

AUSTRALIAN CAPITAL TERRITORY.

No. 6 of 1949.

AN ORDINANCE

Relating to the Control of Rents and the Recovery of Possession of Leased Premises.

BE it ordained by the Deputy of the Governor-General in and over the Commonwealth of Australia, acting with the advice of the Federal Executive Council, in pursuance of the powers conferred by the *Seat of Government Acceptance Act 1909-1938* and the *Seat of Government (Administration) Act 1910-1947*, as follows:—

PART I.—PRELIMINARY.

1. This Ordinance may be cited as the *Landlord and Tenant Ordinance 1949*.* Citation.

2. This Ordinance shall be administered by the Minister of State for the Interior. Administration

3. This Ordinance is divided into Parts, as follows:— Parts.

Part I.—Preliminary.

Part II.—Fair Rents.

Division 1.—Administration.

Division 2.—Rent of Prescribed Premises.

Division 3.—Rent of Prescribed Premises other than Shared Accommodation.

Division 4.—Rent of Shared Accommodation.

Division 5.—General.

Part III.—Recovery of Possession of Prescribed Premises.

Part IV.—Miscellaneous.

4.—(1.) All determinations of fair rents made or continued in force under the repealed Regulations and having force or effect immediately before the commencement of this Ordinance shall continue to be of full force and effect as if made under this Ordinance but may be varied in accordance with the provisions of this Ordinance. Saving.

(2.) All applications to, and other proceedings before, the Commonwealth Rent Controller under the repealed Regulations which are pending immediately before the commencement of this Ordinance may be continued before, and may be determined by, the Controller under this Ordinance, and any pending application shall be deemed to be an application to the Controller under this Ordinance, and the provisions of this Ordinance shall apply to those applications and proceedings as if they were applications to, or proceedings before, the Controller under this Ordinance.

* Notified in the *Commonwealth Gazette* on 25th August, 1949.

(3.) All proceedings before a Fair Rents Board under the repealed Regulations which are pending immediately before the commencement of this Ordinance may be continued before and determined by a Fair Rents Board under this Ordinance, and the provisions of this Ordinance shall apply to those proceedings as if they were proceedings before a Fair Rents Board under this Ordinance.

(4.) All proceedings under Part III. of the repealed Regulations which are pending immediately before the commencement of this Ordinance may be continued and determined under Part III. of this Ordinance as if they had been commenced under that Part.

Crown not bound.

5. This Ordinance shall not bind the Crown in right of the Commonwealth or of a State.

Application of Ordinance.

6.—(1.) The Minister may, by order published in the *Gazette*, declare that the application of this Ordinance shall extend to the premises, or premises included in any class of premises, specified in the order, and thereupon the application of this Ordinance shall, notwithstanding anything contained in paragraph (b) of subsection (1.) of section 12, section 16 or section 79 of this Ordinance, extend to those premises (including goods leased with those premises) or to the premises included in that class of premises (including goods leased with those premises).

(2.) The Minister may, by order published in the *Gazette*, declare that any premises, or the premises included in any class of premises, shall be excluded from the operation of this Ordinance or of such of the provisions of this Ordinance as are specified in the order, and thereupon those premises, or premises of that class, shall be excluded accordingly.

Holiday premises.

7.—(1.) Where any prescribed premises are not holiday premises by reason only of the fact that they have at some time subsequent to the first day of March, 1945, been leased to or occupied by a lessee for a continuous period exceeding three months, the owner or lessor of those prescribed premises may make application in writing to the Controller to exclude the premises from the operation of this Ordinance.

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

(3.) The Controller, in his discretion, may, either unconditionally or subject to such conditions as he thinks fit, issue a certificate excluding the premises from the operation of this Ordinance, or of such provisions of this Ordinance as are specified in the certificate, for such period as is so specified and the premises shall, so long as the certificate remains in force, but subject to any variation thereof, be excluded accordingly.

(4.) Any certificate issued under sub-regulation (3.) of regulation 7A of the repealed Regulations and having force or effect immediately before the commencement of this Ordinance shall

continue to have force and effect in all respects as if this section had been in force at the time when the certificate was issued and the certificate had been issued under this section.

(5.) The Controller may, at any time, revoke or vary any certificate issued under sub-section (3.) of this section or continued in force by sub-section (4.) of this section.

8.—(1.) In this Ordinance, unless the contrary intention appears—

“appeal” means appeal to a Fair Rents Board from a determination of the Controller;

“application” means an application to the Controller under this Ordinance;

“authorized officer” means any person appointed by the Controller in writing to be an authorized officer for the purposes of this Ordinance;

“determination” means the determination of the fair rent of any premises, or of any goods leased therewith, made or continued in force under this Ordinance;

“dwelling-house” means any prescribed premises (including shared accommodation) leased for the purposes of residence, and includes—

(a) the premises of any lodging-house or boarding house; and

(b) any part of premises which is leased separately for the purposes of residence,

but does not include premises licensed for the sale of spirituous or fermented liquors;

“Fair Rents Board” or “Board” means a Fair Rents Board constituted under this Ordinance;

“holiday premises” means any premises which—

(a) during the period which commenced on the first day of March, 1945, and ended on the sixteenth day of December, 1946, have ordinarily been leased for holiday purposes only;

(b) have not at any time during that period been leased to or occupied by any lessee for a continuous period exceeding three months; and

(c) were not, on the sixteenth day of December, 1946, leased for purposes other than holiday purposes,

but does not include any such premises which at any time after that date—

(d) are leased for purposes other than holiday purposes; or

(e) are leased to or occupied by any lessee for a continuous period exceeding three months;

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

“lessor” and “lessee” mean the parties to a lease, or their respective successors in title, and include—

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

respectively;

“prescribed premises” means any premises, other than—

- (a) premises which are for the time being used as a grazing area, farm, orchard, market garden, dairy farm, poultry farm, pig farm or bee farm or which have been leased, either expressly or impliedly, as a grazing area, farm, orchard, market garden, dairy farm, poultry farm, pig farm or bee farm or for the purpose of being used as such;
- (b) holiday premises; and
- (c) premises licensed for the sale of spirituous or fermented liquors,

and includes any part of any premises and any land or appurtenances leased with any premises;

“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; and
- (b) any rates or taxes payable by a lessee in respect of any prescribed premises, other than excess water rates,

and where, in any lease—

- (c) it is provided that a reduced amount, as rent, shall be accepted by the lessor upon any condition to be performed by the lessee, that reduced amount shall be deemed to be the rent payable under the lease; and
- (d) any rebate, discount, allowance or other reduction is provided for, the amount payable after each such reduction is made shall be deemed to be the rent payable under the lease;

“shared accommodation” means any prescribed premises leased, or intended to be leased, for the purpose of residence and forming part of other prescribed premises, but does not include any prescribed premises forming a complete residence in themselves;

“the Controller” means the Rent Controller appointed under this Ordinance, and includes any person exercising any powers or functions delegated to him by the Controller;

“the prescribed date” means the 31st day of August, 1939;

“the repealed Regulations” means the National Security (Landlord and Tenant) Regulations as in force, immediately before the commencement of this Ordinance, under the *Defence (Transitional Provisions) Act 1946-1948*.

(2.) For the purposes of this Ordinance, “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.

(3.) Where the lessor of prescribed premises supplies or provides any services in connexion with the premises and a separate charge is made for those services, the amount charged shall, for the purposes of this Ordinance, be deemed to form part of the rent payable under the lease.

PART II.—FAIR RENTS.

Division 1.—Administration.

9. For the purposes of this Ordinance, there shall be a Fair Rents Board for the Australian Capital Territory and a Fair Rents Board for the Jervis Bay Territory.

Constitution
of Fair Rents
Boards.

Procedure of
Fair Rents
Boards.

10. The Minister may make rules for regulating the procedure of Fair Rents Boards.

Rent
Controller.

11.—(1.) For the purposes of this Ordinance, there shall be a Rent Controller, who shall be appointed by the Minister.

(2.) The Controller may, by writing under his hand, delegate all or any of his powers and functions under this Ordinance or under any order made thereunder (except this power of delegation) so that the delegated powers and functions may be exercised by the delegate.

