

VICTORIA.



ANNO QUARTO

ELIZABETHÆ SECUNDÆ REGINÆ

No. 5884.

An Act to make further Amendments in the Law
relating to Landlord and Tenant.

[15th November, 1955.]

BE it enacted by the Queen's Most Excellent Majesty by
and with the advice and consent of the Legislative
Council and the Legislative Assembly of Victoria in this
present Parliament assembled and by the authority of the
same as follows (that is to say) :—

1. (1) This Act may be cited as the *Landlord and Tenant (Amendment) Act 1955* and shall be read and construed as one with the *Landlord and Tenant Act 1928* and the Acts amending the same all of which Acts and this Act may be cited together as the *Landlord and Tenant Acts*.

(2) This Act shall come into operation on a day to be fixed by proclamation of the Governor in Council published in the *Government Gazette*.

Application

Short title
construction
and citation

Nos. 3710, 5264,
5291, 5525, 5760,
5846 s. 6, 5847.

Application of Rent Control, &c.

2. On the first day of October One thousand nine hundred and fifty-six the provisions of Parts II., III., IV., and V. of the *Landlord and Tenant Act* 1948 shall cease to apply with respect to any premises which are the property of any municipality, including the City of Melbourne and the City of Geelong; and all such premises shall on the said day cease to be prescribed premises and, subject to sub-section (1) of section three of the *Landlord and Tenant Act* 1948 and sub-section (3) of section four of the *Landlord and Tenant Act* 1953, shall not again become or be prescribed premises or be subject to any of the provisions of the said Parts of the said Act.

Non-application after 1st October, 1956, of No. 5264 Parts II., III., IV., and V. to premises owned by municipalities.

Nos. 5264 s. 3(1), 5760 s. 4(3).

3. (1) Except as is provided in sub-section (2) of this section, where after the commencement of this Act a lease (whether or not in writing) is entered into in respect of any premises, the provisions of Parts II., III., IV., and V. of the *Landlord and Tenant Act* 1948 (other than sections fifty-two and sixty-eight thereof) shall not apply with respect to that lease of the premises, and when the lessee goes into occupation of the premises under that lease the premises shall cease to be prescribed premises and, subject to sub-section (1) of section three of the *Landlord and Tenant Act* 1948 and sub-section (3) of section four of the *Landlord and Tenant Act* 1953, shall not again become or be prescribed premises or be subject to any of the provisions of the said Parts of the said Act.

Non-application of No. 5264 Parts II., III., IV., and V. to new leases of any prescribed premises.

Nos. 5264 s. 3(1), 5760 s. 4(3).

(2) The provisions of the last preceding sub-section shall not apply—

(a) in respect of any lease entered into with a lessee who immediately before entering into the lease was the lessee of the premises or was deemed such a lessee by force of any provision of the *Landlord and Tenant Acts* or was in occupation of the premises by force of section fifty-seven of the *Landlord and Tenant Act* 1948; or

(b) in respect of any sub-lease which becomes a lease by force of any provision of the *Landlord and Tenant Acts*.

Saving in respect of new leases to existing tenants or to persons who lived with deceased tenants and in respect of certain sub-leases.

4. (1) Where

Leases for three years or more of any prescribed premises to be free from operation of No. 5264 Parts II., III., IV., and V. Comp. No. 5760 s. 3.

4. (1) Where after the commencement of this Act a lease in writing for a term of not less than three years is entered into in respect of any prescribed premises—

(a) the provisions of Parts II., III., IV., and V. of the *Landlord and Tenant Act* 1948 shall not apply with respect to that lease of the premises ; and

(b) except as hereinafter provided, on the commencement in occupation of the term granted by the lease—

(i) the premises if they are prescribed premises within the meaning of the said Act shall cease to be prescribed premises ; and

(ii) subject to sub-section (1) of section three of the *Landlord and Tenant Act* 1948 and sub-section (3) of section four of the *Landlord and Tenant Act* 1953 the premises shall not again become or be prescribed premises or be subject to any of the provisions of the said Parts of the said Act.

Nos. 5264 s. 3(1), 5760 s. 4(3).

Saving in respect of parts of premises subject to sub-leases.

