

Approved for reprint, 11th August, 1955.

WESTERN AUSTRALIA.

## RENTS AND TENANCIES EMERGENCY PROVISIONS.

15° and 16° Geo. VI., No. XLVII.

No. 47 of 1951.

[As amended by Acts No. 8 of 1952 (a), No. 63 of 1952 (b), No. 45 of 1953 (c), and No. 10 of 1954 (d) and reprinted pursuant to the Amendments Incorporation Act, 1938.]

**AN ACT** relating to Rents and Recovery of Possession of Certain Premises and incidental matters.

[Assented to 20th December, 1951.]

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

### PART I.—PRELIMINARY.

1. This Act may be cited as the *Rents and Tenancies Emergency Provisions Act, 1951-1954*.

Short title.

2. The Increase of Rent (War Restrictions) Act, 1939-1950, is repealed.

Amended by  
No. 10 of  
1954, s. 1 (3).

Repeal.

*Notes.*—In the marginal notes to this Act the reference, "regulations restricting" is to the Increase of Rent (War Restrictions) Act, Recovery of Possession and Restriction on Eviction Regulations published in the *Gazettes* of 3rd Sept., 1948, at pp. 1951-1958; 1st Nov., 1948, at pp. 2637-8; 10th Dec., 1948, at p. 2935; 20th May, 1949, at p. 1070; 8th July, 1949, at p. 1419; 11th Nov., 1949, at p. 2885; 31st Aug., 1951, at p. 2364; and the reference, "regulations procedural" is to the Increase of Rent (War Restrictions) Act Regulations, 1940, published in the *Gazettes* of 9th Feb., 1940, at pp. 190-192; 23rd Feb., 1940, at pp. 286-287; 31st Oct., 1941, at p. 1581; 21st May, 1948, at p. 1098.

(a) Assented to 30th October, 1952.

(b) Assented to 7th January, 1953.

(c) Assented to 29th December, 1953.

(d) Assented to 8th September, 1954: Came into operation on 24th September, 1954. See *Gazette* dated 24/9/54, p. 1627.

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Arrange-  
ment.

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

PART I.—PRELIMINARY.

PART II.—ADMINISTRATION.

PART III.—RENTS.

PART IV.—RECOVERY OF POSSESSION OF  
PREMISES.

PART V.—PROTECTED PERSONS.

PART VI.—MISCELLANEOUS.

Interpre-  
tation.

4. In this Act unless the context requires otherwise—

No. 47 of  
1951, s. 4,  
amended by  
No. 10 of  
1954, s. 3.

Acts mentioned include Acts passed in amend-  
ment of or substitution for the Acts  
mentioned;

“inspector” means a person appointed to the  
office of rent inspector pursuant to the  
provisions of this Act;

“lease” includes a contract, whether made orally  
or in writing or by deed, or imposed pur-  
suant to the provisions of this Act or the  
repealed Act, or however made or subsisting,  
for the leasing or subleasing of premises  
to which the provisions of this Act apply,  
either with or without the use of fittings  
or furniture or other goods, or the supply  
or provision of any domestic service, and  
includes an arrangement relating to the  
use of premises, which arrangement is  
declared by the Court, pursuant to the  
provisions of subsection (2) of the next  
succeeding section, to be a lease of premises  
to which the provisions of this Act apply;

Cr. s. 5 (2)  
post.

“lessor” and “lessee” mean the respective parties  
to a lease and their respective successors in  
title;

“premises” means all premises except those to  
which the provisions of this Act are declared  
by or pursuant to the provisions of this  
Act not to apply;

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“protected person” means a protected person referred to in Part V. of this Act;

“rent” means the actual consideration in money or money’s worth derived from the lease by the lessor from the lessee.

5. (1) The provisions of this Act apply to all premises, including a part of premises where the part is separately leased, except—

Application of this Act to premises. [Cf. ss. 4 and 4A of the repealed Act.] No. 47 of 1951, s. 5 amended by No. 10 of 1954, s. 4.

(a) premises of which the lessor or lessee is—

- (i) the Crown in right of the Commonwealth or the State;
- (ii) an instrumentality of the Crown in right of the Commonwealth or the State;
- (iii) the State Housing Commission constituted pursuant to the provisions of the *State Housing Act, 1946*;<sup>1</sup>
- (iv) the McNess Housing Trust constituted pursuant to the provisions of the *McNess Housing Act, 1930*;<sup>2</sup>

(b) premises in respect of which there subsists a publican’s general license, an hotel license, a wayside-house license, an Australian wine and beer license, or an Australian wine license, issued pursuant to the provisions of the *Licensing Act, 1911*;<sup>3</sup>

(c) premises which for the time being are used, or which are ordinarily used as a grazing area, farm, orchard, vineyard, market garden, dairy farm, poultry farm, pig farm or apiary;

(d) premises leased for holiday purposes where the period of lease to any one lessee does not exceed twelve weeks;

<sup>1</sup> Now State Housing Act, 1946-1954: See No. 12 of 1954, s. 1 (3).  
<sup>2</sup> Reprint of the McNess Housing Trust Act, 1930-1948, is contained in Vol. 6 of the Reprinted Acts of the Parliament of W.A.  
<sup>3</sup> Now Licensing Act, 1911-1954: See No. 73 of 1954, ss. 5 and 8.

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Para. (da)  
added by  
No. 10 of  
1954, s. 4.

- (da) premises which, whether for the first time or otherwise, are after the first day of August, one thousand nine hundred and fifty-four, leased for a fixed term of not less than three years;
- (e) where and to the extent that they are premises excluded by the regulations from the application of this Act.

