

Acts reprinted pursuant to the Amendment Incorporation
Act, 1937

HEALTH ACT, 1935-1955

LANDLORD AND TENANT (Control of Rents)
ACT, 1942-1955

With notes of judicial decisions affecting sections of the reprinted Acts



HEALTH ACT, 1935-1955.

BEING

HEALTH ACT 1935, No. 2238 OF 1935 [ASSENTED TO 19TH DECEMBER, 1935.]

AS AMENDED BY

- STATUTE LAW REVISION ACT 1936, No. 2293 OF 1936
[ASSENTED TO 8TH OCTOBER, 1936.]
- HEALTH ACT AMENDMENT ACT, 1940, No. 33 OF 1940
[ASSENTED TO 21ST NOVEMBER, 1940.]
- HEALTH ACT AMENDMENT ACT, 1941, No. 35 OF 1941
[ASSENTED TO 20TH NOVEMBER, 1941.]
- HEALTH ACT AMENDMENT ACT, 1943, No. 13 OF 1943
[ASSENTED TO 9TH NOVEMBER, 1943.]
- NOXIOUS TRADES ACT, 1943, No. 34 OF 1943 [ASSENTED TO 23RD DECEMBER, 1943.]
- HEALTH ACT AMENDMENT ACT, 1947, No. 48 OF 1947
[ASSENTED TO 11TH DECEMBER, 1947.]
- HEALTH ACT AMENDMENT ACT, 1950, No. 14 OF 1950
[ASSENTED TO 2ND NOVEMBER, 1950.]
- HEALTH ACT AMENDMENT ACT (No. 2), 1950, No. 39 OF 1950
[ASSENTED TO 30TH NOVEMBER, 1950.]
- HEALTH ACT AMENDMENT ACT, 1951, No. 45 OF 1951
[ASSENTED TO 13TH DECEMBER, 1951.]
- HEALTH ACT AMENDMENT ACT, 1952, No. 15 OF 1952
[ASSENTED TO 16TH OCTOBER, 1952.]
- HEALTH ACT AMENDMENT ACT, 1953, No. 18 OF 1953
[ASSENTED TO 19TH NOVEMBER, 1953.]
- HEALTH ACT AMENDMENT ACT, 1954, No. 14 OF 1954
[ASSENTED TO 21ST OCTOBER, 1954.]
- AND
- HEALTH ACT AMENDMENT ACT, 1955, No. 27 OF 1955.
[ASSENTED TO 1ST DECEMBER, 1955.]

An Act to consolidate certain Acts relating to public health.

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 "Health Act, 1935-1955." Short title.
2. This Act is a consolidation of the Acts mentioned in the first schedule, and the said Acts are hereby repealed to the extent therein mentioned. Consolidation.

PART I.

Arrangement
of Act.Amended by
s. 14, 1954,
s. 2.

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

PART I—Preliminary.

PART II—The Central Board.

PART III—Local Boards.

PART IV—County Boards—

DIVISION I—General:

DIVISION II—The Metropolitan County Board.

PART V—Officers.

PART VI—Insanitary Conditions and their Removal.

PART VII—Reports and Inquiries.

PART VIII—Sanitation—

DIVISION I—Air:

DIVISION II—Food:

DIVISION III—Premises.

PART IX—Infectious and Notifiable Diseases.

PART IXA—Tuberculosis.

PART X—Regulations.

PART XI—Miscellaneous

Interpreta-
tion.711, 1898,
ss. 5 and 90,
2217, 1935,
s. 2.

4. In this Act, and in all proceedings thereunder, except where some other meaning is clearly intended—

“Act” includes regulations:

“Central Board” means the Central Board of Health:

“cesspool” means any receptacle for nightsoil or liquid refuse:

“district” means the area within the jurisdiction of a local board:

“drain” means a drain used solely in connection with any building or premises within the same curtilage, and “sewer” means every other drain and sewer:

Health Act, 1935-1955.

PART I.

“infectious disease” means—

- (a) any disease included in the second schedule;
and
- (b) any other disease which the Governor by proclamation declares to be an infectious disease:

Cf. U.K.
52 & 53,
Vict., c. 72,
s. 6.
Cf. U.K.,
54 & 55,
Vict., c. 76,
s. 55(6).
Cf. U.K.
26 Geo. 5 & 1,
Edw. 8, c. 50,
s. 304.

“local board” means a local board of health, and “the local board” means the local board of health of the particular district:

“metropolitan local boards” means—

- (a) the municipal councils of Adelaide, Brighton, Burnside, Campbelltown, Enfield, Glenelg, Henley and Grange, Hindmarsh, Kensington and Norwood, Marion, Mitcham, Payneham, Prospect, St. Peters, Thebarton, Port Adelaide, Unley, Walkerville, West Torrens, and Woodville;
- (b) the Garden Suburb Commissioner; and
- (c) such other local boards as the Governor by proclamation declares to be metropolitan local boards:

Substituted
by 14, 1954,
s. 3 (a).

“notifiable disease” means—

- (a) any disease included in the third schedule;
and
- (b) any other disease which the Governor by proclamation declares to be a notifiable disease:

Inserted by
14, 1954,
s. 3 (b).

* * * * *

Definition of
“offensive
trade” struck
out by 34,
1943, s. 3.

“owner” includes every person for the time being entitled, either on his own or on any account, to the receipt of any rent or profit of the premises referred to:

“public place” includes every place to which the public ordinarily have access:

“private place” means every place other than a public place:

“water supply” includes any river, stream, water-course, creek, swamp, waterhole, well, tank, or reservoir.

PART I.

Infectious diseases.
2217, 1935,
s. 3.
Cf. U.K.
26 Geo. 5 & 1,
Edw. 8, c. 49,
s. 147.
Cf. U.K.
26 Geo. 5 & 1,
Edw. 8, c. 50,
s. 305.

5. (1) The Governor may from time to time by proclamation declare any disease to be an infectious disease.

(2) The Governor may from time to time by proclamation declare that any disease (whether defined as an infectious disease by section 4 or proclaimed as such by proclamation) shall cease to be an infectious disease. Any such disease may subsequently be again proclaimed as an infectious disease.

Subsecs. (3)
and (4)
repealed by
34 1943,
s. 3.

* * * * *

Notifiable diseases.
Inserted by
14, 1954, s. 4.

5a. (1) The Governor may from time to time by proclamation declare any disease to be a notifiable disease.

(2) The Governor may from time to time by proclamation declare that any disease (whether defined as a notifiable disease by section 4 or proclaimed as such by proclamation) shall cease to be a notifiable disease. Any such disease may subsequently be again proclaimed as a notifiable disease.

Alternative procedure.
711, 1898,
s. 6.

6. In all cases where this Act, and any other Act, not hereby repealed, contain provisions for effecting the same or a similar object, but in different modes, proceedings may be had under either Act.

Other procedure not affected.
711, 1898,
s. 7.

7. Nothing in this Act shall affect any power of proceeding by indictment, complaint, or information, or take away or affect any other remedy under any other Act or otherwise.

Saving.
711, 1898,
s. 8.

8. Nothing in this Act shall affect any powers conferred upon the Commissioner of Sewers or the Central Board by the Sewerage Act, 1929, or limit the effect of any Act relating to factories or lodging-houses.

Public buildings subject to this Act.
711, 1898,
ss. 9 and 10.

9. (1) Premises owned or occupied by the Government or by public bodies shall be subject to the provisions of this Act in the same manner as if they were owned or occupied privately.

(2) The officer having the use or control of any such premises shall be liable for any breach of the provisions of this Act as if he were the actual owner or occupier of the premises.

Minister.
711, 1898,
s. 11.

10. The Chief Secretary shall be the Minister of Health.

PART II.

PART II.

THE CENTRAL BOARD.

11. The Central Board shall be charged with the execution of this Act for securing the proper sanitary condition of the State.

Central Board.
711, 1898,
s. 12.
Cf. U.K.
26 Geo. 5 & 1,
Edw. 8, c. 49,
s. 1.

12. The Central Board shall consist of a Chairman appointed by the Governor and four other members, two of whom shall be appointed by the Governor and two shall be elected as hereinafter provided. At least one of the members shall be a legally qualified medical practitioner.

Constitution of Central Board.
711, 1898,
s. 13.

13. (1) A quorum shall consist of any three members.

Quorum, etc.
711, 1898
s. 14 (part).

(2) If the chairman is not present within five minutes after the time for which any meeting has been convened, any three members present may elect one of their number to be chairman for that meeting until the permanent chairman arrives.

(3) Every chairman shall have a deliberative vote, and also a casting vote in case of equality of voting.

14. The chairman of the Central Board shall be the permanent head of the department.

Permanent head.
711, 1898,
s. 14 (part)

15. Before the first day of February, nineteen hundred and thirty-seven, and before the first day of February in every second year thereafter, nominations of candidates willing to act as representatives on the Central Board may be made by the constituent boards to the Chief Secretary.

Nominations.
711, 1898,
s. 15.

16. The names of persons so nominated shall be forwarded to the constituent boards, who may, before the first day of March in that year, each vote for a representative from persons so nominated, and advise the Chief Secretary of their vote.

Voting.
711, 1898,
s. 16.

17. (1) The elective members of the Central Board shall be elected as follows:—

Representative members of Central Board.
711, 1898,
s. 17.
2217, 1935,
ss. 4 and 5.

i. (a) One member shall be elected by the metropolitan local boards:

(b) The other member shall be elected by all the other local boards:

ii. In the month of March following every biennial election, and so soon as practicable after each extraordinary election, the Chief Secretary shall, by notice in the *Government Gazette*, declare the names of the persons elected, and the notice shall be conclusive evidence of the election:

iii. When the seat of any elective member becomes vacant from any cause whatever other than by effluxion of time, the vacancy shall be filled up by an extraordinary election of a new member, to hold office only for the unexpired portion of the term of his predecessor. On the happening of the vacancy the Chief Secretary shall notify the constituent boards and fix a date not less than six weeks thereafter for such boards to advise him of their votes. If any such vacancy occurs within three months of the time when the seat would become vacant by effluxion of time, the Chief Secretary may, in his discretion, not hold an election to fill the vacancy and in such case the seat shall be filled at the next biennial election:

iv. In the case of equality of votes amongst the constituent boards the Chief Secretary shall have a casting vote.

(2) If at any election for a member only one candidate is nominated, the candidate nominated shall be deemed to have been elected and no vote shall be taken.

Term of office.
711, 1898,
s. 18.

18. The elective members shall hold office until notification of the election of their successors.

Recovery of expenses and penalties.
711, 1898,
s. 19.

19. All reasonable expenses incurred by the Central Board in carrying out any duty imposed on or in exercising any power vested in any local board shall be paid by and recovered from the local board in any case where the expense incurred was due to the neglect of the local board.

Powers of Central Board.
711, 1898,
s. 20.

20. Any powers which a local board and its officers may exercise with respect to its particular district may be exercised by the Central Board and its officers with respect to the whole State.

PART II.

21. The Central Board shall have access to all papers and things whatsoever belonging to or in the custody of any local board.

Access to all papers of local boards.
711, 1898, s. 21.

22. The Governor may appoint such officers of the Central Board as he may deem necessary.

Appointment of officers.
711, 98, s. 22.

PART III.

PART III.

LOCAL BOARDS.

23. (1) Every municipal council shall be the local board of health for its municipality.

Constitution of local boards.
711, 1898, s. 23.

(2) Every district council shall be the local board of health for its district council district.

24. Every local board shall be charged with the due execution of this Act for securing the proper sanitary condition of its district, and in particular shall abide by and carry out all such directions as it shall receive in that behalf from the Central Board.

Duties of local board.
711, 1898, s. 24.
Cf. U.K., 26 Geo. 5 & 1, Edw. 8, c. 49, s. 1.

25. (1) The local board may—

Power of local board to establish committee.
2156, 1934, s. 891 (2).

- (a) appoint a committee or committees of its members :
- (b) delegate to any such committee such of the powers and duties of the local board under this Act as the local board thinks fit :
- (c) pass such resolutions as the local board thinks fit for the guidance of any such committee :
- (d) remove any members of any such committee and appoint in the stead of them, or any of them, other members of the local board :
- (e) fix the quorum (which shall be not less than three members) of any such committee.

(2) The proceedings of a committee shall, unless otherwise ordered by the local board, require the approval of the local board.

(3) No expenditure or payment or contract to expend or pay any sum of money exceeding twenty pounds, made by a committee, shall be lawful or valid unless the expenditure, payment, or contract is afterwards approved or ratified by the local board.

(4) A committee appointed under this Act may (subject to any resolution passed by the local board) meet from time to time and adjourn as the committee thinks fit, but no business shall be transacted at any meeting of the committee unless three members are present.

(5) At the first meeting of any committee one of its members shall be appointed chairman of the committee and all questions in committee shall be determined by a majority of votes of the members present. The chairman of the committee shall have a deliberative vote and a casting vote also.

(6) The chairman of the local board shall be *ex officio* a member of every committee of the local board.

Expenses,
penalties, etc.
711, 1898,
s. 26.

26. Except where otherwise specially directed, all expenses, penalties, and fees recovered by any local board, and the proceeds of the sale of any refuse and other like matter, shall be paid over to and applied by the local board for the purposes of this Act.

Separate
accounts.
711, 1898,
s. 27.

27. Every local board shall keep separate accounts of its revenue and expenditure and minutes of its proceedings.

Expenditure.
2156, 1934,
s. 891 (3).

28. The moneys required by a local board for the purposes of this Act shall be provided out of the general rate declared under the Local Government Act, 1934, for the purposes of the municipality or district council district comprised within the district of the local board.

PART IV.

PART IV.

COUNTY BOARDS.

DIVISION I.—GENERAL.

DIVISION I.

29. The Governor may, by proclamation, upon the request of all the local boards affected, declare any two or more contiguous districts to be a county district designated by some distinctive name.

Creation of county boards.
711, 1898, s. 29.
Cf. U.K. 26 Geo. 5 & 1, Edw. 8, c. 49, ss. 6, 8.

30. (1) Upon the proclamation of any county district a county board of health, consisting of not less than three members, shall be constituted for the district in manner prescribed by the proclamation.

Proclamation of county board.
711, 1898, s. 30.

(2) The Governor may from time to time by proclamation—

Inserted by 33, 1940, s. 2.

(a) vary the constitution of any county board of health but so that the county board shall consist of not less than three members:

(b) fix the quorum of any county board and provide that the chairman of the board is to have a deliberative and a casting vote.

Any proclamation made before the passing of the Health Act Amendment Act, 1940, relating to the constitution or quorum of a county board or the voting rights of the chairman thereof shall be as valid as if the provisions of this subsection had been enacted before the making of the proclamation.

31. Local boards forming a county district shall elect the members of the county board in the same manner as elective members of the Central Board are elected, and they shall hold office for a like period, except for the first year, when one-half shall retire by lot, and subsequently one-half shall retire annually.

Election of members of county boards.
711, 1898, s. 31.

32. At the first meeting of the county board after it is constituted, and after each annual election, the members thereof shall elect one of their number to act as chairman, who shall hold office for one year.

Chairman.
711, 1898, s. 32.

33. Local boards forming a county district shall elect two auditors, holding office for two years, except for the first year, when one shall retire by lot.

Auditors.
711, 1898, s. 33.

PART IV.

DIVISION I.

Accounts.
711, 1898,
s. 34.

34. County boards shall cause the accounts to be balanced and an abstract of the receipts and expenditure prepared for each half-year ending on the last day of the months of June and December, and shall publish in the *Government Gazette* within one month of the yearly audit in January an abstract of the receipts and expenditure as allowed by the auditors. Copies of the abstract shall be sent to all local boards forming the county district.

Powers and
duties.
711, 1898,
s. 35.

35. Upon the constitution of any county board by proclamation—

(a) all the powers, duties, and liabilities vested in or imposed on the local boards in the county district shall be vested in and imposed on the county board, and shall, except as to the powers mentioned in the next section, cease to be exercised by the local boards:

(b) the county board shall, in addition, have power to establish and carry on chemical and bacteriological laboratories.

Revenue.
2156, 1934,
s. 891 (14).

36. Subject to section 46, the county board may require any local board within the county district to pay to the county board such portion of the amount of any general rate declared and levied pursuant to the Local Government Act, 1934, as is necessary for the purposes of the county board under this Act.

Meetings.
711, 98,
s. 37.

37. County boards shall meet at least once in each month.

Local boards
may be added
or removed.
711, 98,
s. 38.

38. The Governor by proclamation may—

(a) add to a county district any contiguous local board:

(b) remove from any county district any local board.

Powers of
Governor.
711, 1898,
s. 39.

39. All or any of the provisions of section 35 may be modified by proclamation.

DIVISION II.

DIVISION II—THE METROPOLITAN COUNTY BOARD.

Interpreta-
tion.
1063, 1911,
s. 3.
2217, 1935,
s. 11.

40. In this Division, and in all proceedings under this Division, except where some other meaning is clearly intended—

“animal” includes mammal, fish, fowl, crustacean, mollusc, and any animal used as food:

s. 40. Under section 32b of the Garden Suburb Act, 1919-1936, the Garden Suburb is deemed to form part of the metropolitan county district.

“drug” includes any substances used for or in the composition or preparation of medicine, whether for internal or external use, and also any preservative, antiseptic, disinfectant, deodorant, narcotic, or cosmetic, and any laundry or toilet soap intended for sale to the public by retail, and absorbent cotton wool, and surgical dressings:

“food” includes any article used for food or drink by man, other than drugs, and any article which ordinarily enters into or is used in the composition or preparation of human food, and also flavouring matters, condiments, and confectionery:

Cf. U.K.
15 & 16
Geo. 5, c. 71,
s. 72 (7).

“metropolitan county district” means the metropolitan area as defined by section 5 of the Food and Drugs Act, 1908, including all districts before or after the passing of this Act declared by proclamation under that Act to be within the metropolitan area.

41. The metropolitan county district is hereby declared to be a county district under this Act, under the name of “The Metropolitan County District.”

Metropolitan
county
district.
1063, 1911,
s. 4.

42. (1) The county board constituted under the Food and Drugs Act, 1908, for the metropolitan area under the Act is hereby declared to be a county board under this Act, and shall be the county board for the metropolitan county district. Notwithstanding anything in this Act, the members of the first-mentioned county board shall, by virtue of their offices as such members, be the members of the county board hereby declared to be constituted.

Metropolitan
county
board.
1063, 1911,
s. 5.
Amended by
S.L.R. Act,
1936.

(2) Section 16 of The Food and Drugs Act, 1908, shall apply to and in respect of the said county board to the same extent as if the county board hereby constituted were constituted by proclamation under this Act.

43. (1) Notwithstanding anything to the contrary in this Act contained, all the powers, duties, and liabilities vested in or imposed on the several local boards in the metropolitan county district by this Act, with reference to the following matters, namely:—

Certain
functions of
local boards
vested in the
metropolitan
county board.
1063, 1911,
s. 6.

i. Any land or premises or any public place whereon or wherein—

(a) any animal is sold or slaughtered, or is offered or exposed for sale or slaughter, or is being prepared or stored or kept for sale or slaughter, for human consumption;

(b) any article of food or drug is sold or offered or exposed for sale, or is deposited, stored, or delivered for the purpose of sale or of preparation for sale, for human consumption;

Subdivision (c) repealed by 33, 1940, s. 3.

* * * * *

(d) any person is engaged in the production of an article of food or drug to be sold or offered or exposed for sale, or to be deposited, stored, or delivered for the purpose of sale or of preparation for sale, for human consumption;

ii. Any person who is engaged in the production of any article of food or drug to be sold or offered, exposed, stored, carried, or delivered for sale for human consumption;

iii. Any premises, animal, vehicle, receptacle, or other article or thing used in the production of any article of food or drug for sale for human consumption; and

iv. Any act, matter, or thing which will provide or tend to provide a proper or better security for the sale of food and drugs in a pure and genuine condition;

shall cease to be vested in or imposed on the said local boards or any of them, and shall be solely vested in and imposed upon the county board aforesaid.

(2) All powers, duties and liabilities vested in or imposed on the said local boards with reference to any matters not mentioned in subsection (1), shall continue to be vested in and imposed on the said local boards.

Presumptive evidence in certain cases. 1063, 1911, s. 7. Cf. U.K. 5 & 6 Geo. 5, c. 66, s. 19 (2).

44. In all proceedings under this Division it shall, until the contrary is proved, be presumed that the animal or article of food or drug the subject matter of, or referred to in the proceedings, was intended to be sold or to be offered, exposed, deposited, stored, delivered, or prepared for sale, as the case may require, for human consumption, and that the person engaged in or the animal used in the production of any such article of food or drug was engaged in or used in, as the case may require, the production of an article of food or drug intended for sale for human consumption.

Powers of inspectors. 1063, 1911, s. 8.

Limit of liability of local boards under this Division.

1063, 1911, s. 9.

45. An inspector appointed under The Food and Drugs Act, 1908, shall have all powers, authorities and duties of an inspector appointed under this Act, so far as those powers relate to the matters mentioned in subsection (1) of section 43 of this Act, or any of them.

46. Notwithstanding any provision to the contrary in this Act contained, no local board within the metropolitan county district shall be required by the said county board to contribute any sum to the said county board for enabling the county board to carry out or perform the powers, duties, and liabilities vested in or imposed upon the county board by this Division, otherwise or to a greater extent than the local board is required to contribute to the county board under the provisions of The Food and Drugs Act, 1908.

PART V.

PART V.

OFFICERS.

47. Every local board shall appoint an officer of health, and such inspectors and officers as may be deemed necessary by the Central Board.

Officers. 711, 1898, s. 40.

48. The appointment and dismissal of every officer of health shall be subject to the approval of the Central Board. The officer of health shall—

Officer of health. 711, 1898, s. 41.

(a) be when practicable a legally qualified medical practitioner; and

(b) possess all the powers vested in any inspector.

49. (1) The appointment of every inspector shall be in writing, in duplicate, under the hand of the chairman of the Central Board, or if the appointment be by a local board, under the hand of the chairman and the secretary of the local board.

Appointment of inspectors. 711, 1898, s. 42. 2156, 1934, s. 891 (5). Cf. U.K. 26 Geo. 5 & 1, Edw. 8, c. 50, s. 9.

(2) Every inspector shall be furnished with one of such duplicates, and, if required, shall produce the same to any person whose premises he may be inspecting or about to inspect.

PART V.

Power to enter and inspect.

711, 1898, s. 43.
Cf. U.K. 26 Geo. 5 & 1, Edw. 8, c. 49, s. 287.
Cf. U.K. 26 Geo. 5 & 1, Edw. 8, c. 50, s. 180.

Amended by 48, 1947, s. 2.

50. For the purpose of any inspection, an inspector may, with or without others, enter into and upon any premises between the hours of nine in the forenoon and six in the afternoon, or in the case of any business or trade premises at any time when the business or trade is in progress or is usually carried on, and for the purposes of inspection may open up drains and execute any other necessary works: Provided that the officer of health may, with or without others, enter any premises at any hour.

Obstruction of officers and members.

711, 1898, s. 44.
Cf. U.K. 26 Geo. 5 & 1, Edw. 8, c. 49, s. 288.

51. (1) Any person who obstructs or incites any other person to obstruct, any person acting in the execution of this Act, or of any power thereunder, shall be guilty of an offence against this Act, and liable to a penalty not exceeding ten pounds.

(2) Every member of the police force shall assist all persons acting as aforesaid.

PART VI.

PART VI.

INSANITARY CONDITIONS AND THEIR REMOVAL.