(2) The fact that any premises cease to be prescribed premises pursuant to the operation of the foregoing provisions of this section shall not affect any part thereof which under any sub-lease in force immediately prior thereto is occupied by a sub-lessee and in any such case—

(a) the part of the premises so occupied by the sub-lessee shall continue to be prescribed premises and the provisions of the said Parts of the said Act shall so far as applicable continue to apply to that part ;

(b) if the lessee at any time ceases to be in possession of the premises because of the determination or surrender of his lease or of the making of an order for the recovery of possession or for ejectment the sub-lessee shall become the lessee from the lessor of that part of the premises upon the same terms and conditions as the terms and conditions of the sub-lease as in force immediately before that time ;

(c) any

(c) any order for recovery of possession or ejectment as aforesaid shall not be enforced against the sub-lessee ; and

(d) the sub-lessee shall on the hearing of any proceedings for such an order be entitled to be heard.

(3) Nothing in the foregoing provisions of this section shall be deemed—

Saving of rights of existing lessees.

(a) to authorize any lessor to require any lessee in possession of premises at the commencement of this Act to enter into such a written lease as aforesaid ; or

(b) to affect in any way the rights under the *Landlord and Tenant Act* 1948 of any such lessee who has not entered into such a lease ; or

(c) to affect in any way the operation of sub-section (1) of this section in respect of a lease for a term of not less than three years entered into between a lessor of any premises and a person who became the lessee of those premises by the operation of sub-section (2) of this section.

(4) Section three of the *Landlord and Tenant Act* 1953 is hereby repealed : Provided that the provisions thereof shall continue to apply in respect of any lease entered into in accordance with the said provisions before the commencement of this Act and for the purposes of that application a lease in writing of business premises, expressed to be for a term of not less than three years, which was entered into after the first day of February One thousand nine hundred and fifty-four and in which the commencement date of the term was expressed to be a date prior to the date of the execution of the lease but not prior to the said first day of February, shall, where the lessee was in occupation of the premises from the commencement of the term at the rent expressed in the lease, be deemed to be and always to have been a lease entered into in accordance with the said provisions.

Repeal of No. 5700 s. 3. Saving.

5. In section three of the *Landlord and Tenant Act* 1948—

(a) in sub-section (1) for the expression commencing with the words “ shall extend ” and ending at the end of the sub-section there shall be substituted

Amendment of No. 5264 s. 3. As to Orders declaring No. 5264 to apply to specified premises.

substituted the words "shall extend to any particular premises specified in the Order"; and

(b) at the end of the section there shall be inserted the following sub-section:—

"(3) An Order may be made and shall have full force and effect under sub-section (1) of this section in respect of specified premises to which it relates, notwithstanding that those premises have always been or prior to the making of the Order have become by or pursuant to the operation of some other provision of the Landlord and Tenant Acts exempt from the operation of the provisions of Parts II., III., IV., and V. of this Act."

Determination of Fair Rents.

Application of
this section to
certain
dwelling-houses.

No. 5847 s. 4.

6. (1) This section shall apply with respect to all prescribed premises being dwelling-houses (not being shared accommodation or premises to which section four of the *Landlord and Tenant Act* 1954 applies and not being premises in respect of which a declaration order or direction has been made under section eight of the *Slum Reclamation and Housing Act* 1938 as amended by any Act and is in force declaring those premises to be unfit for human habitation or directing that they be repaired or demolished) which were let at the thirty-first day of December One thousand nine hundred and forty or were let after that date and before the thirty-first day of December One thousand nine hundred and fifty.

Power to lessors
to require
increase of rent
not exceeding
Twenty-five per
centum above
rent at 31st
December, 1940,
&c.

(2) Notwithstanding anything to the contrary in the *Landlord and Tenant Act* 1948, the lessor of any prescribed premises to which this section applies may, subject to the express provisions of any written lease of the premises for a fixed term which has not expired, by notice in writing served on the lessee at any time after the commencement of this Act, require that after the expiration of one month from the service of that notice the rent of the prescribed

premises

premises shall be increased to such an amount as is specified in the notice, not being more than Twenty-five per centum in excess of—

(a) the rent payable in respect of the premises at the thirty-first day of December One thousand nine hundred and forty; or

(b) (where the premises were not in existence or were not let at that date) the rent payable under the lease by which the premises were first let after that date—

and the amount so specified shall from the expiration of the said period of one month be the fair rent of the prescribed premises for all purposes and the provisions of the *Landlord and Tenant Acts* (other than section twenty-five of the *Landlord and Tenant Act 1948*) shall apply thereto accordingly.