(3.) Any delegation by the Controller under this section shall be revocable in writing at will and no such delegation shall prevent the exercise of any power or function by the Controller.

Powers of
Controller
and Fair
Rents Boards.

12.—(1.) The Controller and each Fair Rents Board shall have and may exercise such powers and functions as are conferred upon him or it respectively by this Ordinance, and may exercise those powers and functions—

(a) in relation to all prescribed premises (including goods leased therewith); or

(b) where the Minister, by order published in the *Gazette*, declares that it is desirable that the powers and functions of the Controller and of Boards shall be exercisable with respect to certain prescribed premises only, or with respect to a limited class of prescribed premises only—in relation to those prescribed premises (including goods leased therewith) only or to that limited class of prescribed premises (including goods leased therewith) only.

(2.) The powers and functions of a Fair Rents Board may be exercised by any person who is a Magistrate or Special Magistrate within the meaning of the *Court of Petty Sessions Ordinance* 1930-1940.

Clerks of
Fair Rents
Boards.

13. The Minister shall, in respect of each Fair Rents Board, appoint some person to be the Clerk of the Board.

Division 2.—Rent of Prescribed Premises.

Rent of
prescribed
premises.

14.—(1.) Except in the case of premises which were not in existence or were not leased on the prescribed date, the rent payable by the lessee of any prescribed premises (or of prescribed premises together with goods) shall not, in respect of any period after the commencement of this section, and notwithstanding any term or covenant in any lease in force at any time after the commencement of this section, exceed the rent payable in respect of the prescribed premises at the prescribed date (including the rent

of any goods then leased therewith and the charge for any service then provided in connexion with the lease).

(2.) The rent payable by the lessee of any prescribed premises which were not in existence, or were not leased, on the prescribed date but were leased on the first day of March, 1945, or by the lessee of any such premises together with goods leased therewith, shall not, in respect of any period after the commencement of this section, and notwithstanding any term or covenant in any lease in force at any time after the commencement of this section, exceed the rent payable in respect of the prescribed premises at the first day of March, 1945 (including the rent of any goods then leased therewith and the charge for any service then provided in connexion with the lease).

(3.) Nothing in this section shall affect the operation of any determination.

(4.) Until any rent fixed by virtue of sub-section (1.) or (2.) of this section is increased or decreased by a determination, the rent so fixed shall be the fair rent of the prescribed premises (or of the prescribed premises together with goods) in respect of which it is so fixed, notwithstanding any alterations, additions, repairs or renovations to the prescribed premises (whether structural or otherwise) or any change of ownership or tenancy or in the nature or value of the services supplied by the lessor or in the goods leased with the premises.

15.—(1.) Where the rent of any prescribed premises (or of prescribed premises together with goods) is fixed by virtue of sub-section (1.) or (2.) of the last preceding section, the lessee may, if the lessor of the premises was the lessor on the prescribed date, or on the first day of March, 1945, as the case may be, by notice require the lessor to furnish him with a statutory declaration as to the rent of the prescribed premises (or of the prescribed premises together with goods) on that date, and the lessor shall furnish a statutory declaration accordingly within seven days after the receipt by him of the notice.

Lessor may be required to furnish statutory declaration as to rent.

(2.) Where any lessor is a body (whether corporate or unincorporate), any declaration which that lessor is required to furnish under the last preceding sub-section shall be made by some officer or member of the body having knowledge of the facts.

16. Where the powers conferred by this Ordinance on the Controller or a Fair Rents Board may be exercised in relation to certain prescribed premises (including goods leased therewith) only, or to a limited class of prescribed premises (including goods leased therewith) only, the provisions of this Division shall apply to those prescribed premises (including goods leased therewith) only, or to that limited class of prescribed premises (including goods leased therewith) only.

Application of Division.

Division 3.—Rent of Prescribed Premises other than Shared Accommodation.

Application
to have fair
rent fixed.

17. The lessor, or a lessee who has paid, or has offered (either to the lessor personally or to the person to whom the rent is ordinarily paid) the money payable for, all rent due and payable under the lease up to a date not earlier than twenty-eight days before the date of the application, of any prescribed premises other than shared accommodation (not being prescribed premises in relation to which the Controller is not authorized to exercise the powers conferred by this Part), or the owner of any such premises which are vacant, may apply in writing to the Controller to have the fair rent of the prescribed premises determined by the Controller.

Notice of
application.

18.—(1.) At least seven days prior to determining the fair rent of any prescribed premises other than shared accommodation, the Controller shall give notice of his intention to determine the fair rent of the prescribed premises to the lessor and lessee of the prescribed premises and to any sub-lessee thereof and, in the case of prescribed premises which are vacant, to the owner of those premises.

(2.) Where an application is made by a mesne lessor or mesne lessee, or by a sub-lessor or a sub-lessee, the Controller shall, at least seven days prior to determining the fair rent, give notice of his intention to determine the fair rent to the superior lessor of the person by whom the application is made, and the superior lessor shall be entitled to be a party to the application.

(3.) Where a superior lessor to whom notice is given under the last preceding sub-section or under this sub-section is himself a lessee, mesne lessee or sub-lessee, the Controller shall, at least seven days prior to determining the fair rent, give notice of his intention to determine the fair rent to the superior lessor of that person, and the superior lessor shall be entitled to be a party to the application.

(4.) Where any prescribed premises other than shared accommodation in respect of which an application is made are the subject of a mortgage, the Controller shall, at least seven days prior to determining the fair rent, give notice of his intention to determine the fair rent to the mortgagee, who shall be entitled to be a party to the application.

Determination
of application.

19.—(1.) Where an application has been made for the determination of the fair rent of any prescribed premises other than shared accommodation, the Controller may, after making such inquiries and obtaining such reports (if any) as he considers necessary, and after considering any representations made by any person whose rights may be affected by the determination, determine the fair rent of the prescribed premises.

(2.) Subject to the next two succeeding sub-sections, the determination shall not increase the fair rent of any dwelling-house by such an amount that the annual rental thereof would be increased by more than six per centum of the sum which the Controller is satisfied was necessarily expended by the lessor since the prescribed date or since the date of the last determination of the fair rent of the dwelling-house, whichever is the later, upon the improvement or structural alteration of the dwelling-house (but not including decoration, maintenance or repairs).

(3.) Where the Controller is of opinion, having regard to the matters specified in the next succeeding section, that the rent as at the prescribed date is insufficient, the determination may increase the fair rent (in addition to any other amount by which it is increased under this section) by an amount not exceeding the amount which, in the opinion of the Controller, is the amount of the insufficiency.

(4.) The determination may increase the fair rent if the Controller is satisfied that, by reason of an error or omission, an injustice has been occasioned by the last determination.

20. Subject to the last preceding section, in determining the fair rent the Controller shall have regard to— Matters to be considered.

- (a) the capital value of the premises at the prescribed date, or, if the premises were not in existence on that date, on the date on which the erection of the premises was completed;
- (b) the annual rates and insurance premiums paid or payable in respect of the premises;
- (c) the estimated annual cost of repairs, maintenance and renewals of the premises and fixtures thereon;
- (d) the estimated amount of annual depreciation in the value of the premises and the estimated time per annum during which the premises may be vacant;
- (e) the rents of comparable premises in the locality of the premises the subject of the application;
- (f) the rate of interest charged upon overdrafts by the Commonwealth Bank of Australia;
- (g) any services provided by the lessor or lessee in connexion with the lease;
- (h) any obligation on the part of the lessee to effect any improvements, alterations or repairs to the premises at his own expense;
- (i) the justice and merits of the case and the circumstances and conduct of the parties; and
- (j) any hardship which would be caused to the lessor or lessee or any other person by the making of an order increasing or reducing the rent of the premises including (but without limiting the generality of the word "hardship") any loss which might be imposed upon

the lessor by an order fixing the rent of the premises at an amount less than the lessor's liability under a mortgage of, or contract of sale in respect of, the premises, or under a hire purchase agreement or contract of sale in respect of any goods leased with the premises.

Date of
operation of
determination.

