



ANNO DECIMO TERTIO

GEORGII VI REGIS.

A.D. 1949.

No. 9 of 1949.

An Act to amend the Landlord and Tenant (Control of Rents) Act, 1942-1948.

[Assented to 13th October, 1949.]

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

1. (1) This Act may be cited as the " Landlord and Tenant (Control of Rents) Act Amendment Act, 1949 ". Short titles

(2) The Landlord and Tenant (Control of Rents) Act, 1942-1948, as amended by this Act, may be cited as the " Landlord and Tenant (Control of Rents) Act, 1942-1949 ".

(3) The Landlord and Tenant (Control of Rents) Act, 1942-1948, is hereinafter referred to as " the principal Act ".

2. Section 4 of the principal Act is amended—

- (a) by inserting after the word " goods " in the fifth line of the definition of " lease " the words " and also includes a contract for the letting or subletting of any premises together with the supply or provision of any domestic service " ;
- (b) by inserting after the word " goods " in the second line of paragraph (c) of the definition of " rent " the words " or the supply or provision of any domestic service " ;
- (c) by adding at the end thereof the following subsection (the preceding portion of the said section being read as subsection (1) thereof):—

Amendment of
principal Act,
s. 4—
Interpretation.

(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.

Amendment
of principal
Act, s. 5—
Exemptions.

3. Section 5 of the principal Act is amended—

(a) by inserting after the word "orchard" in the fifth line thereof the word "vineyard";

(b) by inserting after paragraph (a) of subsection (1) the following paragraph:—

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

(c) by striking out paragraph (b) of subsection (1) thereof";

(d) by adding at the end of paragraph (c) of subsection (1) thereof the words "Provided further that if any premises are leased to any person and the letting continues for a period exceeding eight weeks the premises shall, whilst so let to that person after the expiration of the period of eight weeks, not be deemed to be premises ordinarily leased for holiday purposes";

(e) by inserting therein after subsection (1) thereof the following subsections:—

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

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

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

(f) by striking out the letter “(b)” in the fourth line of subsection (3) thereof and by inserting after the word “section” first occurring in the fifth line of subsection (3) thereof the words “or of subsection (1c) of this section”.

4. Section 6 of the principal Act is amended—

Amendment of
principal Act,
s. 6—
Exemptions.

(a) by inserting after paragraph (a) of subsection (1) thereof the following paragraph:—

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

(b) by striking out the word “or” in the fifth line thereof;

(c) by striking out the letter “(c)” in the sixth line thereof and by inserting in lieu thereof the passage “(1a) The provisions of this Act relating to the control of rents shall not apply”.

5. Section 13 of the principal Act is amended—

(a) by inserting after the word “forty-eight” in the last line of paragraph I. of subsection (1a) thereof the words “Provided that if (whether before or after the said day) the lessor and the lessee of any such premises from time to time agree in writing that the rent of the premises shall be any other amount, the rent shall not exceed the amount of the rent so agreed upon”;

Amendment of
principal Act,
s. 13—
Pegging
of rents.

(b) by inserting after the word “forty-eight” in the last line of paragraph II. of subsection (1a) thereof the words “Provided that if the lessor and the lessee of any such premises from time to time agree in writing that the rent of the premises shall be any other amount, the rent shall not exceed the amount of the rent so agreed upon”.

6. Section 18 of the principal Act is amended by adding at the end thereof the following subsection:—

Amendment of
principal Act,
s. 18—
Date from
which rent
determin-
ation takes
effect.

(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.

Amendment of
principal Act,
s. 21—
Basis for
fixing rent.

7. Section 21 of the principal Act is amended by inserting in subsection (1) thereof after paragraph (h) thereof the following paragraph :—

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

Amendment of
principal Act
s. 23—
Effect of
fixing rent.

8. Section 23 of the principal Act is amended by adding at the end of subsection (1) thereof the words “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”.

Amendment of
principal Act,
s. 25—
Variation of
rents.

