

[CONFIDENTIAL.]

(Rough Draft for Consideration Only.)

No. , 1921.

A BILL

To amend the law relating to landlord and tenant; to amend the Fair Rents Act, 1915, and certain other Acts; and for purposes connected therewith.

[MR. MCTIERNAN;— , 1921.]

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 New South Wales in Parliament assembled, and by the authority of
5 the same, as follows:—

1. This Act may be cited as the “Fair Rents Short title.
(Amendment) Act, 1921,” and shall be construed with
the Fair Rents Act, 1915, as amended by the Fair
Rents (Amendment) Act, 1920. The Fair Rents Act,
10 1915, as so amended, is hereinafter called the Principal
Act.

Amendment
of s. 2 of
Principal Act.

2. Section two of the Principal Act is amended—

- (a) by inserting the words “or shop” after the word “dwelling-house” in the definition of “lease”;
- (b) by inserting the words “or shop” after the word “dwelling-house” in paragraph (c) of the definition of “rent”;
- (c) by inserting after the definition of “lessor” and “lessee” the words following: “The expression ‘lessor’ also includes, in relation to any dwelling-house or shop, any person, other than the lessee, who is, or would but for this Act be, entitled to the possession of the dwelling-house or shop, and the expression ‘lessee’ also includes the widow of a lessee dying intestate, who was residing with him at the time of his death, or where a lessee dying intestate leaves no widow or is a woman, such member of the lessee’s family so residing as aforesaid as may be decided, in default of agreement, by the court”; and
- (d) by omitting the definition of “tax.”

Amendment
of s. 3 of
Principal Act.
Application
of Act.

3. Section three of the Principal Act is omitted, and the following new section is substituted therefor:—

3. (1) This Act shall apply to any dwelling-house which is subject to a lease, made before or after the commencement of this Act, at a rent not exceeding one hundred and fifty-six pounds a year, or a proportionate sum for a less period.

(2) This Act shall apply to any shop which is subject to a lease made before or after the commencement of this Act, at a rent not exceeding five hundred pounds a year, or a proportionate sum for a less period.

(3) This Act shall apply to any dwelling-house or shop, the fair rent of which is determined by the court to be less than one hundred and fifty-six pounds a year, or five hundred pounds a year respectively, notwithstanding that under the terms of the lease the rent of such dwelling-house or shop is expressed to be in excess of the said respective amounts.

(4)

(4) This Act shall not apply to dwelling-houses ordinarily leased for summer residence.

(5) This Act shall apply within the localities appointed by the Governor and proclaimed in the Gazette.

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4. (1) Subsection one of section six of the Principal Act is omitted, and the following new subsection is substituted therefor:— Amendment s. 6 of Principal Act.

10 (1) (a) Any lessor; or
(b) any lessee who has paid or tendered all rent payable under his lease, or who satisfies the court that the non-payment of such rent is excusable,
15 may apply to the court for the determination of the fair rent of the dwelling-house or shop leased by or to him, and any lessee may so apply notwithstanding that notice to quit or notice to terminate the tenancy has been given.

20 (2) Subsections three, four, and five of section six of the Principal Act are amended by inserting the words "or shop" after the word "dwelling-house" wherever occurring.

(3) The following new subsection is added after subsection five of section six of the Principal Act:—

25 (6) No application shall be made by the lessee of a dwelling-house or shop to have the fair rent of the dwelling-house or shop determined by the court under the provisions of this Act where the erection of such dwelling-house or shop has been commenced
30 after the passing of the Fair Rents (*Amendment*) Act, 1921.

5. Section nine of the Principal Act is repealed, and the following new section is substituted therefor:— New section substituted for s. 9 of Principal Act.

35 9. (1) In determining the fair rent the court shall first ascertain the capital value of the dwelling-house or shop. Such capital value shall be the capital sum which the fee-simple of the land might be expected to realise if offered for sale on such reasonable terms and conditions as a bona fide seller would
40 require.

(2)

Determination of fair rent.