21.—(1.) Every determination of the fair rent of prescribed premises other than shared accommodation made by the Controller shall come into force on a date fixed by the Controller, but the date so fixed shall not be earlier than the date of the application.

(2.) After making any such determination, the Controller shall give notice in writing thereof, and of the date fixed as the date on which the determination shall come into force, to the lessor and lessee and to any other persons to whom notices have been given by the Controller under section 18 or 23 of this Ordinance.

Effect of
determination.

22. Where any fair rent has been determined by the Controller it shall, as from the date fixed under the last preceding section and until varied in pursuance of this Part, be the rent of the premises, or of the premises together with goods leased therewith, in respect of which it is fixed.

Controller may
determine fair
rents of his
own motion.

23.—(1.) The Controller may, of his own motion, after inquiry, determine the fair rent of any prescribed premises other than shared accommodation.

(2.) The Controller shall give to the lessor and lessee of the prescribed premises and to the other persons referred to in section 18 of this Ordinance notice of his intention to determine the fair rent of the premises, and the notice so given to the lessor shall, for the purposes of this Division, be deemed to be an application.

(3.) In determining the fair rent of prescribed premises under this section, the Controller shall have the same powers as he has in connexion with an application, and any determination made by the Controller shall have the same effect for all purposes as a determination made upon an application.

Premises
proposed
to be leased.

24.—(1.) Upon receipt of a notice from the lessee of any prescribed premises other than shared accommodation that, subject to the consent of the lessor, he proposes to grant a sub-lease of the premises together with goods other than and in addition to the goods (if any) included in his lease, the Controller may, after inquiry, determine the fair rent of the premises together with the goods proposed to be leased or sub-leased therewith.

(2.) The notice by the lessee to the Controller in pursuance of the last preceding sub-section shall, for the purposes of this Division, be deemed to be an application.

(3.) The Controller shall give to the lessor, lessee and proposed sub-lessee of the prescribed premises and to the other persons referred to in section 18 of this Ordinance notice of his intention to determine the fair rent of the premises and goods.

25.—(1.) This Division shall extend in relation to prescribed premises together with goods leased therewith, and any reference in this Division to prescribed premises shall, so far as applicable, include a reference to prescribed premises together with goods leased therewith.

Lease of
prescribed
premises
together with
goods.

(2.) In the case of prescribed premises which are leased together with goods, the Controller may fix the fair rent of the prescribed premises irrespective of the goods or may, in his discretion, fix the fair rent of the prescribed premises together with goods leased therewith.

26. The Controller may, if he thinks fit, cause any prescribed premises to be inspected in connexion with the determination of the fair rent of the premises.

Inspection of
prescribed
premises.

Division 4.—Rent of Shared Accommodation.

27.—(1.) The lessor, or the lessee who has paid, or has offered (either to the lessor personally or to the person to whom the rent is ordinarily paid) the money payable for, all rent due and payable under the lease up to a date not earlier than seven days before the date of the application, under a lease of shared accommodation (not being shared accommodation in relation to which the Controller is not authorized to exercise the powers conferred by this Part), or the owner of any such shared accommodation which is vacant, may make application in writing to the Controller to determine the fair rent thereof.

Determination
of rent of shared
accommodation.

(2.) The Controller shall thereupon cause the shared accommodation to be inspected for the purpose of determining the fair rent thereof.

(3.) The Controller may of his own motion, from time to time, cause any shared accommodation to be inspected for the purpose of determining the fair rent thereof.

(4.) At least seven days prior to determining the fair rent of any shared accommodation, the Controller shall give notice of his intention to determine the fair rent to the lessor and lessee of the shared accommodation, or, in the case of shared accommodation which is vacant, to the intending lessor of that shared accommodation.

(5.) After an inspection of any shared accommodation has been made under sub-section (2.) or (3.) of this section, after making such inquiries and obtaining such reports (if any) as the Controller considers necessary, and after considering any representations made by the lessor (or intending lessor), and any representations made by the lessee (if any), of the shared accommodation, the Controller may determine the fair rent of the shared accommodation.

(6.) Every such determination shall come into force on a date fixed by the Controller, but the date so fixed shall not be earlier than the date upon which the application for a determination was received by the Controller or, in any case in which the Controller causes any shared accommodation to be inspected pursuant to subsection (3.) of this section, not earlier than the date of such inspection.

(7.) In determining the fair rent of any shared accommodation the Controller shall have regard to the matters specified in section 20 of this Ordinance.

(8.) After making any such determination, the Controller shall give notice in writing thereof, and of the date fixed as the date on which the determination shall come into force, to the lessor and the lessee concerned.

(9.) Where any fair rent has been determined in pursuance of this section, it shall, as from the date on which the determination comes into force and until varied in pursuance of this Part, be the rent of the shared accommodation, or of the shared accommodation together with the goods leased therewith, in respect of which it is fixed.

Variation in arrangement of shared accommodation to be notified.

28. Where, after the fair rent of any shared accommodation has been determined (whether in pursuance of the repealed Regulations or of this Ordinance)—

- (a) any part of the shared accommodation is leased separately;
- (b) the whole or any part of the shared accommodation is leased as part of other shared accommodation; or
- (c) the shared accommodation is leased—
 - (i) without the use of any convenience or service which was available to the tenant at the time when the determination was made; or
 - (ii) with the use of any convenience or service which was not so available,

the lessor shall, within seven days, notify the fact in writing to the Controller, giving full particulars of the new lease, including particulars of the rent and charges payable.

Rent of shared accommodation and goods leased therewith.

29.—(1.) This Division shall extend in relation to shared accommodation together with goods leased therewith, and any reference in this Division to shared accommodation shall, so far as applicable, include a reference to shared accommodation together with goods leased therewith.

(2.) In the case of shared accommodation which is leased together with goods, the Controller may determine the fair rent of the shared accommodation irrespective of the goods or may, in his discretion, determine the fair rent of the shared accommodation together with goods leased therewith.

Division 5.—General.

30.—(1.) The lessor or lessee of any prescribed premises, including shared accommodation, in respect of which a determination has been made may, within twenty-one days after the giving of the notice referred in sub-section (2.) of section 21 or in sub-section (8.) of section 27, of this Ordinance, or the corresponding notice under the repealed Regulations, as the case may be, by a notice in writing lodged with the Clerk of a Fair Rents Board, appeal to that Board from the determination. Appeal from determination.

(2.) The Board shall, at least seven days prior to hearing the appeal, give notice in writing of the time, date and place of the hearing of the appeal to the lessor and lessee of the premises and to any other persons to whom notices have been given in pursuance of section 18 or section 23 of this Ordinance, or the corresponding provisions of the repealed Regulations, as the case may be.

(3.) While any such appeal is pending, the determination of the Controller shall continue to have full force and effect.

31.—(1.) The Board shall hear the appeal and may, having regard to the matters specified in section 20 of this Ordinance, confirm the determination and dismiss the appeal, or may determine the fair rent at such amount as, in the opinion of the Board, is the correct fair rent of the prescribed premises. Procedure on appeal. 21

(2.) On the hearing of the appeal, the Board shall make a thorough investigation without regard to legal forms or solemnities, and shall not be bound by any rules of evidence, but may inform itself in such manner as it thinks fit.

(3.) A determination of the Board shall have effect from and including a date fixed by the Board.

(4.) The date fixed by the Board in pursuance of the last preceding sub-section upon appeal from a determination of the Controller shall be not earlier than—

- (a) in the case of premises other than shared accommodation—the date upon which the application for a determination was received by the Controller; or
- (b) in the case of shared accommodation—the date upon which the application for a determination was received by the Controller or, in any case in which the Controller caused any shared accommodation to be inspected pursuant to sub-section (3.) of section 27 of this Ordinance, the date of such inspection.

(5.) Where any fair rent has been determined in pursuance of this section it shall, until varied in pursuance of this Part, be the rent of the premises, or of the premises together with goods leased therewith, in respect of which it is determined.

(6.) The Board shall furnish a copy of its determination to the Controller.

Variation of determination.

32.—(1.) A determination may be varied—

- (a) on application made in the same manner as an application to the Controller for a determination; or
- (b) by the Controller of his own motion,

and the provisions of this Part relating to determinations shall, so far as applicable and *mutatis mutandis*, apply to and in relation to variations of determinations.

