

# INCREASE OF RENT (WAR RESTRICTIONS).

13° GEO. VI., No. CVI.

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No. 20 of 1949.

**AN ACT** to amend and continue the operation of the Increase of Rent (War Restrictions) Act, 1939-1948.

[Assented to 12th October, 1949.]

**BE** it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of Western Australia, in this present Parliament assembled, and by the authority of the same, as follows:—

**Short title.**

1. This Act may be cited as the *Increase of Rent (War Restrictions) Act Amendment Act, 1949*, and shall be read as one with the Increase of Rent (War Restriction

tions) Act, 1939-1948 (Act No. 45 of 1939, reprinted as amended by Nos. 48 of 1941 and 34 of 1943, pursuant to the Amendments Incorporation Act, 1938, and further amended by Nos. 34 of 1945, 10 of 1946, 5 of 1947, 50 of 1947, and 2 of 1948), hereinafter referred to as the principal Act.

2. The principal Act, as amended by this Act, may be cited as the Increase of Rent (War Restrictions) Act, 1939-1949.

Citation of principal Act as amended by this Act.

3. The principal Act is amended by adding after section eighteen E the following sections:—

Ss. 18F to 18L added.

18F. In sections eighteen F to eighteen L, both inclusive, of this Act—

Definitions. O'th W.S.M. reg. 28A, as amended by S.R. No. 55 of 1948.

“discharged member of the Forces” means a person who, having been a member of the Defence Force engaged on war service during any war in which His Majesty became engaged on or after the third day of September, 1939—

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

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

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

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

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

“female dependant of a discharged member”  
means—

- (a) a female who is wholly or partly dependent for her support upon a person who, having been a member of the Defence Force engaged on war service during any war in which His Majesty became engaged on or after the third day of September, 1939, has been discharged from the Defence Force, or has ceased to be engaged on war service, for a period not exceeding four years;
- (b) a female who is wholly or partly dependent for her support upon a pension payable in consequence of the incapacity or the death of a person who has been a member of the Forces;
- (c) the wife of a person who, having been a member of the Defence Force engaged on war service during any war in which His Majesty became engaged on or after the third day of September, 1939—
  - (i) has been discharged from the Defence Force; or
  - (ii) has ceased to be engaged on war service,and, although not receiving a pension, is receiving from the Commonwealth medical treatment of such a nature as to prevent him, either wholly or partly, from engaging in his occupation; and
- (d) the widow of a member of the Forces who died while engaged on war service during any war in which His Majesty became engaged on or after the third day of September, 1939;

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

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

“mortgage” means a mortgage (legal or equitable) of land;

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

“parent of a discharged member” means—

- (a) a person who is a parent of, and is wholly or partly dependent for his support upon, a person who, having been a member of the Defence Force engaged on war service during any war in which His Majesty became engaged on or after the third day of September, 1939, has been discharged from the Defence Force, or has ceased to be engaged on war service, for a period not exceeding four years;
- (b) a person who is a parent of, and is wholly or partly dependent for his support upon a pension payable in consequence of the incapacity or death of, a person who has been a member of the Forces;

(c) a parent of a person who, having been a member of the Defence Force engaged on war service during any war in which His Majesty became engaged on or after the third day of September, 1939—

(i) has been discharged from the Defence Force; or

(ii) has ceased to be engaged on war service

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

“pension” means a pension (including a service pension) under the Australian Soldiers’ Repatriation Act, 1920-1943, and includes a pension payable under any law of a country outside the Commonwealth providing for payment of pensions to members, or former members, of the Naval, Military or Air Forces of that country;

“protected person” means a member of the Forces, discharged member of the Forces, female dependant of a member, female dependant of a discharged member, parent of a member or parent of a discharged member;

“war service” means—

(a) the service of a member of the Citizen Forces when called up for war service under the Defence Act, 1903-1941, or during continuous training under that Act, the Naval Defence Act, 1910-1934, or the Air Force Act, 1923-1941;

- (b) the continuous service under any of those Acts of any person who volunteers and is accepted for such service during war;
- (c) the continuous service of a person called upon to serve in the Defence Force in pursuance of any Act or of any regulations under an Act; and
- (d) the service during war of a member of the Permanent Forces.

18G. (1) For the purposes of this section, a person shall not be deemed to be a protected person unless he or she is—

Modification of laws relating to recovery of possession of premises, etc. O' th W.S.M. reg. 80 as amended by S.R. No. 109 of 1948.