Definition of insanitary condition.

711, 1898, s. 45.
26 Geo. 5 & 1, Edw. 8, c. 49, s. 92.

52. The expression "insanitary condition" includes every breach or non-observance of any of the sanitary provisions of this Act, and also every condition declared to be an insanitary condition pursuant to section 58.

Local board to order inspection in certain cases.

711, 1898, s. 46.
Cf. U.K. 26 Geo. 5 & 1, Edw. 8, c. 49, s. 91.

53. Every local board, upon receiving from any person other than an inspector any information establishing reasonable grounds for suspicion of the existence of any insanitary condition, shall forthwith instruct an inspector to inquire into and report upon the premises referred to.

Report to local board.

711, 1898, s. 47.
Cf. U.K. 26 Geo. 5 & 1, Edw. 8, c. 50, s. 9 (4).

54. (1) If any inspector ascertains the existence of any insanitary condition, he shall forthwith report the circumstances to the local board.

(2) The report shall set out as far as possible—

- (a) the nature of the insanitary condition;
- (b) the apparent cause thereof, and the suggested remedy;
- (c) the description and situation of the premises;
- (d) the name of the owner; and
- (e) the name of the occupier.

55. (1) Every occupier shall, on request, furnish any inspector with the name and address of the owner so far as the same may be known to him.

Occupier to furnish owner's name
711, 1898, s. 48.

(2) Any person who fails to furnish any name or address as aforesaid shall be guilty of an offence against this Act, and liable to a penalty not exceeding ten pounds.

56. If, in the opinion of the inspector, the insanitary condition should be immediately removed, he shall, in addition to reporting the circumstances to the local board, serve upon the occupier, or owner, a notice to remove or amend the same, and therein shall specify what is required to be done, and limit a time for compliance.

Notice by inspector.
711, 1898, s. 49.

57. Upon the receipt of an inspector's report the local board, with or without further inquiry—

Notice by local board.
711, 1898, s. 50.
Cf. U.K. 26 Geo. 5 & 1, Edw. 8, c. 49, s. 93.

(a) may serve a notice requiring the removal or amendment of the insanitary condition; or

(b) may, if the inspector has already given notice—

(i) adopt the notice; or

(ii) issue a new notice in lieu thereof.

58. Any local board, upon being satisfied that it is proper so to do, may serve a notice requiring the removal or amendment of any condition which the local board declares to be an insanitary condition.

Notice of insanitary condition.
711, 1898, s. 51.
Cf. U.K. 2 & 3 Vict., c. 71, s. 41.

59. Every notice under sections 57 and 58 shall specify what is required to be done, and shall limit a time for compliance, and may direct to be done such works as the local board may deem necessary to prevent a recurrence of the insanitary condition.

Requirements of notice.
711, 1898, s. 52.

60. The notice may be served in manner following:—

i. If the owner be unknown, or if, in the opinion of the local board, the insanitary condition is caused by the act or neglect of the occupier, the notice may be served on the occupier:

Service.
711, 1898, s. 53.
Cf. U.K. 38 & 39 Vict., c. 55, s. 267.
Cf. U.K. 26 Geo. 5 & 1, Edw. 8, c. 49, s. 93 (proviso).

s. 58. BRUCE v. JARRETT (1926) S.A.S.R. 96. Where notice was served upon a limited company and proceedings were instituted against a defendant who was a director of and a large shareholder in the company, held that notice had not been served upon the defendant.

- ii. In all other cases the notice may be served on the owner or on any person by whose act or neglect in the opinion of the local board the insanitary condition arises:
- iii. In the case of premises owned by the Government, or by any public body, the notice may be served upon the officer having, or apparently having, the chief control of the premises.

Penalty for non-compliance with notice.
711, 1898, s.54.

61. Any person who, after service upon him, fails to comply with—

- (a) any notice given by an inspector (provided the same be subsequently adopted); or
- (b) any notice of the local board;

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

Power of local board to carry out requirements of notice.
711, 1898, s. 55.

62. On failure to comply with any notice of the local board, or with any inspector's notice, the local board may carry out the requirements of the notice.

No notice necessary in certain cases.
711, 1898, s. 56.
Cf. U.K.
26 Geo. 5 & 1,
Edw. 8, c. 49,
s. 93,
proviso (b).

63. In the case of unoccupied lands or premises, if the owner and the person by whose act or neglect the insanitary condition is caused are unknown, or cannot be found, the local board may remove or amend the insanitary condition without any previous notice whatever.

Power of local board to make complaint.
711, 1898, s. 57.
Cf. U.K.
26 Geo. 5 & 1,
Edw. 8, c. 49,
s. 94 (1).

64. In addition to, or in lieu of summarily removing or amending any sanitary condition, if either—

- (a) the person on whom a notice to remove or amend any insanitary condition has been served makes default in complying with any of the requisitions thereof within the time specified; or

s. 61. BRUCE V. JARRETT (1926) S.A.S.R. 96. Where notice under section 58 was served upon a limited company and proceedings were instituted against a defendant who was a director of and a large shareholder in a company, held that notice had not been served upon the defendant.

(b) the insanitary condition, although amended or removed since the service of the notice, is, in the opinion of the local board, likely to recur on the same premises,

the local board may institute summary proceedings against the person on whom the notice was served.

65. (1) The court, if satisfied that the alleged insanitary condition exists, or has been declared, or is likely to recur on the same premises, may by order require the defendant to remove or amend the same, or to prevent the recurrence thereof within a time to be specified in the order, and may, if thought desirable, specify the works to be executed for the purpose of removing, amending, or preventing the recurrence of the insanitary condition.

Powers of court,
711, 1898,
s. 58.
Cf. U.K.
26 Geo. 5 & 1,
Edw. 8, c. 49,
s. 94.

(2) Any defendant who fails to comply with any such order shall be guilty of an offence against this Act and liable to a penalty not exceeding one pound for every day during which the default continues.

66. All expenses incurred by the local board in connection with the removal or amendment of any insanitary condition may be recovered from the person upon whom the notice has been served.

Recovery of expenses.
711, 1898,
s. 59.
Cf. U.K.
26 Geo. 5 & 1,
Edw. 8, c. 49,
s. 96.

67. All expenses incurred by an owner by reason of his compliance with any notice may be recovered by him from the occupier or other person in all cases where the insanitary condition concerning which the notice was given was caused by the act or neglect of the occupier or other person.

Recovery of expenses by owner from occupier.
711, 1898,
s. 60.

68. All expenses incurred by an occupier by reason of his compliance with any notice may be recovered by him from the owner in all other cases.

Occupier from owner.
711, 1898,
s. 61.

69. In all cases all expenses incurred by any local board shall be a charge upon the premises in respect of which the same were incurred, and may be immediately recovered in the same manner as if they were rates in arrear.

Expenses to be a charge on land.
711, 1898,
s. 62.

-
- s. 66. R. v. LOCAL BOARD OF HEALTH OF PETERSBURG (1903) S.A.L.R. 119. Expenses may only be recovered in a summary way as provided by section 157.
- s. 69. R. v. LOCAL BOARD OF HEALTH OF PETERSBURG (1903) S.A.L.R. 119. Section 69 is limited to the creation of a charge and to the proceedings necessary for the enforcing of that charge.

PART VII.

PART VII.

REPORTS AND INQUIRIES.

Annual report.
711, 1898,
s. 63.

70. Every local board shall, during January in every year and at such other times as the Central Board may direct, report to the Central Board concerning the sanitary condition of its district in such form as the Central Board may require.

Monthly return of infectious diseases.
711, 1898,
s. 64.

71. Every local board shall forward monthly to the Central Board during the first week in each month a return of all cases of infectious disease reported within the district in such form as the Central Board may require.

Returns of measles, scarlet fever, etc.
711, 1898,
s. 65.

72. Every local board shall immediately forward to the Central Board a return of all cases of measles, scarlet fever, diphtheria, typhoid fever, and puerperal fever reported to it for the first time within the district, in such form as the Central Board may require.

Outbreak of infectious disease to be reported.
711, 1898,
s. 66.

73. Every local board shall immediately report to the Central Board the outbreak within its district of any infectious disease or the occurrence of any indications thereof, or of any circumstances of special importance likely to affect the health of any part of the district, together with all such particulars as can aid in the complete comprehension of the case and of its nature and cause.

Central Board to report annually to Chief Secretary.
711, 1898,
s. 67.

74. The Central Board shall annually, not later than the month of March, and also whenever required by the Chief Secretary, report to him concerning all matters affecting the public health.

Annual report to be laid before Parliament.
711, 1898,
s. 68.

75. The annual report of the Central Board shall be laid before Parliament.

Power to institute inquiries,
711, 1898,
s. 69.
Cf. U.K.
38 & 39 Vict.,
c. 55, s. 293.

76. Whenever it appears to the Central Board necessary or proper to make formal inquiry into any matter for the purposes of this Act, the following provisions shall have effect:—

- i. The Central Board shall specify in writing the general scope and object of the inquiry, and such general directions as it may think proper to secure its due performance:
- ii. The inquiry shall be thereupon held by the chairman or such other person as the board may appoint:

The chairman or such other person is hereinafter included in the expression "the chairman":

- iii. The inquiry shall be held either in public or with closed doors, and at such place or places as the chairman may think fit:
- iv. The chairman shall hold sittings at such places, with power from time to time to adjourn the same. He may summon and examine witnesses and receive any evidence that may be offered respecting the subject of the inquiry:
- v. All parol evidence shall be reduced to writing:
- vi. The chairman may require any person to sign any evidence given by him:
- vii. Witnesses may be summoned by being served with a notice in writing under the hand of the chairman calling upon them to attend and give evidence at a time and place to be therein specified. The notice shall be served so long before the time appointed as the chairman may deem reasonable.

77. If any person is served with any such notice, and having been paid or tendered in advance such moneys as he would have been entitled to receive had he been a witness summoned to attend a local court, fails to comply with the same, or, having attended, refuses to give evidence or sign the same, he shall be guilty of an offence against this Act, and liable to a penalty not exceeding five pounds.

Penalty for non-attendance.
711, 1898,
s. 70.

78. A certificate under the hand of the chairman to that effect shall be sufficient proof of non-compliance with the notice to attend and give evidence, and of all other facts necessary to be proved to show it was incumbent upon such person to comply therewith.

Certificate of chairman to be sufficient proof.
711, 1898,
s. 71.

79. The chairman, either alone or with others, for the purposes of the inquiry, may enter and inspect any land or premises between sunrise and sunset.

Power of inspection.
711, 1898,
s. 72.

80. The chairman may, at any time during the progress of the inquiry, and shall, on its completion, make to the Central Board a written report under his hand setting forth the result of the inquiry, his opinion thereon, and his reasons for that opinion. The report shall be accompanied by all evidence and information received during the inquiry.

Chairman to report to Central Board.
711, 1898,
s. 73.

81. Any person who wilfully gives false evidence on any inquiry shall be guilty of an offence against this Act, and liable to a penalty not exceeding fifty pounds.

False evidence.
711, 1898,
s. 74.

PART VIII.

PART VIII.

SANITATION.

DIVISION I.

DIVISION I—AIR.

Sewers and drains.

711, 1898,
s. 75.
Cf. U.K.
10 & 11 Vict.,
c. 34,
s. 22, *et seq.*
Cf. U.K.
26 Geo. 5 & 1,
Edw. 8, c. 49,
s. 14.
Cf. U.K.
26 Geo. 5 & 1,
Edw. 8, c. 50,
ss. 17, 31.

82. Every local board shall cause all sewers and drains to be kept properly cleared, cleansed, and emptied so as not to become or be likely to become injurious to health, or offensive, and for this purpose may construct all necessary works, and direct any sewer or drain into or through such places as may be deemed proper, except into fresh water running streams.

Sewers, drains, stagnant water, and collections of offensive matter.

711, 1898,
s. 76.
1696, 1925,
s. 2.
2089, 1932,
s. 2.
Cf. U.K.
10 & 11 Vict.,
c. 34, s. 30.
Cf. U.K.
26 Geo. 5 & 1,
Edw. 8, c. 49,
s. 26.
Cf. U.K.
26 Geo. 5 & 1,
Edw. 8, c. 50,
s. 52 (2).

83. (1) Any person who—

(a) without the consent of the local board causes or permits any private sewer or drain to be emptied or flow into any public sewer or drain:

Cf. U.K.
26 Geo. 5 & 1,
Edw. 8, c. 49,
ss. 27 (1)
(a), 259.

(b) does anything which, in the opinion of the local board, will tend to the injury of any drain or sewer:

Cf. U.K.
10 & 11 Vict.,
c. 34, s. 99.
Cf. U.K.
38 & 39 Vict.,
c. 55, s. 47
(2).

(c) suffers any waste or stagnant water to remain in any cellar or place within or around any dwelling-house so as to be, or be likely to become, injurious to health or offensive:

Cf. U.K.
38 & 39 Vict.,
c. 55, s. 47
(3).
Cf. U.K.
26 Geo. 5 & 1,
Edw. 8, c. 49,
s. 34.

(d) allows any overflow, soakage, or leakage from any water-closet, privy, or cesspool: Provided that this paragraph shall not apply to any overflow or soakage from a bacteriolytic tank unless the overflow or soakage is offensive:

s. 83. (1) (a) SMITH v. GAMEAU (1887) 21 S.A.L.R. 69; 12 Austn. Digest 1030. Where a licence, revocable under certain conditions as to preventing foul water passing into the pipe, was granted to a person by a local board to drain water from his land through a pipe into a drain, and the water was befouled by the actions of his neighbours, and the local board cut off the connection between the pipe and the drain, held that the local board had power to revoke the licence.

(e) allows any drainage, filth, water, night-soil, or matter to collect or to be deposited in any place, so as to become, or be likely to become, injurious to health or offensive:

Cf. U.K.
26 Geo. 5 & 1,
Edw. 8, c. 50,
s. 82 (1)
(b).

(f) allows any dead animal to remain in any place, so as to cause an offensive smell:

(g) allows any place to become, or be likely to become, in such a state as to be a nuisance, or injurious to health, or offensive:

Cf. U.K.
26 Geo. 5 & 1,
Edw. 8, c. 50,
s. 82 (1)
(c)

(h) carries or conveys offensive or injurious matter through the streets except at hours specified by the local board:

Cf. U.K.
10 & 11 Vict.,
c. 34, s. 98.

(h1) carries or conveys any night-soil through the streets except in a properly covered receptacle:

Inserted by
13, 1943,
s. 2.

(h2) suffers any night-soil to be deposited on or to spill on to any street:

Inserted by
13, 1943,
s. 2.

(i) without the consent of the local board removes, or allows to be removed, any night-soil from a ditch or pit in which the same has been deposited by any local board,

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

(2) If any premises are in such a state as to be a nuisance or injurious to health or offensive, the occupier of the premises shall be guilty of an offence against this Act and liable to a penalty not exceeding twenty pounds.

84. Any local board may provide and maintain water-closets, earth-closets, privies, urinals and other similar conveniences for public accommodation.

Public
conveniences.
711, 1898,
s. 77.
Cf. U.K.
7 Edw. 7,
c. 53, s. 47.
Cf. U.K.
26 Geo. 5 & 1,
Edw. 8, c. 50,
s. 113.

85. (1) Any local board may itself undertake or contract for the removal of refuse or excreta from private places, and for this purpose may provide convenient receptacles, and may by regulation require the occupiers of premises to provide boxes, or other specified receptacles, for the temporary deposit of such matter, and to place such boxes or receptacles in convenient places at convenient times for the removal of their contents.

Removal
of refuse.
711, 1898,
s. 78.
Cf. U.K.
7 Edw. 7,
c. 53, s. 48.
Cf. U.K.
26 Geo. 5 & 1,
Edw. 8, c. 49,
ss. 72-75.

s. 83. (1) (g) MITTON v. H. JONES & Co. (ADELAIDE) LIMITED (1923) S.A.S.R. 446. "Place" is used to connote not only premises but would include casks and tins standing upon the ground. Subsection (1) must be read subject to the provisions of the Act relating to the carrying on of offensive trades.

PART VIII.
DIVISION I.

(2) Any person who deposits any refuse in any place except in such boxes or receptacles shall be guilty of an offence against this Act and liable to a penalty not exceeding ten pounds.

(3) All such refuse shall be the property of the local board.

Public places.
711, 1898,
s. 79.
26 Geo. 5 & 1,
Edw. 8, c. 50,
ss. 20, 22.

86. Every local board shall take all necessary and proper measures to ensure that all public places are properly cleansed and kept free from offensive matter.

Cesspools.
711, 1898,
s. 81.

87. (1) Every distillery, manufactory, brewery, slaughterhouse, and every establishment for the boiling, preserving, or preparing of any animal matter shall be provided with a water-tight cesspool, constructed and kept covered in such a manner as the local board may require.

(2) All refuse which may be or be likely to become injurious to health or offensive shall be deposited therein and periodically removed at prescribed times.

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

Keeping
of pigs.
711, 1898,
s. 82.
Cf. U.K.
26 Geo. 5 & 1,
Edw. 8, c. 49,
s. 92(1)(b).
Cf. U.K.
26 Geo. 5 & 1,
Edw. 8, c. 50,
s. 119.

88. Any person who keeps any pig in any sty or place at a less distance than fifty feet from any dwelling-house, dairy, or public street shall be guilty of an offence against this Act and liable to a penalty not exceeding ten pounds.

Trade
nuisances.
Cf. U.K.
38 & 39 Vict.,
c. 55, s. 114.
Cf. U.K.
26 Geo. 5 & 1,
Edw. 8, c. 49,
ss. 93, 94.
Repealed by
34, 1943,
s. 3 and new
section
inserted by
18, 1953,
s. 2.

89. (1) If in the opinion of the local board any place used for any trade or business is or is likely to become injurious to the health of or offensive to any of the inhabitants of the district, or any person employed therein, the local board may institute summary proceedings against the person by or on whose behalf the trade or business is carried on.

(2) If on the hearing it appears to the court that the trade or business is or is likely to become injurious to the health of or offensive to any of the inhabitants of the district, or any person employed therein, then, unless it be shown that the best practicable means for preventing injury to health or offence have been used, the person so summoned shall be guilty of an offence against this Act and liable for a first offence to a penalty not exceeding fifty pounds and for a second or subsequent offence to a penalty not exceeding one hundred pounds.

(3) The court may suspend its final determination in any case upon condition that the person summoned shall undertake to adopt, within a time to be fixed by the court, such means as may be deemed practicable and are ordered to be carried into effect for preventing or mitigating injury or offence.

(4) The court of summary jurisdiction before which any proceedings may be taken under this section shall be constituted by a special magistrate.

90. Any person who keeps any accumulation or deposit of offensive matter longer than in the opinion of the local board is necessary for the purposes of any trade or business, or who omits to take the best available means of preventing any such accumulation or deposit being injurious to the public health, shall be guilty of an offence against this Act and liable to a penalty not exceeding twenty pounds.

Accumulations of offensive matter.

Repealed by 34, 1943, s. 3 and new section inserted by 18, 1953, s. 2.

91. The provisions of sections 89 and 90 shall not apply within any part of the State to which the provisions of the Noxious Trades Act, 1943, apply.

Application of ss. 89 and 90.

Repealed by 34, 1943, s. 3 and new section inserted by 18, 1953, s. 2.

* * * * *

Ss. 92 to 94 repealed by 34, 1943, s. 3.

DIVISION II—FLOOD.

DIVISION II.

95. Any person who permits any case or receptacle used, or intended to be used, for the carriage of fresh fruit or vegetables to come into direct contact with any manure or other offensive matter, shall be guilty of an offence against this Act and liable to a penalty not exceeding five pounds.

Fruit cases. 711, 1898, s. 89.

96. (1) Whenever the pollution of any water supply becomes or is likely to become injurious to health, the local board shall for the purpose of preventing such pollution have within its district the rights of a riparian proprietor, and may enforce those rights by summary proceedings against the person in default, and may generally prevent the pollution of any water.

Riparian rights. 711, 1898, s. 91. Cf. U.K. 26 Geo. 5 & 1, Edw. 8, c. 49, Part IV.

PART VIII.

DIVISION II.

(2) Any person so in default shall be guilty of an offence against this Act and liable to a penalty not exceeding ten pounds for a first offence, and for every subsequent offence to a penalty of double the amount of the penalty imposed on the then last preceding offence.

Sources of water supply may be closed.

711, 1898, s. 92.
Cf. U.K. 26 Geo. 5 & 1, Edw. 8, c. 49, s. 140.
Cf. U.K. 26 Geo. 5 & 1, Edw. 8, c. 50, s. 103.

97. Any local board may direct that any water supply which in the opinion of the officer of health, or any two legally qualified medical practitioners, is so polluted or unwholesome as to be unfit for human consumption, shall be closed, and that the contents thereof shall cease to be used for human consumption, either absolutely or for such time as the local board may direct.

When closed not to be used.

711, 1898, s. 93.

98. Any person who uses or permits to be used for human consumption, any such well or other source of water while any such direction remains in force, shall be guilty of an offence against this Act and liable to a penalty not exceeding ten pounds.

Offensive matter in or near water supply.

Substituted by 35, 1941, s. 2.

99. Any person who deposits or discharges or causes or suffers to be deposited or discharged any night-soil, animal matter, or other offensive matter into any water supply or who deposits or discharges or causes or suffers to be deposited or discharged any nightsoil, animal matter, or other offensive matter in any place from whence, whether directly or indirectly, the night-soil, animal matter, or other offensive matter flows or falls or is liable to flow or fall into any water supply, shall be guilty of an offence against this Act and liable to a penalty not exceeding fifty pounds.

Swine, etc., on butcher's premises.

711, 1898, s. 95.

100. Any person who keeps any swine, sheep, or cattle on any butcher's business premises, or dresses any carcass therein shall, unless the the premises are duly licensed for slaughtering purposes, be guilty of an offence against this Act and liable to a penalty not exceeding ten pounds.

No swine at slaughter-houses.

711, 1898, ss. 96 and 97, 1696, 1925, s. 4.
2089, 1932, s. 3.

Amended by 14, 1950, s. 2, and by 14, 1954, s. 5.

101. (1) No person in charge of any slaughter-house shall keep, or permit to be kept, in or about any slaughter-house any swine, unless intended for immediate slaughter: Provided that the local board may grant written permission to any person to keep swine, on the following conditions:—

I. That the swine are to be kept at such distance from the slaughter-house, as may be directed; and

ii. That the swine may be fed with offal if the offal has been first thoroughly cleansed and boiled.

(2) No licence, pursuant to this section, shall be granted for a longer period than for one year at any one time, and every such licence may be withdrawn on proof to the satisfaction of the local board of any non-observance of any condition thereof.

(3) If any swine are fed on any blood, offal, manure, or filth from any slaughter-house, other than as authorized by subsection (1), the person in charge of the slaughter-house shall be guilty of an offence against this Act and liable to a penalty not exceeding ten pounds.

(3a) If any dog is in or about any slaughter-house, the person in charge of the slaughter-house shall be guilty of an offence and liable to a penalty not exceeding ten pounds unless he satisfies the court—

Inserted by
14, 1954,
s. 5.

(a) that the dog was in or about the slaughter-house for the purpose of being used for yarding purposes and when not so used was constantly chained; or

(b) that the dog was in or about the slaughter-house without his knowledge and that he could not reasonably have had knowledge of the presence of the dog.