(2.) During such period as is specified in the determination, or, if no period is so specified, during the period commencing with the date of the determination and ending twelve months after that date, an application shall not be made to vary a determination, or to determine the fair rent of prescribed premises, or of prescribed premises together with goods leased therewith, in respect of which a determination has been made, nor shall the Controller vary a determination of his own motion, except on the ground that—

- (a) by an error or omission an injustice has been occasioned by the determination;
- (b) increased outgoings or losses have been or will be incurred by the lessor by reason of the use made by the lessee of the premises since the date of the determination;
- (c) the determination has been based on an incorrect estimate of the value of the premises or of goods leased therewith or of the services supplied by the lessor, or of premises of which the premises form part, or on an incorrect calculation, and by reason thereof an injustice has been occasioned by the determination;
- (d) there has been a substantial alteration in the terms and conditions upon which the premises are leased;
- (e) substantial alterations or additions have been made to the premises, to the goods leased therewith, or to the services supplied by the lessor, since the determination was made; or
- (f) the value of the premises, of the goods leased therewith or of the services supplied by the lessor has materially decreased or increased since the determination was made.

(3.) For the purposes of this section, any reference in section 18, 23 or 27 of this Ordinance to notice of intention to make a determination shall be read as a reference to notice of intention to consider the making of a variation of a determination.

Effect of determination.

33.—(1.) A determination shall apply to any lease of the prescribed premises or, where a determination is made in respect of prescribed premises and of goods leased therewith, to any lease of those premises together with goods, for the time being subsisting, and to the lessor and lessee thereof, notwithstanding any alterations, additions, repairs or renovations to the prescribed premises

(whether structural or otherwise) or any change of ownership or tenancy or in the nature or value of the services supplied by the lessor or in the goods leased with the premises.

(2.) The rent payable by the lessee of any prescribed premises, or of any prescribed premises together with goods leased therewith, shall not exceed the fair rent thereof fixed by a determination, notwithstanding any term or covenant in any lease in force at the time of the application or at any time thereafter.

34.—(1.) Where the fair rent of any prescribed premises or shared accommodation has been determined (whether in pursuance of the repealed Regulations or of this Ordinance), the lessor shall give notice in writing to the Controller of—

Lessor to notify change in services supplied or in nature of occupancy.

- (a) the nature and extent of any services, not supplied at the date of the determination, which he commences to supply to any lessee; and
- (b) the fact that the prescribed premises cease, or the shared accommodation ceases, to be occupied by a lessee and become or becomes occupied by a lodger.

(2.) A notice under this section shall be given within seven days after the matter required to be notified arises.

35.—(1.) A person shall not—

- (a) let premises, or premises together with goods, at a rent exceeding the fair rent thereof; or
- (b) demand, receive or pay any sum as rent exceeding the fair rent thereof.

Premises not to be let at rent exceeding fair rent.

(2.) The legal remedies for the enforcement of any covenant or agreement—

- (a) to pay rent for premises, or for premises together with goods, exceeding the fair rent thereof; or
- (b) which, directly or indirectly, would secure to any person the payment of rent or of money in respect of the occupation of premises, or of the occupation of premises and the use of goods leased therewith, so that the amount received by the person would exceed the fair rent thereof,

shall be limited to the enforcement of payment of the fair rent thereof.

(3.) Any sum paid as rent—

- (a) for, or in respect of the occupation of, premises; or
- (b) for, or in respect of, the occupation of premises and the use of goods leased therewith,

exceeding the fair rent thereof, shall, to the extent of the excess, be recoverable in an action for debt in any court of competent jurisdiction by the lessee from the lessor to whom it was paid.

Certain
payments
prohibited.

36.—(1.) A person shall not, whether as principal or agent, or in any other capacity—

(a) require, give or receive, or offer, promise or agree to give or receive, any bonus, premium or sum of money (other than rent), or require the purchase or exchange of any goods or goodwill, in consideration of, or in association with—

(i) the grant, acceptance, assignment or transfer of any lease of;

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

(iii) any agreement for a lease or for the renewal, extension, assignment or transfer of a lease of;

(iv) his consenting to a sub-lease of; or

(v) his vacating,

any prescribed premises (including any dwelling-house), except with the consent of the Controller or in pursuance of a term of a transaction which has been consented to by a Minister or the delegate of a Minister in pursuance of the National Security (Economic Organization) Regulations;

(b) pay, give or receive, or offer, promise or agree to pay, give or receive, any sum of money or other consideration—

(i) for obtaining or making available a key of any prescribed premises (including any dwelling-house); or

(ii) for information as to a tenancy, or as to the possibility or likelihood of obtaining a tenancy, of any prescribed premises (including any dwelling-house); or

(c) make it a condition of the granting of any lease of a dwelling-house that the lessee shall effect any improvements, alterations or repairs at his own expense.

(2.) Any sum paid in contravention of this section may be recovered by the person who paid it from the person to whom it was paid in an action for debt in any court of competent jurisdiction, or, if the person to whom it was paid is the lessor, may, without prejudice to any other method of recovery, be deducted by the lessee from any rent payable by him to the lessor within six months after the date of the payment.

(3.) Where a person has, in contravention of this section, been required to purchase or exchange any goods or goodwill, he may recover in any court of competent jurisdiction, from the person

guilty of the contravention, so much of any amount paid, in accordance with the requirement, for the goods or goodwill purchased as exceeds the fair value thereof, or, as the case may be, an amount equal to the excess of the fair value of the goods which he has exchanged over the fair value of the goods which he has received in exchange.

37.—(1.) A person shall not make any representation, or do any other act, whereby a person is informed, either expressly or by implication, that, upon the purchase or exchange of any goods or goodwill, he will or may receive or obtain, or be entitled to receive or obtain, the grant, transfer, assignment, renewal or extension of a lease, or consent to a sub-lease, of any prescribed premises (including any dwelling-house).

Certain representations, &c., prohibited.

(2.) In any prosecution for a contravention of this section, it shall be a defence if the defendant proves that—

- (a) at the time of the representation or act, he specified a price for the purchase, and that the price so specified was not unreasonable; or
- (b) that the proposed exchange was not unfair.

38.—(1.) A person shall not refuse, or procure any person to refuse, to let a dwelling-house to any person on the ground that it is intended that a child shall live in the dwelling-house.

Refusal to let dwelling-house to applicant with family prohibited.

(2.) In any prosecution for an offence arising under the last preceding sub-section, where all the facts and circumstances constituting the contravention, other than the ground of the refusal, are proved, it shall lie upon the defendant to prove that the ground of refusal was not the ground alleged in the charge.

(3.) A person shall not—

- (a) instruct any other person not to let; or
- (b) state his intention, whether by advertisement or otherwise, not to let,

a dwelling-house to any person if it is intended that a child shall live in the dwelling-house.

(4.) A person shall not, for the purpose of determining whether or not he will let a dwelling-house, inquire from any prospective tenant of the dwelling-house whether—

- (a) the prospective tenant has any children; or
- (b) it is intended that a child shall live in the dwelling-house if it is let to that prospective tenant.

(5.) In any prosecution for an offence arising under the last preceding sub-section, where all the facts and circumstances constituting the contravention, other than the purpose of the inquiry, are proved, it shall lie upon the defendant to prove that the purpose of the inquiry was not the purpose alleged in the charge.

Dwelling-house
not to be let
unless in
good repair.
Abolition of
distress for
rent of
dwelling-houses.

39. A person shall not let a dwelling-house which is not, at the date of the letting, in fair and tenantable repair.

40. Notwithstanding the provisions of any other law, a person shall not levy or make any distress for rent of a dwelling-house.

Premises leased
for holiday
purposes only.

41. Notwithstanding anything contained in this Ordinance or in any declaration issued in pursuance of this Ordinance, a dwelling-house shall, for the purposes of sections 36, 37, 38, 39 and 40 of this Ordinance, be deemed to include holiday premises.

No appeal
from order
of Board.