(a) a member of the Forces who—

(i) is; or

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

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

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

(i) immediately prior to his discharge;

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

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

so required;

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

(i) is; or

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

so required; or

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

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

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

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

so required.

(2) For the purposes of this section, unless the contrary intention appears—

“dwelling house” means premises 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 for the purpose of residence, whether forming a complete residence in itself or otherwise,

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

“lease” includes every contract for the letting of 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 premises together with goods, but does not include a lease arising under an attornment clause in a mortgage or in an agreement for the sale and purchase of land;

“lessor” and “lessee” means 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;

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

(d) where there is more than one lessor or lessee, any one or more of the lessors or lessees,

respectively;

“premises” means any premises other than—

(a) premises licensed for the sale of spirituous or fermented liquors; or

(b) premises which are ordinarily occupied by a lessor as a permanent residence but are for the time being occupied by a lessee to whom the premises were leased for a specific term for holiday purposes only, which term has expired,

and includes land, any part of any premises and any land or appurtenances leased with any premises.

(3) An order shall not be made for the recovery of possession of premises from a lessee (being a protected person), or for the ejectment from premises of a lessee (being a protected person), unless the court making the order is satisfied—

(a) that the lessee has failed to pay the rent in respect of a period of not less than fifty-six 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 some other person has been convicted, during the currency of the lease, of an offence arising out of the use of the premises for an 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 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;
- (g) 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);
- (h) 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;
- (i) 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);

- (j) 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;
- (k) that the lessee became the lessee of the premises by virtue of an assignment or transfer which the lessor has not consented to or approved; or
- (l) that the lessee has sub-let the premises or some part thereof by a sublease which has not been consented to or approved by the lessor.

(4) An order shall not be made on the ground specified in paragraph (k) or (l) of the last preceding subsection—

- (a) where the lessee became the lessee by virtue of an assignment or transfer made before the fourteenth day of March, 1947, or the sublease was granted before that date;
- (b) where the lease is for a fixed term, unless that term has expired; or
- (c) where the lease is a periodic lease, unless the period which was current at the date on which the assignment, transfer or sublease took effect, has expired.

(5) Where a tenancy has been lawfully determined and a person claiming under the lessee and actually in possession of the premises or any part thereof is a protected person, an order for the ejection of persons from those premises or for the recovery of possession of those premises shall not be enforced against the protected person unless the court which made the order is satisfied—

- (a) that the protected person has failed to pay the rent in respect of a period of not less than fifty-six days;

- (b) that the protected person has failed to perform or observe some other term or condition of his tenancy and the performance or observance of that other term or condition has not been waived or excused by his landlord;
- (c) that the protected person has failed to take reasonable care of the premises, or of any goods the property of his landlord, or has committed waste;
- (d) that the protected person has been guilty of conduct which is a nuisance or annoyance to adjoining or neighbouring occupiers;
- (e) that the protected person or some other person has been convicted, while the protected person was actually in possession of the premises or part thereof, of an offence arising out of the use of the premises or part thereof for an illegal purpose or that a court has found or declared that the premises or part thereof have, while the protected person was actually in possession of the premises or part thereof, been used for some illegal purpose;
- (f) that the premises—
  - (i) being a dwelling house, are reasonably required by the person in whose favour the order was made for the 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 person in whose favour the order was made or by a person associated or connected with him in his trade, profession, calling or occupation;

- (g) 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);
- (h) that the person in whose favour the order was made 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; or
- (i) that the person, body or authority in whose favour the order was made 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),

and gives leave to enforce the order against the protected person.

(6) Except in the case of an order made in circumstances specified in paragraph (a), (b), (c), (d), (e), (j), (k) or (l) of subsection (3) of this section, an order shall not be made against a protected person unless the court, in addition to being satisfied upon any other ground upon which the court is required to be satisfied, is further satisfied—

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

- (b) that the protected person (being the lessee) has sub-let the premises in respect of which the making of an order is sought and is permanently residing elsewhere;  
or
- (c) that in the case of an application under paragraph (f) of Subsection (3) of this section—

- (i) the lessor has been the legal or equitable owner of the dwelling house for not less than three years immediately preceding the date of the application and does not own any other dwelling house; and
- (ii) the protected person has received not less than three months' notice requiring possession of the dwelling house to be given to the lessor provided such notice was given after the coming into operation of the Increase of Rent (War Restrictions) Act Amendment Act, 1949, and such protected person fails to show that subsequent to the receipt of such notice he has made reasonable efforts to obtain other accommodation; and
- (iii) a refusal by the Court to make the order would cause greater hardship to the lessor than the hardship that would be caused to the protected person by the making of the order.