(4) If any dog is fed on any blood, offal, manure, or filth from any slaughter-house, the person in charge of the slaughter-house shall be guilty of an offence against this Act and liable to a penalty not exceeding ten pounds: Provided that this subsection shall not apply to any such offal which has been first thoroughly cleansed and boiled.

Inserted by
33, 1940,
s. 4.

(5) Any person who sells or offers for sale or has in his possession for sale any offal from any slaughter-house which is infected with any hydatid cyst shall be guilty of an offence against this Act and liable to a penalty not exceeding ten pounds: Provided that this subsection shall not apply to any such offal which has been thoroughly cleansed and boiled.

Inserted by
14, 1950,
s. 2.

102. Any person who feeds to any swine any blood, offal, manure, or filth, or causes or permits any swine to be so fed, shall be guilty of an offence against this Act and liable to a penalty not exceeding ten pounds: Provided that this section shall not apply to offal which has been thoroughly cleansed and boiled.

Feeding of
swine.
2089, 1932,
s. 4.

PART VIII.
DIVISION II.

Inspection
after
slaughter.
711, 1898,
s. 100.

103. No meat of any animal slaughtered in any public slaughter-house shall be sold or offered for sale as human food unless the animal has been inspected by an inspector of cattle after the slaughtering thereof, and certified fit for human consumption. The Central Board may direct any butcher's slaughter-house to be subject to the same inspection.

Non-
application of
sections 100,
101, and 103
in certain
districts.
957, 1908,
s. 4.
1055, 1911,
s. 4.

104. Sections 100, 101, and 103 shall not apply within any district comprised within the metropolitan abattoirs area within the meaning of the Metropolitan Export Abattoirs Act, 1936, nor within any district comprised within any abattoirs area within the meaning of The Abattoirs Act, 1911.

Inspector
of cattle.
711, 1898,
s. 104.

105. Any local board may appoint, subject to the approval of the Central Board, an inspector of cattle. There shall also be a chief inspector of cattle appointed by the Governor. The chief inspector shall be a veterinary surgeon.

Diseased
animals.
711, 1898,
s. 105.
2217, 1835,
s. 6.
Of U.K.
49 & 50 Vict.,
c. 32.

106. (1) Animals suffering from cancer, pleuro-pneumonia, tuberculosis, actinomycosis, anthrax, or trichinosis, or any other disease which the Governor may by proclamation add to this list, are "diseased animals" within the meaning of this Act.

(2) The Governor may, by proclamation, declare any disease to be a disease for the purposes of this section, and may by proclamation declare that any disease (whether mentioned in this section or declared a disease as aforesaid) shall cease to be a disease for the purposes of this section. Any such disease may subsequently be again proclaimed as a disease for the purposes of this section.

Isolation of
diseased
animals.
1248, 1916,
s. 3.

107. (1) Every owner of a diseased animal shall give notice thereof to the local board, and shall isolate the animal from all other animals not being diseased animals, and shall keep it so isolated.

(2) Any owner who fails to isolate or keep isolated any such animal shall be guilty of an offence against this Act, and liable to a penalty not exceeding twenty pounds.

(3) It shall be a defence to any prosecution under this section to show that the defendant did not know, and could not by the exercise of reasonable diligence have discovered, that the animal was diseased.

s. 104. The expression "Metropolitan Abattoirs Act, 1908," altered to "Metropolitan and Export Abattoirs Act, 1936," pursuant to the Amendments Incorporation Act, 1937.

108. If the inspector of cattle suspects that any animal is a diseased animal, he may use all necessary tests to ascertain the facts as regards the suspected animal, and any other animal in the same herd or premises.

Inspector may use tests.
711, 1898, s. 107.
2217, 1935, s. 7.

109. (1) Any inspector of cattle on being satisfied that any animal is a diseased animal shall give notice in writing to the owner or person in charge, directing him to kill the animal and destroy its carcass.

Destruction of diseased animals.
711, 1898, s. 108.

(2) Any such owner or person who fails to comply with any such notice shall be guilty of an offence against this Act, and liable to a penalty not exceeding twenty pounds.

(3) If any animal killed pursuant to this section is subsequently found to be free from disease, the owner may recover its value from the board by which the inspector was appointed. The owner may require the inspector to test for disease the carcass before being destroyed. The value of the carcass may be deducted from the compensation recoverable.

110. (1) Any person who sells, consigns, or exposes for sale, or supplies for food, any diseased animal, or any meat therefrom, shall be guilty of an offence against this Act, and liable to a penalty not exceeding twenty pounds.

Diseased meat exposed for sale.
711, 1898, s. 109.
1248, 1916, s. 4.

(2) Any person having for sale any such animal or meat in his possession or under his control, shall be deemed to be a person who exposes the animal or meat for sale.

(3) On proof of the selling, consigning, exposing for sale, or supplying, of the animal or meat in question, it shall be presumed that that animal or meat was sold, consigned, exposed for sale, or supplied, for food, unless the defendant proves the contrary.

111. (1) Any person who keeps or exposes for sale any food intended for human consumption which is diseased, unsound, unwholesome, or otherwise unfit for human consumption, shall be guilty of an offence against this Act and liable to a penalty not exceeding twenty pounds.

Unwholesome food.
711, 1898, s. 110.

(2) On proof of the keeping or exposing for sale it shall be presumed that the food in question was intended for human consumption unless the defendant proves the contrary.

s. 110. G. LAUGHTON AND COOMBS LIMITED v. MASTER BUTCHERS LIMITED (1915) S.A.L.R. 3. Special leave to appeal to the High Court refused, MASTER BUTCHERS LIMITED v. G. LAUGHTON AND COOMBS LIMITED (1915) 19 C.L.R. 349; 4 Austn. Digest 148. Held that the defendant was not guilty of an offence where the sale of an animal was made without his being aware that the animal was diseased.

PART VIII.

DIVISION II.

Contamina-
tion of milk.
711, 1898,
s. 111,
1248, 1916,
s. 5.

Cf. U.K.
26 Geo. 5 & 1,
Edw. 8, c. 50,
s. 204.

112. (1) Any person who—

- (a) supplies to any person the milk of any diseased animal or any animal suffering from ulcers or other diseases of the udder:
- (b) mixes any such milk with other milk intended for human consumption, sale, or for butter or cheese making:
- (c) uses any such milk for human consumption, or for the food of swine or other animals, unless the milk has been boiled for at least ten minutes, and the local board has been notified of the intention to so use the milk:
- (d) allows any person suffering from any infectious disease, or who may be living in any house where such disease exists, to—
 - (i) milk any cow;
 - (ii) handle any vessel used for the reception of milk intended for sale or for human consumption;
 - (iii) take part or assist in the business of dairyman, cowkeeper, or vendor of milk; or
 - (iv) be employed in a dairy,

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

(2) It shall be a defence to any prosecution under this section to show that the defendant did not know, and could not by the exercise of reasonable diligence have discovered—

- (a) that the animal was diseased or suffering as aforesaid; or
- (b) that the person was suffering from an infectious disease; or
- (c) that an infectious disease existed in the house where the person lived.

according to the nature of the offence charged.

(3) The officer of health may grant exemption from the operation of paragraph (d) of subsection (1) in respect of a person living in a house where an infectious disease exists, provided that—

- (a) the person is not suffering from any infectious disease; and
- (b) proper isolation is secured.

List of customers to be furnished.
711, 1898, s. 112.
Cf. U.K. 26 Geo. 5 & 1, Edw. 8, c. 50, s. 207.

113. (1) Every person, on production of a certificate of the officer of health that the milk supplied by that person, or from his dairy, is suspected of causing disease, shall furnish to the local board a list of the names and addresses of his customers, and a full statement of the names and residences of the persons from whom the milk is obtained.

(2) Any person who fails to supply any such list or statement shall be guilty of an offence against this Act, and liable to a penalty not exceeding ten pounds.

114. No person shall store, keep, or deposit any milk in any room used for sleeping, or in any other place or mode likely to render the milk unwholesome.

Storing of milk in sleeping or dwelling place.
711, 1898, s. 113.

115. Local boards may, by regulation, provide—

Registration and licensing of dairies and regulations.
711, 1898, s. 115.
Cf. U.K. 5 & 6 Geo. 5, c. 66, s. 1.

(a) for the licensing of cowkeepers, dairymen, and vendors of milk;

(b) for the registration and inspection of dairies, milk stores, and milk shops;

(c) for the inspection of dairy farms and grazing grounds;

(d) for the sanitary conditions of cowyards, cowsheds, dairies, milk, milk stores, milk shops, and vessels used for milk;

(e) for preserving the health and good condition of cattle kept at any dairy;

(f) for prohibiting the sale of milk by other than licensed persons and except from registered dairies, milk stores, and milk shops;

(g) for prohibiting the adulteration of milk;

(h) for temporarily prohibiting, on the certificate of the officer of health, the sale of milk from dairies where animals are diseased, or supposed to be diseased, or where persons are suffering, or supposed to be suffering, from an infectious disease, or where there are reasonable grounds for suspecting that the milk supply from such dairies is causing the spread of infectious disease.

Cf. U.K. 5 & 6 Geo. 5, c. 66, s. 3.
Cf. U.K. 26 Geo. 5 & 1, Edw. 8, c. 50, ss. 185, 206.

Dwelling-houses unfit for habitation.

711, 1898, s. 116.
Cf. U.K. 26 Geo. 5 & 1, Edw. 8, c. 40, s. 83.

116. (1) Any local board may, by notice in writing, declare that any building, or any specified part thereof, is unfit for human habitation.

(2) The notice may direct that the building, or part thereof, shall not, after a time to be specified in the notice, be inhabited or occupied by any person.

(3) The notice shall be affixed to some conspicuous part of the building.

Not to be let or occupied.
711, 1898, s. 117.

117. Any person who after the expiration of the specified time, inhabits or occupies, or suffers to be inhabited or occupied, any such building or part thereof, shall be guilty of an offence against this Act and liable to a penalty not exceeding ten pounds.

Condemned building to be removed or amended.
711, 1898, s. 118.

118. (1) A notice may be served upon the owner of the building directing him to either amend the same in some specified manner, or to take down and remove the same.

(2) Any person who fails to comply with any such notice shall be guilty of an offence against this Act, and liable to a penalty not exceeding twenty pounds.

Over-crowding.
711, 1898, s. 119.
Cf. U.K. 38 & 39 Vict., c. 55, s. 91, para. 5.

119. Any person who suffers any building or part thereof, to be so overcrowded as to be, or likely to become, injurious to health, shall be guilty of an offence against this Act and liable to a penalty not exceeding twenty pounds.

Proper conveniences in houses.
711, 1898, s. 120.
Cf. U.K. 36 Geo. 5 & 1, Edw. 8, c. 49, s. 44.

120. (1) All houses shall have in proper and convenient situations such closets and privies, with such conveniences and of such size and so constructed as shall, in the opinion of the local board, be necessary and sufficient.

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

s. 118. *TIPPITT v BELCHER* (1925) S.A.S.R. 1; 3 Austn. Digest 74. As to the obligation to comply with a notice within the time specified. The notice is a peremptory notice and it is intended that it should receive prompt attention. If the person served fails to obey the notice in some minor or trivial respect, or making every reasonable effort to obey it, is nevertheless unable to complete the work within the time allowed, the offence may be trivial.

PART VIII.
DIVISION III.

Houses erected on insanitary land.
711, 1898, s. 121.
Cf. U.K. 26 Geo. 5 & 1, Edw. 8, c. 49 s. 54.

121. (1) The local board may, by notice, prohibit the erection of any house or building on any land which, in their opinion, for sanitary reasons is unfit for human habitation until any sanitary defects existing in connection with the land have been removed to the satisfaction of the local board.

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

122. (1) Any local board, when necessary or expedient, may enter into and construct drains and other works upon any public or private land for the purpose of draining surface water from other lands.

Drains may be made in private or public property.
711, 1898, s. 122.
Cf. U.K. 26 Geo. 5 & 1, Edw. 8, c. 49, ss. 36, 278.

(2) Where the land upon which the works are constructed is private property, the local board shall pay full compensation to any person who shall sustain damage by reason of the exercise of the above power.

123. (1) All houses erected or re-built in municipalities or in townships within district council districts after the thirteenth day of January, eighteen hundred and ninety-nine, shall have such drains, means of ventilation, and sanitary requirements constructed of such materials and in such manner as the local board may prescribe. In this section "township" means a township as defined by section 5 of the Local Government Act, 1934-1952.

New houses to have proper drains.
711, 1898, s. 123.
Cf. U.K. 26 Geo. 5 & 1, Edw. 8, c. 49, s. 43.
Amended by 18, 1953, s. 3.

(2) Plans and specifications showing the proposed drains, means of ventilation, and sanitary arrangements, shall be submitted to and approved by the local board before the erection or rebuilding of any such house is commenced.

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

(4) This section shall not apply within any part of the State to which the provisions of the Building Act, 1923-1946, apply.

Inserted by 18, 1953, s. 3.

124. (1) The owner or occupier of every building, whether erected before or after the passing of this Act—

- (a) which is used as a workshop or manufactory; or
- (b) in which persons are employed or are intended to be employed in any trade or business; or

Factories to have proper conveniences, to be ventilated and not to be overcrowded.
711, 1898, s. 124.
Cf. U.K. 26 Geo. 5 & 1, Edw. 8, c. 49, s. 46.

PART VIII.
DIVISION III.

- (c) which is used as a school, church, theatre, or hall, capable of ordinarily accommodating a meeting or assembly of more than twenty persons:

shall—

- (i) provide the building with suitable accommodation in the way of urinals, closets, and privies; where both sexes are employed separate accommodation shall be provided with separate approaches thereto:
- (ii) keep the building in a clean state and ventilate the same in such manner as to render harmless, as far as practicable, any impurities generated by the work carried on therein.

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

Definition of lodging-house.
711, 1898, s. 125.
Cf. U.K.
26 Geo. 5 & 1, Edw. 8, c. 49, Part IX.
Cf. U.K.
26 Geo. 5 & 1, Edw. 8, c. 50, Part VI.

125. Whenever any building, or part thereof, is let in lodgings or for the purpose of board and lodging, the same shall be deemed to be a lodging-house.

Limit of number of inmates.
711, 1898, s. 126.
Cf. U.K.
26 Geo. 5 & 1, Edw. 8, c. 49, s. 240.

126. The local board may fix the number of persons who may occupy any lodging-house, and may, by regulation, provide for the registration and special inspection thereof.

PART IX.

PART IX.

INFECTIOUS AND NOTIFIABLE DISEASES.

Heading amended by 14, 1954, s. 6.

Report of infectious disease.

711, 1898, s. 127.
Cf. U.K.
26 Geo. 5 & 1, Edw. 8, c. 49, s. 144.
Cf. U.K.
26 Geo. 5 & 1, Edw. 8, c. 50, s. 192.

Amended by 14, 1954, s. 7.

127. (1) Where any inmate of any building or part of a building is or is supposed to be suffering from any infectious disease or any notifiable disease, unless the building is a public or licensed hospital into which persons suffering from infectious diseases are received—

- (a) the head of the family;
- (b) on his default, the nearest relative of the inmate present in the building or being in attendance on the inmate;

(c) on default by such relative, every person in charge or in attendance on the inmate; or

(d) on default by any such persons, the occupier or owner of the building:

and in any case

(e) every medical practitioner attending on or called in to visit the inmate;

shall, so soon as he becomes aware that the inmate is suffering from any infectious disease or notifiable disease, report the same to the local board, who shall immediately report the same to the Central Board.

(2) Any person not being a person required to make a report in the first instance, but only in case of default by some other person, shall not be liable to any penalty if he proves that he had reasonable cause to suppose that the report had been duly made.

(3) The owner or occupier of every building used as a hospital shall, as soon as he or his manager or superintendent becomes aware that an inmate is suffering from any infectious disease or notifiable disease, report the same to the local board.

(4) Any person guilty of any contravention of this section shall be guilty of an offence against this Act and liable to a penalty not exceeding five pounds.

128. (1) Every medical practitioner attendant on or consulted by any person suffering from pulmonary tuberculosis or any other form of tuberculosis shall, so soon as the fact becomes known to him, report the same to the Central Board: Provided the notification shall not be necessary if the case has been previously reported to the Central Board. Every such report shall be made in the form prescribed by regulation made by the Governor or in a form to the like effect and in the report the medical practitioner shall supply such of the particulars specified in the said form as are known to the medical practitioner.

Medical practitioner to notify cases of tuberculosis. 711, 1898, s. 128. Amended by 13, 1943, s. 3, by 39, 1950, s. 2, and by 15, 1952, s. 2.

(2) Any person who fails to make any report required by this section shall be guilty of an offence against this Act and liable to a penalty not exceeding five pounds.

PART IX.

Fee to
medical
practitioner.

711, 1898,
s. 129.

991, 1909,
s. 5.

Cf. U.K.
52 & 53 Vict.,
c. 72, s. 4.

(2) (part).
Cf. U.K.

26 Geo. 5 & 1,
Edw. 8, c. 50,
s. 192 (7).

Amended by
39, 1950, s. 43,
and

subsec. (2)
substituted
by 15, 1952,
s. 3.

Medical
practitioner
protected.

711, 1898,
s. 130.

Amended by
14, 1954,
s. 8.

Disinfection
of buildings,
and articles.

711, 1898,
s. 131.

Cf. U.K.
7 Edw. 7

c. 53, s. 66.
Cf. U.K.

26 Geo. 5 & 1,
Edw. 8, c. 49,
s. 167.

Butter and
cheese
factories may
be closed.

711, 1898,
s. 132.

129. (1) The local board shall pay to every medical practitioner a fee of two shillings for every report made by him to the board under section 127: Provided that when a report or reports is or are made concerning two or more persons in the same building only one such fee shall be payable.

(2) The Central Board shall in respect of every report made to it in compliance with section 128 by a medical practitioner in the course of private practice, pay to the medical practitioner a fee of ten shillings and six pence.

130. No medical practitioner shall be liable to any proceedings for any mis-statement made in good faith in attempted notification of any infectious disease or notifiable disease: Provided he promptly notifies to the local board any change in his diagnosis.

131. (1) If the officer of health or any legally qualified medical practitioner certifies in writing to the local board that the cleansing or disinfection of any building or part thereof, or any bedding, clothes or other articles whatever would tend to prevent the spread of tuberculosis or any infectious disease, the local board may order and supervise the use of disinfectants, and take such other sanitary precautions as it may deem necessary to cleanse or disinfect the building or part thereof, and articles, and for that purpose may remove any such articles.

(2) Any expenses incurred by the local board may be recovered from the owner or occupier of the building or part thereof, or the local board may itself, if it see fit, defray the expenses or any part thereof.

132. (1) If at any time any legally qualified medical practitioner certifies to the local board that any person suffering from any infectious disease or from pulmonary tuberculosis is residing in a building or part of a building used for the storage of milk, or for the storage of manufacture of butter, cheese, or other articles of human food, and that there is reason to believe that the milk, butter, cheese, or other article of human food may be contaminated by the disease, the local board may, with the sanction of the Central Board, order the owner or person in charge of the building to close the same until the officer of health certifies that the person has been removed from the building, and that all necessary precautions have been taken to prevent such contamination.

(2) Any person neglecting to comply with any such order shall be guilty of an offence against this Act and liable to a penalty not exceeding twenty pounds.

133. Any local board may—

- (a) provide or combine with other local boards to provide proper places, apparatus, and attendance for disinfecting purposes;
- (b) disinfect any articles;
- (c) make arrangements for disinfection with any hospital or with any local board possessing disinfecting apparatus;
- (d) make arrangements with any laboratory for scientific examination.

Disinfecting apparatus may be provided.
711, 1898, s. 133.
Cf. U.K.
26 Geo. 5 & 1, Edw. 8, c. 49, s. 166.
Cf. U.K.
26 Geo. 5 & 1, Edw. 8, c. 50, s. 194.

134. (1) Any person who, knowing himself to be suffering from any infectious disease, or having so suffered, not being sufficiently recovered to be free from all risks of infecting others—

- (a) exposes himself in any public place without taking reasonable precautions against spreading the disease:
- (b) enters any place of common resort:
- (c) enters any ship, vessel, railway carriage, or public conveyance without previously notifying to the master, conductor, or person in charge the fact of the disease,

Exposure of infected persons.
711, 1898, ss. 184 and 185.
Cf. U.K.
26 Geo. 5 & 1, Edw. 8, c. 49, ss. 148, 149, 159.
Cf. U.K.
26 Geo. 5 & 1, Edw. 8, c. 50, s. 203.

shall be guilty of an offence against this Act and liable to a penalty not exceeding five pounds.

(2) Any such person entering a public conveyance in breach of paragraph (c) of subsection (1) shall in addition to the said penalty, be liable to pay to the owner all loss and expense incurred in respect of the disinfection of the conveyance.

135. (1) Every owner or person in charge of any public conveyance having conveyed any person suffering or having so suffered not being sufficiently recovered from an infectious disease shall, immediately after he becomes aware of that fact, give notice to the local board of the district wherein he resides.

Owner of conveyance to give notice to local board.
711, 1898, s. 136.
Cf. U.K.
7 Edw. 7, c. 53, s. 64.
Cf. U.K.
26 Geo. 5 & 1, Edw. 8, c. 49, s. 160.
Cf. U.K.
26 Geo. 5 & 1, Edw. 8, c. 50, ss. 205, 211.

(2) Every such owner or person who fails to give any notice required by this section shall be guilty of an offence against this Act and liable to a penalty not exceeding five pounds.

Disinfection
of
conveyance.
711, 1898.
s. 187.

136. The local board may disinfect any such conveyance, and may recover all expenses incurred from the owner.

Children
attending
school.

Cf. U.K.
7 Edw. 7,
c. 53, s. 57.
Cf. U.K.
26 Geo. 5 & 1,
Edw. 8, c. 49,
s. 150.

Substituted
by 33, 1940,
s. 5.

137. (1) If any child is or has been suffering, or has been resident where any person is or has been suffering, from any infectious disease, then any person who suffers or permits that child to attend school, unless and until the said person has procured a certificate from a legally qualified medical practitioner that there is, in his opinion, no risk of infection, shall be guilty of an offence against this Act and liable to a penalty not exceeding five pounds.

(2) This section shall not apply in the case of measles, whooping cough, or influenza or any other infectious disease to which the Governor by proclamation declares that this section shall not apply.

(3) The Governor may by proclamation declare that this section shall not apply to any infectious disease and may by proclamation revoke or vary any such proclamation.

Letting
infected
buildings.

711, 1898.
s. 139.
Cf. U.K.
38 & 39 Vict.,
c. 55, s. 128.
Cf. U.K.
26 Geo. 5 & 1,
Edw. 8, c. 49,
s. 157.
Cf. U.K.
26 Geo. 5 & 1,
Edw. 8, c. 50,
s. 198.

138. (1) Any person who knowingly lets for hire any building or part of a building in which any person is or has been suffering from any infectious disease without having had the building or part thereof, and all articles therein liable to retain infection, disinfected, in manner directed by a legally qualified medical practitioner, shall be guilty of an offence against this Act and liable to a penalty not exceeding twenty pounds.

(2) The keeper of an inn shall be deemed to let for hire part of a building to any person admitted as a guest.

Duty to
bury bodies.

Inserted by
48, 1947,
s. 3.

138a. (1) Any person who suffers or permits the body of any dead person or the body of any stillborn child to be in any premises at any time after seven days after the death of the deceased person or, as the case may be, the stillbirth of the child, shall be guilty of an offence and liable to a penalty not exceeding five pounds for every day during which the contravention of this subsection continues.