9. Section 25 of the principal Act is amended—

- (a) by inserting after the word “materially” in the third line of paragraph (c) of subsection (1) thereof the words “increased or”.
- (b) by inserting after the words “substantially” in the last line of paragraph (c) of subsection (1) thereof the words “increased or”.

Enactment of
s. 26ha of
principal Act—

10. The following section is enacted and inserted in the principal Act after section 26h thereof :—

Duty to give
receipt for
rent.

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

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

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

11. Section 26i of the principal Act is amended by inserting after the word "irrecoverable" in the fifth line thereof the words "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".

Amendment of
s. 26i of
principal Act—
Rent records.

12. Section 26n of the principal Act is amended—

Amendment of
principal Act,
s. 26n—
Restriction on
eviction.

- (a) by striking out the word "required" in the seventh and the fourteenth lines of paragraph (g) of subsection (5) thereof and by inserting in lieu thereof in each case the word "needed";
- (b) by inserting after the word "him" in the last line of subparagraph (i) of paragraph (g) of subsection (5) thereof the words "or by a married son or married daughter of the lessor";
- (c) by striking out the word "required" in the twelfth and nineteenth lines of paragraph (l) of subsection (5) thereof and by inserting in lieu thereof in each case the word "needed";
- (d) by inserting after the word "him" in the last line of subparagraph (i) of paragraph (l) of subsection (5) thereof the words "or by a married son or married daughter of the purchaser";
- (e) by adding at the end of subsection (1) thereof the following paragraph :—
 - (p) that the premises were let as a shop or business premises and have been converted by the lessee, without the consent of the lessor either express or implied, from a shop or business premises into a dwelling-house and the premises are required by the lessor for re-conversion to a shop or business premises ;
- (f) by adding at the end thereof the following subsection :—
 - (8) Notice to quit on a ground specified in paragraph (g) of subsection (5) shall not be given if the lessor is an alien unless he has continuously

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

**Amendment of
principal Act,
s. 26q—
Notice to quit
where dwelling-
house sold.**

13. Section 26q of the principal Act is amended—

- (a) by inserting after the word “purchase” in the third line thereof the words “transfer or assignment”;
- (b) by inserting before the word “shall” in the fifth line thereof the words “or of a lease thereof”;
- (c) by inserting after the word “purchase” in the sixth line thereof the words “or, as the case may be, the date of the lease”.

**Amendment of
principal Act,
s. 26u—
Court to consider
relative
hardship.**

14. Section 26u of the principal Act is amended—

- (a) by striking out the word “and” in the last line of paragraph (b) of subsection (1) thereof;
- (b) by inserting after paragraph (c) of subsection (1) thereof the following paragraphs:—
 - (d) where the application is made under a ground specified in paragraph (g) of subsection (5) of section 26n—whether at the time the lessor acquired the premises the premises were let to the lessee and whether the lessee had any opportunity to acquire the premises and the reasons for the lessee failing to acquire the premises;
 - (e) where the application is made under a ground specified in paragraph (l) of subsection (5) of section 26n—whether at the time the premises were agreed to be sold to the purchaser the premises were let to the lessee and whether the lessee had any opportunity to acquire the premises and the reasons for the lessee failing to acquire the premises; and
 - (f) where the application is made under a ground specified in paragraph (g) of subsection (5) of section 26n—whether the lessee is the owner of another dwelling-house capable of

being occupied by him and whether he has taken all necessary and proper steps to obtain possession thereof.

(c) by adding at the end of subsection (1) the following passage :—

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

15. The following Part is enacted and inserted in the principal Act after Part IIIB thereof :—

Enactment
Part IIIC of
principal Act—

PART IIIC.

PROTECTED PERSONS.