(3) Where at any time after the commencement of this Act any application is made to a Board to determine the fair rent of any prescribed premises to which this section applies, whether or not the fair rent thereof has previously been fixed by service of a notice pursuant to this section, the Board shall determine the fair rent of the premises to be such amount as in all the circumstances of the case it considers equitable having regard to the matters referred to in section twenty-one of the *Landlord and Tenant Act 1948* except that, in lieu of the capital value referred to in paragraph (a) of the said section twenty-one, the Board shall have regard to a capital value which is Twenty-five per centum in excess of the capital value so referred to.

As to determination by Board of fair rent of premises to which this section applies.

7. (1) This section shall apply with respect to all prescribed premises, not being dwelling-houses, which were let at the thirty-first day of December One thousand nine hundred and forty or were let after that date and before the thirty-first day of December One thousand nine hundred and fifty.

Application of this section to premises other than dwelling-houses.

(2) Notwithstanding anything to the contrary in the *Landlord and Tenant Act 1948*, the lessor of any prescribed premises to which this section applies may, subject to the express provisions of any written lease of the premises for

Power to lessors to require increase of rent not exceeding Thirty per centum above rent at thirty-first day of December One thousand nine hundred and forty, &c

a fixed

a fixed term which has not expired, by notice in writing served on the lessee at any time after the commencement of this Act, require that after the expiration of one month from the service of that notice the rent of the prescribed premises shall be increased to such an amount as is specified in the notice, not being more than Thirty per centum in excess of—

- (a) the rent payable in respect of the premises at the thirty-first day of December One thousand nine hundred and forty ; or
- (b) (where the premises were not in existence or were not let at that date) the rent payable under the lease by which the premises were first let after that date—

and the amount so specified shall from the expiration of the said period of one month be the fair rent of the prescribed premises for all purposes and the provisions of the *Landlord and Tenant Acts* (other than section twenty-five of the *Landlord and Tenant Act* 1948) shall apply thereto accordingly.

As to
subsequent
determinations
of fair rent
by Board.

(3) Where at any time after the commencement of this Act any application is made to a Board to determine the fair rent of any prescribed premises to which this section applies, whether or not the fair rent thereof has previously been fixed by service of a notice pursuant to the last preceding sub-section, the Board shall determine the fair rent of the premises to be such an amount as in all of the circumstances of the case it considers equitable having regard to the matters referred to in section twenty-one of the *Landlord and Tenant Act* 1948 except that, in lieu of the capital value referred to in paragraph (a) of the said section twenty-one, the Board shall have regard to a capital value which is Thirty per centum in excess of the capital value so referred to.

Power to lessor
to demand
addition to
rent in respect
of carrying out
of statutory
repairs,
additions, &c.

8. (1) Where pursuant to any Act or to any regulation or by-law under any Act the lessor of any prescribed premises is required by any statutory authority to carry out any repairs improvements or additions to those premises and the required repairs improvements or additions are completed to the satisfaction of the said authority, then, if the existing fair rent of the premises was fixed

by

by or pursuant to the Landlord and Tenant Acts prior to carrying them out, the lessor may, subject to the express provisions of any written lease of the premises for a fixed term which has not expired, by notice in writing served on the lessee require that after the expiration of one month from the service of the notice the rent payable in respect of the premises shall be increased to such amount as is specified in the notice, not exceeding the sum of—

- (a) the rent lawfully payable at the date of service of the notice; and
- (b) an addition calculated at the rate of Eight per centum per annum upon the amount expended by the lessor in carrying out the said repairs improvements or additions—

and the amount so specified shall from the expiration of the said period of one month be the fair rent of the prescribed premises for all purposes and the provisions of the Landlord and Tenant Acts (other than section twenty-five of the *Landlord and Tenant Act 1948*) shall apply thereto accordingly.