42. Every determination of a Fair Rents Board or of the Controller shall, except as provided by this Part, be final and without appeal, and no writ of prohibition or certiorari shall lie in respect thereof.

Costs not to
be allowed.

43. No costs shall be allowed in any proceedings before the Controller or a Board under this part, not being proceedings in respect of an offence arising under this Part.

Controller not
bound to
conduct oral
hearing.

44.—(1.) Before making a determination, or a variation of a determination, the Controller shall make a thorough investigation without regard to legal forms or solemnities, and may proceed to make the determination or variation without a formal or oral hearing of the persons interested or their representatives.

(2.) This section shall not affect the right of any person to make representations to the Controller in writing, or the duty of the Controller to consider any such representations.

Summoning of
witnesses and
production of
documents.

45.—(1.) The Controller, or the Magistrate constituting a Fair Rents Board, may by summons in writing under his hand or under the hand of the Clerk of the Board, summon any person to attend the Controller or Board at the time and place mentioned in the summons, and then and there to give evidence and to produce books, documents or writings in his custody or control which he is required by the summons to produce.

(2.) The Controller or a Board may administer an oath or affirmation to any person appearing as a witness before the Controller or Board, whether the witness has been summoned or appears without being summoned, and may examine the witness upon oath or affirmation.

Failure to
attend or
produce
documents.

46.—(1.) A person who has been served with a summons to attend the Controller or a Fair Rents Board shall not, without reasonable excuse, refuse or fail to attend the Controller or Board or to produce any documents, books, or writings in his custody or control which he was required by the summons to produce.

(2.) It shall be a defence to a prosecution for failing, without reasonable excuse, to produce any documents, books or writings if the defendant proves that the documents, books or writings were not relevant to the subject-matter of the proceedings before the Controller or Board.

47. A person appearing as a witness before the Controller or a Fair Rents Board shall not refuse to be sworn or make an affirmation or to answer any question relevant to any proceedings before the Controller or Board put to him by the Controller or the Board or by any counsel, solicitor or agent appearing before the Controller or Board. Refusal to be sworn or give evidence.

48. A witness before the Controller or a Fair Rents Board shall not knowingly give false testimony in any evidence given by him to the Controller or Board. False testimony.

49. A witness before the Controller or a Fair Rents Board shall have the same protection and shall, in addition to the penalties provided by this Ordinance, be subject to the same liabilities in any civil or criminal proceedings, as a witness in any case tried in the Supreme Court. Protection to and liability of witness.

50.—(1.) No action or proceeding, whether civil or criminal, shall lie against any person for publishing in good faith for the information of the public— Protection of reports and proceedings.

(a) a copy of or a fair extract from, or a fair abstract of, any determination made by the Controller or a Fair Rents Board; or

(b) a fair and accurate report of any proceedings before the Controller or a Board.

(2.) A publication shall be deemed to be made in good faith for the information of the public if the person by whom it is made was not actuated by ill-will against the person defamed or by any other improper motive.

51.—(1.) A person shall not wilfully insult or disturb a Fair Rents Board, or interrupt the proceedings of a Board, or use any insulting language to a Board, or by writing or speech use words which are false or defamatory of a Board, or otherwise commit any wilful contempt of a Board. Contempt of Board.

(2.) The Magistrate constituting a Fair Rents Board shall, in relation to any contravention of the last preceding sub-section committed in the face of the Board, have all the powers of a court of summary jurisdiction sitting in open court in relation to a contempt committed in the face of the court.

52. The Controller and a Fair Rents Board shall, in the exercise of his or its functions under this Part, have the same protection and immunity as a Justice of the High Court. Protection of Board.

53. The Controller shall, on application, furnish to any person information as to the fair rent of any prescribed premises, or of any goods leased therewith, fixed by a Board or by the Controller. Information as to fair rent.

**Intervention
by Attorney-
General.**

54. The Attorney-General may, at any stage of any proceedings under this Part before a Fair Rents Board, intervene by counsel, solicitor or agent on behalf of the Commonwealth, who may examine witnesses and address the Board.

**Representation
by agent.**

55.—(1.) Any person who is a party to proceedings before a Board or the Controller under this Part or who may be affected by the result of any such proceedings, may be represented by an agent, who may examine witnesses and address the Board or Controller on that person's behalf.

(2.) The agent shall not be—

(a) a barrister or solicitor, or a clerk of a barrister or solicitor, unless—

(i) all parties or persons affected consent thereto;

(ii) the Attorney-General has intervened by counsel or solicitor; or

(iii) one of the parties or persons affected is a barrister or solicitor; or

(b) a person who—

(i) having been entitled to practise as a solicitor, is no longer entitled to practice as a barrister or solicitor; or

(ii) having been entitled to practise as a barrister, is no longer entitled to practise as a barrister or solicitor.

(3.) An agent shall not charge or receive any fee or other remuneration for or in respect of any matter or thing done by him in relation to any such proceedings unless the fee or other remuneration has been fixed by the Board or the Controller.

**Records
of rent.**

56.—(1.) A lessor shall, by himself or his agent, keep or cause to be kept a record showing the rent received in respect of prescribed premises (and of prescribed premises together with goods) leased by him.

(2.) The person having the custody of the record or of any previous like record, relating to a period not earlier than the prescribed date, in respect of the prescribed premises shall, when requested by any tenant of the prescribed premises or by an authorized officer so to do, make the record available, within fourteen days after such request, for inspection by that tenant or authorized officer, as the case may be.

(3.) The lessor shall, by himself or his agent, produce the records at the hearing of any proceedings under this Part in respect of the prescribed premises and the records shall at the hearing be evidence of the contents thereof.

(4.) A lessor or agent shall not knowingly make, or allow to be retained, in any such record any entry false in a material particular.

(5.) A request under this section may be made orally or in writing.

57. The person receiving any payment of rent of prescribed premises (or of any prescribed premises together with goods) shall, at the time of receiving the payment, give or cause to be given, to the person making the payment, a receipt for the payment, specifying the date of the payment, the amount paid, the period in respect of which the payment is made and the premises in respect of which the payment is made. Receipts to be given.

58.—(1.) It shall be the duty of the lessor of any prescribed premises (or of any prescribed premises together with goods) to take all reasonable steps to ascertain whether the fair rent thereof is fixed by or under this Part and, if so, the amount of the fair rent. Lessor to ascertain fair rent.

(2.) Where any prescribed premises (or prescribed premises together with goods) were leased at the prescribed date, the lessor at the prescribed date shall, on demand in writing by the lessor at the time the demand is made, furnish to him, within twenty-eight days after receipt of the demand, a statutory declaration as to the rent of the premises (or of the premises together with goods) at the prescribed date.

(3.) Where any prescribed premises were not in existence, or were not leased, on the prescribed date, but were leased on the first day of March, 1945, the lessor at the first day of March, 1945, shall, on demand in writing by the lessor at the time the demand is made, furnish to him, within twenty-eight days after the receipt of the demand, a statutory declaration as to the rent of the premises (or of the premises together with goods) at the first day of March, 1945.

59.—(1.) In any proceedings before any court, a certificate by the Controller that, in respect of a period specified in the certificate, the fair rent of any prescribed premises was fixed by a determination (including any determination by a Fair Rents Board), and specifying the amount thereof, shall be evidence of the matters certified to. Certificate as to fair rent.

(2.) Judicial notice shall be taken of the signature of the person signing any such certificate and of the fact that he is, or has been, the Controller.

60.—(1.) Any notice or other document required or permitted by this Part to be given to, or served upon, any person, may be given or served— Service of notices.

(a) by delivering the notice or other document to him personally; or

(b) by forwarding the same by post in a pre-paid letter addressed to him at his usual or last-known place of abode or business or at any address notified to the Board or the Controller as the address at which notices may be given to or served upon him.

(2.) Any notice or other document required or permitted by this Part to be given to, or served upon, the Controller may be given or served by leaving the same at the office of the Controller with some person apparently employed thereat or by sending the same by post in a pre-paid letter addressed to the Controller.

(3.) Where any notice or other document is required or permitted by this Part to be given to, or served upon, a person whose address is unknown, it may be given or served by publishing it in a daily newspaper circulating in the district in which the prescribed premises concerned are situated.