(2) A certificate in the form prescribed, purporting to be signed by the valuer-general, or by the town or shire clerk of the municipality or shire in which any land is situate, shall be prima facie evidence of the capital value of the land referred to and of the other particulars mentioned in the certificate. 5

(3) In determining the fair rent of a dwelling-house or shop the court shall first determine the basic annual rent of such dwelling-house or shop, 10 by adding together—

- (a) the sum which is equivalent to one year's interest on the capital value of such dwelling-house or shop, such interest being calculated at the rate which the court declares was, at 15 the date of the application to the court to determine the fair rent of such dwelling-house or shop, the normal rate charged upon overdrafts by the Commonwealth Bank of Australia, and 20
- (b) the amount of the annual rates last paid in respect of such dwelling-house or shop, prior to the date of such application.

(4) The court shall determine the fair rent by adding to the basic annual rent such sums (if any), 25 not exceeding two and one-half per centum on the capital value of such dwelling-house or shop, as the court deems just and equitable, but so that the fair rent shall not exceed ten per centum of the said capital value. 30

(5) The court shall determine the fair rent for any period less than one year to be such proportionate part of the basic annual rent or fair annual rent as the court deems right.

(6) Without limiting the discretion of the 35 court in any other case, the court shall not determine the fair rent of any dwelling-house at a sum exceeding the basic annual rent, where it is proved to the satisfaction of the court that such dwelling-house is unsatisfactory as a dwelling-house on 40 account of the want of ordinary conveniences, or the condition of the premises or any part thereof:

Provided

5 Provided that, except where circumstances which render an increase equitable are proved to the satisfaction of the court, the fair rent shall not exceed the rent at which the dwelling-house or shop was let on the first day of January, one thousand nine hundred and fifteen :

10 Provided also, that if the court by its determination increases or decreases the rent of any dwelling-house or shop above or below the rent payable under the lease at the date when the application was made, such increase or decrease shall not take effect until the expiration of fourteen days after the date of such determination.

15 **6.** Section ten of the Principal Act is repealed and the following new section is substituted therefor :—

New section substituted for s. 10 of Principal Act.

20 **10.** Where a building is occupied by two or more lessees, the court shall determine the fair rent of the whole, and then determine the proportion of such fair rent which it shall deem to be the fair rent of the portion of the building which is leased to the lessee who is making the application.

Lease of part of building.

7. Section eleven of the Principal Act is repealed and the following new section is substituted therefor :—

New section substituted for s. 11 of Principal Act.

25 **11.** (1) Where an application has been made by a lessee to determine the fair rent of a dwelling-house or shop, then if the lessee has duly paid the rent of the dwelling-house or shop, and has otherwise performed the conditions of his lease, other than the conditions of an agreement express or implied, to comply with the terms of a notice to quit or a notice to terminate the tenancy, no person shall, without the consent of the court,—

Restriction on lessor's power to determine lease.

30 (a) during the pendency of the application demand any increased rent ; or

35 (b) during the pendency of the application or during the period of six months from the date of such determination, give any notice or take any proceedings to determine the lease.

40 (2) Any person contravening any of the provisions of this section shall be liable to a penalty not exceeding *fifty* pounds.

Amendment
of ss. 13, 15,
and 16 of
Principal Act.

8. (1) Sections thirteen, fifteen, and sixteen of the Principal Act are amended by inserting the words "or shop" after the word "dwelling-house" wherever occurring.

(2) Section thirteen of the Principal Act is further amended by adding at the end of the section the following new proviso:—

Provided that at any time after three months from the date of such determination (whether such determination was made prior to or after the commencement of the Fair Rents (Amendment) Act, 1921) the lessee, after service upon his lessor of the prescribed notice, may apply for a reduction of the rent determined by the court upon the ground that the rate of interest referred to in section nine has decreased since the date of the determination by the court of the fair rent, or upon the ground that the dwelling-house or shop is not in a reasonable state of repair, or, in the case of a dwelling-house, that the dwelling-house is unsatisfactory as a dwelling-house on account of the want of ordinary conveniences or the condition of the premises. Such application shall be heard and determined as an application made under this Act.