[Cf. s. 18D of  
the repealed  
Act.]  
Amended by  
No. 10 of  
1954, s. 4.

(2) A Court, having for determination a question arising under this Act, to which question consideration of an arrangement relating to the use of premises is relevant, may declare the arrangement to be a lease of premises to which the provisions of this Act apply, if the arrangement, although made otherwise than in the form of a lease, should, in the opinion of the Court, having regard to the substance of the arrangement, be regarded as a lease for the purpose of giving effect to the objects and intention of this Act.

PART II.—ADMINISTRATION.

Rent  
Inspectors.

6. (1) The Minister may appoint such persons to the office of rent inspector as he considers necessary for the purposes of this Act.

(2) Occupants of the office shall not, as such, be subject to the provisions of the *Public Service Act, 1904*,<sup>1</sup> or liable for anything done or omitted in good faith in the reasonable belief that it was necessary in carrying out the duties of the office.

Authority  
conferred  
upon Local  
Courts.  
No. 47 of  
1951, s. 7,  
amended by  
No. 10 of  
1954, s. 5.

7. Notwithstanding the provisions of any other Act or law, every Local Court established pursuant to the provisions of the *Local Courts Act, 1904*,<sup>2</sup> and constituted by a Stipendiary, Police, or Resident Magistrate and held nearest the premises concerned is by virtue of this Act authorised to exercise the powers conferred by this Act upon the Court, and to entertain, hear and determine applications,

<sup>1</sup> Now Public Service Act, 1904-1954: See No. 54 of 1954, s. 1 (3).

<sup>2</sup> Now Local Courts Act, 1904-1954: See No. 26 of 1954, s. 1 (3).

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appeals and other matters referred to, and enforce orders made and judgments pronounced by, the Court pursuant to the provisions of this Act in respect of those premises, unless section seven A of this Act provides otherwise.

7A. (1) Notwithstanding that premises are situated in a district assigned to a Fair Rents Court constituted under section seven B of this Act, applications, not being applications to an inspector, and notices of appeals mentioned in section thirteen, fifteen or sixteen of this Act in respect of the premises are to be lodged with the Local Court held nearest the premises.

Local Courts to refer determination of rents to Fair Rents Courts in certain circumstances. S. 7A added by No. 10 of 1954, s. 6.

(2) Where an application or notice of appeal mentioned in section thirteen, fifteen or sixteen of this Act is lodged with a Local Court in respect of premises situated in a district assigned to a Fair Rents Court constituted under this Act, the Local Court shall not hear or determine the application or appeal, but the Clerk of the Local Court shall refer it to the Fair Rents Court for hearing and determination.

(3) A Fair Rents Court to which an application or appeal is referred under subsection (2) of this section by the Clerk of a Local Court, shall cause a copy of its determination of the application or appeal to be lodged with the Clerk of that Local Court, who shall file it as a record of that Local Court.

7B. (1) A Fair Rents Court is constituted by a Magistrate appointed by the Governor, who is hereby authorised to make the necessary appointments.

Constitution of Fair Rents Court. S. 7B added by No. 10 of 1954, s. 6.

(2) A Fair Rents Court so constituted has jurisdiction to hear and determine applications, not being applications to an inspector, and appeals mentioned in section thirteen, fifteen or sixteen of this Act in respect of premises situated in the district or districts assigned to it by the Governor who is hereby authorised to make the necessary assignment.

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(3) The provisions of the Rules of Court and regulations under this Act apply *mutatis mutandis* in respect of the hearing of an application or appeal by a Fair Rents Court as if the application or appeal were being heard and determined by a Local Court.

Of. 50 Vict.  
No. 17 and  
Gazette  
8th Nov.,  
1940, pp. 1981  
et seq.

(4) The Governor shall constitute a Fair Rents Court to be known as the Metropolitan Fair Rents Court which by this Act has assigned to it the Magisterial Districts of Perth and Fremantle as declared under the Magisterial Districts Act, 1886.

(5) The Governor shall by proclamation constitute such other Fair Rents Courts to be known by such names, and assign to each such portion or portions of the State for its district or districts, as the Minister recommends.

(6) In the first month of each quarter of every year during the continuance of this Act, the Metropolitan Fair Rents Court shall report, in writing, to the Minister upon—

- (a) the number of applications or appeals received and determined by the Court during the previous quarter; and
- (b) in respect to each such application or appeal—

the nature and locality of the premises,  
the amount of the rent appealed from,  
the amount of the fair rent as determined by the Court, and

the net annual return of such fair rent expressed as a percentage on the capital value of the premises; and

- (c) such other information as the Court may consider necessary or desirable.

Such report shall be laid before both Houses of Parliament if Parliament is sitting, and if not, then immediately upon the reassembling of Parliament; but the Minister may, if he thinks fit, publish such reports forthwith upon his receiving them.

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

Expenses of administration.

PART III.—RENTS.

9. In this Part, unless the context requires otherwise—

Interpretation.

“Court” means the Local Court established under the provisions of the Local Courts Act, 1904,<sup>1</sup> constituted by a Stipendiary, Resident, or Police Magistrate, and held nearest the premises concerned, unless the premises are situated in a district assigned to a Fair Rents Court constituted under this Act, in which case, the expression “Court” means the Fair Rent Court.

[Cf. ss. 2, 5 and 12F of the repealed Act.]  
No. 47 of 1951, s. 9 amended by No. 10 of 1954, s. 7.

10.\* Notwithstanding the provisions of any lease in force at any time after the specified day, the rent of premises for any period after that day and during the operation of this Act, shall not exceed the rent ascertained in accordance with the provisions of this Part.

Pegging of rents.  
Cf. s. 5 of the repealed Act.