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

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

(a) has been discharged from the forces, or has ceased to be engaged on war service, for a period not exceeding five years ; or

(b) having been discharged from the forces, or having ceased to be engaged on war service, for a period exceeding five years—

(i.) is receiving a pension from the Commonwealth ; or

(ii.) is not receiving such a pension, but is receiving from the Commonwealth medical treatment of such a nature as to prevent him either wholly or partly from engaging in his occupation ;

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

“ female dependant of a discharged member ” means—

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

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

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

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

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

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

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

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

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

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

“ parent of a discharged member ” means—

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

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

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

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

“ war service ” means—

- (a) the service of a member of the citizen forces when called up for war service under the Defence Act, 1903-1941, or during continuous training under that Act, the Naval Defence Act, 1910-1934, or the Air Force Act, 1923-1941 ;
- (b) the continuous service under any of those Acts of any person who volunteers and is accepted for such service during war ;
- (c) the continuous service of a person called upon to serve in the defence force in pursuance of any Act or of any regulations under an Act of the Commonwealth of Australia ; and
- (d) the service during war of a member of the permanent forces.

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

(a) a member of the forces who—

(i.) is ; or

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

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

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

(i.) immediately prior to his discharge ;

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

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

so required ;

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

(i.) is ; or

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

so required ; or

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

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

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

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

so required.

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

Rights of protected persons as to recovery of possession of premises.

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

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

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

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

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

(a) that reasonably suitable alternative accommodation (in this section referred to as “the alternative accommodation”) is, or has been since the date upon which notice to quit was given, available for the occupation of the protected person in lieu of the premises in respect of which the order is sought (in this section referred to as “the premises at present occupied”); or

(b) that within a period of twelve months of the bringing of the action the premises have been offered for sale to the protected person at a price approved by the principal administrative officer for the purposes of the administration of the provisions of the Prices Act, 1948, relating to land transactions or at a price which in the opinion of the court is a fair price for the premises, and the offer has not been accepted by the protected person ; or

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

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

(a) that reasonably suitable alternative accommodation (in this section referred to as “the alternative accommodation”) is, or has been since the date upon which notice to quit was given, available for the occupation of the protected person in lieu of the premises in respect of which the order is sought (in this section referred to as “the premises at present occupied”); or

(b) that within a period of twelve months of the bringing of the action the premises have been offered for sale to the protected person at a price approved by the principal administrative officer for the purposes of the administration of the provisions of the Prices Act, 1948, relating to land transactions or at a price which in the opinion of the court is a fair price for the premises, and the offer has not been accepted by the protected person ; or

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

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

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

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

Letting of
vacant houses
to protected
persons.

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

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

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

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

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

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

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

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

26ap. For the purposes of section 26ao—

- (a) a dwelling-house shall be deemed to be unoccupied notwithstanding that the owner has permitted a person to enter into occupation of the dwelling-house in contravention of subsection (4) of that section and, in any such case, the court may grant the application notwithstanding that the person in occupation of the dwelling-house is not before the court on the hearing of the application ;
- (b) a dwelling-house shall be deemed to be unoccupied notwithstanding that the owner has entered into occupation of the dwelling-house in contravention of subsection (4) of that section ;
- (c) a dwelling-house shall not be deemed to be occupied by reason only of the fact that it is furnished ;
- (d) a dwelling-house may be deemed by the court to be unoccupied if it is occupied irregularly and the court is satisfied that the dwelling-house is not used as the permanent and sole dwelling-house of the occupant and that another dwelling-house is occupied as the principal dwelling-house of the occupant ;
- (e) a dwelling-house shall be deemed to be about to become unoccupied if the court is satisfied that the occupant of the dwelling-house, at the time of the service of the notice of application, is about to vacate the dwelling-house, notwithstanding any arrangement (other than an arrangement for the occupation of the dwelling-house by a protected person or by a person such as is referred to in subsection (5) of section 26aq) entered into, whether before or after the service of the notice, in respect of the occupation of the premises after the then existing occupancy ceases.

Dwelling-house
is to be deemed
to be unoccu-
pied in certain
cases.

Hearing of
application.

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

- (a) any hardship which would be caused to the owner or to any other person (not being a person who has entered into occupation of the dwelling-house in contravention of section 26ao) 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 26ao 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.

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

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

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

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

Enforcement of warrants.