Amendment
of s. 17A of
Principal
Act.

9. Subsection one of section 17A of the Principal Act is amended—

- (a) by inserting after the words "any person who" the words "whether as principal or agent or in any other capacity";
- (b) by inserting at the end of paragraph (a) of this subsection the words "for giving his consent to a sublease or."

Amendment
of s. 17c of
Principal
Act.

10. Subsection two of section 17c of the Principal Act is amended by inserting the words "and the proprietor or publisher of any newspaper in which any such advertisement is published" after the words "child or children."

New section
added after
s. 17c of
Principal Act.
Court may
order pay-
ment to lessee
for increase
in value of
goodwill.

11. The Principal Act is further amended by the addition after section 17c of the following new section:—

17D. (1) Where an application by a lessee for the renewal of a lease of a shop is refused by the lessor,
and

and the lessee has performed the conditions of the lease other than the conditions of an agreement, express or implied, to comply with the terms of a notice to quit, or a notice to terminate the tenancy, the court may order the payment by the lessor to the outgoing lessee of such sum as, in the opinion of the court, will reasonably compensate the lessee for any increase in the value of the goodwill of the shop which has been caused or contributed to by the occupation of the shop by the outgoing lessee.

(2) Any sum payable under the last preceding subsection may be recovered by the outgoing lessee from the lessor in an action of debt in any court of competent jurisdiction.

(3) A certificate of the sum ordered to be paid by the lessor, purporting to be signed by the magistrate of the court, which certificate the magistrate is hereby required to give where an order for payment is made, if requested so to do by the outgoing lessee, shall be prima facie evidence of the order made by the court.

(4) This section shall apply in the case of an application by a lessee for the renewal of any lease which was current on the first day of November, one thousand nine hundred and twenty-one.

12. Sections twenty-one and twenty-three of the Principal Act are amended by inserting the words "or shop" after the word "dwelling-house" wherever occurring. Amendment of ss. 21 and 23 of Principal Act.

13. The Principal Act is further amended by the addition after section twenty-one of the following new sections:— New sections added after s. 21 of Principal Act.

21A. (1) No order or judgment for the recovery of possession of any dwelling-house or shop, or for the ejection of a lessee therefrom, shall be made or given unless— Restrictions on right to possession.

(a) any rent lawfully due from the lessee has not been paid, or any other obligation of the tenancy (whether under the lease or under this Act), so far as the same is consistent with this Act, has been broken or not performed; or

(b)

- (b) the lessee or any person residing with him has been guilty of conduct which is a nuisance or annoyance to adjoining occupiers, or has been convicted of using the premises, or allowing the premises to be used, for an 5 immoral or illegal purpose, or the condition of the dwelling-house or shop has, in the opinion of the court, deteriorated owing to acts of waste committed by the lessee or any such person ; or 10
- (c) the lessee has given notice of his intention to quit, and in consequence of that notice the lessor has contracted to sell or let the dwelling-house or shop, or has taken any other steps as a result of which he would, 15 in the opinion of the court, be seriously prejudiced if he could not obtain possession ; or
- (d) the dwelling-house is reasonably required by the lessor for occupation as a residence for 20 himself, or for some member of his family, or for any person bona fide residing or to reside with him, and the court is satisfied that alternative accommodation, reasonably equivalent as regards rent and suitability in 25 all respects, is available ; or
- (e) the lessor is the Crown, or a municipal or statutory authority, and the dwelling-house or shop is reasonably required for public purposes, or for the purpose of the execution 30 of the duties or powers vested in such authority ; or
- (f) in the opinion of the court, having regard to all the circumstances, greater hardship would be caused by refusing an order for possession 35 than by granting it.