11.\* (1) In the case of premises leased for a fixed term subject to the provisions of section twelve A of this Act—

Rents of premises.  
[Cf. ss. 7-12A of the repealed Act.]  
No. 47 of 1951, s. 11 amended by No. 45 of 1953, s. 2.

(a) where the lease is entered into before the specified day and the rent being charged pursuant to the lease does not exceed that lawfully chargeable in accordance with the provisions of the repealed Act as last in operation, the rent during the term shall be the rent so being charged;

(b) where the lease is entered into after the specified day for a fixed term exceeding twelve months, the rent during the term shall be the rent determined in the case of premises referred to in subsection (2) of section thirteen of this Act—by an

<sup>1</sup> Now Local Courts Act, 1904-1954: See No. 26 of 1954, s. 1 (3).

\* Ceased to operate on 30th April, 1954: See section 12A post.

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inspector, and in the case of other premises  
—by the Court.

(2) Subject to the provisions of this Act relating to the determination of the amount of the rent of premises by a Judge of the Supreme Court, a Local Court, or an inspector and subject to the provisions of section twelve A of this Act—

(a) in the case of premises leased at the specified day, and, in the case of premises which are not leased at that day but were leased prior to that day, the rent on and after that day shall not exceed—

(i) the full amount of rent lawfully chargeable in accordance with the provisions of the repealed Act as last in operation, whether in fact that full amount or less than that full amount was being charged; and in addition—

(ii) unless the amount of the rent has, since the first day of January, one thousand nine hundred and fifty-one, been determined by a Judge, Court, or an inspector, such sum not exceeding ten per centum of that full amount of rent as the lessor and the lessee agree from time to time in writing, which agreement shall be exempt from Stamp Duty; and

(iii) increased outgoings, if any;

(b) in the case of premises which have never been previously leased and are leased after the specified day, the rent shall not exceed that at which the premises are first leased and in addition increased outgoings, if any.

Conditions  
applying to  
authorised  
increases  
of rent.

12\* Subject to the provisions of section twelve A of this Act rent of premises shall not be increased by the amount of increase authorised by the last preceding section—

\* Ceased to operate on 30th April, 1954: See section 12A post.



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(a) unless the lessor apportions payment of the amount of increase in equal payments payable with each periodical day appointed by the lease of the premises for payment of rent during a period of not less than one year commencing with the expiration of the notice mentioned in paragraph (c) of this section;

No. 47 of 1951 amended by No. 45 of 1953, s. 3.

(b) where the premises are a part of premises which part is leased separately, unless the lessor apportions payment of the amount of increase as required in the last preceding paragraph and also in the ratio which the rent of that part bears to the total of the rents for the whole of the premises, or if the whole of the premises are not leased, to the fair and reasonable rental value of the whole of the premises;

(c) unless the lessor gives fourteen days' notice of his intention so to increase the rent; until—

(d) the expiration of the notice.

12A. On the thirtieth day of April, one thousand nine hundred and fifty-four the provisions of sections ten, eleven and twelve of this Act cease to operate and the provisions of section thirteen of this Act operate in their stead on and after the first day of May, one thousand nine hundred and fifty-four during the operation of this Act.

S. 12A added by No. 45 of 1953, s. 4.

13.\* (1) (a) The lessor or lessee of premises may, subject to the provisions of subsection (4) of this section and of section fifteen of this Act, from time to time make application for the amount of the rent of the premises to be determined.

Determination of rents. [Cf. s. 15 post.] No. 47 of 1951, s. 13 amended by No. 45 of 1953, s. 5; No. 10 of 1954, s. 8.

(b) On and after the first day of May, one thousand nine hundred and fifty-four, the rent of premises

Para. (b) added by No. 45 of 1953, s. 5.

\* See section 12A ante.

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for any period during the operation of this Act shall be such as is agreed between the lessor and the lessee, but whether the lessor and lessee have or have not agreed, or negotiated for agreement, as to the rent the lessor or lessee may subject to the provisions of subsection (4) of this section and of section fifteen of this Act, from time to time make application for the amount of rent of the premises to be determined.

1954, s. 8.  
Proviso  
added by  
No. 10 of

Provided that where after the thirtieth day of April, one thousand nine hundred and fifty-four (and before the thirty-first day of August, one thousand nine hundred and fifty-five) a lessor gives a lessee notice to quit or terminate the tenancy of any premises the rent of such premises on and after the date of such notice or the first day of August, one thousand nine hundred and fifty-four (whichever is the later) shall not, except by a determination of the inspector or the Court, as the case may be, exceed the amount of rent lawfully chargeable on the twenty-eighth day of April, one thousand nine hundred and fifty-four.

Subsec. (2)  
amended by  
No. 45 of  
1953, s. 5;  
No. 10 of  
1954, s. 8.

(2) (a) Where the premises are part of premises which part is leased separately for residential purposes, a rent inspector may, upon application being made to him by the lessor or the lessee, or of his own motion, determine the fair rent thereof, including also premises with goods leased therewith. The rent inspector may determine the fair rent of the leased premises together with goods leased therewith, and such determination shall come into force on a date fixed by him, but the date so fixed shall not be earlier than seven days after the date of the determination. The lessor and lessee concerned shall be notified in writing of such determination and the date fixed on which it comes into force and of their rights of appeal mentioned in subsection (4) of this section. For the purposes of this paragraph, the expression, "part of premises which part is leased separately for residential purposes" does not include a self-contained flat which is completely closed off and which includes both cooking and bathing facilities.

(b) Where any fair rent has been determined in pursuance of this subsection, it shall, as from the date on which the determination comes into force and until varied by the Court on appeal or by a subsequent determination of the rent inspector, be the rent of the leased premises in respect of which it was fixed.