(2) For the purposes of the last preceding sub-section—

(a) “statutory authority” includes—

- (i) any Minister or other officer;
- (ii) any municipality (including the City of Melbourne and the City of Geelong);
- (iii) any body corporate established by or under any Act for any public purpose; and

(b) a certificate purporting to be signed by—

- (i) the Minister or officer in question;
- (ii) the town clerk or shire secretary of the municipality in question; or
- (iii) a member or officer of the body corporate in question—

and certifying that the required repairs improvements or additions have been completed to the satisfaction of the statutory authority shall be *prima facie* evidence of the matters contained therein.

Evidence of
carrying out
repairs, &c.

9. (1) This

Provision for
fixing fair rent
by agreement
where
substantial
alterations or
additions made
to premises,
&c.

9 (1) This section shall apply with respect to all prescribed premises (not being premises to which section four of the *Landlord and Tenant Act* 1954 applies).

(2) Where substantial alterations or additions are made—

(a) to any prescribed premises to which this section applies; or

(b) (if the lease provides for the use of any furniture or other goods in connexion with the letting of the premises) to the furniture or other goods—

then, if the existing fair rent of the premises was fixed by or pursuant to the *Landlord and Tenant Acts* prior to the making of those alterations or additions, the lessor and the lessee may make an agreement in writing with respect to the rent of the premises, and where such an agreement is made the amount specified in that behalf in the agreement shall for all purposes be the fair rent of the premises as from the date specified in that behalf therein (not being earlier than the day on which the agreement is entered into) and no further proceedings for the fixing of the fair rent of those premises, except on the ground referred to in paragraph (b) or paragraph (c) of section twenty-five of the *Landlord and Tenant Act* 1948, shall be commenced by either of the parties to the agreement during the period specified in that behalf in the agreement or, if no such period is specified, during the period of six months next after the day from which the fair rent is altered by the agreement.

Amendment of
No. 5264 s. 12
as amended by
No. 5847 s. 4 (5).

As to modes
of determining
and altering
fair rents.

10. Section twelve of the *Landlord and Tenant Act* 1948 as amended by any Act is hereby amended as follows:—

(a) In sub-section (3) for the words “or agreement as hereinafter provided” there shall be substituted the words “agreement or notice as hereinafter provided”;

(b) For

(b) For sub-section (5) there shall be substituted the following sub-section:—

“(5) The fair rent of any prescribed premises shall not be altered except—

(a) by a determination of the appropriate Board as hereinafter provided;

(b) by an agreement in writing signed by the lessor and the lessee pursuant to and in accordance with some provision of the Landlord and Tenant Acts; or

(c) by service by the lessor on the lessee of a notice in writing requiring, pursuant to and in accordance with some provision of the Landlord and Tenant Acts, an increase in the rent of the premises.”

11. (1) For section six of the *Landlord and Tenant Act* 1953 there shall be substituted the following section:—

“6. Where application is made to a Board for the determination of the fair rent of any prescribed premises—

(a) which or any part or parts of which is or are sub-let by the lessee; or

(b) which or any part or parts of which is or are occupied by lodgers or boarders—

the Board shall determine the fair rent to be such amount as it considers equitable—

(i) having regard to the matters referred to in section twenty-one of the *Landlord and Tenant Act* 1948 but as if for the reference therein to the capital value of the premises at the date referred to in paragraph (a) of the said section twenty-one there were substituted in a proper case a reference to the capital value of the premises at such other date as the Board deems appropriate

in

New section
substituted
for No. 5760 s. 6.

As to
determination
of fair rent
when premises
are sub-let.

in view of the date or dates upon which the existing sub-leases or boarding or lodging agreements were made ; and in addition

- (ii) having regard to the manner in which the premises are occupied and used, the depreciation of the premises arising from such use, the rents paid under the several sub-leases, the effect (if any) which the operation of the provisions of section four of the *Landlord and Tenant Act* 1954 has had on those rents, the services (if any) provided by the lessee, the charges paid by any lodgers or boarders and such other factors as the Board considers relevant."

No. 5847 s. 4.