Service upon
agent sufficient.

61.—(1.) Any notice or other document required or permitted by this Part to be given to, or served upon, a lessor under the lease of any prescribed premises 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.

(2.) Any notice or other document required or permitted by this Part to be given to, or served upon, a lessee under the lease of any prescribed premises 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.

(3.) If two or more persons are lessors or lessees under any lease of any prescribed premises, it shall be a sufficient compliance with any provision of this Part requiring or permitting any notice or other document to be given to, or served upon, the lessors or lessees if the notice is given to, or served upon, any one of the lessors or lessees.

Courts may
order refund
of amounts
overpaid.

62.—(1.) Upon conviction of any person for any offence arising under this Part the court may, in addition to any penalty, order that any amount which has been received by or paid to that person in contravention of this Part be refunded to the person by whom the payment was made, and the like proceedings may be taken upon the order as if the order had been a judgment of the court in favour of the last-mentioned person.

(2.) Where a court proposes to make an order under this section against a convicted person, the court may hear evidence tending to show that the contravention of which the person has been convicted was part of a course of conduct in contravention of this Part, and evidence to the contrary, and may, if it sees fit, include in the order any amounts which appear to the court to have been received by or paid to the person in contravention of this Part as part of that course of conduct.

(3.) Without prejudice to the operation of sub-section (1.) of this section, where a court has made an order under this section, a certificate under the hand of the clerk or other appropriate officer of the court, specifying the amount ordered to be refunded and the person by whom and the person to whom the amount is

payable, may be filed in any court having civil jurisdiction to the extent of that amount, and shall thereupon be enforceable in all respects as a final judgment of that court.

(4.) So much only of the amount ordered to be refunded as has not already been refunded or recovered may be recovered by either of the methods specified in this section.

PART III.—RECOVERY OF POSSESSION OF PRESCRIBED PREMISES.

63.—(1.) Except as provided by this Part, the lessor of any prescribed premises shall not give any notice to terminate the tenancy or take or continue any proceedings to recover possession of the premises from the lessee or for the ejection of the lessee therefrom. Restriction
on eviction.

(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 any court of competent jurisdiction for an order for the recovery by him of any prescribed premises (or of any goods leased therewith) or for the ejection of the lessee therefrom if the lessor, before taking the proceedings, has given to the lessee, upon one or more of the prescribed grounds but upon no other ground, notice to quit in writing for a period determined in accordance with the next succeeding section, 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.

(5.) The prescribed grounds shall be—

- (a) that the lessee has failed to pay the rent in respect of a period—
 - (i) where the lessee's period of occupation does not exceed six months—of not less than seven days;
 - (ii) where the lessee's period of occupation exceeds six months but does not exceed twelve months—of not less than fourteen days; and
 - (iii) in any other case—of not less than twenty-eight days;
- (b) that the lessee has failed to perform or observe some other term or condition of the lease and the performance or observance of that other term or condition has not been waived or excused by the lessor;

- (c) that the lessee has failed to take reasonable care of the premises, or of any goods leased therewith, or has committed waste;
- (d) that the lessee has been guilty of conduct which is a nuisance or annoyance to adjoining or neighbouring occupiers;
- (e) that the lessee or any other person has been convicted, during the currency of the lease, of any offence arising out of the use of the premises for any illegal purpose or that a court has found or declared that the premises have, during the currency of the lease, been used for some illegal purpose;
- (f) that the lessee has given notice of his intention to vacate the premises and, in consequence of that notice, the lessor has agreed to sell or let the premises or has taken any other steps as a result of which he would be seriously prejudiced if he could not obtain possession;
- (g) that the premises—
 - (i) being a dwelling-house—are reasonably required by the lessor for occupation by himself or by some person who ordinarily resides with, and is wholly or partly dependent upon, him; or
 - (ii) not being a dwelling-house—are reasonably required for occupation by the lessor or by a person associated or connected with the lessor in his trade, profession, calling or occupation;
- (h) that the premises are used as, or have been acquired for use as, a parsonage, vicarage, presbytery or other like premises and are reasonably required for the personal occupation of a minister of religion (including a person who, although not ordained, is performing all the duties of a minister of religion);
- (i) that the lessor is a trustee and the premises are reasonably required by a beneficiary under the trust for his personal occupation or for the occupation of some person who ordinarily resides with, and is wholly or partly dependent upon, him;
- (j) that the lessor is a person, body or authority carrying on a hospital, or a trustee for such a person, body or authority, and the use of the premises is reasonably required for the purposes of the hospital (including the accommodation of the staff of the hospital);
- (k) that the premises have been occupied, or are occupied, in consequence of his employment by some person in the employ of the lessor and are reasonably required for

the personal occupation in consequence of that employment of some other person employed by, or about to become employed by, the lessor;

- (l) that the lessor has agreed to sell the premises by an agreement which requires the purchaser to pay not less than one-fourth of the whole purchase money within twelve months from the date thereof and by which the purchaser is entitled to vacant possession of the premises and the premises—

(i) being a dwelling-house—are reasonably required by the purchaser for occupation by himself or by some person who ordinarily resides with, and is wholly or partly dependent upon, him; or

(ii) not being a dwelling-house—are reasonably required for occupation by the purchaser or by a person associated or connected with the purchaser in his trade, profession, calling or occupation;

- (m) that the premises are reasonably required by the lessor for reconstruction or demolition;

(n) that the lessee has become the lessee of the premises by virtue of an assignment or transfer which the lessor has not consented to or approved; or

(o) that the lessee has sub-let the premises or some part thereof by a sub-lease which has not been consented to or approved by the lessor.

(6.) In the last preceding sub-section, unless the contrary intention appears, “lessor” includes, where there is more than one lessor, any one or more of the lessors, and “lessee” includes, where there is more than one lessee, any one or more of the lessees.

(7.) Notice to quit on a ground specified in paragraph (n) or (o) of sub-section (5.) of this section—

(a) shall not be given—

(i) where the lessee became the lessee by virtue of an assignment or transfer made before the fourteenth day of March, 1947, or the sub-lease was granted before that date;

(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 sub-lease was in breach of any covenant or condition.

(8.) A notice to quit given prior to the commencement of this Ordinance in accordance with the provisions of the repealed Regulations shall have the same force and effect as if given under the corresponding provisions of this Ordinance.

ef **64.**—(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 the last preceding sub-section 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 paragraph (c), (d), (e) or (f) of sub-section (5.) of the last preceding section and not on any other ground;
- (ii) a period exceeding thirty days if the notice is given on any other ground; or
- (iii) in the case of shared accommodation—a period exceeding fourteen days; or

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

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

65.—(1.) A lessor, after he has received from the Controller notice of his intention to determine the fair rent of any prescribed premises (otherwise than upon an application by the lessor), shall not, without the consent of the Controller, give a notice to quit to the lessee of the premises on any ground specified in paragraph (f), (g), (h), (i), (j), (k) or (l) of sub-section (5.) of section 63 of this Ordinance until after the expiration of six months after the making of the determination, but if a determination has not been made within a period of six months after the date of receipt by the lessor of the notice of intention, such a notice to quit may be given after the expiration of that period.

(2.) In sub-section (1.) of this section—

- (a) any reference to an application by a lessor for a determination shall include a reference to any such application under the repealed Regulations;
- (b) any reference to a notice by the Controller of his intention to determine the fair rent of any prescribed premises shall include a reference to any such notice given by the Commonwealth Rent Controller or his delegate under the repealed Regulations; and
- (c) any reference to the consent of the Controller shall include a reference to any such consent by the Commonwealth Rent Controller or his delegate under regulation 60 of the repealed Regulations.

66.—(1.) A person who becomes, or has, before the commencement of this Ordinance, become, the lessor of prescribed premises, being a dwelling-house or part of a dwelling-house, by purchase thereof, shall not, within a period of six months after the date of the agreement for the purchase, give a notice to quit on the ground specified in paragraph (g) of sub-section (5.) of section 63 of this Ordinance to any person who was a lessee of the prescribed premises at the date of the agreement for the purchase.

Notice to quit where dwelling-house sold.