(3) In determining the amount of the rent, the inspector or the Court, as the case may be, shall take into consideration such factors as the inspector or the Court considers relevant, but so that the rent determined for

[Cf. s. 11 of  
the repealed  
Act.]  
Subsec. (3)  
amended by  
No. 45 of  
1953, s. 5;  
No. 10 of  
1954, s. 8.

- (a) premises which are leased otherwise than in parts, yields a fair net annual return being not less than two per centum per annum and not more than eight per centum per annum on the capital value of the premises at the date of the application; or
- (b) premises being part of premises which part is leased separately, yields a fair net annual return determined on the basis mentioned in paragraph (a) of this subsection with such additional return, if any, as the Court or the inspector as the case may be, is hereby authorised to determine and does determine as fit in the particular circumstances of the case;

but the Court or the inspector shall not during the term of a lease of premises which has been or may be entered into for a fixed term of two years or more, alter the rent reserved by the lease.

(4) The lessor or lessee of any leased premises in respect of which a determination has been made under subsection (2) of this section may, within fourteen days after the giving of the notice of the determination, appeal to the Court from the determination of the rent inspector. Every notice of appeal shall be deemed an application. While any such appeal is pending, the determination of the rent inspector shall continue to have full force and effect.

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**Cf. s. 7 (2)  
(g) of the  
repealed Act.**

(5) The Court shall hear applications, other than those made to a rent inspector, pursuant to the provisions of subsection (2) of this section and determine the amount of the rent and declare the date, not being earlier than that of the application, on and after which determination shall be effective.

(6) The amount of the rent as so determined shall, unless and until varied pursuant to the succeeding provisions of this Part, be the rent of the premises.

**Appeal from  
decision of  
a Local  
Court.**

**[Cf. s. 9 of  
the repealed  
Act.]**

**No. 47 of  
1951, s. 14  
amended by  
No. 10 of  
1954, s. 9.**

14. (1) Where the capital value of the premises exceeds three thousand pounds, the lessor or lessee of the premises may appeal to a Judge of the Supreme Court against any decision of a Local Court or Fair Rents Court determining the amount of the rent of the premises.

(2) The Judge shall hear and determine the appeal.

(3) The decision of the Judge shall be final.

**Limitation  
on  
applications.  
[Cf. s. 12D of  
the repealed  
Act.]**

**No. 47 of  
1951, s. 15  
amended by  
No. 10 of  
1954, s. 10.**

15. (1) Where the amount of the rent of premises is determined in accordance with the provisions of this Part, whether before or after the coming into operation of the Rents and Tenancies Emergency Provisions Act Amendment Act, 1954, the lessor or lessee of the premises shall not make application for a variation of that amount of rent within six months of the determination, unless—

- (a) by an error or omission, an injustice has been occasioned by that determination;
- (b) since the determination, substantial alterations or additions have been made to the premises; or
- (c) since the determination the accommodation provided in the premises has been materially increased or decreased, or if the lease pro-

vides for the use of furniture, goods, fittings or the provision or supply of domestic services, there has been a substantial increase or decrease of all or any of them.

(2) Subsection (1) of this section does not preclude a lessor or lessee of premises who under paragraph (b) of subsection (1) of section thirteen of this Act, has agreed the rent of the premises, from making application after the agreement for a determination of the rent, notwithstanding that the rent of the premises has been determined prior to the agreement and within six months of the application, but where the rental is determined after the agreement subsection (1) of this section operates in respect of further applications to determine the rent of the premises.

Subsec. (2)  
added by  
No. 10 of  
1954, s. 10.

16. A person who is entitled and intends to let premises may, subject to the provisions of the last preceding section, apply to an inspector or a Court, as the case may be, for a determination of the amount of the rent of the premises, and the amount of the rent as determined shall, unless and until varied in pursuance of the provisions of this Act, be the rent of those premises.

Premises  
intended  
to be let.  
Cf. s. 12E of  
the repealed  
Act.

**PART IV.—RECOVERY OF POSSESSION  
OF PREMISES.**

17.\* (1) In this section, "specified day" means the thirty-first day of December, one thousand nine hundred and fifty.

Application.  
[Cf. regulation  
restricting.  
Gazette 3rd  
September,  
1948, and  
amend-  
ments.]  
No. 47 of  
1951, s. 17  
amended by  
No. 45 of  
1953, s. 6.

(2) Subject to the provisions of section twenty A of this Act the provisions of this Part do not—

- (a) affect the rights at law of parties to a lease entered into after the specified day;
- (b) affect the rights at law of parties to a lease of a dwelling-house ordinarily used for the occupation by persons employed by the lessor;

Cf. s. 15 (4)  
of the  
repealed Act.

Cf. regulation 3 (5) (1)  
of the  
regulations  
restricting.

\* Ceased to operate on 30th April, 1954: See s. 20A post.

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Cf. s. 15A (5)  
(b) of the  
repealed Act.

- (c) enable the lessor of premises leased at the specified day for a fixed term, to terminate the lease before the expiration of the term, or thereafter in contravention of the provisions of this Part, to recover possession of the premises from the occupant who, having occupied them as the lessee, continues in occupation of the premises after the expiration of the term, or to eject him from the premises;

Cf. s. 15A (5)  
(c) of the  
repealed Act.

- (d) unless the period of the tenancy is monthly or less than monthly, enable the lessor of premises, the subject of a periodic tenancy, at the specified day to terminate the tenancy before the time when, irrespective of this Act, the tenancy is terminable at law, or thereafter in contravention of the provisions of this Part, to recover possession of the premises from the occupant who, having occupied them as the lessee, continues in occupation of the premises after the termination of the tenancy, or to eject him from the premises;

Cf. s. 15 (5)  
of the  
repealed Act.

