said Act, be deemed to have retired until at the expiry of his long leave of absence.

75a. (1) Subject to this section the Minister may, if he is of opinion that special circumstances justify him in so doing, and if the Commissioner so recommends, grant to any officer of the public service special leave of absence.

Special Leave.
Inserted by
2377, 1937,
s. 9.

(2) The leave may be granted without pay or on reduced pay or on full pay and on any terms which the Minister thinks fit; but where the leave is granted on pay it shall not exceed sixteen days in any year on full pay or a proportionately longer period on reduced pay.

(3) Where any special leave is granted without pay, the Minister may order that the period of such leave or any portion thereof shall be counted as service for the purpose of determining the date of any annual increment or increase in the officer's salary.

(4) Nothing in this section shall be held to restrict any power of the Governor to grant special leave of absence.

76. (1) Where a person becomes an officer of the public service of the State and his service in such public service is continuous with service in the public service of the Commonwealth or of any other State, the continuous service of that person in the public service of the Commonwealth or of the other State shall be for the purposes of leave of absence under sections 74 and 75 of this Act reckoned as service in the public service of the State.

Rights of
officers trans-
ferred from
Common-
wealth public
service.
1259, 1916,
s. 47a.
1716, 1925,
s. 17.
Amended by
30, 1946, s. 12.

(2) This section shall be deemed to have commenced on the first day of January, nineteen hundred and twenty-four.

77. (1) Nothing in this Act shall be construed as affecting the provisions of the Holidays Act, 1910: Provided that the Governor may, by proclamation, declare that a day specified therein shall be a holiday with regard to any department, either in addition to or in substitution for any public holiday, in which case the offices connected with such department shall be closed on that day: Provided nevertheless that nothing in this Act or such proclamation shall prevent the Minister from requiring the services of any officer of such department during such day in case of emergency.

Public
holidays.
1259, 1916,
s. 69.

* * * * *

Subsection (2)
repealed by 30,
1946, s. 13.

PART VI.

PART VI.

MISCELLANEOUS.

Notices, etc.,
to be published in the
Gazette.

1259, 1916,
s. 71.

78. Notice of every appointment, transfer, retirement, vacation of office, or dismissal of an officer, and of every order-in-Council or proclamation under this Act, shall be published in the *Gazette* within twenty-eight days after the same is made or occurs, and such notice shall be conclusive evidence of such appointment, transfer, retirement, vacation of office, dismissal, or order-in-Council or proclamation.

Notice to
officer whose
address is
unknown.

1259, 1916,
s. 72.

79. (1) In the event of the address for the time being of an officer being unknown to the board, Commissioner, permanent head, or Minister (as the case may be) all notices, orders, or communications to or for such officer may be posted to the last known address of such officer, and a notification of the fact of such posting shall be published in the *Gazette*.

(2) Compliance with subsection (1) of this section shall be deemed a sufficient service of such notice, order, or communication on such officer.

(3) In case any such notice, order, or communication relates to any charge made against an officer, then, if within a time specified in such notice, order, or communication no answer is received by the authority asking whether the officer admits the truth of such charge, he shall be deemed to deny the truth of such charge, and such charge may be inquired into and dealt with in the absence of such officer.

Regulations.

1259, 1916,
s. 75.
1716, 1925,
s. 26.

80. (1) In addition to any power by this Act conferred on the Governor to make regulations as to any matter (which power shall in every case be implied for the purposes of any section in this Act in which regulations are referred to, or in which the word "prescribed" is used), the Governor may, on the recommendation of the board, make any regulations which may be necessary or convenient for the carrying out of any of the provisions of this Act, or for better effecting the objects of this Act, and in particular (without limiting the effect of this section) for all or any of the following purposes, namely:—

- i. for regulating the performance by the Commissioner of his duties and functions :
- ii. for regulating the appointment of officers of the public service :