(2) It shall be a sufficient defence to any proceedings for an offence under subsection (1) if proof is given that the

body is in the premises to which the proceedings relate with and in accordance with any conditions of the consent in writing—

- (a) if the premises are situated within a district, of the officer of health of that district; or
- (b) if the premises are not situated within a district, of the chairman of the Central Board.

The officer of health or, as the case may be, chairman of the Central Board may, in any case where he thinks it expedient so to do, give consent as aforesaid and any such consent may be given subject to such conditions as the officer of health or, as the case may be, chairman of the Central Board thinks fit.

(3) Nothing in this section shall apply to any body which—

- (a) is in any premises being a public mortuary; or
- (b) is in any premises by direction of a coroner or a member of the police force; or
- (c) is in any premises being a school of anatomy which is licensed under the Anatomy Act, 1884-1934.

(4) Nothing in this section shall affect the operation of the provisions of section 138b or section 139.

138b (1) If any body of any deceased person or the body of any stillborn child is in any premises (other than premises such as are referred to in subsection (3) of section 138a) and the officer of health of the district in which the premises are situated or, if the premises are not situated in a district, the chairman of the Central Board, is satisfied that the presence of the body may cause an offensive condition to arise or continue or may cause a condition likely to be prejudicial to the public health to arise or continue, the officer of health or, as the case may be, the chairman of the Central Board may, by notice in writing delivered to the occupier of the premises, require the occupier of the premises to secure the burial or cremation of the body within the time specified in the notice.

Power to
order burial
or cremation
of body.
Inserted by
48, 1947,
s. 3.

(2) Any such occupier upon being served with a notice as aforesaid shall thereupon comply with the notice by procuring the burial of the body or, subject to the provisions of the Cremation Act, 1891-1936, the cremation thereof. If the occupier fails to comply with the notice he shall be guilty of an offence and liable to a penalty not exceeding five pounds for every day during which the default continues.

(3) The provisions of this section shall apply not withstanding any provisions of section 139.

Interment
within forty-
eight hours.
711, 1898.
s. 140.
Cf. U.K.
52 & 53 Vict.
c. 72, s. 8.
Cf. U.K.
26 Geo. 5 & 1,
Edw. 8, c. 49,
ss. 161, 162.
Cf. U.K.
26 Geo. 5 & 1,
Edw. 8, c. 50,
s. 209.

139. (1) When any person having suffered from any infectious disease dies in consequence of that disease, the body shall be interred within forty-eight hours, or at such earlier time as may be directed by the local board, by the parent, nearest relative, or person in charge during the illness.

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

Isolation of
tenements
and premises.
711, 1898.
s. 141.

140. (1) Upon the receipt of a certificate in writing or by telegram from any officer of health or any legally qualified medical practitioner that any infectious disease exists within a district, and that isolation is necessary to prevent the spreading thereof, the Governor may authorize the Central Board to stop all or any traffic, and to limit and prevent the ingress and egress of any persons to or from any house or premises for such time and in such manner as the Central Board may think necessary.

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

Power to
prevent
spread of
disease by
isolation.
1938, 1918,
s. 3.

141. Upon the receipt of a certificate in writing from the Central Board that any infectious disease exists within the State, and that isolation is necessary to prevent the spreading thereof, or that there is danger of an outbreak of infectious disease occurring in the State, and that isolation is necessary to prevent the outbreak, the Governor may authorize the Central Board to stop all or any traffic and to limit and prevent the ingress, egress, and regress of any persons to or from any house or premises, or to limit and prevent the carriage of any persons in any vehicle for such time and in such manner as the Governor may think necessary.

Ambulances.
711, 1898.
s. 142.
Cf. U.K.
7 Edw. 7,
c. 59 s. 50.
Cf. U.K.
26 Geo. 5 & 1,
Edw. 8, c. 49,
s. 197.

142. Any local board may provide or combine with any other local board to provide and maintain vehicles suitable for the conveyance of persons suffering from any infectious disease, and may convey any such person to a hospital or other place free of charge.

143. Where any suitable hospital, quarantine station, or place for the reception of the sick is provided within any district, or within a reasonable distance therefrom, and any person is suffering from any infectious disease and—

Removal of persons to hospitals.
711, 1898.
s. 143.
Cf. U.K.
26 Geo. 5 & 1,
Edw. 8, c. 49,
s. 169.
Cf. U.K.
26 Geo. 5 & 1,
Edw. 8, c. 50,
s. 201.

- (a) proper isolation is otherwise impracticable; or
- (b) the person is lodged in a room occupied by others of more than one family, or on board any ship or vessel, or in a common lodging-house, or in a boarding-house,

any local board may, on a certificate signed by any legally qualified medical practitioner, and with the consent of the superintending body or medical officer of the hospital, quarantine station, or place, compulsorily remove any such person to the hospital, quarantine station, or place, at the cost of the local board.

144. Any local board may provide or combine with any other local boards to provide for the use of inhabitants of the district hospitals or temporary places for the reception of any person suffering from any infectious disease, and for that purpose may—

Hospitals.
711, 1898.
s. 144.

- (a) build any such hospitals or places:
- (b) contract for the use of any hospital, or part of a hospital or place:
- (c) arrange with any person for the reception of the suffering.

145. (1) Any expenses incurred, pursuant to section 144, by a local board in maintaining in any such hospital or place any person suffering from any infectious disease shall be a debt due to the local board for which the following persons shall be jointly and severally liable:—

Maintenance.
Substituted by 35, 1941,
s. 3.

- I. The person so maintained:
- II. The husband or wife of the said person:
- III. If the said person is under the age of twenty-one years, the father of the said person, or if the father is dead, the mother of the said person:

s. 145. BODEY v. SHEPHERDSON (1922) S.A.S.R. 174; 11 Austrn. Digest 87. Where a child was maintained pursuant to section 144 and there was no evidence of a contract by the father to pay the expenses, held that no liability attached to the father of the child. Since this decision section 145 has been amended to provide that such a liability is incurred.

iv. The children of the said person who were over twenty-one years of age at the time the liability was incurred.

(2) Any money payable under this section for the maintenance of any person shall accrue from week to week, and may be recovered by the local board by action in any court of competent jurisdiction but no amount in excess of four pounds four shillings shall be payable under this section for the maintenance of any person for any week.

(3) When two or more persons are jointly and severally liable under this section for the same sum, they shall be entitled as against each other to such indemnity or contribution as is directed by the court.

(4) Nothing in this section shall take away or restrict the liability of any person for the maintenance of any other person under any other Act or law for the time being in force, or the power of any court to make any order under such Act or law in respect of the maintenance of any person.

(5) If satisfied that to require payment of the whole or any part of any amount payable under this section would impose hardship on the person by whom it is payable, the local board may remit the whole or any part of any amount payable under this section.

Licensing of hospitals and managers.
711, 1898.
s. 146.
2156, 1934.
s. 891 (10).
Cf. U.K.
26 Geo. 5 & 1,
Edw. 8, c. 49,
s. 187.
Cf. U.K.
26 Geo. 5 & 1,
Edw. 8, c. 50,
s. 241.

146. (1) No building or any part thereof shall, after the first day of June, one thousand eight hundred and ninety-nine, be used for the purpose of a private hospital or maternity home unless and until the building or part thereof shall be licensed by the local board for that purpose. Every application for a licence shall be accompanied by the name of the manager.

(2) No person shall act as manager of any such private hospital or maternity home unless licensed by the local board for that purpose.

(3) Any person guilty of any contravention of this section shall be guilty of an offence against this Act, and liable to a penalty not exceeding twenty pounds.

(4) The manager shall be responsible for the good government of the institution.

(5) The licence fee for the building shall not exceed two pounds per annum, and shall, subject to section 165 of the

Amended by
S.L.R. Act,
1936.

Maintenance Act, 1926, be the only licence fee chargeable: Provided that no fee shall be required from any institution where no charge is made for the attendance on and maintenance of its inmates.

(6) The licence shall be granted upon such conditions as are prescribed by regulation made by the Governor.

Substituted by 33, 1940, s. 6 (2).

(7) Any building or part thereof so licensed shall be liable to be inspected at any time.

146a. (1) In this section "rest home" means any building (other than a building which is licensed under section 146 of this Act, or under section 165 of the Maintenance Act, 1926-1941, or under Part VIIa. of the Mental Defectives Act, 1935-1945) in which any person receives any other person (other than a relation of the first mentioned person) to board or lodge and who undertakes for fee or reward to exercise oversight, care or control over such other person by way of nursing treatment or treatment applicable to aged, infirm or helpless or partially helpless persons.

Licensing of rest homes. Inserted by 48, 1947, s. 3.

(2) No building or any part thereof shall, after the first day of July, nineteen hundred and forty-eight, be used for the purposes of a rest home unless and until the building or part thereof is licensed by the local board for the purpose. Every application for a licence shall be accompanied by the name of the manager.

(3) No person shall act as manager of any rest home unless licensed by the local board for the purpose.

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

(5) The manager of any rest home shall be responsible for the good government thereof.

(6) The licence fee for the building shall not exceed two pounds.

(7) A licence under this section shall be granted on such conditions as are prescribed by regulation made by the Governor.

(8) Any building or part thereof licensed as aforesaid shall be liable to be inspected at any time.

PART IXA.

TUBERCULOSIS.

Interpreta-
tion.

Inserted by
45, 1951,
s. 3.

146b. (1) In this Part—

“the Director-General” means the Director-General of Public Health holding office under the Health and Medical Services Act, 1949, or the person for the time being acting as such Director-General;

“constable” includes any member of the police force;

“institution” means an institution established or provided by the Government for the maintenance and treatment of persons suffering from tuberculosis;

“tuberculosis” means tuberculous disease in any form.

(2) Nothing in this Part shall restrict the operation of any provision of Part IX of this Act.

Examination
of individual
suspects.

Inserted by
45, 1951,
s. 3.

146c. (1) If the Director-General is satisfied that there are reasonable grounds for suspecting that any person is suffering from tuberculosis he may by notice in writing signed by him or by any person acting under his authority require that person to attend at a time and place specified in the notice, and to undergo such diagnostic examinations as the Director-General arranges. A notice under this subsection shall be served on the person to whom it is addressed at least fourteen days before the time fixed by the notice for the examination.

(2) If for any reason the examination of any person is not held or completed at the time and place fixed by notice given under subsection (1) of this section, or on any adjournment, the Director-General or any person authorized by him may adjourn or further adjourn the examination or the completion thereof and give the person who is being or is to be examined written notice to attend again at the time and place to which the examination is adjourned.

(3) The Director-General may revoke any notice given under the preceding subsections of this section if satisfied that—

(a) the person named therein is not suffering from tuberculosis; or

(b) the person named therein is suffering from tuberculosis and is being or will be adequately treated for that disease; or

(c) any other sufficient cause exists for revoking it.

(4) The Director-General may amend any notice given under the preceding subsections of this section.

(5) If a person on whom a notice is served under this section fails to comply with any requirement of the notice he shall be guilty of an offence.

Penalty: For a first offence, a fine not exceeding ten pounds.

For a second or subsequent offence, a fine not exceeding twenty-five pounds.

(6) Proceedings against a person for an offence against this section shall not affect his liability to apprehension under the next following section.

146d. (1) If a person served with a notice under the preceding section fails to attend for examination in accordance with the notice the Director-General may apply to a special magistrate for the issue of a warrant for the apprehension of that person; and the special magistrate if satisfied that the said person has so failed, may issue such a warrant.

Enforcement
of order for
individual
examination.
Inserted by
45, 1951,
s. 3.

(2) A warrant issued under this section shall—

(a) state shortly the matter on which it is founded;

(b) name or otherwise describe the person against whom it is issued;

(c) order the person or persons to whom it is directed to apprehend and detain the said person and bring him for examination in accordance with this section;

(d) be in the prescribed form.

(3) A warrant issued under this section may be directed specially to any constable or other person by name, or generally to all constables in the State, or both specially and generally as aforesaid. If a warrant is directed to constables generally it shall be lawful for any constable to execute it as if it had been directed to him by name.

(4) A person apprehending a person by virtue of a warrant under this section—

(a) shall forthwith notify the Director-General of the apprehension;

(b) shall, pending the examination of such person, detain him in a hospital or other suitable place appointed by the Director-General for the purpose.

(5) Upon being informed that a person has been apprehended under this section the Director-General shall, as early as practicable, make arrangements for the examination of that person and advise the person who executed the warrant of the time and place fixed for the examination.

(6) A person executing a warrant under this section shall at the time so fixed bring the person apprehended from the place where he is detained to the place for the examination.

(7) A warrant issued under this section for the apprehension of a woman shall, wherever practicable, be directed to a woman constable.

Examination
of classes
or groups.
Inserted by
45, 1951,
s. 3.

146e. (1) The Minister may, from time to time by notice order that any groups or classes of persons specified in the notice shall submit themselves to examination of the chest by X-ray in accordance with the provisions of the notice.

(2) Any group or class of persons to which a notice applies may be described in the notice by reference to their ages or the nature or place of their occupations, or the name of their employer, or their place of residence or country of origin, or the alphabetical group in which their names fall, or in any other way which the Minister thinks proper.

(3) Every such notice—

(a) shall be published by advertisement in a newspaper circulating in the locality in which the examination is to be held;

(b) shall specify the time at which or the period during which, and the place at which, persons specified in the notice shall attend for examination;

(c) may provide for any matters necessary or convenient to be provided in order to ensure that the persons specified in the notice shall attend for examination and that the examination shall be properly carried out.

(4) If a person attends for examination in accordance with a notice under this section and if for any reason the examination is not made or completed at the time and place at which he attends, the Director-General, or any person authorized by him, may adjourn the examination or the

completion thereof and give to the said person a written notice requiring him to attend at the adjourned examination, and stating the time and place where it will be held.

(5) A person who fails to comply with any requirement of a notice given under any provision of this section shall be guilty of an offence.

Penalty—For a first offence, a fine of not more than ten pounds.

For a second or subsequent offence, a fine of not more than twenty-five pounds.

146f. (1) If a special magistrate is satisfied that any person suffering from tuberculosis (in this Part called a "patient") is in an infectious condition and that the circumstances in which the patient is living or the habits of the patient are such that there is a substantial risk that he will cause infection to other persons, he may order that the patient be removed to an institution or to some other place agreed upon by the patient and the Director-General and be detained and offered treatment there for such period not exceeding six months as the special magistrate orders.

Detention of tuberculosis patients.
Inserted by 45, 1951, s. 3.

(2) Where a special magistrate is satisfied that a patient who is already an in-patient in an institution (whether he is a voluntary patient or is being detained pursuant to an order) is in an infectious condition and that if he leaves the institution there will be a substantial risk that he will cause infection to other persons, the magistrate may order that the patient be detained in the institution in which he is already an in-patient, or in some other institution agreed upon by the patient and the Director-General, for such period not exceeding six months as the special magistrate thinks fit.

(3) An order shall not be made under this section except upon the application of the Director-General.

(4) Upon being informed by the Director-General that he intends to apply for an order under this section, a special magistrate shall fix a time and place for hearing the application.

(5) The Director-General shall serve on the patient at least seven clear days before the hearing a notice stating his intention to apply for the order and of the time and place fixed for the hearing of the application, and informing the patient of his right to appear before the special magistrate personally, or by counsel or agent.

(6) On the hearing of the application the special magistrate—

- (a) shall hear and consider any relevant evidence, information or arguments submitted by or on behalf of the Director-General or the patient;
- (b) shall not be bound by the legal rules of evidence.

Enforcement
of orders for
detention.

Inserted by
45, 1951,
s. 3.

146g. (1) When an order is made under the preceding section of this Act a special magistrate on the application of the Director-General may issue a warrant for the apprehension and detention of the patient.

(2) The warrant shall—

- (a) state shortly the matter on which it is founded;
- (b) name or otherwise describe the patient;
- (c) order the person or persons to whom it is directed to apprehend the patient and take him to an institution and there receive and detain him in accordance with this section;
- (d) be in the prescribed form.

(3) A warrant under this section shall be directed generally to all constables in the State and to the superintendent of the institution in which the patient is to be detained. It shall be lawful for any constable to execute any such warrant as if it had been directed to him by name.

(4) A warrant under this section shall—

- (a) authorize any person to whom it is directed to do all or any of the following things, namely, to apprehend the patient, to take him to the institution mentioned in the order, and to receive him in that institution and detain him there until he is lawfully released;
- (b) be sufficient authority, for the apprehension and return to the said institution of the patient if he unlawfully leaves the said institution.

Release of
persons
detained.

Inserted by
45, 1951,
s. 3.

146h. (1) The Director-General may in writing—

- (a) order that a person who is being detained in an institution pursuant to an order under section 146f may leave the institution either permanently or for a period specified in the order;

(b) extend any period mentioned in an order under paragraph (a) of this subsection.

(2) On the application of a person who is being detained in an institution pursuant to an order under section 146f and after hearing the Director-General a special magistrate may order—

(a) that the said person be released from the institution either permanently or for a period specified in the order;

(b) that any period specified in an order under paragraph (a) of this subsection be extended.

No such order shall be made unless the magistrate is satisfied that the applicant may be released without substantial risk of infection to others, or, as the case may be, that the period of his release may be extended without such risk.

(3) Any order made under this section may be subject to any conditions imposed by the person making it and if any such condition is broken or not observed, the order shall cease to have effect.

146j. (1) Any party to an application made to a special magistrate under section 146f or 146h of this Act may, within twenty-one days after the special magistrate has made an order or given a decision on the application, appeal to the Supreme Court against that order or decision.

Appeals.
Inserted by
45, 1951,
s. 3.

(2) Every such appeal shall be heard and determined by a single judge sitting in chambers.

(3) On the hearing of the appeal the Judge may do such one or more of the following things as he deems appropriate, namely, confirm, reverse or modify the order or decision appealed against, or make any order or give any decision which in the Judge's opinion, should have been made or given in the first instance.

(4) The Judge shall make no order as to costs in respect of the hearing of an appeal under this section except where the appeal is by the patient and is successful.

(5) Subject to the provisions of this section the procedure on an appeal shall be such as is prescribed by rules of the Supreme Court.

146k. (1) Any order or notice required or authorized by this Part to be served upon or given to any person may be served upon or given to him by—

Mode of
service.
Inserted by
45, 1951,
s. 3.

- (a) delivering it to him personally; or
- (b) leaving it for him at his last or most usual place of abode or business with some other person apparently an inmate thereof or employed thereat and apparently not less than sixteen years of age.

(2) Where an order or notice is left for a person under paragraph (b) of the preceding subsection that person shall be deemed to have received it on the day on which it was so left unless he proves the contrary.

Provisions
as to
examinations.
Inserted by
45, 1951,
s. 3.

146l. (1) If a person who attends or is brought to a place for examination pursuant to this Part refuses to submit himself to examination—

- (a) he shall be guilty of an offence and liable to a fine not exceeding twenty-five pounds;
- (b) the medical practitioner or other person appointed to conduct the examination may, with the aid of any persons acting under his instructions use any means necessary to conduct the examination.

(2) If any person obstructs or interferes with any person conducting or assisting to conduct any examination under this Part he shall be guilty of an offence and liable to a fine not exceeding twenty-five pounds.

Applications
to
magistrates.
Inserted by
45, 1951,
s. 3.
Regulations
under this
Part.
Inserted by
45, 1951,
s. 3.

146m. Every application to a special magistrate under this Part shall be heard and determined in chambers.

146n. The power to make regulations conferred by section 147 of this Act shall be deemed to include power to make any regulations necessary or convenient for the administration and enforcement of this Part of this Act, and without limiting the generality of this section shall include power to make regulations—

- (a) with respect to the practice and procedure (including the summoning and examination of witnesses) on applications under this Part;
- (b) prescribing the forms for use under this Part;
- (c) for securing orderly behaviour on the part of persons who have attended for examination or are being examined or detained under this Part;
- (d) prescribing penalties recoverable summarily and not exceeding twenty-five pounds for breach of any regulation made under this section.

PART X.

PART X.

REGULATIONS.

147. (1) The Governor, on the recommendation of the Central Board, may make regulations for or with respect to—

(a) the measures to be taken for preventing the spread of or for limiting, mitigating, or eradicating tuberculosis or any infectious disease or notifiable disease:

Regulations:
2089, 1932,
s. 5,
2156, 1934,
s. 891 (8)
and (9).
Of. U.K.
26 Geo. 5 & 1,
Edw. 8, c. 49,
s. 72 (3) (a).
Para. (a)
amended by
27, 1955,
s. 2 (a).

(b) the prevention of the spread of infectious disease or notifiable disease by persons who though not at the time suffering from such disease are “contacts” or “carriers” and liable to disseminate the infection thereof, and the keeping of such persons under medical surveillance and the restriction of the movements of such persons:

Amended by
27, 1955,
s. 2 (b).

(c) defining “contacts” and “carriers” for the purposes of this Act:

(d) the prohibition of spitting in public places or in public conveyances except into receptacles provided for the purpose:

(e) the imposition and enforcement of isolation or of medical observation and surveillance in respect of persons suffering or suspected to be suffering from tuberculosis or any infectious disease or notifiable disease, the premises in which such persons are accommodated, those in charge of or in attendance on such persons, and other persons living in or visiting such premises or who may otherwise have been exposed to the infection of such disease; and the inspection of any such premises:

Amended by
27, 1955,
s. 2 (c).

(f) the disinfection of ambulances and other vehicles in which persons suffering from infectious disease are conveyed; the measures to be taken to prevent the spread of infectious disease from the bodies of persons who have died from infectious disease including the disinfection of any vehicles in which any such bodies are conveyed:

(f1) prescribing the conditions upon which licences under section 146 for private hospitals and maternity

Inserted by
33, 1940,
s. 6 (1).

homes may be granted and the revocation of such licences; prescribing the qualifications of persons acting as managers or persons in charge of such private hospitals and maternity homes; and providing for an appeal to the Central Board from any decision of a local board with respect to the grant or revocation of any such licence:

Inserted by
48, 1947,
s. 5.

(f2) prescribing the conditions upon which licences under section 146a for rest homes as defined by that section may be granted and the revocation thereof; prescribing the qualifications of persons acting as managers or persons in charge of such rest homes; and providing for an appeal to the Central Board from any decision of a local board with respect to the grant or revocation of any such licence:

(g) the regulation of trade in flock, rags, and in second-hand clothing, bedding, or any similar articles, and requiring the cleaning and disinfection of any such articles before removal, sale, or exposure for sale, or use in any manufacturing process:

(h) the installation, maintenance, and inspection of bacteriolytic tanks, and the fittings and drains and water closets used in connection therewith:

Cf. U.K.
26 Geo. 5 & 1,
Edw. 8, c. 50,
s. 144.

(i) the supervision of slaughter-houses licensed pursuant to the Local Government Act, 1934, and the receiving, inspection, and slaughtering therein of animals; and the conduct of persons carrying on business or employed at such slaughter-houses:

(j) except as regards slaughter-houses within the metropolitan abattoirs area under the Metropolitan and Export Abattoirs Act, 1936, or within any area proclaimed under The Abattoirs Act, 1911, the prescribing and regulation of the nature and kind of structure of, and the materials to be used in the construction of slaughter-houses in respect of which any application for a slaughtering licence under the Local Government Act, 1934, may be made, and the drains, receptacles, and other conveniences to be provided in connection with any such slaughter-house, prior to the granting of any such licence:

s. 147. (1) (j) The expression "Metropolitan Abattoirs Act, 1908," altered to "Metropolitan and Export Abattoirs Act, 1936," pursuant to the Amendments Incorporation Act, 1937.