(7) Except in the case of an order made in circumstances specified in paragraph (a), (b), (c), (d) or (e) of subsection (5) of this section, a court shall not give leave to enforce an order against a protected person, unless the court, in addition to

being satisfied upon any other ground upon which the court is required to be satisfied, is satisfied—

- (a) that reasonably suitable alternative accommodation (in this section referred to as “the alternative accommodation”) is available for the occupation of the protected person in lieu of the premises in respect of which the giving of leave to enforce an order is sought (in this section referred to as “the premises at present occupied”); or
- (b) that in the case of an application under paragraph (f) of Subsection (5) of this section—

- (i) the lessor has been the legal or equitable owner of the dwelling house for not less than three years immediately preceding the date of the application and does not own any other dwelling house; and

- (ii) the protected person has received not less than three months’ notice requiring possession of the dwelling house to be given to the lessor provided such notice was given after the coming into operation of the Increase of Rent (War Restrictions) Act Amendment Act, 1949, and such protected person fails to show that subsequent to the receipt of such notice he has made reasonable efforts to obtain other accommodation; and

- (iii) a refusal by the Court to give the leave would cause greater hardship to the lessor than to the protected person.

(8) For the purposes of the last two preceding subsections, accommodation shall not be deemed to be reasonably suitable unless—

- (a) the rent of the alternative accommodation does not exceed the rent of the premises at present occupied;

- (b) the floor area of the alternative accommodation is not less than the floor area of the premises at present occupied;
- (c) in the case of a dwelling house, the alternative accommodation is not less congenial than the premises at present occupied; and
- (d) the conditions generally appertaining to the alternative accommodation are not inferior to the conditions appertaining to the premises at present occupied.

(9) The provisions of subsections (3) to (8), inclusive, of this section, shall not apply in relation to premises of which a protected person is the lessor.

(10) Where proceedings have been taken by a lessor who is a protected person to recover possession of premises from a lessee who is not a protected person or for the ejectment from premises of a lessee who is not a protected person, any provisions of the law of the State or of the Commonwealth as to the availability or otherwise of alternative accommodation for the lessee shall not be applicable.

(11) Where by any law of the State it is provided that a person who has become the lessor of a dwelling house by purchase shall not, within a period longer than six months after the date of the agreement for purchase, give a notice to quit on any ground, a lessor who is a protected person, may give a notice to quit at the expiration of six months from that date.

(12) (a) Subject to the provisions of the next succeeding paragraph, where an order has been made during the period between the expiration of the operation of the National Security (War Service Moratorium) Regulations and the coming into operation of the Increase of Rent (War Restrictions) Act Amendment Act, 1949, and the order would not have been competent if sections eighteen F to eighteen L, both inclusive, of this Act, had been in force, the order shall not be enforceable unless the court upon application within seven days from the commencement of that Act otherwise orders.

(b) The provisions of the last preceding paragraph shall not apply in any case in which the eviction pursuant to any such order has been completed during that period.

18H. (1) Where a soldier's dependant referred to in subsection (6) of this section is in the occupation of a dwelling house which was occupied by the member by virtue of his employment, whether on terms of payment of rent or the provision of any other consideration or otherwise, it shall not be lawful for any person to evict the soldier's dependant from the dwelling house unless—

Prohibition  
of eviction  
of dependants  
of members  
of the Forces  
in certain  
cases.  
C'th W.S.M.  
reg. 30C.

- (a) the soldier's dependant has failed to comply with the terms and conditions; if any, on which the soldier's dependant was permitted to occupy the dwelling house; and
- (b) the person seeking to evict the soldier's dependant has obtained the leave of the court.

(2) The court, in considering any application for leave under the last preceding subsection, shall take into consideration all the circumstances of the case, and in particular, shall have regard to any provision made by the person seeking the leave for other accommodation for the soldier's dependant.

(3) (a) Subject to the provisions of the next succeeding paragraph, where prior to the commencement of the Increase of Rent (War Restrictions) Act Amendment Act, 1949, a soldier's dependant has been evicted from any dwelling house, and the eviction would not, if sections eighteen F to eighteen L, both inclusive, of this Act had been in force at the time of the eviction, have been lawful, the owner of the dwelling house shall make the dwelling house available for occupation by the soldier's dependant within seven days from the commencement of that Act, or make available other suitable accommodation unless the court, upon application made within that period, otherwise orders.



