

# AUSTRALIAN CAPITAL TERRITORY.

No. 10 of 1952.

## AN ORDINANCE

### To amend the Landlord and Tenant Ordinance 1949.

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

1.—(1.) This Ordinance may be cited as the *Landlord and Tenant Ordinance 1952*.\*

Short title  
and citation.

(2.) The *Landlord and Tenant Ordinance 1949* is in this Ordinance referred to as the Principal Ordinance.

(3.) The Principal Ordinance, as amended by this Ordinance, may be cited as the *Landlord and Tenant Ordinance 1949-1952*.

2. Section three of the Principal Ordinance is amended by inserting after the words “Part III.—Recovery of Possession of Prescribed Premises.” the words “Part IIIA.—Protected Persons.”

Parts.

3. After Part III. of the Principal Ordinance the following Part is inserted:—

#### “PART IIIA.—PROTECTED PERSONS.

“88A. In this Part—

Definitions.

‘discharged member of the Forces’ means a person who, having been a member of the Defence Force engaged on war service—

(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 under the *Repatriation Act* 1920-1951; or

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\* Notified in the *Commonwealth Gazette* on 19th December, 1952.  
1604.—PRICE 8d.

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

'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;

'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, 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—
  - (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 medical treatment under the Repatriation Regulations 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;

'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' mean the parties to a lease, or their respective successors in title, and include—

- (a) a mesne lessor and a mesne lessee;
- (b) a sub-lessor and a sub-lessee;
- (c) in respect of premises which are subject to a mortgage, a mortgagee who enters or has entered into possession of the premises under the mortgage and a person who was the lessee of the premises under the mortgagor immediately prior to the mortgagee entering into possession; and
- (d) where there is more than one lessor or lessee, any one or more of the lessors or lessees, respectively;

'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 of any part of the Queen's dominions other than the Commonwealth;

'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, 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 under the *Repatriation Act 1920-1951* 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—
  - (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 under the Repatriation Regulations 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;

‘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 specified 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;

‘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’ means a war in which the Commonwealth became engaged on or after the third day of September, 1939;

‘war service’ means continuous full-time service of a member of the Defence Force during a time of war, and includes war service within the meaning of Part XI. of the *Re-establishment and Employment Act 1945-1952*.

Modification  
of laws relating  
to recovery of  
possession of  
premises, &c.

“88B.—(1.) For the purposes of this section, a person shall not be deemed to be a protected person unless that person is—

(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 as a home by him or by a member of the household to which he belongs;

(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.) An order shall not be made for the recovery of possession of premises from a lessee (being a protected person), or for the ejection 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 with the premises, or has committed waste;
- (d) that the lessee has been guilty of conduct which is a nuisance or annoyance to occupiers of adjoining or neighbouring property;
- (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 sub-lease which has not been consented to or approved by the lessor.

“(3.) An order shall not be made on the ground specified in paragraph (k) or (l) of the last preceding sub-section—

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

“(4.) Where a tenancy has been lawfully determined and a person claiming under the lessee and actually in possession of the premises or any part of the premises 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 occupiers of adjoining or neighbouring property;
- (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 of the premises for an illegal purpose or that a court has found or declared that the premises or part of the premises have, while the protected person was actually in possession of the premises or part of the premises, 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 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.

“(5.) Except in the case of an order made in circumstances specified in paragraph (a), (b), (c), (d), (e), (j), (k) or (l) of sub-section (2.) 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.

“(6.) Except in the case of an order made in circumstances specified in paragraph (a), (b), (c), (d) or (e) of sub-section (4.) 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 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’).

“(7.) For the purposes of the last two preceding sub-sections, 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.

“(8.) The provisions of sub-sections (2.) to (7.) (inclusive) of this section shall not apply in relation to premises of which a protected person is the lessor.

“(9.) 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 ejection from premises of a lessee who is not a protected person, the provisions of this Ordinance as to the availability or otherwise of alternative accommodation for the lessee shall not be applicable.

“88c.—(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 Australia 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 the prescribed form 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 Part.

This Part not to apply in certain cases.

“(2.) A notice under the last preceding sub-section 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 sub-section (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 protected person within the meaning of this Part is not furnished to the claimant, then, notwithstanding that the respondent is, or at any subsequent time becomes, a protected person, this Part 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 sub-section (1.) of this section, if 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 sub-section.

“(4.) For the purposes of the last preceding sub-section, where the doing of an 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 officer thereto authorized in writing by the Minister, 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, an 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 officer may issue to the claimant a certificate to that effect and thereupon this Part 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 sub-section shall, in the absence of proof to the contrary, be deemed to have been duly issued.”.

Dated this nineteenth day of December, 1952.

W. J. McKELL  
Governor-General.

By His Excellency's Command,

W. S. KENT HUGHES  
Minister of State for the Interior.

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