- (k) except as aforesaid, the maintenance of cleanliness in, at, and about every slaughter-house and place used for slaughtering cattle, sheep, or swine:
- (l) enforcing the destruction of infected cattle, which, if slaughtered, would be unfit for human food:
- (m) enforcing the destruction of unwholesome meat:
- (m1) regulating the fumigation of premises for the destruction of animal or insect pests or disease germs by means of gases, vapours, fumes, mists or smokes which are or may be dangerous to human life or health: Inserted by 33, 1940, s. 7.
- (m2) for prohibiting or regulating the removal from any premises of any furniture or other chattels which are vermin infested or the removal of any furniture or other chattels from any vermin infested premises, and for requiring and regulating the fumigation of any such furniture and other chattels: Inserted by 35, 1941, s. 4.
- (m3) declaring that any substances (which term shall in this and the following three paragraphs include solids, liquids, and gases) shall be dangerous substances and that any processes shall be dangerous processes: Inserted by 45, 1951, s. 4.
- (m4) regulating or restricting the production, manufacture, use, storage, sale or other disposal of any substances declared by regulation to be dangerous substances; Inserted by 45, 1951, s. 4.
- (m5) regulating or restricting the use or application of processes declared by regulation to be dangerous processes; Inserted by 45, 1951, s. 4.
- (m6) prescribing any other matters which it is necessary or convenient to prescribe for the purpose of ensuring that adequate precautions shall be taken to prevent death, injury or ill health from substances declared by regulation to be dangerous substances or from processes declared by regulation to be dangerous processes. Inserted by 45, 1951, s. 4.
- (m7) prescribing qualifications for persons employed as inspectors by local boards and county boards; authorizing the Central Board to examine persons and grant certificates of competency to persons passing such examinations or who are otherwise qualified therefor; providing that any such examinations may be conducted by persons appointed by Inserted by 27, 1955, s. 2 (d).

Health Act, 1935-1955.

the Central Board; prescribing the mode of determining such qualifications and obtaining recognition therefor in other States of Australia; providing for the cancellation or suspension of such certificates and the grounds upon and the manner in which such cancellation or suspension may be effected; and providing that after a day fixed in the regulations no person shall be employed by a local board or a county board as an inspector for the purposes of this Act or the Food and Drugs Act, 1908-1954, who does not hold such a certificate which is in force: Provided that no such regulation shall apply to or affect the status of any health inspector who holds such office at the time the regulation comes into operation:

- (n) generally carrying into effect the purposes of this Act:
- (o) imposing penalties not exceeding ten pounds for the breach of any regulation.

(2) Any regulation purporting to be made before the first day of November, nineteen hundred and thirty-four, by the Central Board of Health pursuant to the Health Act, 1898, with respect to any matters referred to in paragraphs (i) to (m), both inclusive, of subsection (1), shall be deemed to have been made by the Governor pursuant to the powers conferred by the said paragraphs.

Powers of
Central
Board.
711, 1898.
s. 147.

148. The Central Board may make—

- (a) model regulations for the guidance of local boards in the execution of this Act:
- (b) all such regulations as a local board is by this Act authorized to make.

Powers of
local boards.
711, 1898.
s. 148.

149. Every local board—

- (a) may, and when expressly directed by the Central Board shall, adopt the model regulations prepared by the Central Board:
- (b) and may make in addition all such regulations not repugnant thereto as it may deem useful or necessary for properly carrying into effect the provisions of this Act within its district.

Application of
regulations
may be
limited.
711, 1898,
s. 149.

150. Any regulation may be made to apply only to particular districts or to particular parts of a district.

151. In all cases not otherwise provided for any regulation may impose any penalty not exceeding ten pounds for any breach or non-observance of the same, or in the case of a continuing breach not exceeding two pounds for each day that the breach is continued.

Penalties may be imposed.
711, 1898, s. 150.
2217, 1935, s. 9.

152. All regulations made by a local board shall—

- (a) be submitted to the Central Board for approval;
- (b) be subject to the confirmation of the Governor; and
- (c) when confirmed by the Governor, shall be published in the *Government Gazette*, and shall thenceforth have the force of law.

Submission of regulations to Central Board.
711, 1898, s. 151.

153. All regulations shall be laid before both Houses of Parliament within fourteen days after the making thereof, if Parliament be then in session, and if not, then within fourteen days after the commencement of the next session of Parliament.

Regulations to be laid before Parliament.
711, 1898, s. 152.
2089, 1932, s. 6.

154. If either House of Parliament passes a resolution disallowing any such regulation of which resolution notice has been given at any time within fourteen sitting days of such House after the regulation has been laid before it, the regulation shall thereupon cease to have effect, but without affecting the validity, or curing the invalidity, of anything done, or of the omission of anything, in the meantime.

Disallowance by Parliament.
2089, 1932, s. 7.

155. The *Government Gazette* containing any regulations shall be conclusive evidence of the making thereof.

Evidence of regulations.
711, 1898, s. 154.

PART XI.

PART XI.

MISCELLANEOUS.

156. To secure the due execution of this Act all persons failing to do any act directed to be done or doing any act forbidden to be done by any provision or by any part of any provision of this Act, or by any regulation, notice, or order of the Central Board, or of any local board, or any notice of any officer, or order of court, shall be guilty of an offence against this Act, and shall be liable—

Penalties.
711, 1898, s. 155.
2217, 1935, s. 10.

- (a) to any sum not exceeding the particular penalty specified in or at the foot of the provision or

regulation, or in or at the foot of the particular provision under which any such notice or order is given or made:

- (b) if there be no specified penalty, then in the case of a breach—
- (i) of a provision of this Act to a penalty not exceeding fifty pounds; or
 - (ii) of any regulation to a penalty not exceeding ten pounds.

Summary proceedings.
711, 1898,
s. 156.

157. All complaints and informations shall be heard and determined, and all moneys, costs, and expenses shall be recovered in a summary way.

Appropriation of penalties.
711, 1898,
s. 157.
2089, 1932,
s. 8.

158. All penalties for an offence against this Act which are recovered on the complaint of any inspector or officer of a local board shall be paid to that local board. All other penalties shall be paid into the general revenue of the State.

Legal proceedings.
711, 1898,
s. 158.

159. All complaints, informations, and legal proceedings by or against the Central Board or any local board, may be preferred, prosecuted, or defended in the name of that board, or in the name of the chairman, secretary, or inspector.

No proceedings to be taken without authority.
711, 1898,
s. 159.
Cf. U.K.
26 Geo. 5 & 1,
Edw. 8, c. 49,
s. 298.

160. Except where otherwise provided, no proceedings shall be instituted under this Act, except by or on behalf, or with the authority of the Central Board or of the local board. The authority may be either general or particular, and may be proved by the production of the authority in writing under the hand of the chairman or secretary of the board, or a copy of a resolution under the hand of the chairman or secretary.

Constitution of board need not be proved.
711, 1898,
s. 160.

161. It shall not be necessary in any legal proceedings to prove the existence, constitution, or appointment of the Central Board, or any local board, or of any chairman, officer, or member thereto.

Proof of boundaries and appointment of officers.
711, 1898,
s. 161.

162. (1) A certificate under the hand of any person appearing to be the chairman or secretary, or the oath of any officer, shall be sufficient evidence of—

- (a) the boundaries of any district:

s. 157. *R. v. LOCAL BOARD OF HEALTH OF PETERSBURG* (1903) S.A.L.R. 119. Section 157 is mandatory and provides the only method of procedure whereby money, costs, and expenses can be recovered against the person.

BODEY v. SHEPHERDSON (1922) S.A.S.R. 174; 11 *Austn. Digest* 87. Section 157 is limited so as to apply only to such moneys, costs, and expenses as the Act gives a right to recover.

(b) the appointment of any officer,
until the contrary be proved.

(2) Any notice thereof in the *Government Gazette* shall be conclusive evidence.

163. In any proceedings under this Act, on proof that an article was exposed in any place to which the public had access, or in any market or shop, it shall be presumed that the article was exposed for sale, unless the defendant proves the contrary.

Presumption where goods are exposed in shop, etc. 1248, 1916, s. 6.

164. Every document required to be made or authenticated by any board shall (unless otherwise provided) be sufficiently authenticated if appearing to be signed by any member or officer of the board.

Authentication of documents. 711, 1898, s. 167. Cf. U.K. 26 Geo. 5 & 1, Edw. 8, c. 49, s. 284. Cf. U.K. 26 Geo. 5 & 1, Edw. 8, c. 150, s. 300.

165. (1) Any document required to be served may be served by posting the same in an envelope addressed to the person for whom it is intended at his last known or most usual place of abode or business, or by delivering the same to the said person or at the said place.

Service of documents. 711, 1898, s. 168. Cf. U.K. 26 Geo. 5 & 1, Edw. 8, c. 49, s. 285. Cf. U.K. 26 Geo. 5 & 1, Edw. 8, c. 50, s. 301.

(2) In the case of unoccupied land or premises it shall be sufficient to affix any necessary notice on some conspicuous part of the land or premises.

(3) Any notice, consent, permission, or licence by this Act required to be given or obtained shall be in writing.

(4) Any document posted pursuant to this section shall be deemed to have been duly served at the time when in the ordinary course of post it would have arrived at its address.

166. Whenever any person fails to perform any duty cast upon him by this Act, or fails to comply with any order or notice, the local board may perform the duty or carry out the terms of the order or notice, and recover all expenses from the person in default.

Neglect of duty. 711, 1898, s. 169.

167. No board shall, except where otherwise expressly provided, be liable for anything in good faith done or caused or omitted to be done by it in carrying out the provisions of this Act, and every person acting under the authority of any board shall be indemnified by the board for all liability in so acting.

Board not to be liable in certain cases. 711, 1898, s. 170.

PART XI.

Actions
against
board.
711, 1898,
s. 171.

168. Every legal proceeding against any such person or against any board or person in good faith acting or intending to act under this Act, on account of anything done or omitted to be done shall be commenced within two months after the cause of action shall have arisen, and not afterwards.

Members
and officers
of boards
interested in
contracts, etc.
711, 1898,
s. 172.

169. Any member or officer of any board who—

- (a) is directly or indirectly interested in any bargain or contract entered into by the board; or
- (b) exacts, takes, or accepts any fee or reward whatsoever other than his proper remuneration,

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

Incorporation
of
Compulsory
Acquisition
of Land Act,
1925.
711, 1898,
s. 173.

170. The Compulsory Acquisition of Land Act, 1925, except sections 49, 79, 80, 81, and 82, is incorporated with this Act. The board of health shall be deemed to be the promoters of an undertaking, and this Act shall be deemed to be the special Act.

Provision as
to sale and
manufacture
of
bacteriolytic
or septic
tanks.
Inserted by
27, 1955,
s. 3.

171. (1) Any person who—

- (a) sells;
- (b) exposes for sale;
- (c) manufactures or constructs for the purpose of sale;

or

- (d) has in his possession for the purpose of sale,

any bacteriolytic or septic tank, which is not of a size, or is not constructed of such material and in such manner, as is approved by the Central Board shall be guilty of an offence and liable to a penalty not exceeding fifty pounds.

(2) Any such approval of the Central Board may be given by way of a specific or a general approval.

(3) In any proceedings for an offence against this section, a certificate purporting to be signed by the chairman or secretary of the Central Board and stating that any bacteriolytic or septic tank is not of the size or is not constructed of such materials or in such a manner as is approved by the Central Board shall be *prima facie* evidence of the statement in the certificate.

(4) A complaint in respect of any offence against this section or against any regulation made in pursuance of paragraph (h) of subsection (1) of section 147 shall be made within twelve months from the time when the matter of complaint arose.

SCHEDULES.

THE FIRST SCHEDULE.

Acts Consolidated and Repealed.

Reference to Act.	Short Title.	Extent of Repeal.
No. 711 of 1898 ..	The Health Act, 1898	The whole
No. 991 of 1909 ..	The Health Act Amendment Act, 1909	The whole
No. 1063 of 1911 ..	The Health Act Amendment Act, 1911	The whole
No. 1248 of 1916 ..	Health Act Further Amendment Act, 1916	The whole
No. 1338 of 1918 ..	Health Act Further Amendment Act, 1918	The whole
No. 1696 of 1925 ..	Health Act Further Amendment Act, 1925	The whole
No. 2089 of 1932 ..	Health Act Amendment Act, 1932 ..	The whole
No. 2156 of 1934 ..	Local Government Act, 1934	Section 891
No. 2217 of 1935 ..	Health Act Amendment Act, 1935 .. .	The whole

THE SECOND SCHEDULE.

List of Infectious Diseases.

Substituted
14, 1954,
s. 9.

Acute infective encephalitis	Meningococcal infection
Amoebiasis	Ornithosis
Ancylostomiasis	Paratyphoid fever
Anthrax	Plague
Bilharziasis	Poliomyelitis
Cholera	Puerperal pyrexia
Diphtheria	Salmonella infection
Diarrhoea infantile infective	Scarlet fever
Dysentery bacillary	Smallpox
Influenza in epidemic form	Trachoma
Leprosy	Typhoid fever
Leptospirosis	Typhus fever (louse borne)
Malaria	Yellow fever

THE THIRD SCHEDULE.

List of Notifiable Diseases.

Inserted by
14, 1954,
s. 10.

Acute rheumatism	Lead poisoning
Brucellosis	Ophthalmia
Chorea (St. Vitus)	Rubella
Dengue	Tetanus
Erythema nodosum	Trichinosis
Encephalitis following another disease	Typhus fever—
Filariasis	Flea borne
Homologous serum jaundice	Mite borne
Hydatid disease	Tick borne
Infective hepatitis	

[As reprinted pursuant to the Amendments Incorporation Act, 1937, and section 46 of the Landlord and Tenant (Control of Rents) Act Amendment Act, 1951.]



LANDLORD AND TENANT (CONTROL OF RENTS) ACT, 1942-1955.

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.]

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

LANDLORD AND TENANT (CONTROL OF RENTS) ACT AMENDMENT
ACT, 1950, No. 50 OF 1950 [ASSENTED TO 7TH DECEMBER, 1950.]

LANDLORD AND TENANT (CONTROL OF RENTS) ACT AMENDMENT
ACT, 1951, No. 51 OF 1951 [ASSENTED TO 13TH DECEMBER, 1951.]

LANDLORD AND TENANT (CONTROL OF RENTS) ACT AMENDMENT
ACT, 1952, No. 39 OF 1952 [ASSENTED TO 4TH DECEMBER, 1952.]

LANDLORD AND TENANT (CONTROL OF RENTS) ACT AMENDMENT
ACT, 1953, No. 25 OF 1953 [ASSENTED TO 3RD DECEMBER, 1953.]

LANDLORD AND TENANT (CONTROL OF RENTS) ACT AMENDMENT
ACT, 1954, No. 41 OF 1954 [ASSENTED TO 16TH DECEMBER, 1954]

AND

LANDLORD AND TENANT (CONTROL OF RENTS) ACT AMENDMENT
ACT, 1955, No. 20 OF 1955 [ASSENTED TO 24TH NOVEMBER, 1955.]

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:

REPRINT OF ACT. Pursuant to section 46 of the Landlord and Tenant (Control of Rents) Act Amendment Act, 1951, those Parts, sections, subsections, paragraphs, subparagraphs, and other subdivisions of this reprinted Act which were enacted up to the end of 1951 have been re-numbered in numerical or alphabetical order, as the case may require, and all cross references in the reprinted Act have been corrected in conformity with the renumbering.

PART I.

PART I.

PRELIMINARY.

1. (1) This Act may cited as the “Landlord and Tenant (Control of Rents) Act, 1942-1955.”

Short title and commencement.

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

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

Arrangement of Act.

PART I.—Preliminary.

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

PART II.—Administration.

PART III.—Control of rents.

PART IV.—Control of rents of caravans.

PART V.—Recovery of possession of premises.

PART VI.—Protected persons.

* * * * *

Passage repealed by 25, 1955, s. 15 (2).

PART VII.—Miscellaneous.

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.

Repealing provision.

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

Interpretation.

“dwelling-house” means any premises the whole or a substantial part of which is leased for the purpose of residence, and includes—

Amended by 38, 1946, s. 2 (2), by 5, 1948, s. 4 (2) and by 39, 1952, s. 3.

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

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

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.

E. AND W. HACKETT LTD. v. OLIVER (1953) S.A.S.R. 19. Where the manager of a nursery was required to live at a house of his employer for which he paid no rent, held that his occupation of the house was that of a licensee.

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

Amended by
5, 1948,
s. 3 (a), and
by 9, 1949,
s. 2 (a).

“lease” includes every contract for the letting or subletting of any premises, whether the contract is made orally, in writing, or by deed, and includes a contract for the letting or subletting of any premises together with the use of furniture or other goods 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 (b), (c),
and (d).

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

- (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 mortgage immediately prior to the mortgagee entering into possession:

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

“local court” means a local court of full jurisdiction consisting solely of a Local Court Judge or a special magistrate:

Amended by
38, 1946,
s. 2 (1).

“rates” means any charges levied by the Minister of Works or by any municipal council or district council:

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

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

- (a) the value to the lessor of any covenants, conditions or other provisions of, or relating to, the lease to be performed by the lessee other than covenants, conditions, and provisions usually entered into by a lessee;
- (b) any rates or taxes (other than excess water rates) payable by the lessee in respect of the premises to which the lease relates;
- (c) any amount payable by the lessee to the lessor for the use of any furniture or other goods 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:

“shared accommodation” means any premises to which this Act applies—

- (a) which form part of other premises; and
- (b) which are leased for the purpose of residence; and
- (c) the lessee of which, under the terms of the lease, uses any habitable room in common with the lessor or with another lessee:

Inserted by
5, 1948,
s. 3 (f), and
substituted
by 51, 1951,
s. 2.

“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 (2).

(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), and amended by 25, 1953, s. 3. Para. (a) amended by 9, 1949, s. 3 (a).

5. (1) This Act shall apply to any premises being a dwelling-house (including any part of any such 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;

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

(b) 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;

Para. repealed by 9, 1949, s. 3 (d).

* * * * *

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

(d) 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

s. 4. (2) *BENGER v. HEGARTY AND GARDINER. BENGER v. HEGARTY AND WHITENBURY* (1950) S.A.S.R. 293. Where a lease was made of a hotel and shops and the shops were sublet by the lessee and, at the termination of the lease, a fresh lease of the hotel and shops was granted to another lessee but the lessee and the sub-lessee refused to give up possession of the shops, held that the lessee and the sub-tenants, being persons remaining in possession of the shops after the termination of the head lease and sub-tenancies respectively, were “lessees” within the meaning of section 4 (2) and were protected by section 42.

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 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.

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;

- (e) 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.

* * * * *

Subsecs (2) and (3) inserted by 9, 1949, s. 3 (e) and repealed by 25, 1953, s. 3 (c).

(4) This Act shall not apply to any premises licensed under the Licensing Act, 1932-1945.

Inserted by 9, 1949, s. 3 (e) and amended by 25, 1953, s. 3 (d).

(5) 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.

(6) In this Act, the term "premises to which this Act applies" shall include a reference to all premises being dwelling-houses other than premises to which this Act does not apply by virtue of paragraphs (a), (b), (d), or (e) of subsection (1) of this section or of subsection (4) of this section or of subsection (1) or (2) of section 6. The term also includes a reference to any part of any such premises which is separately leased and to any land or appurtenances leased with any such premises or part of any such premises.

Amended by 9, 1949, s. 3 (f), by 51, 1951, s. 3, and by 25, 1953, s. 3 (e), (f) and (g).

6. (1) The provisions of this Act shall not apply with respect to any lease of premises under which lease the lessor is—

Exemptions from Act. Subsec. (1) substituted by 39, 1952, s. 4.

- (a) the Government of the Commonwealth or the State or any instrumentality of any such Government;
- (b) any municipal council or district council; or
- (c) the trust.

s. 6. THE ELECTRICITY TRUST OF SOUTH AUSTRALIA v. LINTERNERS LIMITED (1950) S.A.S.R. 133. Held that the Electricity Trust of South Australia is an instrumentality of the Government of South Australia within the meaning of section 6 (1) (a).
 MORIALTA PROTESTANT CHILDREN'S HOMES INC. v. HEINRICH (1955) S.A.S.R. 232. Where the secretary of an incorporated association was the tenant of a house purchased by the association as a residence for its secretary and after ceasing to be secretary he remained in and paid rent for the house for some weeks, held that, by reason of section 6 (2a), the provisions of the Act relating to recovery of possession had no application.

PART I.

Inserted by
51, 1951,
s. 4 (a) and
substituted
by 25, 1953,
s. 4 (a).

- (2) The provisions of this Act shall not apply—
- (a) with respect to any lease entered into after the passing of the Landlord and Tenant (Control of Rents) Act Amendment Act, 1953, of any dwelling-house the erection of which is completed after the said passing and which or any part of which has not been used for the purpose of residence at any time prior to the said passing;
 - (b) with respect to any lease entered into after the passing of the Landlord and Tenant (Control of Rents) Act Amendment Act, 1953, of the whole of any premises which or any part of which was not let for the purpose of residence at any time between the first day of September, nineteen hundred and thirty-nine, and the time of the said passing;
 - (c) with respect to any lease in writing of any dwelling-house the term of which is for three years or more and which is entered into after the passing of the Landlord and Tenant (Control of Rents) Act Amendment Act, 1953;
 - (d) with respect to any lease in writing of any dwelling-house the lease of which is for two years or more and which is entered into after the passing of the Landlord and Tenant (Control of Rents) Act Amendment Act, 1954;
 - (e) with respect to any lease in writing of any premises to which this Act applies any part of which is let or used as a shop the term of which is for one year or more and which is entered into after the passing of the Landlord and Tenant (Control of Rents) Act Amendment Act, 1954.

Inserted by
41, 1954,
s. 3 (a).

Inserted by
41, 1954,
s. 3 (a).

Inserted by
41, 1954,
s. 3 (b).

(2a) The provisions of this Act relating to the recovery of possession of premises shall not apply with respect to a lease of any premises (whether entered into before or after the passing of the Landlord and Tenant (Control of Rents) Act Amendment Act, 1954) in any case where the lessee is an employee of the lessor and the dwellinghouse is let to the lessee in consequence of his employment by the lessor.

Inserted by
20, 1955, s.3.

(2b) If any lease in writing of any dwellinghouse is entered into after the passing of the Landlord and Tenant (Control of Rents) Act Amendment Act, 1955, and if the lease provides that the term thereof shall commence from a date specified in the lease and shall terminate upon a date specified in the lease, then the provisions of this Act relating to the control of rents

shall not apply with respect to any rent payable under the lease in respect of the term so specified in the lease.

(3) 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.

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

(4) The provisions of this Act relating to the control of rents shall not apply with respect to the rent payable under and in accordance with the provisions of any lease in writing the term of which is for twenty-one years or more and the term of which commenced before the third day of September, nineteen hundred and thirty-nine.

Inserted by 50, 1950, s.2.

* * * * *

Inserted by 51, 1951, s. 4 (b) and repealed by 25, 1953, s. 4 (b).

(6) 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.

* * * * *

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

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

Construction of Act.

PART II.

PART II.

ADMINISTRATION.

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

Administration of Act.

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

Protection of members of trust.

PART II.

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

Appointment
of officers.

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

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

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

Expenses of
administra-
tion.

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

PART III.

PART III.

CONTROL OF RENTS.