- (e) affect the rights at law of the lessor of premises leased at or after the specified day, the lessee of which after the specified day, without the consent of the principal lessor, assigns the lease of the premises, or sublets the premises wholly or in part, or gives permission to any person to use the premises wholly or in part unless the permission is given for use of a temporary and casual, or temporary and occasional nature without consideration in money or money's worth and is not in contravention of the provisions of the lease of the premises;

Cf. s. 12A (4)  
(b) and (c)  
of the  
repealed Act.

- (f) preclude a person from exercising the right to accept, reject or discontinue the acceptance of a person as his lodger.

18.\* (1) Except as provided in this Act and subject to the provisions of section twenty A of this Act, the lessor of premises, shall not give notice to quit or terminate the tenancy or commence or continue proceedings to recover possession of, or eject the lessee from, the premises.

[Cf. s. 15 (1) Restrictions of the repealed Act.]  
No. 47 of 1951, s. 18 amended by No. 45 of 1953, s. 7.

(2) A notice to quit or terminate the tenancy of premises—

(a) if given in contravention of the provisions of this Part, shall not operate to terminate the tenancy;

Cf. Reg. 8 of the regulations restricting.

(b) if given in accordance with the provisions of this Part, shall, subject to those provisions, terminate the tenancy on the day of the expiration of the notice notwithstanding that at law a notice to quit, to be effective, shall expire on any other day.

Cf. s. 15A (1) last para of the repealed Act.

19.\* (1) The lessor of premises who is the owner of the premises may, in accordance with the provisions of this section but subject to the provisions of section twenty A of this Act, obtain from the Court an order for recovery of possession of the premises and may eject all persons occupying the premises whether as lessee, sublessee, or otherwise, but the right conferred upon him by this section, does not affect other rights, if any, which, by virtue of the operation of sections seventeen and twenty of this Act, the lessor has.

Summary recovery of possession in certain circumstances where lessor is owner.  
[Cf. s. 15A of the repealed Act.]

Cf. s. 15 (5) (d) of the repealed Act and ss. 17 ante and 20 post.]  
No. 47 of 1951, s. 19 amended by No. 45 of 1953, s. 8.

(2) If the lessor is a body, whether incorporated or not incorporated, and has owned the premises for at least six months and requires the premises

for occupation by the lessor, or its agents or servants, or by a majority of its shareholders who subscribed to its capital and acquired shares in it prior to the thirtieth day of June,

\* Ceased to operate on 30th April, 1954: See s. 20A post.

one thousand nine hundred and fifty-one, for the purpose of obtaining accommodation for the conduct of their respective businesses, or by another body which is the lessor's partner,

the lessor may cause one of its officers or members to make a statutory declaration

deposing to the foregoing matters mentioned in this subsection and to the constitution or identity of the lessor and that he is authorised by the lessor to make the declaration

and may give

to the lessee and any person who, or body which, with the lessor's written consent, is a sublessee, an assignee of the lessee, or is using the premises with the permission of the lessee

notice in accordance with the provisions of subsection (5) of this section to quit the premises.

(3) If the lessor is a person not being a body, and has owned the premises for at least six months and has resided in the Commonwealth for at least two years

and requires the premises

for his own occupation or for occupation by both or either of his parents or a married or widowed child, which parents or parent or child have or has resided in the Commonwealth for at least two years, or for occupation by any body of which he is a substantial shareholder or of which he is a director, manager or secretary,

the lessor may make a statutory declaration

deposing to the foregoing matters mentioned in this subsection

and may give

to the lessee and any other person who, or body which, with the lessor's written consent, is a sublessee, an assignee of the lessee, or is using the premises with the permission of the lessee

notice in accordance with the provisions of subsection (5) of this section to quit the premises.



(4) If the lessor is a trustee and requires the premises for the purpose of winding up the trust, he may make a statutory declaration deposing to the foregoing matters mentioned in this subsection and may give to the lessee and any other person who, or body which, with the lessor's written consent, is a sublessee, an assignee of the lessee, or is using the premises with the permission of the lessee, notice in accordance with the provisions of the next succeeding subsection to quit the premises.

(5) (a) The lessor shall serve written notice to quit and a true copy of the statutory declaration on the lessee and any other person who, or body which, with the lessor's written consent, is a sublessee, an assignee of the lessee, or is using the premises with the permission of the lessee.

(b) The period of notice to quit shall be that, to which the person on whom it is served is entitled at law, or six months, whichever is the longer.

Cf. Reg. 4 (2)  
(b) of the  
regulations  
restricting.

(6) At any time after the expiration of the notice to quit the lessor may apply to the Court for an order for recovery of possession of the premises and for ejection of the lessee and all other persons, if any, from the premises and on proof of such of the facts mentioned in the preceding subsections of this section as are appropriate to the application, the Court shall make the order and specify in the order, the person or persons or body entitled, by virtue of the order, to occupancy of the premises, and may award mesne profits or damages.

(7) At any time after the making of the order, the clerk of the Court, whether the order is proved to have been served or not, shall, on the application of the lessor, issue a warrant authorising and requiring the bailiff of the Court to give possession of the premises to the person or persons or body specified in the order as entitled to occupancy and the warrant shall be executed accordingly.

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(8) Where possession of premises is recovered pursuant to such an order, the lessor shall not at any time during the period of twelve months next following the date of the recovery, lease or part with the possession of the premises, except by leave of the Court granted upon further application and good cause shown.