- III. for the arrangement of the public service in its prescribed divisions ; for facilitating the working of the public service ; the classification of the work therein ; and the classification of officers :
- IV. for prescribing the conditions under which officers of a division may be transferred to any specified offices in another division :
- V. for regulating examinations (whether entrance examinations or not), for fixing the fees payable for entrance examinations, and for registering in the order of merit the names of all persons who have passed the entrance examinations, and of those candidates who, having qualified at any such examination, are appointed to fill subsequent vacancies arising within a prescribed period :
- VI. for prescribing the rates of salaries or wages for women employed in the public service, and the terms upon which the service of female officers may be dispensed with upon their marriage : Provided, that nothing in any regulation shall be taken to permit the employment of any married woman except upon the certificate of the Commissioner in each case that such employment is desirable :
- VII. for regulating and determining the scales or amounts of the allowances or expenses to be made to officers for transfer or travelling, or in lieu of quarters, or for living at isolated stations, or in places where, owing to their situation, the cost of living is exceptionally high, and providing for the relief and transfer of officers employed for the prescribed period in any such locality, or for the partial reimbursement of the cost of conveyance of such officers, their wives and families, when such officers are travelling on recreation leave :
- VIII. for regulating the duties of officers and the mode in which such duties shall be performed, and for regulating the conduct of officers :
- IX. for prescribing the mode of registering applicants for temporary employment, and the mode of keeping the register, and the mode of selecting persons therefrom, and the method of dealing with or punishing persons temporarily employed, and for regulating generally the terms and conditions of any temporary employment :

Public Service Act, 1936-1949.

- x. for regulating the hours of attendance of officers, and the keeping and signing of records of attendances, or prescribing other methods of recording attendances :
- xi. for regulating the granting of leave of absence to officers :
- xii. for regulating the performance of and payment of officers for extra services :
- xiii. for regulating the payment of examiners :
- xiv. for fixing the amount and nature of the security to be given for the fidelity of officers occupying positions the nature of which, in the opinion of the Commissioner, renders it necessary for such officers to find security for their fidelity :
- xv. for fixing, subject to the provisions of this Act, the maximum or minimum age of persons who may be appointed to any particular division or class or grade, or to any particular office :
- xvi. for providing for notification to the Commissioner of every punishment inflicted on any officer by virtue of this Act, and for keeping records thereof :
- xvii. for determining the dates, times, or periods of time at or within which shall be done any things and acts required or permitted by this Act to be done, and in respect of which no dates, times, or periods of time are specifically provided :
- xviii. for notifying vacancies, and the method of applying for appointment to fill vacancies :
- xix. for prescribing the allowances to be paid to witnesses for their attendance and expenses :
- xx. for prescribing, where there is no provision in this Act, or no sufficient provision, in respect of any matter or thing necessary to give effect to this Act, in what manner and form the want or insufficiency of provision shall be met :
- xxi. for fixing penalties, not exceeding in any case twenty pounds for the breach of any regulation, and for deducting such penalties from the salaries or other remuneration of officers committing such breaches :
- xxii. for regulating all matters in connection with appeals to the board.

(2) Any regulation may be made to apply either generally or with respect to any particular case or class of cases, or any particular officer, or class, or grade of officers, or the officers in any particular place.

81. The moneys required for the purposes of this Act shall, except where express provision is made in this Act for any such moneys, be paid out of moneys provided by Parliament for such purposes.

Provision of
moneys for
purposes of the
Act.
1259, 1916,
s.76.

SCHEDULES.

THE FIRST SCHEDULE.

Sec. 5.

ACTS REPEALED.

No. and Year of Act.	Short Title of Act.
1259 of 1916	Public Service Act, 1916
1385 of 1919	Public Service Act Amendment Act, 1919
1516 of 1922	Public Service Act Amendment Act, 1922
1668 of 1925	Public Service Act Amendment Act, 1925
1716 of 1925	Public Service Act Amendment Act (No. 2), 1925
2042 of 1931	Public Service Act Amendment Act, 1931
2136 of 1933	Public Service Act Amendment Act, 1933

Sec. 75.

THE SECOND SCHEDULE.

The South Australian Railways Commissioner.
Secretary to the South Australian Railways Commissioner.
General Traffic Manager.
Chief Engineer for Railways.
Chief Mechanical Engineer.
Comptroller of Railways Accounts.
Chief Assistant Engineer.
Accountants.
Assistant Engineers.
Bookkeeper (Comptroller of Accounts Branch).
Bookkeeper (Locomotive Branch).
Chief Audit Inspector.
Chief Clerk (Railways Commissioner's Office).
Chief Clerk (General Traffic Manager's Branch).
Chief Clerk (Chief Engineer for Railways Branch).
Chief Clerk (Chief Mechanical Engineer's Branch).
Chief Clerk (Traffic Audit Office).
Collector of Accounts (Senior).
District Locomotive Superintendents.
Draughtsmen in Charge.
Goods Superintendent.
Out-door Running Superintendent.
Passenger Superintendent.
Paymaster.
Railway Electrician.
Receiver.
Resident Engineers.
Superintendent of Station Services.
Traffic Auditor.
Traffic Superintendents.
Works Manager.