Repeal of
No. 5847 s. 5.
Saving.

(2) Section five of the *Landlord and Tenant Act* 1954 is hereby repealed: Provided that the said repeal shall not affect any fair rent determined pursuant to the said section five before the commencement of this Act or the continuity of operation and effect of any such determination.

Power to
Board to
determine fair
rents under
sub-leases on
application by
lessor of head
lease.

(3) Without limiting or affecting the powers of a Board under section eighteen of the *Landlord and Tenant Act* 1948, where application is made to a Board for the determination of the fair rent of any premises in any of the circumstances referred to in section six of the *Landlord and Tenant Act* 1953 as re-enacted by the foregoing provisions of this section, the Board may of its own motion after serving notice of its intention so to do upon the sub-lessees concerned proceed to determine the fair rents under all or any of the sub-leases of any part or parts of the premises as well as determining the fair rent in respect of which the application was made, and the provisions of the *Landlord and Tenant Acts* shall apply in respect of each such determination accordingly.

Amendment of
No. 5264 s. 64
as amended by
No. 5291 s. 2.

Authorized
officer or
Board
empowered to
require lessors
and lessees to
answer
questions
about
sub-lessees,
boarders, &c.

(4) Section sixty-four of the *Landlord and Tenant Act* 1948 as amended by any Act is hereby amended as follows :—

(a) In paragraph (b) of sub-section (1)—

- (i) after the words "any lease thereof" there shall be inserted the words "or any sub-lease of any part thereof" ;

(ii) after

- (ii) after the words "any such lease" (where twice occurring) there shall be inserted the words "or sub-lease";
 - (iii) at the end of the paragraph there shall be inserted the words "or to the number of lodgers or boarders occupying the premises or any part or parts thereof or to the fees or charges payable by such lodgers or boarders or to the services provided for such lodgers or boarders";
- (b) In paragraph (c) of sub-section (1) after the words "any lease thereof" there shall be inserted the words "or any sub-lease of any part thereof"; and
- (c) At the end of the section there shall be inserted the following sub-section:—

"(3) The provisions of the last preceding sub-section (except paragraph (a) thereof) shall extend and apply to and with respect to any person who is before the Board in any proceedings under this Act and who is required by the Board to answer any question referred to in paragraph (b) or to produce any rent book, receipt or document referred to in paragraph (c) of sub-section (1) of this section."

Orders for Re-possession.

12. In paragraph (i) of sub-section (5) of section thirty-seven of the *Landlord and Tenant Act 1948*—

- (a) after the word "trustee" there shall be inserted the words "or personal representative"; and
- (b) after the word "trust" there shall be inserted the expression "or in the estate (as the case may be)".

Amendment of
No. 5204 s. 37.

As to premises
required for
occupation by
beneficiary in
estate where
lessor is
personal
representative.

13. (1) For

Amendment of
No. 5264 s. 45
as amended by
Nos. 5760 s. 16,
5847 s. 7 (2).

Re-possession
where lessor
owns two or
more houses
all occupied
by lessees.

13. (1) For paragraph (a) of sub-section (6) of section forty-five of the *Landlord and Tenant Act* 1948 as amended by any Act there shall be substituted the following paragraph :—

“(a) that neither the lessor nor his or her spouse, if living with him or her—

(i) owns any other dwelling-house in Victoria which is presently available for his or her occupation ; or

(ii) has within the period of twelve months immediately prior to the date of giving notice to quit owned such a dwelling-house ”.

Amendment of
No. 5264 s. 45
as amended by
Nos. 5760 s. 16,
5847 s. 7 (2).

Court to
disregard
relative
hardship and
alternative
accommodation
in certain
applications for
re-possession
of premises for
reconstruction
or demolition.