Recovery of possession and ejection generally. [Cf. regulations restricting. *Gaz. 3rd Sept., 1948, and amendments.*] No. 47 of 1951, s. 20 amended by No. 45 of 1953, s. 9.

20.\* (1) Subject to the provisions of this Part in general, and to the provisions of section twenty A of this Act in particular, a lessor of premises may, in accordance with the provisions of this section, obtain an order of the Court for recovery of possession of and ejection from the premises.

(2) The lessor shall serve written notice to quit on the lessee and any person who, or body which, with the lessor's written consent, is a sublessee, an assignee of the lessee, or is using the premises with the permission of the lessee, and who, or which the lessor requires to quit the premises.

Cf. Reg. 1 of the regulations restricting.

(3) The period of notice to quit shall be that to which the person on whom it is served is entitled at law, or twenty-eight days, whichever is the longer.

(4) At any time after the expiration of the period specified in the notice to quit the lessor may apply to the Court for an order for recovery of possession of the premises from and ejection of all persons served with the notice to quit and all other persons, if any, who are in occupation of the premises without his consent.

(5) On the hearing of the application, the Court shall consider the particular circumstances of the case and having regard to the substantial merits of the case, make such order as the Court thinks just.

\* Ceased to operate on 30th April, 1954: See s. 20A post.

(6) Without limiting or otherwise affecting the generality of the provisions of the last preceding subsection the Court shall, unless for good cause shown, grant the application and make the order, if satisfied on hearing the application, that the lessee or person in occupation of the premises has—

- (a) failed to pay the rent for a period of twenty-eight days from the due date for payment;
- (b) 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) failed to take reasonable care of the premises, or of any goods leased therewith, or has committed waste;
- (d) has been guilty of conduct which is a nuisance or annoyance to adjoining or neighbouring occupiers;
- (e) been convicted, 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 an illegal purpose; or
- (f) become the occupant of the premises by virtue of an assignment or a transfer to which the lessor has not consented, or of which the lessor has not approved.

Cf. Reg. 3  
(5) of the  
regulations  
restricting.

(7) In respect of any proceedings brought pursuant to the provisions of this section, the Court may, of its own motion, or on the application of a party to the proceedings—

Cf. Reg. 11  
of the  
regulations  
restricting.

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

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- (i) adjourn the proceedings;
  - (ii) stay or suspend the execution of any declaration, judgment or order which has been made or given in the proceedings; or
  - (iii) postpone the date for recovery of possession or for ejection specified in the judgment or order; or
  - (iv) vary, discharge, or rescind the declaration, judgment or order;
- (b) 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 as that within which it is required to be executed,
- (i) if the Court is satisfied that because of the illness of the lessee or person in occupation of the premises, 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 so stated—for such period as the Court 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.

Cf. Reg. 8A  
of the  
regulations  
restricting.

(8) Where a person continues in occupation of premises after he is served pursuant to the provisions of this section with a notice to quit, he shall be deemed to do so on the terms and conditions so far as applicable of his former occupancy, other than the original period thereof and except as to any option of purchase or removal, until he either gives up possession voluntarily or in execution of an order of the Court.

20A. On the thirtieth day of April, one thousand nine hundred and fifty-four the provisions of sections seventeen, eighteen, nineteen and twenty of this Act cease to operate and the provisions of section twenty B of this Act operate in their stead on and after the first day of May, one thousand nine hundred and fifty-four and during the operation of this Act.

S. 20A added  
by No. 45 of  
1953, s. 10.

20B. § (1) On and after the first day of May, one thousand nine hundred and fifty-four, the lessor of premises (other than premises in respect of which there subsists a lease entered into after the thirty-first day of December, one thousand nine hundred and fifty) shall not during the operation of this Act commence proceedings to recover possession of, or eject the lessee from, premises unless he has given to the lessee notice to quit of at least twenty-eight days or such longer period as that to which the lessee is entitled at law.

S. 20B added  
by No. 45 of  
1953, s. 10:  
Repealed and  
re-enacted  
by No. 10 of  
1954, s. 11.

(2)<sup>1</sup> Upon any application pursuant to the provisions of section thirteen of this Act being lodged by a lessee (other than a lessee under notice to quit or to terminate the tenancy of premises) with a Fair Rents Court or an inspector (as the case may be) for the amount of the rent of the premises to be determined, a notice to quit or terminate the tenancy shall not thereafter be issued in respect of those premises until the expiration of a period of three months from the date of the lodgment of such application.

Provided that where the amount of the rent determined by the Court is less than eighty per centum of the amount of the rent being charged or requested by the lessor at the date of the application as aforesaid, a notice to quit or terminate the tenancy shall not be given to any such lessee until after the expiration of a period of twelve months from the date of that determination of the rent by the Court.

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§ See also s. 20A.

<sup>1</sup> See subsection (4) post.

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(3)<sup>1</sup> Upon the hearing by the Supreme Court or a Local Court of any summons for the recovery of possession of premises (other than premises in respect of which there subsists a lease entered into after the thirty-first day of December, one thousand nine hundred and fifty) the Court hearing such summons may at its discretion, on account of any reason of severe hardship which may be proved by the lessee, suspend the operation of any judgment or order thereon for such period not exceeding three months from the date of the hearing as the Court may determine.

(4) The provisions of subsections (2) and (3) of this section shall continue in force until the thirty-first day of August, one thousand nine hundred and fifty-five and no longer.

[S. 21  
amended by  
No. 8 of  
1952, s. 2.]

21. [*Repealed by No. 45 of 1953, s. 11.*]

PART V.—PROTECTED PERSONS.