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

Rent of dwelling-house.

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

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

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

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

Meaning of
"owner".

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

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

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

Application of
Part.

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

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

(3) If, within the period specified in subsection (1) of this section, a statutory declaration by the respondent or by some person having knowledge of the facts stating that the respondent is a protected person within the meaning of this Part is not furnished to the claimant, then notwithstanding that the respondent is, or at any subsequent time

becomes, a protected person within the meaning of this Part, this Part shall not apply in respect of the doing, or in respect of the continuance or completion of the doing, of an act of the kind referred to in subsection (1) of this section, provided the claimant commences to do, or to continue or complete the doing of, the act within three weeks after the expiration of the period specified in that subsection.

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

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

(a) has abandoned the property in respect of which the claimant desires to do, or to continue or complete the doing of, any act ; or

(b) cannot be found and that the claimant has made reasonable efforts to ascertain his whereabouts, 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.

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

Exemptions
from applica-
tion of Part.

16. Section 2 of the principal Act is amended by inserting therein after the line " Part IIIB—Recovery of possession of premises " the line " Part IIIC—Protected persons ".

Amendment of
principal Act,
s. 2—
Arrangement.

Enactment of
Part IIID.
of principal
Act—

17. The following Part is enacted and inserted in the principal Act after Part IIIC. thereof :—

PART IIID.

CONTROL OF RENTS OF HOTEL PREMISES.

Interpretation.

26ax. In this Part—

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

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

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

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

Constitution
of board.

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

(2) The board shall consist of—

- (a) a special magistrate appointed by the Governor who shall be the chairman of the board ;
- (b) a member who shall be appointed by the Governor on the nomination of the committee of the South Australian Associated Brewers ;
- (c) a member to be appointed by the Governor on the nomination of the committee of the United Licensed Victuallers Association of the Commonwealth of Australia (South Australian Branch).

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

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

(5) No matter or thing done by the board or by the chairman or any member thereof or by any person whenever acting under the direction or authority of the board shall, if the matter or thing was done *bona fide* for the purpose

of executing this Part, subject them or any of them personally to any action, liability, claim or demand whatsoever.

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

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

Application to board with respect to rent of hotel premises.

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

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

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

Notice of proceedings of application.

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

Onus in proceedings before board.

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

Determination of rent by board.

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

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

Board to have powers of Royal Commission.

Commencement
of
determination.

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

Notice of
determination.

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

Effect of
determination.

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

(2) If any sum is or has been paid being a sum which by virtue of subsection (1) would have been irrecoverable by the lessor of any hotel premises, the sum so paid shall be recoverable from the lessor who received the payment by the lessee by whom it was paid, and may, without prejudice to any other method of recovery, be deducted by that lessee from any rent payable by him to that lessor in respect of the said premises.

Secretary and
officers.

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

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

Application
of ss. 36,
37, 38.

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

Mode of making
application
to board.

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

Amendment of
principal Act,
s. 2—
Arrangement.

18. Section 2 of the principal Act is amended by inserting therein after the line "Part IIIC.—Protected persons" the line "Part IIID.—Control of rents of hotel premises".

19. The following section is enacted and inserted in the principal Act after section 27 thereof :—

Enactment of
s. 27a of
principal Act—

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

Duty to give
receipt for
rent.

(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.

20. Section 44 of the principal Act is repealed.

Repeal of
s. 44 of
principal Act.

21. Section 49 of the principal Act is amended by striking out the word "forty-nine" in the second line thereof and by inserting in lieu thereof the word "fifty".

Amendment of
principal Act,
s. 49—
Duration of
Act.

22. In any proceedings in any court which were commenced before the passing of this Act and in which the decision of the court was not announced by the court before the passing of this Act, the provisions of this Act shall be construed as if the said provisions had been enacted before the commencement of those proceedings.

Effect of Act
on proceedings
pending.

In the name and on behalf of His Majesty, I hereby assent
to this Bill.

C. W. M. NORRIE, Governor.