(b) The provisions of the last preceding paragraph shall not apply in any case in which—

during the period between the expiration of the operation of the National Security (War Service Moratorium) Regulations and the coming into operation of the Increase of Rent (War Restrictions) Act Amendment Act, 1949—

a soldier's dependant has been lawfully evicted from any dwelling house pursuant to an order of the court and the eviction has been completed.

(4) Where an application is made under the last preceding subsection, the owner shall, unless the court otherwise orders, make the dwelling house or other suitable accommodation available for occupation by the soldier's dependant within seven days after the determination of the application.

(5) For the purposes of this section, accommodation shall not be deemed to be suitable unless—

(a) the rent of the accommodation does not exceed the rent of the dwelling house from which the soldier's dependant was evicted;

(b) the floor area of the accommodation is not less than the floor area of that dwelling house;

(c) the accommodation is not less congenial than the accommodation at that dwelling house; and

(d) the conditions generally appertaining to the accommodation are not inferior to the conditions appertaining to that dwelling house.

(6) In this section—

“owner,” in relation to any dwelling house, includes any person having control of the dwelling house, whether on behalf of the Commonwealth or a State or an authority of the Commonwealth or a State, or any local governing authority or any person whatsoever;

“soldier's dependant” means parent of a member or female dependant of a member.

(7) The provisions of this section shall be in addition to and not in substitution for any of the other provisions of sections eighteen F to eighteen L, both inclusive, of this Act.

18I. (1) Any person (in this section referred to as "the claimant"), who desires to do, or to continue or complete the doing of, any act against any person (in this section referred to as "the respondent"), in respect of the rental or possession of any premises may, if the respondent is resident in the State and is not, to the knowledge of the claimant, a protected person, serve on the respondent, in the manner provided by this section, a notice (in accordance with a form prescribed), requiring the respondent to inform the claimant, within fourteen days after the receipt of the notice, whether or not the respondent is a protected person within the meaning of this Act.

This Act  
not to apply  
in certain  
cases.  
O' th W.S.M.  
reg. 30D.

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

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

(4) For the purposes of the last preceding subsection, where the doing of any act is dependent on the completion of any preliminary act, the commencement of the doing, or the continuance or

completion of the doing, of the preliminary act shall be deemed to be the commencement of the doing of the first-mentioned act.

(5) If the claimant produces evidence (supported by statutory declaration) to the satisfaction of an inspector, that the respondent—

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

(b) cannot be found and that the claimant has made reasonable efforts to ascertain his whereabouts, and that the claimant is not aware that the respondent is a protected person,

the inspector may issue to the claimant a certificate to that effect and thereupon the provisions of sections eighteen F to eighteen L, both inclusive, of this Act, shall not apply in respect of the doing, or in respect of the continuance or completion of the doing, of the act by the claimant.

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

18J. The Registrar of Titles may, upon submission to him of evidence of re-entry by a lessor, require such evidence as he deems necessary that the re-entry does not contravene any provision of sections eighteen F to eighteen L, both inclusive, of this Act, or of any regulations in force under the National Security Act, 1939, or under that Act as amended, having the title National Security (War Service Moratorium) Regulations and may refuse to note the re-entry until evidence accordingly is submitted to him.

18K. (1) Subject to this section, no transaction or proceeding shall be invalidated by reason only that it has been entered into or taken in contravention of the provisions of sections eighteen F to eighteen L, both inclusive, of this Act, but nothing in this section shall affect the liability of any person to a penalty in respect of any such contravention.

Power of  
Registrar of  
Titles to  
require  
evidence.  
C'th W.S.M.  
reg. 31.

Validation.  
C'th W.S.M.  
reg. 31.

(2) The appropriate court may, on the application of the Attorney General or of any person interested, make an order that a transaction or proceeding entered into or taken in contravention of the provisions of sections eighteen F to eighteen L, both inclusive, of this Act, shall be invalidated, but the court shall not make any such order if the court is satisfied that the effect of the order (if made) would be to prejudice the rights of a person in respect of, or arising out of, the transaction or proceeding which are acquired *bona fide* and without notice of the contravention.

(3) In this section, "the appropriate court" means the High Court or the Supreme Court of the State in which the transaction or proceeding was entered into or taken.

18L. Sections eighteen F to eighteen K, both inclusive, of this Act shall continue in force until the thirtieth day of September, one thousand nine hundred and fifty, and no longer.

4. Section twenty of the principal Act is amended by substituting for the word "forty-nine" the word "fifty".

Amendment  
of s. 20.  
Cf. No. 34  
of 1945, s. 2.