(2.) A lessor of prescribed premises, being a dwelling-house or part thereof, shall not give a notice to quit on the ground specified in paragraph (l) of sub-section (5.) of section 63 of this Ordinance to any person who was a lessee of the prescribed premises at the date of the agreement referred to in that paragraph within a period of six months after the date of the agreement.

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

Notice to specify grounds.

68. A notice to quit given in accordance with the provisions of section 63 of this Ordinance or of the corresponding provisions of regulation 58 of the repealed Regulations 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 made.

Notice to quit to terminate lease.

69.—(1.) Where a lessor has taken proceedings in any court to recover possession of any prescribed premises from the lessee or for the ejectment of the lessee therefrom and the court has (whether before or after the commencement of this section) 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 court having jurisdiction under this Part so to do.

Notice to quit after failure of eviction proceedings.

(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.

70.—(1.) For the purposes of section 63 of this Ordinance, the only courts of competent jurisdiction shall be—

Competent courts.

- (a) in the Australian Capital Territory—the Court of Petty Sessions; and
- (b) in the Jervis Bay Territory—the Court of Petty Sessions constituted under the law of the State of New South Wales sitting at Nowra in that State.

(2.) A court specified in sub-section (1.) of this section shall, subject to this Part, have jurisdiction in proceedings under this Part.

(3.) The jurisdiction of a court under this section shall not be exercised except by a Stipendiary or Special Magistrate.

Court to
consider
hardship.

71.—(1.) On the hearing of any proceedings by a lessor for an order for the recovery of possession of any prescribed premises or for the ejection of the lessee therefrom (whether the proceedings were commenced before or after the commencement of this Ordinance), 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; and
- (c) where the application is made on any one or more of the grounds specified in paragraphs (g), (h), (i), (j), (k), (l) and (m) of sub-section (5.) of section 63 of this Ordinance or on any one or more of the grounds specified in paragraphs (g), (h), (i), (ia), (j), (k) and (l) of sub-regulation (5.) of regulation 58 of the repealed Regulations—whether any reasonably suitable alternative accommodation in lieu of the prescribed premises is, or has been since the date upon which notice to quit was given, available for the occupation of the person occupying the prescribed premises or for the occupation of the lessor or other person by whom the prescribed premises would be occupied if the order were made,

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

(2.) Where the application is made on either of the grounds specified in paragraphs (n) and (o) of sub-section (5.) of section 63 of this Ordinance or on either of the grounds specified in paragraphs (m) and (n) of sub-regulation (5.) of regulation 58 of the repealed Regulations, the court shall not refuse in the exercise of the discretion vested in it by the last preceding sub-section, to make the order unless the court is satisfied—

- (a) that special circumstances exist by reason of which the order should not be made; or
- (b) without limiting the generality of the last preceding paragraph, in a case where the ground specified in paragraph (o) of sub-section (5.) of section 63 of

this Ordinance or in paragraph (n) of sub-regulation (5.) of regulation 58 of the repealed Regulations applies, that the sub-letting was in the course of a business of sub-letting carried on by the lessee.

(3.) On the hearing of an application specified in the last preceding sub-section, any assignee, sub-lessee or person in occupation of the prescribed premises or any part thereof shall be entitled to be heard.

72. In respect of any proceedings referred to in the last preceding section, the court may— Power to stay proceedings on orders.

(a) from time to time, subject to such conditions (if any), and for such period as it thinks fit—

- (i) adjourn the proceedings;
- (ii) stay or suspend the execution of any judgment or order which has been made or given in the proceedings; or
- (iii) postpone the date for recovery of possession or for ejectment specified in any such judgment or order; or

(b) subject to such conditions (if any) as it thinks fit, vary, discharge or rescind any such judgment or order; or

(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.

73.—(1.) An application to stay or suspend the execution of, or to vary, discharge or rescind, any judgment or order referred to in the last preceding section, or to postpone the date for recovery of possession or for ejectment 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 prescribed premises or for the ejectment of the lessee until the court has heard the application. Certain applications to operate as stay of execution.

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

(3.) Where, in respect of any proceedings referred to in section 71 of this Ordinance, the court has refused to grant an application of any of the kinds referred to in sub-section (1.) of this section, no further application of any of those kinds shall be made in respect of those proceedings except with the leave of the court.

Hearing in chambers.

74. Proceedings for the recovery of possession of prescribed premises or for the ejectment 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 any court to dispose of any such proceedings in chambers otherwise than under this section.

Appeals.

75.—(1.) Except as provided in this section, there shall be no appeal (other than an appeal to the High Court), in proceedings under this Part, from a judgment or order of a court of competent jurisdiction referred to in section 70 of this Ordinance.

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

(3.) The Supreme Court shall have jurisdiction to hear appeals under this section.

Ejectment orders not enforceable unless made under Ordinance.

76. Notwithstanding anything contained in any other law, no order (other than an order made under this Ordinance or under the repealed Regulations) made by any court for the recovery by the lessor of possession of any prescribed premises (or of any goods leased therewith) or for ejectment of the lessee shall be enforceable.

Court may order compensation for misrepresentation.

77. Where a lessor has obtained an order for the recovery of possession of any prescribed premises or for the ejectment therefrom of a lessee and it is subsequently proved that the order was obtained by a fraudulent representation or the concealment of material facts, the court which made the order may order the lessor to pay to the former lessee such sum as appears to the court to be sufficient as compensation for damage or loss sustained by the lessee as the result of the order, and the like proceedings may be taken upon the order as if the order had been a judgment of the court in favour of the former lessee.

Premises not to be sold or re-let in certain cases.

78.—(1.) If a notice to quit is given on the ground specified in paragraph (g), (h), (i), (j) or (k) of sub-section (5.) of section 63 of this Ordinance 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 the appropriate 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.

(2.) Nothing in the last preceding sub-section shall prevent—

- (a) the letting of any portion of the prescribed premises which is not reasonably required by the lessor or purchaser, as the case may be, provided that the total rent obtained is not greater than a reasonable rent for the whole of the premises less a reasonable deduction for the portion of the premises not so let; or
- (b) where notice to quit has been given on the ground specified in paragraph (h), (i) or (k), 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.) In sub-sections (1.) and (2.) of this section—

- (a) any reference to a notice to quit shall include a reference to a notice to quit given in pursuance of the repealed Regulations;
- (b) any reference to the ground specified in paragraph (g), (h), (i), (j) or (k) of sub-section (5.) of section 63 of this Ordinance shall include a reference to the corresponding ground specified in sub-regulation (5.) of regulation 58 of the repealed Regulations;
- (c) any reference to a vacation of premises shall include a reference to vacation of premises before the commencement of this Ordinance; and
- (d) any reference to an order for the recovery of possession of premises or for the ejectment therefrom of the lessee shall include a reference to any such order made under the repealed Regulations before the commencement of this Ordinance.

(4.) In this section, “the appropriate Court” means—

- (a) in relation to premises in the Australian Capital Territory—the Court of Petty Sessions; and
- (b) in relation to premises in the Jervis Bay Territory—the Court of Petty Sessions constituted under the law of the State of New South Wales sitting at Nowra in that State.

(5.) A court specified in the last preceding sub-section shall have jurisdiction to hear and determine applications for consents under this section, but that jurisdiction shall not be exercised except by a Stipendiary or Special Magistrate.

Application to
limited class
of premises.

79. Where an order is in force declaring that it is desirable that the powers and functions of the Controller and of Fair Rents Boards shall be exercisable with respect to certain prescribed premises only, or with respect to a limited class of prescribed premises only, the provisions of this Part shall apply only with respect to the prescribed premises, or limited class of prescribed premises, referred to in the order.

Enforcement
of orders.

80. An order for the recovery of possession of any prescribed premises (or of any goods leased therewith) or for the ejection of a lessee therefrom made by a court under this Ordinance may be enforced in the same manner as a like order if made by that court otherwise than under this Ordinance might be enforced.

Acceptance of
rent not to
waive notice
to quit.

81. Where notice to quit any prescribed premises has been given, whether before or after the commencement of this Ordinance—

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

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

Persons not
to interfere
with use or
enjoyment
of premises.