22. (1) In this section, unless the context requires otherwise—

Protected persons.  
[Cf. s. 18M  
of the  
repealed  
Act.]  
No. 47 of  
1951, s. 22  
amended by  
No. 63 of  
1952, s. 2;  
No. 10 of  
1954, s. 12.

“Court” means the Local Court established under the provisions of the Local Courts Act, 1904,<sup>2</sup> constituted by a Stipendiary, Resident, or Police Magistrate, and held nearest the premises concerned.

“premises” means premises leased for the purpose of residence;

“protected person” means—

(a) a person receiving a pension pursuant to the provisions of the *Australian Soldiers Repatriation Act, 1920*, for total and permanent incapacity;

(b) the widow of a person whose death occurred during or as a result of his war service, if and while she has any

<sup>1</sup> See subsection (4) post.

<sup>2</sup> Now Local Courts Act, 1904-1954: See No. 26 of 1954, s. 1 (3).

child of his under the age of twenty-one years dependent upon and residing with her and while she remains his widow;

(c) a person engaged on war service within any prescribed area outside the Commonwealth whilst so serving, and for such further or other period as may be prescribed;

(d) a person who has enlisted in the Armed Forces, or auxiliary services connected therewith, of the Commonwealth for war service outside the Commonwealth and by direction of the particular service in which he is serving has left, or in the opinion of the Court will be required to leave, Western Australia to complete his training in another part of the Commonwealth prior to departure on war service outside the Commonwealth, while so serving;

(da) (i) on and after the first day of December, one thousand nine hundred and fifty-two, the wife of a person mentioned in paragraph (c) or in paragraph (d) of the interpretation, "protected person" in this subsection, who is dependent upon him; and

Para. (da)  
added by  
No. 63 of  
1952, s. 2.

(ii) such person wholly dependent on a person so mentioned, as is prescribed;

during the period for which the person so mentioned is a protected person, or, if another period is prescribed, during the period prescribed.

"war service" means service as a member of the armed forces of the Commonwealth under

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Cf. Regs. 29,  
30 and 31  
of the  
regulations  
restricting.

the *Defence Act, 1903*, the *Naval Defence Act, 1910*, or the *Air Force Act, 1923*, during any war, or during any operation prescribed by regulation to be an operation of the nature of war, in which war or operation His Majesty became or becomes engaged on or after the third day of September, one thousand nine hundred and thirty-nine.

(2) (a) On the hearing of any proceedings for an order for the recovery of possession of premises from a protected person or the ejection of a protected person from premises, the Court shall notify the State Housing Commission.

(b) The State Housing Commission, on being so notified, shall make available to the protected person, within six months a worker's home or a dwelling-house which is owned or controlled by the State Housing Commission for rental purposes.

(c) Until a house has been so made available to the protected person, the Court shall not make an order against the protected person unless the lessor is a protected person or unless the Court is satisfied that refusal to make the order would cause substantially greater hardship to the lessor and his interests than to the protected person and his interests, or that the acts or omissions of the protected person are such as to render him undeserving of relief pursuant to the provisions of this section.

Provided that where the lessor is a protected person the State Housing Commission shall make available to the lessee within three months of the date of the order a worker's home or dwelling-house.

PART VI.—MISCELLANEOUS.

23. (1) Applications made, proceedings for recovery of unlawful charges, prosecutions for offences, appeals, and other proceedings commenced, notices given and warrants issued, pursuant to the

Transition.  
Cf. s. 19 (1)  
ante and  
Act No. 30  
of 1918, ss. 15,  
16 and 17.



provisions of the repealed Act, but not finalised when this Act comes into operation, may be finalised as if that Act had continued in operation.

(2) The provisions of the last preceding subsection do not affect the application to this Act of the provisions of the *Interpretation Act, 1918*.<sup>1</sup>

24. (1) The lessee of premises, or an inspector may serve written notice on a lessor or his agent requiring the lessor to furnish him with a statutory declaration as to the rent being charged for the premises and the lessor shall furnish a statutory declaration accordingly within seven days after service of the notice.

Lessee may require statutory declaration as to rent. Cf. s. 6 of the repealed Act.

(2) If the lessor is a body, whether incorporated or not incorporated, a declaration which that lessor is so required to furnish shall be made by an officer or member having knowledge of the facts.

24A. (1) For the purposes of this Act an inspector may—

S. 24A added by No. 45 of 1953, s. 12.

- (a) enter on and inspect any land or premises;
- (b) require any person to furnish to the inspector such information as he requires;
- (c) require any person to answer any question put to him by the inspector;
- (d) require any person to produce any books, documents or writings in his custody or control,

in relation to any matter arising under the provisions of this Act.

(2) No person shall—

- (a) refuse or fail to furnish the information or to answer the question or to produce the books, documents or writings; or

<sup>1</sup> Reprint of the Interpretation Act, 1918-1948, is contained in Vol. 6 of the Reprinted Acts of the Parliament of W.A.

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- (b) give any information or make any answer which is false in any particular; or
- (c) hinder or obstruct an inspector in the course of his duties.

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

25. A person shall not refuse to let residential premises because it is intended that a child shall live in the premises.

Refusal to let a house because of intended occupancy by child, an offence. Cf. s. 13 of the repealed Act. Cf. Reg. 20 of the regulations restricting.

26. (1) A person shall not, without the consent of the lessee of premises, or without reasonable cause, proof whereof shall lie upon the defendant, do, or cause to be done, or omit, or cause to be omitted, anything 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 connection 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 against the last preceding subsection, the Court convicting may, irrespective of any penalty imposed pursuant to the provisions of this Act, 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.

27. A person who receives rent or any other payment or consideration, or makes any charge contrary to the provisions of this Act commits an offence against this Act.