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

13. (1) Notwithstanding any term, condition or covenant in any lease in force at any time after the passing of this Act, the rent payable by the lessee of any premises (being a dwellinghouse) 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:—

s. 13. FENWICK V. BOUCAUT AND HODDER (1951) S.A.S.R. 290. The effect of subsection (1) is to peg the rent of premises to which the Act applies at the rate current on 1st August, 1942, ignoring any excess over the rent which was legally recoverable.

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

* * * * *

Inserted by 5, 1948, s. 5 (b), and repealed by 25, 1953, s. 5 (a).

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

Amended by 25, 1953, s. 5 (b).

(4) 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.

(5) 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.

Determination
of rent.

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

Notice of
determination
of rent.

Amended by
51, 1951, s. 5.

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. If the premises in respect of which the rent is so determined are not premises which are part of other premises leased separately the trust shall, in the notice aforesaid, supply information indicating such part of the rent provisionally determined as has been fixed after having regard to the matters stated in paragraphs (i) and (j) of subsection (1) of section 21.

Objection to
determination.

Amended by
51, 1951, s. 6.

17. (1) Within fourteen days after notice aforesaid is given to any lessor or lessee, the lessor or lessee, as the case may be, may by notice in writing given to the trust and to the other party to the lease, object to the amount of the rent so determined by the trust. Every such notice of objection shall contain particulars of the objection. After the receipt by the other party to the lease of the notice of objection that party may, at any time within twenty-one days after the notice aforesaid of the determination is given to him, by notice in writing given to the trust and to the party to the lease by whom the objection is made, make reply to the particulars stated in the objection. The trust may extend the time within which any such objection or reply may be given. In any case it thinks fit, the trust may hear any oral representations relating to any objection or reply made by the lessor or lessee or by some person on his behalf.

(2) The trust, on hearing or considering any objection or reply, 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 or reply the trust shall finally determine the rent of the premises.

Publication of
determination
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 and any reply to 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 to be 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.

Amended by
39, 1952, s. 5.

(3) The trust shall give notice in writing to the lessor and the lessee of every determination made under this section. If the rent fixed by the determination of the trust under this section is fixed in respect of premises which are not premises which are part of other premises leased separately, and the said rent differs from the rent provisionally determined under section 15, the trust, in the notice required to be given under this section, shall supply information indicating such part of the rent fixed under this section as has been fixed after having regard to the matters stated in paragraphs (i) and (j) of subsection (1) of section 21.

Amended by
51, 1951,
s. 7 (a).

(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.

Inserted by
9, 1949, s. 6.

(1) Notwithstanding any of the foregoing provisions of this section, the trust may, in any case in which it is of opinion that it is just so to do, fix as the date from which any determination of the trust shall take effect, any date not earlier than one month after the day upon which the application was made to the trust for the determination of the rent.

Inserted by
51, 1951,
s. 7 (b).

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

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

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.

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.

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.

Order by local court. Amended by 51, 1951, s. 8.

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 purposes 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. On the hearing of the appeal the local court shall not be bound by any rules of evidence or procedure but may inform itself in such manner as it thinks fit. The decision of the local court shall be final and conclusive.

(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.

Matters to be considered in fixing rent.

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

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. Since this decision subsections (2), (3), and (4) have been enacted.

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

- (a) the accommodation provided in the premises and the state of repair and the general condition thereof;
- (b) the neighbourhood in which the premises are situated;
- (c) if the lease relates to a part of any premises, the rent (if any) of the whole of the premises;
- (d) whether the premises or any part thereof is sublet by the lessee or is used by the lessee for the purpose of accommodating lodgers or boarders and the number of persons residing in the premises;
- (e) 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;
- (f) if the lease provides for payment for the use of furniture or other goods, the value, condition, and suitability of the furniture or goods;
- (g) 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;
- (h) 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;
- (i) any expenditure reasonably incurred by the lessor for rates, taxes, insurance and other costs in respect of the premises beyond the expenditure which would have been reasonably incurred for that purpose immediately prior to the first day of September, nineteen hundred and thirty-nine;
- (j) the difference between the reasonable value of any repairs or maintenance work carried out with respect to the premises and the reasonable expenditure which would have been incurred in carrying out those repairs or maintenance work

Inserted by
51, 1951,
s. 9 (a).

Inserted by
38, 1946, s. 5,
and sub-
stituted by
51, 1951,
s. 9 (b).

Inserted by
51, 1951,
s. 9 (b).

s. 21. (contd.) 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 intendment of the Act does not preclude a valuation which brings the rent of furnished premises into line with those of unfurnished premises *mutatis mutandis*.

MILLS v. ROBINSON (1950) S.A.S.R. 25. In fixing a rent the South Australian Housing Trust should take into consideration a proper return to be paid by the tenant for any easement, or a right of that nature, to which he is entitled under the terms of his tenancy agreement.

immediately prior to the first day of September, nineteen hundred and thirty-nine;

Inserted by 9, 1949, s 7, and amended by 51, 1951, s. 9 (c).

- (k) 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 express or implied consent of the lessor.

Inserted by 51, 1951, s. 9 (d) and amended by 41, 1954, s. 4, and by 20, 1955, s. 4.

(2) In fixing the rent under this Act of any dwelling-house, the trust or, as the case may be, local court, shall take as the basis for fixing the rent, the amount of its rental value in accordance with the general level of rental values for comparable premises prevailing at the first day of September, nineteen hundred and thirty-nine, but for the said purpose the said general level shall be deemed to be increased by thirty-three and one-third per centum thereof and the rent shall be fixed in accordance with the said general level so deemed to be increased and after having regard to any other matters required by this section to be taken into regard.

Inserted by 51, 1951, s. 9 (d) and amended by 25, 1953, s. 6 (a) (b).

(3) In fixing the rent of any premises to which this Act applies any part of which is used as a shop, storeroom, workshop, stable or for any similar purpose, the trust or, as the case may be, local court, in addition to having regard to any other matters required by this section to be taken into regard, shall, with respect to the rent to be fixed with respect to the part of the premises so used, have regard to the general level of rentals for comparable premises prevailing at the time of fixing the rent which is the result of agreement between the lessors and lessees thereof and the rent shall be fixed in accordance with that general level.

Inserted by 51, 1951, s. 9 (d) and substituted by 25, 1953, s. 6 (c).

(4) If any part of any premises to which this Act applies is a shop but is (whether with or without the consent of the lessor) used for the purpose of residence, then in fixing the rent of the premises the trust, or as the case may be, local court shall fix the rent with respect to that part of the premises which is a shop according to its rental value as a shop ascertained as provided by subsection (3) hereof.

(5) 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.

(6) 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.

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.

WEBB v. RADCLIFFE (1955) S.A.S.R. 184. Where the rent of a house was fixed by the South Australian Housing Trust and the owner subsequently converted the house into two flats (which were not entirely self-contained and required the use in common of the laundry, lavatory and bathroom) and let both to the same tenant at a rent in excess of that fixed, held that the excess was irrecoverable.

PART III.

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

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

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

Inserted by 51, 1951, s. 10.

(2) Notwithstanding the provisions of subsection (1), if the rent of any premises to which this Act applies is, before the passing of the Landlord and Tenant (Control of Rents) Act Amendment Act, 1951, fixed by the trust or a local court pursuant to this Act, further proceedings under this Act for the fixing of the rent of those premises may be commenced after a period of three months from the time the rent was fixed as aforesaid.

(3) 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.

Application by lessor contemplating repairs, etc. Inserted by 50, 1950, s. 3.

26. (1) A lessor of premises to which this Act applies may give notice in writing to the trust stating that he intends carrying out such repairs, renovations, improvements, alterations or additions to the premises as are specified in the notice and requesting the trust to give an estimate of the probable rent of the premises after the carrying out of the work so specified.

(2) The trust shall cause the premises to be inspected and after making such inquiries and obtaining such reports as the trust considers necessary, the trust shall inform the lessor of what would be the probable estimated rent of the premises if the repairs, renovations, improvements, alterations, or additions, as the case may be, are properly carried out.

(3) If subsequently to the carrying out of the work the rent of the premises is fixed by a determination of the trust made upon the application of the lessor or otherwise, the trust shall determine the rent of the premises in accordance with this Act and neither the trust nor, on any appeal from the determination of the trust, the local court, shall be bound by the estimate of rent given by the trust as aforesaid, but the trust or, as the case may be, the local court shall have such regard to the estimate as the trust or local court, as the case may be, deems just in the circumstances.

27. (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.

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

(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 IV.

PART IV.

CONTROL OF RENTS OF CARAVANS.

28. 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:

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

“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 any person is authorized to use or place or keep placed 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 dwelling-house, other building, or any part thereof or goods or for the use of any land other than the land upon which the caravan is actually placed;
- (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.

Amended by
50, 1950, s. 4.
and by 51,
1951, s. 11.

Fixation of
rents in
respect of
letting of
caravans.

Inserted by
30, 1947, s. 2,
and amended
by 51, 1951,
s. 12.

29. (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, with respect to caravans situated within such part or parts of the State as are specified in the notice, the maximum rents payable in respect of the letting of such caravans shall from a day or days to be

specified in the notice, not exceed the rent or rents set out in the notice.

Any such notice may fix different maximum rents—

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

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

30. (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 29 shall, except in the circumstances mentioned in section 31 or 40, not exceed the rent fixed by the declaration and appropriate to the caravan.

Payment of rent under letting of caravans. 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.

31. (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 29, 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.

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

(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 30, 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.

32. (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 arrange-

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

Landlord and Tenant (Control of Rents) Act, 1942-1955.

ments 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 28, 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.

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

33. (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 32, shall, except in the circumstances mentioned in section 34, not exceed the rent fixed by the declaration and appropriate to the land and the arrangement with respect thereto.

(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 land.
Inserted by 30, 1947, s. 2.

34. (1) The owner of any land in respect of which a maximum rent has been determined pursuant to section 32, 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 32: Provided that no such application may be made in respect of any land by the owner thereof within six months after the making of any prior application by that owner in respect of that land.

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

(3) Notwithstanding the provisions of section 33, 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 32 and any rent

in excess of such maximum rent shall, notwithstanding any agreement to the contrary, be irrecoverable.

35. (1) If any rent is determined pursuant to section 31 or 34 in respect of any caravan or land, the trust shall supply to the owner of the caravan or land, as the case may be, a notice stating the maximum rent payable pursuant to this part in respect of the caravan or land and the owner of the caravan or land, as the case may be, shall, within a time to be specified by the trust, cause the notice to be fixed to the caravan or, as the case may be, displayed on the land in manner directed by the trust.

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

(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.

36. (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.

Duty to give receipt for rent.
Inserted by 9, 1949, s. 10.

(1a) If the payment received by any person as aforesaid consists of rent with respect of a caravan together with rent with respect to any land, either the receipt to be given pursuant to subsection (1) shall specify an amount which is the part of the payment which is payable as rent with respect to the caravan and an amount which is the part of the payment which is payable as rent with respect to land or separate receipts shall be given as provided by subsection (1) for each such part of the payment. If any receipt such as is first mentioned in this subsection does not specify the said parts of the payments so made, then, without limiting any liability under this section of the person by whom the receipt is given, the amount stated in the receipt shall, for the purposes of any proceedings under this Part and in the

Inserted by 39, 1952, s. 6.

Landlord and Tenant (Control of Rents) Act, 1942-1955.

absence of proof to the contrary, be deemed to be the rent paid as rent in respect of the caravan.

(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.

37. (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.

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

38. 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 to 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.

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

39. (1) For the purpose 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—

- (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.

40. (1) 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.

(2) If pursuant to subsection (1), this Part does not apply to any caravan then, during such time as this Part does not apply to that caravan, this Part shall not apply to the rent of any land payable in respect of that caravan.

Inserted by 51, 1951, s. 13.

PART V.

PART V.

RECOVERY OF POSSESSION OF PREMISES

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

Commencement of Part. Inserted by 5, 1948, s. 6.

Part V. 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. 41. Part V. was proclaimed to commence on 16th August, 1948: *Gazette* 13th August, 1948, p. 703.

PART V.

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

42. (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 ejectment 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 ejectment 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 for a period determined in accordance with section 43 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 110, 111 and 112 shall not apply to the service of a notice to quit.

- s. 42. 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 ejectment proceedings if necessary, held that it was sufficient for the purposes of regulation 58 of the National Security (Landlord and Tenant) Regulations (which corresponded with section 42) 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 to 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 in 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

(5) Where for any sufficient cause the service of any notice to quit cannot be effected, a special magistrate may, upon an affidavit showing grounds, make such order for substituted or other service or substitution for service of notice by advertisement or otherwise as may be proper.

Inserted by
51, 1951,
s. 14 (a).

(6) The prescribed grounds shall be—

(a) that the lessee has failed to pay the rent in respect of a period—

Amended by
50, 1950,
s. (1) (a).

(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,

or that the lessee has failed to pay any rent which has been due and payable for more than twenty-eight days;

(b) that the lessee has failed to perform or observe some other term or condition of the lease and the performance or observance of that other term or condition has not been waived or excused by the lessor;

(c) that the lessee has failed to take reasonable care of the premises, or of any furniture or other goods leased therewith or has committed waste;

s. 42.
(contd.)

Saturday nights in any year and the committee was described in the agreement as "the landlord" and the exhibitor as "the tenant," and the agreement referred to the payment of "rent" by the tenant and contained covenants by 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 (6), held that the notice complied with the requirement of section 42 (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 V. 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.

PART V.

Amended by
51, 1951,
s. 14 (b).

(d) that the lessee or any person residing or lodging in the premises 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 (d) 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 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 son

Amended by
9, 1949,
s. 12 (a), (b),
by 25, 1953,
s. 7 (a), (b),
(c), and by
41, 1954,
s. 5 (a).

s. 42. (6) (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 42 (6) (d).

CURTIS v. STUTLEY (1950) S.A.S.R. 130. To justify notice to quit being given upon the ground mentioned in section 42 (6) (d), the conduct of the lessee must have some relation to the lessee's use of the leased premises. It is not sufficient that the lessee has been guilty of conduct which has in fact been a nuisance or annoyance to an adjoining or neighbouring occupier, but which does not arise from, and has no relation to, his use of the premises.

CLAREY v. PRINCIPAL AND COUNCIL OF WOMEN'S COLLEGE (1953) 90 C.L.R. 170; 27 A.L.J. 401. A landlord who lets portion of a building for the accommodation of university students cannot complain that the conduct of the students, in keeping late hours and in course of so doing making noises of a kind incidental to the occupation of the premises as a dwelling such as walking about, scraping chairs along the floor, having baths, talking and laughing, and preparing for bed, constitutes a nuisance or annoyance to adjoining occupiers.

s. 42. (6) (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 ARMEN'S IMPERIAL LEAGUE OF AUSTRALIA

or daughter of the lessor or by a brother or sister of the lessor or of the wife or husband of the lessor; or

(ii) being a part of a dwelling-house leased other than 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 needed 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);

Amended by 51, 1951, s. 14 (c).

(i) that the lessor is a trustee and the premises are reasonably needed 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;

Amended by 51, 1951, s. 14 (c).

(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 needed for the purposes of the hospital (including the accommodation of the staff of the hospital);

Inserted by 51, 1951, s. 14 (c).

* * * * *

Para. (k) repealed by 20, 1955, s. 5 (a).

s. 42. (6) (g) (HENLEY AND GRANGE SUB-BRANCH) INCORPORATED V. GRACE ABBOTT AND JOSEPH ERNEST ABBOTT (1946) S.A.S.R. 270. Where premises are part dwelling-house 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 42 (6). 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."

R. AND J. BAKER LIMITED V. LANGDON (1952) S.A.S.R. 75. The word "lessor" in subparagraph (i) applies only to a natural person and does not include a body corporate.

PART V.

Inserted by
50, 1950,
s. 5 (1) (b),
and amended
by 51, 1951,
s. 14 (c),
(e), and (f).

(l) that the premises being a dwelling-house (which was owned by the lessor at the time of the passing of the Landlord and Tenant (Control of Rents) Act Amendment Act, 1951) situated in or contiguous to any grazing area, farm, orchard, vineyard, market garden, dairy farm, poultry farm, pig farm or apiary of the lessor are reasonably needed for the personal occupation as a dwelling-house in consequence of that employment by some person employed by or about to be employed by the lessor for the purpose of the grazing area, farm, orchard, vineyard, market garden, dairy farm, poultry farm, pig farm, or apiary, as the case may be;

Inserted by
25, 1953,
s. 7 (d).

(ll) that the premises are reasonably needed for the permanent occupation as a dwelling-house in consequence of that employment by some person employed by, or about to be employed by, the lessor;

Amended by
9, 1949,
s. 12 (c), (d),
by 25, 1953,
s. 7 (e), (f),
(g), and by
41, 1954,
s. 5 (b).

(m) that the lessor has agreed to sell the premises by an agreement which requires the purchaser to pay not less than one-fourth of the whole purchase-money within twelve months from the date thereof and by which the purchaser is entitled to vacant possession of the premises and the premises—

(i) being a dwelling-house or, in the case of a dwelling-house within the meaning of paragraph (d) 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 son or daughter of the purchaser or by a brother or sister of the purchaser or of the wife or husband of the purchaser; or

(ii) being a part of a dwelling-house leased other than 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;

- (n) that the premises are reasonably needed by the lessor for reconstruction or demolition; Amended by 51, 1951, s. 14 (c).
- (o) that the premises being a dwelling-house, the lessee, by subletting the dwelling-house or any part thereof, or by taking in boarders or lodgers, is making or during the period of six months immediately preceding the giving of the notice to quit was making, a profit from the premises which, having regard to the rent paid by the lessee, is unreasonable; Inserted by 51, 1951, s. 14 (g).
- (p) 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; Amended by 50, 1950, s. 5 (1) (c).
- (q) 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;
- (r) 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; Inserted by 9, 1949, s. 12 (e) and amended by 41, 1954, s. 5 (c).
- (s) that the lessee has without the consent or approval of the lessor not personally resided in the premises for a continuous period of at least six months. Inserted by 25, 1953, s. 7 (h).

(7) In subsection (3) and subsection (6), 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. Amended by 20, 1955, s. 5 (b).

(8) Notice to quit on a ground specified in paragraph (p) or (q) of subsection (6)—

(a) shall not be given—

(i) where the lessee became the lessee by virtue of an assignment or transfer made before

s. 42. (6) (n) 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.

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.

Inserted by
9, 1949,
s. 12 (f) and
amended by
20, 1955,
s. 5 (c), (d).

(9) Notice to quit on a ground specified in paragraph (g) of subsection (6) shall not be given by a lessor who 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 (m) of subsection (6) shall not be given by a purchaser who is an alien unless he has continuously resided in the Commonwealth for at least three years immediately prior to the giving of a notice.

Inserted by
50, 1950,
s. 5 (2).

(10) A notice to quit may be given with respect to any part of any premises to which this Act applies notwithstanding that the lease of the premises comprises that part and other parts of the premises and proceedings may be taken for the recovery of the possession of any such part or for the ejectment of the lessee therefrom.

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

43. (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.

(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 (a), (c), (d), (e) or (f) of subsection (6) of section 42 and not on any other ground;

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

Amended by
50, 1950, s. 7.

(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.

(3) If any premises to which this Act applies are let upon a fortnightly lease or upon a lease for any less period, a notice to quit in respect of those premises shall not be ineffective by reason that the period of the notice to quit does not expire upon a day coinciding with the expiration of a period of the lease.

Inserted by 51, 1951, s. 15.

44. (1) Every notice to quit shall on the face of the notice bear an indorsement to the effect that the lessee to whom the notice to quit is given is not legally obliged to comply with the notice unless ordered to do so by a local court.

Requirements of notice to quit.

Inserted by 5, 1948, s. 6, and substituted by 51, 1951, s. 16.

(2) In any proceedings for the recovery of possession of any premises or for the ejectment of the lessee therefrom in which an appearance has been entered by the defendant, the validity of the notice to quit upon which those proceedings are founded shall not be affected by the fact only that the notice to quit does not bear an indorsement as required by subsection (1).

45. (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 who becomes the lessor thereof by virtue of a lease granted in respect of the premises shall not, within a period of six months after the date of the agreement for the purchase, transfer, or assignment or, as the case may be, the date of the commencement of the term of the lease, give a notice to quit on the ground specified in paragraph (g) of subsection (6) of section 42 to any person who was a lessee of the premises at the date of the agreement for the purchase, transfer, or assignment or, as the case may be, the date of the commencement of the term of the lease.

Notice to quit where dwelling-house sold.

Inserted by 5, 1948, s. 6, and amended by 9, 1949, s. 13, by 50, s. 8, and by 25, 1953, s. 8.

(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 (m) of subsection (6) of section 42 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. and amended by 51, 1951, s. 17 and by 25, 1953, s. 9.

46. A notice to quit shall specify the ground relied upon and, in the proceedings, the lessor may rely upon any ground upon which notice to quit may be lawfully given whether specified in the notice to quit or not.

If in any proceedings the lessor relies upon any ground other than a ground specified in the notice to quit and if on the hearing of the proceedings the court makes an order for the recovery of possession of the premises or for the ejection of the lessee therefrom, that order shall be deemed to terminate the tenancy of the lessee as from the day on which the order takes effect.

Notice to quit to terminate lease.

Inserted by 5. 1948, s. 6. and amended by 51, 1951, s. 18.

47. A notice to quit given in accordance with the provisions of section 42, section 53, section 54 or section 55 shall, if the tenancy in respect of which the notice was given has not otherwise terminated, operate so as to terminate the tenancy of the premises at the expiration of the period specified in the notice, but nothing in this section shall operate so as to determine any tenancy before the date on which it would have terminated if this section had not been enacted.

Notice to quit after failure of eviction proceedings.

Inserted by 5. 1948, s. 6.

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

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

S. 47. AMAD v. GRANT; GROSGLICK 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 (but see subsection (3) of section 43). Held that Regulation 62 of the National Security (Landlord and Tenant) Regulations (which corresponded with section 47) 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 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.**

49. (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 ejectment of the lessee therefrom, the court shall take into consideration, in addition to all other relevant matters—

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

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

s. 49. 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, MATTERS, ROGERS, SMITH, AND LEAN (1946) S.A.S.R. 234. In the case of business premises, where the relative hardship between lessor and lessee appears 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.

MCARTHUR 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 dwelling-house occupied by him.

OLDFIELD v. GRAY AND OTHERS (1950) S.A.S.R. 206. Where a lessee of premises sublet the premises to his son without the consent or approval of the lessor, held, in proceedings by the lessor for recovery of possession of the premises upon this ground, that any hardship suffered by the lessee or his son, through the lessee being prevented from conferring upon the son the right to occupation of the premises, did not constitute the "special circumstances" required by section 49 (2) (a) to justify the refusal of an order for possession.

SHIELL v. SYMONS. SHIELL v. FORD. SHIELL v. NICHOLLS (1951) S.A.S.R. 82. Under the Health Act, 1935, a local board of health declared an old dwellinghouse (which was sublet to various sub-tenants) unfit for habitation and the lessor gave notice to quit on the ground that the premises were reasonably required by the lessor for reconstruction. In proceedings to recover possession from some of the sub-lessees held that, while substantial hardship must necessarily be suffered by the lessor as the result of the refusal of the order, no hardship could be caused to the sub-lessees by the making of the order, any hardship which they might suffer arising not from the order but from the operation of the provisions of the Health Act.

PART V.

Amended by
50, 1950, ss.
6 (2) and
9 (a) by 39,
1952, s. 7 (a),
and by 25,
1953, s. 10
(a).