82.—(1.) A person shall not, without the consent of the lessee of prescribed premises, and without reasonable cause (proof whereof shall lie upon the defendant), do, or cause to be done, any act, or omit, or cause to be omitted, any act whereby the ordinary use or enjoyment by the lessee of the premises or of any goods leased therewith, or of any conveniences usually available to the lessee, or of any service supplied to, or provided in connexion with the premises is interfered with or restricted.

(2.) Where the lessor, or any agent or servant of the lessor, has been convicted of an offence arising under the last preceding subsection, 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, goods, conveniences or service, and the lessor shall comply with the provisions of the order.

(3.) For the purposes 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.

83.—(1.) Where—

Protection of
sub-lessees.

(a) a lessor has consented to or approved a sub-lease of any prescribed premises or any part thereof by the lessee, or a lessee has sub-let any prescribed premises or any part thereof in the course of a business of sub-letting carried on by the lessee; and

(b) the lessee ceases to be in possession of the premises, following upon—

(i) the obtaining of an order by the lessor for the recovery of possession of the premises from the lessee or for the ejectment of the lessee from the premises on any of the grounds specified in paragraphs (a) to (f) of sub-section (5.) of section 63 of this Ordinance or upon any of the grounds specified in paragraphs (a) to (f) of sub-regulation (5.) of regulation 58 of the repealed Regulations; or

(ii) the surrender of his lease by the lessee,

the sub-lessee shall (if he is in possession of the whole or portion of the prescribed premises sub-let 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 sub-lease, 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 sub-paragraph (i) of paragraph (b) of the last preceding sub-section applies, the order shall not be enforced against the sub-lessee.

(3.) Where, prior to the lessor of any prescribed premises giving notice to quit upon any of the grounds specified in sub-section (5.) of section 63 of this Ordinance or in sub-regulation (5.) of regulation 58 of the repealed Regulations, the lessee of the prescribed premises has sub-let 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 sub-let and who is a sub-lessee of the prescribed 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 prescribed premises or for the ejectment of the lessee therefrom, file the notice given to him under this section with the proper officer of the court in which the proceedings are taken; and
- (c) the proper officer of the court shall thereupon give notice by registered post to each person specified in the notice, at the address so specified, of the date of hearing of the proceedings by the court.

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

Protection of certain persons in possession of premises.

84. Where—

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

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

Costs not to be allowed.

85. 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.

Intervention of Attorney-General.

86. The Attorney-General may, at any stage of any proceedings in relation to which this Part applies, intervene by counsel, solicitor or agent on behalf of the Commonwealth, who may examine witnesses and address the court.

Exclusion of premises let for a short term from operation of Part III.

87.—(1.) The lessor or former lessor under a lease, or the proposed lessor under a proposed lease, of any prescribed premises for a fixed term not exceeding six months may, at any time while the lessee or former lessee is in occupation of the premises, or prior to the commencement of the term of the proposed lease, make application in writing to the Controller to exclude the premises from the operation of this Part.

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

(3.) The Controller may, in his 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.) Any certificate issued before the commencement of this Ordinance under regulation 78 of the repealed Regulations and having force or effect immediately before that commencement shall continue to have force and effect in all respects as if this section had been in force at the time when the certificate was issued and the certificate had been issued under this section.

(5.) The Controller may at any time revoke or vary any certificate issued or continued in force under this section.

88.—(1.) The provisions of this Part shall not apply to or in relation to any prescribed premises in respect of which a certificate under this section is in force.

Exclusion of certain subdivided premises, &c., from operation of Part III.

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

(3.) The Controller may—

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

(b) refuse the application.

(4.) A certificate issued under this section in respect of prescribed premises 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.) Any certificate issued before the commencement of this Ordinance under regulation 79 of the repealed Regulations and having force or effect immediately before that commencement shall continue to have full force and effect in all respects as if this section had been in force at the time when the certificate was issued and the certificate had been issued under this section.

(6.) The Controller may revoke or vary any certificate issued or continued in force under this section.

(7.) This section shall apply only in relation to prescribed premises being—

(a) a dwelling-house which is not in whole or in part leased to any person;

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

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

(8.) 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.

PART IV.—MISCELLANEOUS.

Threats and
boycotts
prohibited.

89.—(1.) A person shall not, by any threat, or in any other manner, endeavour to dissuade or prevent a lessor or lessee from making or prosecuting any application under this Ordinance or taking or continuing any proceedings in relation to which this Ordinance applies.

(2.) The owner of any prescribed premises, and the agent of any such owner, shall not refuse, or procure any person to refuse, to lease the premises to any other person who desires to lease the same if the reason for that refusal was the fact that that other person had made an application under this Ordinance or the repealed Regulations.

(3.) In any prosecution for an offence arising under the last preceding sub-section, where all the facts and circumstances constituting the contravention, other than the reason for the refusal, are proved, it shall lie upon the defendant to prove that the reason for the refusal was not the reason alleged in the charge.

(4.) A person shall not do, or procure 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 under this Ordinance or the repealed Regulations or has taken any proceedings in relation to which this Ordinance applies or the repealed Regulations applied.

90. No covenant or agreement (whether entered into before or after the commencement of this Ordinance) shall have any force or effect to deprive any lessee of any right, power, privilege or benefit provided for by this Ordinance. Contracting out prohibited.

91. A person shall not enter into or make any contract or arrangement, whether orally or in writing, for the purpose of, or which has the effect of, in any way, and whether directly or indirectly, defeating, evading, or preventing the operation of, this Ordinance in any respect. Contracts to evade Ordinance prohibited.

92.—(1.) Where any transaction is entered into in contravention of this Ordinance, the transaction shall not thereby be invalidated, and the rights, powers and remedies of any person thereunder shall, except where otherwise expressly provided in this Ordinance, be the same as if this Ordinance had not been made. Transactions not invalidated.

(2.) Nothing in this section shall affect the operation of section 90 of this Ordinance or the liability of any person to any penalty in respect of any contravention of this Ordinance.

93.—(1.) The Controller or an authorized officer may require a person— Information to be furnished on request.

- (a) to furnish to the person making the requirement such information as that person requires;
- (b) to answer any question put to him by that person; or
- (c) to produce any books, documents or writings in his custody or control,

in relation to any matter arising under this Ordinance or the repealed Regulations.

(2.) A person shall not, when so required—

- (a) refuse or fail to furnish the information or to answer the question or to produce the books, documents or writings; or
- (b) give any information or make any answer which is false in any particular.

(3.) A person shall not be obliged to furnish any information or to answer any question or to produce any books, document or writings under this section unless he has first been informed by the person making the requirement that he is required and is obliged, by virtue of this section, to furnish the information or to answer the question or to produce the books, documents or writings.

(4.) A person shall be deemed to have failed to furnish information, or to produce books, documents or writings, required of him under this section if he does not furnish the information or produce the books, documents or writings—

- (a) in the case of a requirement in writing—within fourteen days after receipt by him of the requirement; or

(b) in the case of an oral requirement—within fourteen days after the day upon which the requirement is made.

(5.) A requirement under this section may be served by post on the person on whom it is made at his last-known place of abode or business.

Powers of entry and inspection.

94. The Controller or an authorized officer may, for the purposes of this Ordinance or the repealed Regulations, enter on and inspect any land or premises.

Proof of instruments.

95. Every document purporting to be a certificate or other instrument made or issued and signed by the Controller, or the Commonwealth Rent Controller or his delegate, in pursuance, or for the purposes, of any provision of this Ordinance or of the repealed Regulations shall be received in evidence and shall, until the contrary is proved, be deemed to be a certificate or other instrument (as the case may be) made or issued by the controller or by the Commonwealth Rent Controller or his delegate, as the case may be.

Offences and penalties.

96. Any person who contravenes, or fails to comply with, any provision of this Ordinance shall be guilty of an offence and shall be liable, on conviction, to a penalty not exceeding One hundred pounds or imprisonment for six months.

Dated this fourth day of August, 1949.

J. NORTHCOTT

Deputy of the Governor-General.

By His Excellency's Command,

VICTOR JOHNSON

Minister of State for the Interior.

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