Over-  
charging an  
offence.  
Cf. s. 17 (1)  
of the  
repealed Act.

27A. (1) It is an offence for a person, whether a principal or agent or otherwise, and if an agent, whether he is or is not licensed under the Land Agents Act, 1921,<sup>1</sup> to pay or give or receive, or to offer or promise or agree to pay or give or receive, a sum of money or other consideration—

S. 27A added  
by No. 45 of  
1953, s. 13.

- (a) for obtaining or making available a key to any premises or any part of premises; or
- (b) for information relating
  - (i) to tenancy occupation or use, however described; or
  - (ii) to the possibility or likelihood of tenancy occupation or use, however described;

of any premises or part of premises.

(2) Subsection (1) of this section does not

<sup>1</sup> Reprint of the Land Agents Act, 1921-1953, is contained in Vol. 6 of the Reprinted Acts of the Parliament of W.A.

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- (a) apply to a person whose business is or includes the selling or cutting of keys at a reasonable charge; or
- (b) affect the right of a person, who is not precluded by section twelve of the Land Agents Act, 1921,<sup>1</sup> from doing so, to sue for and recover commission, reward or remuneration, for effecting a leasing or letting or the acquisition under a leasing or letting of any premises or part of premises.

Lessor's right of inspection of premises. Cf. s. 15C of the repealed Act.

28. (1) Subject to the provisions of any lease lawfully made, by which the lessor is entitled to enter and inspect the premises leased, the lessee of premises shall permit the lessor to enter and inspect the premises, but shall not be obliged to do so more than once in any period of two months, and then only between the hours of nine in the forenoon and four in the afternoon, if the lessor gives to the lessee not less than forty-eight hours' notice that he requires to inspect the premises.

(2) If the lessee does not so permit the lessor to inspect the premises, the lessee shall be regarded as failing to observe a condition of the lease.

Cf. Reg. 19 of the regulations restricting.

29. Where notice to quit premises has been given whether before or after the commencement of this Act, any demand for or acceptance by the lessor of rent or the commencement of proceedings by the lessor to recover rent, shall not of itself constitute evidence of a new tenancy or operate as a waiver of the notice.

Penalties. Cf. s. 17 of the repealed Act.

30. (1) A person who contravenes the provisions of this Act or the regulations commits an offence against this Act.

Cf. s. 15A (4) of the repealed Act.

(2) On conviction of an offence against this Act, the offender shall, if no other penalty is prescribed, be liable to a penalty not exceeding five hundred pounds.

<sup>1</sup> Reprint of the Land Agents Act, 1921-1953, is contained in Vol. 6 of the Reprinted Acts of the Parliament of W.A.

(3) Irrespective of any penalty imposed pursuant to the provisions of this Act, the Court convicting an offender may order him to pay into Court such sum as shall secure that he derives no benefit from the offence and may order that the whole or part of the sum shall be paid out of Court to the person from whom, but for the provisions of this section, the benefit would be derived.

(4) Prosecutions for offences against this Act may be commenced within two years from the time when the matter of complaint arose upon a complaint made by any person being a lessor, lessee or occupant who is aggrieved, or the Minister, or any person authorised in writing by the Minister, and shall be dealt with summarily by a Stipendiary, Police, or Resident Magistrate in accordance with the provisions of the *Justices Act, 1902*.<sup>1</sup>

31. In any proceedings brought pursuant to the provisions of this Act, a Judge of the Supreme Court, a Local Court, a Fair Rents Court, or a Court of summary jurisdiction, as the case may be, may make such order as to costs as may be decided just.

Costs.  
[Cf. s. 10 of  
the repealed  
Act.]  
No. 47 of  
1951, s. 31  
amended by  
No. 10 of  
1954, s. 13.

32. (1) The Governor may make such regulations and rules of Court as are not inconsistent with the provisions of this Act and as he thinks necessary, in order to provide for the effective operation of, and for facilitating the achievement of the objects and intention of this Act and may, by such regulations and rules of Court, prescribe forms for use for the purposes of this Act, and authorise such fees as he thinks reasonable to be charged in connection with applications, appeals and other proceedings brought pursuant to the provisions of this Act.

Delegated  
powers.  
Cf. s. 18 of  
the repealed  
Act.

(2) Without limiting the generality of the provisions of the last preceding subsection, the powers delegated to the Governor may be exercised in relation to—

<sup>1</sup> Now *Justices Act, 1902-1954*; See No. 73 of 1954, ss. 5 and 8.

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Gaz. 9th  
Feb., 1940,  
regulations  
procedural  
I-13; s. 7 (2)  
of the  
repealed Act.

(a) the manner in which applications shall be made and appeals and other proceedings commenced, conducted and disposed of, the parties who shall be entitled to be heard and their representation, the reception of statutory declarations in evidence and the enforcement of orders;

Cf. Regs. 3  
(4), 21 (3)  
of the  
regulations  
restricting.  
Cf. s. 18 of  
the repealed  
Act.

(b) service of documents and the persons who shall be served;

(c) recovery of possession of, and the eviction from, premises or any class of premises, of any persons or class of persons, and to the protection of any persons or class of persons from such recovery and eviction;

(d) excluding premises or those in any class of premises from the application of this Act or any specified provisions of this Act.

Duration  
of Act.  
[Cf. s. 20 of  
the repealed  
Act.]  
No. 47 of  
1951, s. 33  
amended by  
No. 8 of  
1952, s. 3;  
No. 45 of  
1953, s. 14;  
No. 10 of  
1954, s. 14.

**33.** The provisions of this Act shall continue in operation until the thirty-first day of December, one thousand nine hundred and fifty-five, and no longer.