(c) where the application is made on any one or more of the grounds specified in paragraphs (g), (h), (i), (j), (l1), (m) and (n) of subsection (6) of section 42—whether reasonably suitable alternative accommodation in lieu of the premises is, or has been, whether before or after 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 (6) of section 42—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), and
amended by
50, 1950,
s. 9 (b).

(e) where the application is made under a ground specified in paragraph (m) of subsection (6) of section 42—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;

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

(f) where the application is made under a ground specified in paragraph (g) of subsection (6) of section 42—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;

Inserted by
9, 1950,
s. 9 (c).

(g) where the application is made on a ground specified in paragraph (g) of subsection (6) of section 42—whether the lessor has been required by circumstances to live elsewhere than in the premises and whether there has been any relevant change in those circumstances;

Inserted by
50, 1950,
s. 9 (c).

(h) whether the lessee has made reasonable efforts to secure other premises;

Inserted by
50, 1950,
s. 9 (c).

(i) where the proceedings relate to a dwelling-house and a permit has been issued to the lessee under the Building Materials Act, 1949, for the construction of a dwelling-house—whether the lessee has been guilty of unreasonable delay in the

construction of the dwelling-house in respect of which the permit was issued;

- (j) where application is made on a ground specified in paragraph (s) of subsection (6) of section 42— whether the lessee had reasonable cause not to reside personally in the premises,

Inserted by 25, 1953, s. 10 (b).

and may, in its discretion, make the order subject to such conditions (if any) as the court thinks fit 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.

Amended by 9, 1949, s. 14 (c), and by 51, 1951, s. 19 (a), (b).

(2) Where the application is made on either of the grounds specified in paragraphs (p) and (q) of subsection (6) of section 42, 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—

Amended by 51, 1951, s. 19 (c).

- (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 (q) applies, that the subletting was in the course of a business of subletting carried on by the lessee and that the business was commenced or is carried on with the express or implied consent of the lessor.

(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.

(4) If, on the hearing of any such proceedings where application is made on a ground specified in paragraph (a), (b), or (c) of subsection (6) of section 42 or on a ground specified in paragraph (d) of subsection (6) of section 42 in respect of premises other than shared accommodation, the court is satisfied that the ground has been proved, or if, on the hearing of any such proceedings, proof is given to the satisfaction of the court that, at the time of the giving of the notice to quit, the lessee was in arrears with respect to any rent payable under the lease (whether those arrears were paid before the hearing or not), the court may, if the court thinks fit, make the order without taking into consideration any of the matters referred to in subsection (1) of this section.

Inserted by 50, 1950, s. 9 (d), and amended by 51, 1951, s. 19 (d), (e) and (f).

PART V.

Inserted by
51, 1951,
s. 19 (g).

(5) If, on the hearing of any such proceedings where application is made on a ground specified in paragraph (e), (k), (l), or (r) of subsection (6) of section 42 or on a ground specified in paragraph (d) of subsection (6) of section 42 in respect of premises being shared accommodation, the court is satisfied that the ground has been proved, the court shall not take into consideration any of the matters referred to in subsection (1) of this section.

Inserted by
50, 1950,
s. 9 (d) and
amended by
25, 1953, s. 10
(c), (d), (e),
and by 41,
1954, s. 6 (a)

(6) If in any such proceedings where application is made on the ground that a dwelling-house is reasonably needed for the occupation as a dwelling-house by the lessor or the son or daughter of the lessor and proof is given to the satisfaction of the court—

- (a) that the lessor has been the owner of the dwelling-house for at least two years before the giving of the notice to quit; and
- (b) that at the time of the giving of the notice to quit the lessor was not the owner of any other dwelling-house which was reasonably available to the lessor, or as the case may be, the son or daughter of the lessor for his occupation; and
- (c) that the lessor has not since the twenty-second day of September, nineteen hundred and forty-nine, as owner, transferred or conveyed or otherwise disposed of any dwelling-house which was at the time of the transfer, conveyance or disposition reasonably available to the lessor, or as the case may be, the son or daughter of the lessor for his occupation; and
- (d) that the lessor is a British subject; and
- (e) that the lessor has since the passing of the Landlord and Tenant (Control of Rents) Act Amendment Act, 1950, given notice to quit to the lessee for a period of not less than six months,

then the court shall not take into consideration any of the matters mentioned in subsection (1) of this section.

Nothing in this subsection shall limit any right of the lessor under any other provision of this Act.

The Governor may make regulations prescribing a form of notice to quit which may be given by any lessor in pursuance of this subsection and, without limitation of the right of a lessor to give notice to quit in any other form, any notice to quit in the form prescribed by regulation shall be deemed to

be sufficient notice of all the matters referred to in paragraphs (a) to (e) inclusive of this subsection.

In paragraph (a) of this subsection "owner" includes a tenant for life and the survivor of two or more joint tenants or tenants in common.

Inserted by
51, 1951,
s. 19 (h).

(7) If in any such proceedings where application is made on the ground that a dwelling-house is reasonably needed by the lessor for his occupation as a dwelling-house or that the lessor being a trustee the dwelling-house is reasonably needed by a beneficiary under the trust for his personal occupation as a dwelling-house, proof is given to the satisfaction of the court—

Inserted by
51, 1951,
s. 19 (i) and
amended by
41, 1954,
s. 6 (b).

- (a) that the lessor or, as the case may require, the beneficiary, is a protected person; and
- (b) that at the time of the giving of the notice to quit, the lessor or, as the case may require, the beneficiary was not the owner of any other dwelling-house which was reasonably available to him for his occupation; and
- (c) that the lessor or, as the case may require, the beneficiary has not since the twenty-second day of September, nineteen hundred and forty-nine, as owner, transferred or conveyed or otherwise disposed of any dwelling-house which was at the time of the transfer, conveyance, or disposition reasonably available to him for his occupation; and
- (d) that the lessor has since the passing of the Landlord and Tenant (Control of Rents) Act Amendment Act, 1951, given notice to quit to the lessee for a period of not less than six months,

then the court shall not take into consideration any of the matters mentioned in subsection (1) of this section.

Nothing in this subsection shall limit any right of the lessor under any other provisions of this Act.

The Governor may make regulations prescribing a form of notice to quit which may be given by any lessor in pursuance of this subsection and, without limitation of the right of a lessor to give notice to quit in any other form, any notice to quit in the form prescribed by regulation shall be deemed to be sufficient notice of all the matters referred to in paragraphs (a) to (d) inclusive of this subsection.

In this subsection "protected person" has the meaning given to that term by section 72.

Inserted by
39, 1952,
s. 7 (b) and
amended by
25, 1953,
s. 10 (f).

(8) If in any such proceedings where application is made in respect of a dwelling-house upon a ground specified in paragraph (g) or (m) of subsection (6) of section 42 proof is given to the satisfaction of the court—

- (a) that the lessee has constructed or caused to be constructed a dwelling-house upon land in which he had a beneficial interest;
- (b) that the dwelling-house was completed after the passing of the Landlord and Tenant (Control of Rents) Act Amendment Act, 1952; and
- (c) that the dwelling-house on its completion was available for occupation by the lessee as a residence but the lessee has not so occupied the dwelling-house,

then the court shall not take into account any of the matters mentioned in subsection (1) of this section.

Inserted by
25, 1953,
s. 10 (g), and
amended by
41, 1954,
s. 6 (c)

(9) If in any such proceedings where application is made on the ground that the premises (being premises part of which is used as a shop, storeroom, workshop or stable or for a similar purpose) are reasonably needed for occupation by the lessor in connection with his trade, profession, calling or occupation, proof is given to the satisfaction of the court—

- (a) that the lessor has been the owner of the premises for at least two years before the giving of the notice to quit; and
- (b) that at the time of the giving of the notice to quit the lessor was not the owner of any other premises which were reasonably available to him for occupation by him in connection with his trade, profession, calling or occupation; and
- (c) that the lessor is a British subject or a body corporate incorporated or registered in accordance with any law of the State; and
- (d) that the lessor has since the passing of the Landlord and Tenant (Control of Rents) Act Amendment Act, 1953, given notice to quit to the lessee for a period of not less than six months,

then the court shall not take into consideration any of the matters mentioned in subsection (1) of this section.

Nothing in this subsection shall limit any right of the lessor under any other provision of this Act.

(10) If any such proceedings where application is made on the ground 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, proof is given to the satisfaction of the court that the lessor has since the passing of the Landlord and Tenant (Control of Rents) Act, 1954, given notice to quit to the lessee for a period of not less than six months, then the court shall not take into consideration any of the matters mentioned in subsection (1) of this section.

Inserted by 41, 1954, s. 6 (d).

Nothing in this subsection shall limit any right of the lessor under any other provision of this Act.

50. (1) In respect of any proceedings referred to in section 49, the court—

Power of court.

Inserted by 50, 1950, s. 10.

(a) if satisfied that such an order should be made in accordance with the provisions of this Part, may make an order for the recovery of possession of such part of the premises the subject of the proceedings as the court thinks fit or for the ejection of the lessee from such part;

(b) with the consent of the parties and without any further hearing in the proceedings may make any order which may be made by the court in pursuance of this Part.

(2) In any case where in the opinion of the court it is in the interests of justice so to do, the court, in its discretion, may hear two or more such proceedings together and in any such event the court may regulate the proceedings with reference to the cross-examination of witnesses or otherwise relating to the hearing as the court thinks fit.

51. In respect of any proceedings referred to in section 49 the court or a special magistrate may—

Power to stay proceedings or orders.

Inserted by 5, 1948, s. 6, and amended by 51, 1951, s. 20.

(a) from time to time, subject to such conditions (if any) and for such period as it thinks fit—

(i) adjourn the proceedings;

s. 51. *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 51 (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 51 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.

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

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

52. (1) An application to stay or suspend the execution of, or to vary, discharge or rescind, any judgment or order referred to in section 51, 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.

Substituted by 51, 1951, s. 21.

(2) Notwithstanding anything in the Local Courts Act, 1926-1947, or any other Act, a warrant for delivery of possession of premises which pursuant to such Act would remain in force for any fixed period, shall remain in force for such further period or periods, if any, as the court shall, from time to time, direct whether before or after the expiration of such fixed period and whether the warrant has expired or not.

(3) Where in respect of any proceedings referred to in section 49 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.

53. (1) Notwithstanding section 42 but subject to this section, the lessor of premises to which this Act applies being shared accommodation in a dwelling-house which premises were leased at the passing of the Landlord and Tenant (Control of Rents) Act Amendment Act, 1951, may give notice to quit to the lessee under the lease at the time of the said passing without specifying any ground therein.

Proceedings for recovery of possession of shared accommodation already leased. Inserted by 51, 1951, s. 22.

(2) A notice to quit shall not be given under this section except subject to the following provisions:—

- I. The lessor shall give notice to quit to the lessee for a period of not less than two months:
- II. At the time of the giving of the notice to quit and during the period of twelve months prior to the giving of the notice, the lessor shall not have let shared accommodation in the dwelling-house to different lessees under two or more leases in existence at the same time:
- III. The lessor shall at the time of the giving of the notice to quit reside in the dwelling-house and shall have resided in the dwelling-house during the whole of the period of twelve months prior to the giving of the notice to quit:
- IV. During the period of six months prior to the giving of the notice to quit the lessor shall not have recovered as rent from the lessee in respect of the premises any amount which by virtue of this Act is irrecoverable.

Every such notice to quit shall, in addition to containing such other matters as are necessary, give notice to the lessee of the matters referred to in paragraphs II., III., and IV. of this subsection but if, in any proceedings by the lessor for an order for the recovery of possession of the premises or the ejection of the lessee therefrom, an appearance is entered by the defendant, the validity of the notice to quit shall not be affected by the fact only that the notice to quit has not given notice of the matters aforesaid.

(3) On the hearing of any proceedings by the lessor for an order for the recovery of possession of the premises or for the ejection of the lessee therefrom, if proof is given (the onus of which proof shall be on the lessor) to the court

Landlord and Tenant (Control of Rents) Act, 1942-1955.

that the lessor was entitled under this section to give the notice to quit, then the court shall make the order without taking into consideration any of the matters mentioned in subsection (1) of section 49 unless the court considers that special circumstances exist in which case the court may, in its discretion, take into consideration any of the said matters.

(4) Except as otherwise provided by this section, the provisions of this Part shall apply with respect to any such notice to quit or proceedings.

(5) Nothing in this section shall limit any right of the lessor under any other provisions of this Act.

Provisions for recovery of possession of shared accommodation to be leased in the future.
Inserted by 51, 1951, s.22.

54. (1) Notwithstanding section 42 but subject to this section, the lessor of premises to which this Act applies being shared accommodation in a dwelling-house, may give notice to quit to the lessee of those premises under any lease made after the passing of the Landlord and Tenant (Control of Rents) Act Amendment Act, 1951, without specifying any ground therein.

(2) A notice to quit shall not be given under this section except subject to the following provisions:—

- i. The lessor shall give notice to quit to the lessee for a period of not less than two months:
- ii. At the time of the giving of the notice to quit and during the period of twelve months prior to the giving of the notice, the lessor shall not have let shared accommodation in the dwelling-house to different lessees under two or more leases in existence at the same time:
- iii. The lessor shall at the time of the giving of the notice to quit reside in the dwelling-house and shall have resided in the dwelling-house during the whole of the period of twelve months prior to the giving of the notice to quit:
- iv. The rent payable for the premises shall have been fixed by a determination of the trust or an order of a local court:
- v. During the period of six months prior to the giving of the notice to quit the lessor shall not have recovered as rent from the lessee in respect of the premises any amount which by virtue of this Act is irrecoverable.

Every such notice to quit shall, in addition to containing such other matters as are necessary, give notice to the lessee

of the matters referred to in paragraphs II., III., IV., and V., of this subsection but if, in any proceedings by the lessor for an order for the recovery of possession of the premises or the ejection of the lessee therefrom, an appearance is entered by the defendant, the validity of the notice to quit shall not be affected by the fact only that the notice to quit has not given notice of the matters aforesaid.

(3) On the hearing of any proceedings by the lessor for an order for the recovery of possession of the premises or for the ejection of the lessee therefrom, if proof is given (the onus of which proof shall be on the lessor) to the court that the lessor was entitled under this section to give the notice to quit, then the court shall make the order without taking into consideration any of the matters mentioned in subsection (1) of section 49 unless the court considers that special circumstances exist in which case the court may, in its discretion, take into consideration any of the said matters.

(4) Except as otherwise provided by this section, the provisions of this Part shall apply with respect to any such notice to quit or proceedings.

(5) Nothing in this section shall limit any right of the lessor under any other provision of this Act.

(6) In this section "shared accommodation" means any premises to which this Act applies—

- (a) which form part of other premises; and
- (b) which are leased for the purpose of residence; and
- (c) the lessee of which, under the terms of the lease, uses any habitable room, bathroom or privy in common with the lessor or with another lessee.

54a. (1) Notwithstanding section 42 but subject to this section, the lessor of any dwelling-house may give notice to quit to the lessee of the dwelling-house without specifying any ground therein.

Recovery of possession of dwellinghouse comprised in estate.

Inserted by 41, 1954, s. 7.

(2) A notice to quit shall not be given under this section except subject to the following provisions:—

- I. The lessor shall be the lessor of the dwellinghouse as the executor or administrator of an estate in which the dwelling-house is included;
- II. The gross value of the dwelling-house shall be an amount which is at least one-half the amount of the gross value of the total estate;

Landlord and Tenant (Control of Rents) Act, 1942-1955.

- III. The purpose for which the notice to quit is given shall be to facilitate the sale of the dwelling-house either for the purpose of giving effect to a testamentary disposition or trust affecting the dwelling-house or to prevent hardship to any person entitled to a beneficial interest in the estate;
- IV. The lessor shall give notice to quit for a period of at least six months.

Every such notice to quit shall, in addition to containing such other matters as are necessary, give notice to the lessee of the matters referred to in paragraphs I., II. and III. of this subsection but if, in any proceedings by the lessor for an order for recovery of possession of the dwelling-house or for the ejection of the lessee therefrom, an appearance is entered by the defendant, the validity of the notice to quit shall not be affected by the fact only that the notice to quit has not given notice of the matters aforesaid.

(3) On the hearing of any proceedings by the lessor for an order for the recovery of possession of the dwelling-house or for the ejection of the lessee therefrom if proof is given (the onus of which proof shall be on the lessor) to the court that the lessor was entitled under this section to give the notice to quit, then the court shall make the order without taking into consideration any of the matters mentioned in subsection (1) of section 49.

Provisions for recovery of dwellinghouse for occupation by employee. Inserted by 51, 1951, s. 22.

55. (1) Notwithstanding section 42 but subject to this section, the lessor of any dwelling-house may give notice to quit to the lessee of the dwelling-house on the ground that the dwelling-house is reasonably needed for the personal occupation in consequence of that employment of some person employed by, or about to be employed by, the lessor.

Amended by 25, 1953, s. 11, and by 41, 1954, s. 8.

(2) Notice to quit shall not be given under this section except subject to the following provisions:—

- I. The lessor shall have been the owner of the premises for at least two years before the giving of the notice to quit:
- II. The lessor shall be a British subject or a body corporate incorporated or registered in accordance with any law of the State:
- III. The lessor shall have, since the passing of the Landlord and Tenant (Control of Rents) Act Amendment Act, 1951, given notice to the lessee for a period of not less than six months.

(3) On the hearing of any proceedings by the lessor for an order for the recovery of possession of the dwelling-house or the ejection of the lessee therefrom, if proof is given (the onus of which proof shall be on the lessor) that the lessor was entitled under this section to give the notice to quit and that the lessor has not within the period of twelve months preceding the giving of the notice to quit given any other notice to quit under this section, the court shall make the order without taking into consideration any of the matters mentioned in subsection (1) of section 49.

(4) Except as otherwise provided by this section, the provisions of this Part shall apply with respect to any such notice to quit or proceedings.

(5) Nothing in this section shall limit any right of the lessor under any other provision of this Act.

55a. (1) Notwithstanding section 42 but subject to this section the lessor of any dwelling-house may give notice to quit to the lessee of the dwelling-house without specifying any ground therein.

Recovery of possession where alternative accommodation is offered to lessee.

Inserted by 25, 1953, s. 12

(2) A notice to quit shall not be given under this section unless the lessor offers to make available to the lessee at the time the notice to quit is given reasonably suitable alternative accommodation (in this section referred to as "the alternative accommodation").

Every notice to quit given under this section shall describe the alternative accommodation and shall state where it is situated and the rent thereof.

(3) Section 45 shall not apply with respect to any notice to quit given under this section.

(4) On the hearing of any proceedings by the lessor for an order for the recovery of possession of the dwelling-house or the ejection of the lessee therefrom if proof is given (the onus of which proof shall be on the lessor) to the court that the lessor has, at the time of the giving of notice to quit, offered the alternative accommodation to the lessee and if the court is satisfied that the alternative accommodation is reasonably comparable with the dwelling-house leased by the tenant and that the rent thereof is reasonably comparable with that of the said dwelling-house and that it is situated at a place reasonably convenient for the needs of the lessee, the court shall make the order without taking into consideration any of the matters mentioned in subsection (1) of section 49.

PART V.

Recovery of possession of dwellinghouse in certain cases.

Inserted by 41, 1954, s. 9.

55b. (1) Notwithstanding section 42 but subject to this section, the lessor of any dwelling-house may give notice to quit to the lessee of the dwelling-house without specifying any ground therein.

(2) A notice to quit shall not be given under this section except subject to the following provisions:—

- i. The lessor shall be the owner of another dwelling-house in which he resides at the time of the giving of the notice to quit and shall not, at that time, be the owner of any other dwelling-house;
- ii. The purpose for which the notice to quit is given shall be to facilitate the sale of the dwelling-house;
- iii. The lessor shall give notice to quit for a period of at least six months.

Every such notice to quit shall, in addition to containing such other matters as are necessary, give notice to the lessee of the matters referred to in paragraphs i. and ii. of this subsection but if, in any proceedings by the lessor for an order for the recovery of possession of the dwelling-house or the ejection of the lessee therefrom, an appearance is entered by the defendant, the validity of the notice to quit shall not be affected by the fact only that the notice to quit has not given notice of the matters aforesaid.

(3) On the hearing of any proceedings by the lessor for an order for the recovery of possession of the dwelling-house or for the ejection of the lessee therefrom if proof is given (the onus of which proof shall be on the lessor) to the court that the lessor was entitled under this section to give the notice to quit, then the court shall make the order without taking into consideration any of the matters mentioned in subsection (1) of section 49.

Recovery of possession of premises in certain cases.
Inserted by 20, 1955, s. 6

55c. (1) Notwithstanding section 42, but subject to this section, the lessor of any dwelling-house may, at any time after the passing of the Landlord and Tenant (Control of Rents) Act Amendment Act, 1955, give notice to quit to the lessee thereof, on the ground that the dwelling-house is reasonably needed for the occupation as a dwelling-house by the lessor, or by a son or daughter, or the father or mother of the lessor.

(2) Notice to quit shall not be given under this section except subject to the following provisions:—

- i. With the notice to quit, there shall be served on the lessee by the lessor, a statutory declaration by the

lessor declaring that the dwelling-house is reasonably needed for occupation by the lessor, or by a son or daughter, or the father or mother of the lessor, as the case may be, and setting out the full name and particulars of the accommodation then occupied by that person:

ii. The notice to quit given to the lessee shall be for a period of not less than six months.

(3) On the hearing of any proceedings for an order for the recovery of possession of the dwelling-house, or the ejection of the lessee therefrom, if proof is given (the onus of which proof shall be on the lessor) that the notice to quit was given in accordance with this section, the court shall make the order without taking into consideration any of the matters mentioned in subsection (1) of section 49.

(4) Except as otherwise provided by this section, the provisions of this Part shall apply with respect to any such notice to quit or proceedings.

(5) Nothing in this section shall limit the right of the lessor under any other provision of this Act.

(6) Section 45 shall not apply to any notice to quit given under this section.

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

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

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

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

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

s. 57. 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.

R. & J. BAKER LIMITED V. LANGDON (1952) S.A.S.R. 75. The right of appeal conferred by subsection (2) is not limited by any restriction as to the amount in issue.

PART V.

Ejectment orders not enforceable unless made under Act.

Inserted by 5, 1948, s. 6.

Section inserted by 5, 1948, s. 6, and repealed by 51, 1951, s. 23.

* * * * *

Premises not to be sold or re-let in certain cases.

Inserted by 5, 1948, s. 6, and amended by 50, 1950, s. 6 (3), by 51, 1951, s. 24, and by 25, 1953, s. 13.

58. 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 ejectment of the lessee, shall be enforceable.

60. (1) If a notice to quit is given on the ground specified in paragraph (*g*), (*h*), (*i*), (*j*), (*k*), (*l*), (*l1*) or (*m*) of subsection (6) of section 42 or in subsection (1) of section 55 and the premises in respect of which the notice is given are vacated in accordance with the notice, or if an order for the recovery of possession of the premises or for the ejectment therefrom of the lessee is made on any such ground, the premises shall not, without the consent of a local court, be again leased or sold, or agreed to be leased or sold until after the expiration of the period of twelve months immediately succeeding the date on which the premises were vacated, possession of the premises was recovered, or the ejectment effected. Any person who commits any contravention of this subsection shall be guilty of an offence and liable to a penalty not exceeding five hundred pounds.