(2) At the time of the application for, or the making or giving of any order or judgment for, the recovery of possession of a dwelling-house or shop, or for the ejectment of a lessee therefrom, or 40 in the case of any such order or judgment which has

5 has been made or given, whether before or after
the passing of the Fair Rents (Amendment)
Act, 1921, and not executed, at any subsequent
time, any court to which any such application
is made, or by which any such order or judgment
is made or given, may adjourn the application, or
stay or suspend execution on any such order or
judgment, or postpone the date of possession for
10 such period or periods as it thinks fit, and subject
to such conditions as it thinks fit, and if such
conditions are complied with, the said court may, if
it thinks fit, discharge or rescind any such order or
judgment. Where any such order or judgment
15 has been executed after the introduction of the
Fair Rents (Amendment) Act, 1921, the court may
vary or discharge such order or judgment, and may
make such order as is just for the purpose of
preserving and restoring the rights and obligations
of the parties thereto as they would have existed, if
20 such order or judgment had not been executed.

(3) An order or judgment against a lessee
for the recovery of possession of any dwelling-
house or shop, or ejectment therefrom under this
section, shall not affect the right of any sublessee
25 to whom the premises or any part thereof have
been lawfully sublet before proceedings for recovery
of possession or ejectment were commenced, to
retain possession under his lease or be in any way
operative against any such sublessee.

30 (4) Where a lessor has obtained an order
or judgment for possession or ejectment under
this section, which is subsequently proved to have
been obtained by misrepresentation or the conceal-
ment of material facts, the court may order the
35 lessor to pay to the former lessee such sum as
appears sufficient as compensation for damage or
loss sustained by that lessee as the result of the
order or judgment.

40 (5) Nothing in this section shall prejudice
or affect the powers conferred by section six of the
Police Offences (Amendment) Act, 1908.

Restrictions
on distress
for rent.

21B. (1) No distress for the rent of any dwelling-house or shop to which this Act applies shall be levied without the leave of the court. Regulations may be made prescribing the procedure to be followed in respect of an application for leave 5 under this section.

(2) Upon the hearing of any such application the court may—

- (a) grant or refuse the application, or adjourn the hearing or the further hearing of the 10 application, from time to time, upon such terms as it thinks fit;
- (b) allow any rent due to be paid by instalments;
- (c) order that certain articles, not exceeding in 15 the whole the value of fifty pounds, shall be exempt from distress;
- (d) make such other order as it thinks just.

(3) Any person who distrains without obtaining the leave of the court, or, where such 20 leave has been obtained, otherwise than in accordance with such leave, shall be liable to a penalty not exceeding *one hundred* pounds.

(4) Nothing in this section shall be deemed to deprive any person against whose goods distress 25 is levied of any right, protection, or immunity to which such person would have been entitled if this Act had not been passed.

Rent not to
be increased
without
notice.

21C. (1) The rent of any dwelling-house or shop to which this Act applies shall not be increased by 30 the lessor unless and until fourteen days' notice has been given to the lessee by the lessor in the form prescribed, of his intention so to increase the rent, and stating the reasons why the proposed increase is sought to be imposed. 35

(2) The provisions of this section shall apply to any increase of rent imposed or sought to be imposed at any time after the first day of November, one thousand nine hundred and twenty-one, and no increased rent shall be payable by the 40 lessee unless the requirements of this section have been complied with. (3)

5 (3) If any such notice contains any statement or representation which is false or misleading in any material respect, the lessor shall be liable to a penalty not exceeding *twenty* pounds, unless he proves that such statement or representation was made innocently and without intent to deceive.

10 (4) Where a notice of an increase of rent which at the time was valid has been served upon any lessee, the increase of rent may be continued without the service of any fresh notice upon any subsequent lessee.

(5) Rent increased without compliance with the provisions of this section may be recovered.

15 (6) This section shall not apply in the case of a dwelling-house or shop the erection of which was commenced after the passing of the Fair Rents (Amendment) Act, 1921.

20 21D. Nothing in this Act shall apply to any premises in respect of which a license (other than a spirit merchant's license) is in force under the provisions of the Liquor Act, 1912.

25 21E. Any person, other than the lessee of any dwelling-house or shop to which this Act applies, who has acquired the right to sublet any such premises, shall not sublet any such premises at a rent in excess of the rent which is or was payable by the lessee to his lessor and shall not charge any bonus or premium as the consideration or part of the consideration for the subletting of such premises.

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