(2) At the end of section forty-five of the *Landlord and Tenant Act* 1948 as amended by any Act there shall be inserted the following sub-section :—

“(7) Where the application is made on the ground that the premises, not being a dwelling-house, are reasonably required by the lessor for reconstruction or demolition, the court shall not refuse to make an order under sub-section (1) of this section by reason only of any of the matters referred to in paragraph (a) or paragraph (c) of that sub-section if the court is satisfied—

(a) that the lessor *bona fide* intends—

(i) to demolish the existing premises and to build new premises on the site ; or

(ii) to reconstruct the premises by structural alterations involving the expenditure of a sum of not less than One hundred per centum of the capital value of the existing premises at the date of the application—

and has made or will be able to make suitable financial arrangements for that purpose ; and

(b) that

(b) that the lessor either—

(i) has given to the lessee not less than six months' notice to quit and has executed or will execute under seal an undertaking to lease to the lessee, in the premises when built or reconstructed as aforesaid, premises not less suitable, in nature and extent, for the lessee's purposes than those occupied by the lessee at the date of the notice to quit, and within such time and at such rent and on such terms as the court thinks reasonable; or

(ii) has given to the lessee not less than two years' notice to quit and has paid or will pay to the lessee a sum, determined by the court, equalling the aggregate of the amounts of rent paid in respect of the premises during the period of two years immediately before the date of application—

and any order made in a case to which this sub-section applies may be conditioned upon execution of such an undertaking or payment of the sum so determined (as the case may be)."

(3) In section twenty-one of the *Landlord and Tenant Act* 1953 as amended by any Act after the expression "sub-section (6)" there shall be inserted the expression "or sub-section (7)".

Amendment of No. 5760 s. 21 as amended by No. 5847 s. 7 (2).
Non-application of No. 5264 Pt. V. (re protected persons) in such cases.

(4) Any person who, having obtained an order for recovery of possession of or ejectment from any premises by virtue of the provisions of sub-section (7) of section forty-five of the *Landlord and Tenant Act* 1948, fails, without just cause or excuse (the proof whereof shall lie on him), to pay any sum of money undertaken or directed to be paid by him pursuant to the said sub-section (7) or to carry out any undertaking executed or directed to be executed by him pursuant to the said sub-section (7)

Provision in case of failure to pay money or carry out undertaking.

shall,

shall, without affecting or abating any civil liability which may arise from such failure, be guilty of an offence against the *Landlord and Tenant Act 1948* and liable to punishment accordingly.

Certain payments to lessees not to be regarded as illegal payments

14. Nothing in section thirty-one of the *Landlord and Tenant Act 1948* shall apply or be deemed ever to have applied to any payment or offer of payment referred to in paragraph (ii) of section fourteen of the *Landlord and Tenant Act 1953* or shall apply to any payment referred to in sub-paragraph (ii) of paragraph (b) of sub-section (7) of section forty-five of the *Landlord and Tenant Act 1948* as amended by any Act.

Licences and Special Premises.

Amendment of No. 5760 s. 4.

15. (1) Section four of the *Landlord and Tenant Act 1953* is hereby amended as follows:—

Licences to occupy premises in connexion with employment deemed not to be leases.

(a) In sub-section (1) after the words “or boarder” there shall as from the enactment thereof be deemed to have been inserted the words “or in pursuance of or in connexion with a contract of employment”;

As to declaration of “special premises”.

(b) In sub-section (3) for the words “any premises” there shall be substituted the words “any particular premises specified in the Order”; and

(c) At the end of the section there shall be inserted the following sub-section:—

“(5) An Order may be made and shall have full force and effect under sub-section (3) of this section in respect of the specified premises to which it relates, notwithstanding that those premises prior to the making of the Order are not prescribed premises within the meaning of the *Landlord and Tenant Act 1948* and notwithstanding that those premises have always been or have become by or pursuant to the operation of some other provision of the *Landlord and Tenant Acts* exempt from the operation of the provisions of Parts II., III., IV., and V. of the *Landlord and Tenant Act 1948*.”

(2) After

(2) After paragraph (b) of sub-section (1) of section two of the *Landlord and Tenant Act* 1953 there shall be inserted the following expression :—

“and subject to sub-section (1) of section three of the *Landlord and Tenant Act* 1948 and sub-section (3) of section four of this Act any such premises shall not again be or become prescribed premises or be subject to any of the provisions of the said Parts of the said Act.”

Consequential amendment of No. 5760 s. 2 as amended by No. 5847 s. 11.

Certain premises otherwise exempted to be subject to provisions empowering declarations of premises as subject to No. 5264.