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

(*a*) the letting of any portion of the premises to which this Act applies which is not reasonably required by the lessor or purchaser, as the case may be, provided that the total rent obtained is not greater than a reasonable rent for the whole of the premises less a reasonable deduction for the portion of the premises not so let; or

(*b*) where notice to quit has been given on the ground specified in paragraph (*h*), (*i*), (*k*), (*l*), or (*l1*) of subsection (6) of section 42 or in subsection (1) of section 55 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).

(4) A complaint in respect of any offence against this section shall be made within twelve months from the time when the matter of complaint arose.

Inserted by
39, 1952, s. 8.

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

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

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

Acceptance of
rent not to
waive notice
to quit.

Inserted by
5, 1948, s. 6,
and amended
by 51, 1951,
s. 25.

- (a) any demand by the lessor for payment of rent, or of any sum of money as rent, in respect of any period 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.

63. (1) Where—

Protection of
sub-lessee.

Inserted by
5, 1948, s. 6.

(a) a lessor has consented to or approved a sublease of any premises to which this Act applies or any part thereof by the lessee, or a lessee has sublet any premises to which this Act applies or any part thereof in the course of a business of subletting carried on by the lessee; and

(b) the lessee ceases to be in possession of the premises, following upon—

- (i) the obtaining of an order by the lessor for the recovery of possession of the premises from the lessee or for the ejection of the lessee from the premises on any of

the grounds specified in paragraphs (a) to (f) of subsection (6) of section 42;
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 (6) of section 42, 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 ejection 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.

64. Where the lessee of any premises to which this Act applies dies and a person (being the wife, husband, father, mother, son or daughter of the lessee) who resided with the lessee immediately prior to his death is in possession of the premises immediately after his death, that person shall have the like right to continue in possession of the premises as the lessee would have had if he had not died, but proceedings may be taken against that person for the recovery of the possession of the premises from that person or for his ejection from the premises in accordance with the provisions of this Part as if he were a lessee of the premises.

Protection of certain persons in possession of premises. Cf. Vic. 5264, 1948, s. 57. Inserted by 5, 1948, s. 6, substituted by 51, 1951, s. 26, and amended by 20, 1955, s. 7

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

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

(2) Notwithstanding subsection (1), if any such proceedings are taken upon a ground specified in paragraph (a), (b), (c), (d), (e), (f), (p), (q), or (r) of subsection (6) of section 42 the costs of the proceedings shall be in the discretion of the court.

Inserted by 51, 1951, s. 27.

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

* * * * *

Section inserted by 5, 1948, s. 6, and repealed by 51, 1951, s. 28.

s. 64. NOBLETT AND MANSFIELD V. MANLEY AND ANOTHER (1952) S.A.S.R. 155. Held that a son and daughter-in-law residing with a lessee were lodgers and therefore were excluded from the operation of section 64. Since this decision the section has been amended by, among other things, deleting the reference therein to lodgers and boarders.

s. 65. 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.

ANDERSON V. BOWLES (1951) 84 C.L.R. 310. Where the tenant was held to be liable to damages for failure to perform his obligations to deliver up possession of premises, held that the landlord could not recover from the tenant the costs of proceedings which ended in the ejection of a sub-lessee.

PART V.

Exclusion of premises let for a short term from operation of Part.

Inserted by 5, 1948, s. 6, and amended by 50, 1950, s. 11, and by 51, 1951, s. 29.

67. (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 twelve 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.

(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) and may at any time extend the period of any such certificate.

(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.

Exclusion of certain sub-divided premises, etc., from operation of Part.

Inserted by 5, 1948, s. 6. Subsec. (2) amended by 39, 1952, s. 9.

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

(2) Where the owner or the lessee 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. An application shall not be made as aforesaid by a lessee of premises except with the consent in writing of the owner of the premises.

(3) The trust may—

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

(b) refuse the application.

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

lessee of the dwelling-house or of any part of the dwelling-house or of the residential unit or of any other residential unit in the building.

(5) The trust may revoke or vary any certificate issued under this section and may at any time extend the period of any such certificate.

Amended by 51, 1951, s. 30 (a).

* * * * *

Subsec (6) repealed by 51, 1951, s. 30 (b).

(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 and "owner" includes a tenant for life and the survivor of two or more joints tenants or tenants in common.

Amended by 51, 1951, s. 30 (c).

(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.

69. If at the expiration of the period of any certificate issued or continued in force under section 67 or section 68, the lessee continues in possession of the premises to which the certificate applies, then the following provisions shall apply:—

Operation of exclusion certificate. Inserted by 51, 1951, s. 31.

- I. At any time within one month after the expiration of the said period a notice to quit the premises may be given to the lessee by the lessor and the provisions of this Part shall not apply with reference to the notice to quit:
- II. After the expiration of the period of the notice to quit but within three months after the expiration of the period of the certificate, proceedings may be commenced by the lessor for the recovery of the possession of the premises from the lessee or for the ejection of the lessee therefrom and the provisions of this Part shall not apply with respect to those proceedings nor, for the purpose of those proceedings, to the premises.

70. (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

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

Landlord and Tenant (Control of Rents) Act, 1942-1955.

applies or for the ejection of any lessee therefrom may be continued as if those proceedings had been commenced under this Part.

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

(3) All rules of court made pursuant to the Local Courts Act, 1926-1947, with respect to proceedings under the National Security (Landlord and Tenant) Regulations shall *mutatis mutandis* apply to proceedings under this Part.

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

71. (1) The Governor may make regulations—

- (a) prescribing grounds upon which notices to quit premises to which this Act applies may be given by lessors, and for that purpose may vary or delete any of the prescribed grounds set out in section 42 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 43.

Inserted by
51, 1951,
s. 32.

(2) The Governor may make regulations prescribing forms of notices to quit which may be given by any lessor in pursuance of section 42, and, without limitation of the right of a lessor to give a notice to quit in any other form, any notice to quit in a form prescribed by regulation shall be deemed to be sufficient notice of all matters referred to therein.

PART VI.

PART VI.

PROTECTED PERSONS.

Interpretation.
Inserted by
9, 1949,
s. 15, and
substituted
by 51, 1951,
s. 33.

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

“discharged member of the forces” means, subject to subsection (2) of this section, a person who, having

Part VI. 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

been a member of the forces, has been discharged from the forces for a period not exceeding five years or has ceased to be engaged on war service for a period not exceeding five years:

“member of the forces” means a member of the Defence Force engaged on war service and includes any person on active service during any such war service with the naval, military, or air forces of the United Kingdom or of any other part of the King’s Dominions (other than the Commonwealth of Australia):

“pension” means a pension (other than a service pension) under the Australian Soldiers’ Repatriation Act, 1920-1949, and includes a pension payable under any law of the United Kingdom or of any other part of the King’s Dominions (other than the Commonwealth of Australia) providing for payment of pensions to members or former members of the naval, military, or air forces thereof:

“protected person” means, subject to subsections (2) and (3) of this section—

- (a) a discharged member of the forces;
- (b) a war pensioner;
- (c) the wife of a war pensioner who is residing with her husband;
- (d) the widow of any member of the forces who is wholly or partly dependent for her support upon a pension paid to her in consequence of the death of her husband whilst engaged on or as a result of war service:

“war pensioner” means, subject to subsection (3) of this section, a person who, having been a member of the forces and having been discharged from the forces or having ceased to be engaged on war service, is receiving a pension in respect of incapacity arising from war service of an amount of at least fifty per centum of the amount which would be payable as pension for total and permanent incapacity:

Landlord and Tenant (Control of Rents) Act, 1942-1955.

“war service” means—

- (a) the service during any war in which His Majesty became engaged on or after the third day of September, nineteen hundred and thirty-nine but before the passing of the Landlord and Tenant (Control of Rents) Act Amendment Act, 1951, of a member of the citizen forces when called up for war service under the Defence Act, 1903-1949, or during continuous training under that Act, the Naval Defence Act, 1910-1949, 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 any such war;
- (c) the continuous service during any such war 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;
- (d) the service during any such war of a member of the permanent forces;
- (e) the continuous service during any such war of a person called upon to serve in the naval, military, or air forces of the United Kingdom or of any other part of the King's Dominions (other than the Commonwealth of Australia).

Inserted by
39, 1952,
s. 10.

(1a) For the purposes of this Part the Korean War and any operations under a British commander for the suppression of unlawful violence in Malaya shall be deemed to be a war in which His Majesty became engaged on or after the third day of September, nineteen hundred and thirty-nine but before the passing of the Landlord and Tenant (Control of Rents) Act Amendment Act, 1951.

(2) A person shall not be deemed to be a discharged member of the forces unless that person was—

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

- (c) 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.

(3) A person shall not be deemed to be a war pensioner unless that person was—

- (a) immediately prior to his discharge;
- (b) for a continuous period of not less than three months during the period of six months immediately prior to his discharge; or
- (c) 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 and unless that person—

- (d) resided within the Commonwealth at any time within three years before the commencement of his war service.

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

73. (1) The provisions of Part V. 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.

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

(2) The provisions of paragraph (c) of subsection (1) of section 49 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 42 shall be read as if for paragraph (a) of subsection (6) 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.”

Amended by
50, 1950,
s. 6 (4), by
51, 1951,
s. 34 (a), (b),
and by 25,
1953, s. 14
(a).

(4) Notwithstanding the provisions of Part V. of this Act, an order shall not be made for the recovery of possession of any premises from a protected person, or for the ejectment from any premises of a lessee (being a protected person) on any ground specified in paragraph (g), (h), (i), (j), (k), (l), (l1), (m) or (n) of subsection (6) of section 42 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 whether before or after 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 subject to the lease of the lessee, and the protected person, without reasonable cause, has failed to accept the offer; or

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

Amended by
50, 1950,
s. 6 (4), by
51, 1951,
s. 34 (c), (d),
and by
25, 1953,
s. 14 (b)

(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 ejectment 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), (l1), (m), or (n) of subsection (6) of section 42 not be enforced against the protected person unless the court is satisfied—

s. 73. (5) *DALBY v. GAZZARD* (1949) 78 C.L.R. 375; 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.

HANKIN v. CLAYTON (1952) S.A.S.R. 6. Held that “fair price” for premises is not what would be the price of the premises if sold tenanted or what would be the price if sold with vacant possession, but what is a price fair to both lessor and lessee. Since this decision the section has been amended to provide that the price is to be a fair price subject to the lease of the lessee.

- (a) that reasonably suitable alternative accommodation (in this section referred to as "the alternative accommodation") is, or has been whether before or after 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 subject to the lease of the lessee, and the protected person, without reasonable cause, has failed to accept the offer; or
- (c) that the protected person has sublet the premises in respect of which the order is sought and is permanently residing elsewhere.

* * * * *

Subsec. (6) repealed by 51, 1951, s. 34 (e).

(7) The provisions of subsections (3), (4) and (5) of this section shall not apply in relation to the premises of which a protected person is the lessor.

Amended by 51, 1951, s. 34 (f), (g).

74. (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.

Letting of vacant houses to protected persons. Inserted by 9, 1949, s. 15.

(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.

Subsec. (4)
repealed by
51, 1951,
s. 35.

* * * * *

Inserted by
63, 1949, s. 3.

(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.

When
dwelling-
house deemed
to be
unoccupied.
Inserted by
9, 1949, s. 15.
Para. (a)
amended by
39, 1952,
s. 11 (a), (b).

75. For the purposes of section 74—

(a) a dwelling-house shall be deemed to be unoccupied notwithstanding that the owner has, after a copy of an application under subsection (1) of that section has been served as provided by subsection (3) of that section, permitted a person to enter into occupation of the dwelling-house 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;

Amended by
39, 1952,
s. 11 (c), (d).

(b) a dwelling-house shall be deemed to be unoccupied notwithstanding that the owner has, after a copy of an application under subsection (1) of that section has been served as provided by subsection (3) of that section, entered into occupation of the dwelling-house;

(c) a dwelling-house shall not be deemed to be occupied by reason only of the fact that it is furnished;

Inserted by
63, 1949, s. 4.

(d) 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;

(e) 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;

(f) 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 76) 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.

76. (1) Upon the hearing of an application under section 74 the court shall take into consideration, in addition to all other relevant matters—

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

(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 74 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.

77. (1) Where more than one application is made under section 74 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.

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

Inserted by 9, 1949, s. 15.

(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 76, take into consideration the priority of service of the applications under section 74 of this Act.

78. A warrant granted by a court under section 76 of this Act may be enforced in the same manner as a warrant of possession granted by that court may be enforced.

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

79. (1) Upon delivery of possession of a dwelling-house to a protected person under a warrant granted under section 76 the protected person shall be deemed to be a tenant of the owner of the dwelling-house.

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

(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.

80. For the purposes of sections 74 to 79 (inclusive) the expression “owner”, in relation to the dwelling-house which is the subject of a lease or sublease, means—

Meaning of “owner.”
Inserted by 9, 1949, s. 15.

- (a) where the dwelling-house is unoccupied—the lessee or sublessee 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.

PART VI.

Application
of Part.
Inserted by
9, 1949, s. 15,
and amended
by 50, 1950,
s. 12.

81. (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 and the grounds upon which the respondent claims to be a protected person within the meaning of this Part.

(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 and stating the grounds upon which the respondent claims to be 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, 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.

82. Nothing in this Part shall apply to any dwelling-house in respect of which a certificate of exemption under section 67 or section 68 is in force.

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

* * * * *

Part VII, inserted by 9, 1949, s. 17 and repealed by 25, 1953, s. 15 (1).

PART VIII.

MISCELLANEOUS.

96. (1) Any person who, whether as principal or agent or in any other capacity, in any rent book or similar document, without reasonable excuse, 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. Amended by 51, 1951, s. 36.

(2) Any person who, whether as principal or agent or in any other capacity, without reasonable excuse, demands or, without reasonable excuse, 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.

s. 96. 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. Since this decision the section has been amended by the substitution of the words "without reasonable excuse" for the word "wilfully." WEBB v. RADCLIFFE (1955) S.A.S.R. 184. Where the rent of a house was fixed by the South Australian Housing Trust and the owner subsequently converted the house into two flats (which were not entirely self-contained and required the use in common of the laundry, lavatory and bathroom) and let both to the same tenant at a rent in excess of that fixed, held that he had committed an offence against section 96 (2).

(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.

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

97. (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 or rent.

Record of rents.
Amended by 51, 1951, s. 37.

98. (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, without reasonable excuse, makes or, without reasonable excuse, 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.

99. (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

s. 99. *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 99.

local court under this Act, shall be guilty of an offence and liable to a penalty not exceeding fifty pounds.

* * * * *

Subsec. (2) repealed by 51, 1951, s. 38.

(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.

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

Provisions relating to purchase of furniture, etc. Amended by 50, 1950, s. 13.

(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, acceptance, assignment, or transfer of any lease; or
- (ii) the renewal or extension of a lease or the continuance of a letting; or
- (iii) any agreement for a lease or for the renewal, extension, assignment, or transfer 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, or attempts to pay, give, or recover 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.

s. 100. 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 100 (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 VIII.

Inserted by
25, 1953.
s. 16.

(1a) This section shall not apply with respect to any sum of money which is required, given or received or offered, promised or agreed to be given or received on the sale of any goods comprising the stock in trade of any business and which is substantially equal to the fair value of those goods.

(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.

Inserted by
51, 1951,
s. 39.

(3) A complaint in respect of any offence against this section shall be made within twelve months from the time when the matter of complaint arose.

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

101. (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), and
amended by
51, 1951,
s. 40.

(4) Notwithstanding the definition of "dwelling-house" in section (4), in this section "dwelling-house" means any premises 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.

102. (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. Any lessor against whom an order is made as aforesaid who fails or neglects to comply with the order shall be guilty of an offence and liable to a penalty not exceeding fifty pounds.

Amended by
51, 1951,
s. 41.

(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 IV.) the maximum rent (within the meaning of Part IV.) of which is fixed pursuant to Part IV. and any land with respect to which the maximum rent (within the meaning of Part IV.) is fixed pursuant to Part IV.

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 IV.) 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 28 shall be deemed to be a tenancy.

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

Suspension
of right to
distrain for
rent.

(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.

Inserted by
5, 1948, s. 7.

PART VIII.

Provision for payment of rent on sale of premises.

Inserted by 20, 1955, s. 8.

103a. If the lessor under any lease of any premises to which this Act applies—

- (a) transfers, conveys or assigns his interest as lessor to any other person; and
- (b) notice of the transfer, conveyance or assignment and of the name and address of such other person is not given to the lessee,

any payment of rent or tender of payment of rent under the lease by the lessee to the lessor by whom the transfer, conveyance or assignment is made or to a person to whom the rent has been previously customarily paid shall be deemed to be a valid payment or tender of payment, as the case may be, of that rent.

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

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

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

Powers of entry and inspection.
Amended by 51, 1951, s. 42 and by 25, 1953, s. 17.

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

- (a) may enter into and upon any premises to which this Act applies (which or any part of which is leased) at any reasonable time for the purpose of examining the premises;
- (b) may require any person being the lessor or lessee or a former lessor or lessee of any premises to which this Act applies or being the agent of any such

s. 105. *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 105 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 105 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.

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, or as to use of the premises for the purpose of accommodating lodgers and the amounts paid for such use;

- (c) may require any person being the lessor or lessee or a former lessor or lessee of any premises to which this Act applies or being the agent of any of 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.

106. 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

Penalty for refusing to disclose name of lessor.

mis-states the same, he shall be guilty of an offence and liable to a penalty not exceeding twenty pounds.

Contract to
avoid Act.

107. (1) 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.

Inserted by
39, 1952,
s. 12.

(2) If pursuant to any agreement, licence or arrangement of any kind whatsoever (not being a lease and whether oral or in writing and whether made before or after the passing of the Landlord and Tenant (Control of Rents) Act Amendment Act, 1952) any person in consideration of a payment or payments made or to be made to any other person is entitled or authorized to occupy any premises or any part of any premises for the purpose of residence, then, for the purposes of this Act, that agreement, licence or arrangement shall be deemed to be a lease of the premises or part thereof, the person to whom the payment or payments are made or are to be made shall be deemed to be the lessor of the premises or part thereof, the person by whom the payment or payments are made or are to be made shall be deemed to be the lessee of the premises or part thereof, and any such payment shall be deemed to be rent paid or payable in respect of the premises or part thereof:

Provided that if any such agreement, licence, or arrangement was made before the seventeenth day of September, nineteen hundred and fifty-two, the only provisions of this Act which shall apply with respect to that agreement, licence, or arrangement shall be the provisions of this Act relating to the control of rents.

Power of court
to make order
for inspection
of leased
premises.

Inserted by
50, 1950,
s. 14.

108. (1) The lessor of any premises to which this Act applies may by summons make application to a local court for an order under this section. Notwithstanding that no other proceedings have been instituted or are pending, any such summons shall be issued in the same form and manner as an interlocutory summons and, subject to any direction of the court, the procedure with respect to such a summons shall *mutatis mutandis*, be followed.

(2) If upon the hearing of any such application the local court is of opinion—

- (a) that the lessee of the premises or any person acting on his behalf has, without reasonable cause, refused to permit the lessor or any agent of the lessor or any person acting under the authority of the lessor to enter and inspect the premises;

- (b) that the purpose of the proposed entry and inspection is reasonable;
- (c) that, if the lease of the premises is in writing, such an order would not be contrary to the provisions of the lease,

the court may make an order under this section.

(3) If upon the hearing of any such application the local court is of opinion—

- (a) that the lessee of the premises or any person acting on his behalf has, without reasonable cause, refused to permit the lessor or any person acting under the authority of the lessor to enter the premises and to carry out therein any repairs, renovations or decoration work;
- (b) that the carrying out of the repairs, renovations or decoration work is reasonably necessary;
- (c) that, if the lease of the premises is in writing, such an order would not be contrary to the provisions of the lease,

the court may make an order under this section.

(4) Every such order made in pursuance of subsection (2) shall provide—

- (a) that the persons named in the order or that persons of the class named therein, or both, shall have the right to enter and inspect the premises during such hours as are specified in the order;
- (b) that the right so given shall be exercised only during the period specified in the order,

and the order may also contain such conditions as to exercise of the rights thereby given as the court thinks proper.

If thought proper by the court, any such order may provide that the lessor or any person acting on his behalf may place upon the premises a notice stating that the premises are for sale and particulars relating to the sale.

(5) Every such order made in pursuance of subsection (3) shall provide—

- (a) that the persons referred to in the order shall have the right to enter the premises during such hours as are specified in the order and that the said persons may carry out such repairs, renovations or decoration work as is specified in the order;

(b) that the right so given shall be exercised only during the period specified in the order,

and the order may also contain such conditions as to the exercise of the rights thereby given as the court thinks proper.

(6) If the lessee of the premises, without reasonable cause, fails to comply with the order that failure shall be deemed to be a failure to observe a condition of the lease of the premises.

Amended by
51, 1951,
s. 43.

(7) Any proceedings under this section shall be conducted in such manner as the court from time to time thinks fit and in any such proceedings the court shall not be bound by the rules of evidence and may inform itself in such manner as it thinks fit. The costs of any such proceedings shall be in the discretion of the court.

(8) The power given by section 117 to make rules of court shall include power to make rules of court regulating the making and hearing of applications under this section and generally regulating proceedings under this section.

Right of
lessor to
inspect
premises.
Inserted by
51, 1951,
s. 44.

109. (1) The lessor of any premises to which this Act applies may give at least forty-eight hours' notice to the lessee of the premises that it is the intention of the lessor to inspect the premises on a day specified in the notice and during such period as is specified in the notice being not more than one hour in the daytime between the hours of nine o'clock in the morning and six o'clock in the afternoon. After the expiration of forty-eight hours after the giving of the notice aforesaid the lessor may enter and inspect the premises on the day and during the period specified in the notice.

(2) The power given by subsection (1) may be exercised from time to time but, if any such inspection is made, this section shall not be deemed to authorize a further inspection until the expiration of six months from the time of the last preceding inspection.

(3) If the lessee to whom notice is given as aforesaid, without reasonable excuse, refuses to permit the lessor to enter or inspect the premises as required by this section or hinders the lessor during any such inspection, he shall be deemed to have failed to observe a condition of the lease of the premises.

(4) Nothing in this section shall limit the power of a local court to make an order under section 108 or diminish

any right of the lessor to enter the premises under any term or condition of the lease of the premises.

* * * * *

Section 109a, inserted by 25 1953, s. 13, and repealed by 41, 1954, s. 10.

110. (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.

111. (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 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.

112. 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.

113. 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.

114. 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.

115. 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.

116. 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.

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

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

* * * * *

Section repealed by 9, 1949, s. 10.

119. (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.

(3) In any prosecution under this Act the allegation in the complaint that a specified place is situated within any specified part of the State shall be *prima facie* evidence of the fact so alleged.

Inserted by 50, 1950, s. 15.

(4) If in any prosecution under this Act or in any proceedings to recover possession of any premises from the lessee or for the ejection of the lessee therefrom (whether the proceedings are taken under this Act or otherwise), proof is given that the premises or a substantial part of the premises is leased for the purpose of residence, the premises shall be presumed to be premises to which this Act applies and this Act shall be presumed to apply to the lease thereof unless sufficient evidence is given to the contrary.

Inserted by 25, 1953, s. 19.

PART VIII.

Premises
used for
purpose of
residence.

120. 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 purposes of residence.

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

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

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

Summary
proceedings
for offences.

122. 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, by 9,
1949, s. 21,
by 50, 1950,
s. 16, by
51, 1951,
s. 45, by 39,
1952, s. 13,
by 25, 1953,
s. 20, by 41,
1954, s. 11,
and by 20,
1955, s. 9.

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