AN EMPIRICAL STUDY OF THE NEED FOR REFORM OF THE VICTORIAN RENT CONTROL LEGISLATION

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The statutory method of rent control currently in effect in Victoria is unique in the common law world and is radically different from that of the other Australian states and territories. The Victorian legislation, which is embodied in Part V of the *Landlord and Tenant Act* 1958-1971, restricts the application of rent control to residential dwellings classed as prescribed premises, and provides for two separate classes of premises to fall within this category.

Firstly, there is the residual group of premises that fall within the definition of "prescribed premises" under section 43. Under this section the legislative protection and rent control provisions extend to all premises leased between 31st December 1940 and 1st February 1954 which have not been re-let to the same tenant by a lease in writing for three years or over, nor have been re-let at any time to another tenant, nor have become vacant, nor have been excluded from the protection of Part V by an Order of the Governor in Council published in the *Government Gazette.*

Secondly, there is a group consisting of premises declared subject to Part V of the Act by section 44(1). This section states

> "The Governor in Council may, by Order published in the *Government Gazette,* declare that the application of this Part shall extend to any particular premises specified in the Order and those premises shall thereupon become prescribed premises . . ."

This article is designed to examine and recommend reforms to improve the practical operation of this second group of prescribed premises. This group is of considerable importance in that section 44(1) provides the only universally applicable check against landlords charging excessive rents. The statistics over the past nine years on the number of complaints of excessive rents received and the action taken by the Rental Investigation Bureau (hereafter referred to as the Bureau) are shown in Table 1. Although the number of premises declared subject to Part V of the *Landlord and Tenant Act* is quite small, it is submitted that section 44(1) has more significance than these figures would suggest. In addition to

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acting as a deterrent to landlords charging excessive rents, the threat of the possible implementation of rent control acts as a powerful incentive for landlords to reduce rents to a reasonable level after negotiations with the Bureau. One can speculate that the number of negotiated reductions as shown in Table 1 would be considerably less in the absence of section 44(1).

TABLE 1

STATISTICS OF THE RENTAL INVESTIGATION BUREAU[1]

	Number of Complaints	*Negotiated Rent Reductions*	*Premises Prescribed*	*Rents Considered Not Excessive*
1965	736	386	117	233
1966	583	337	55	191
1967	868	475	61	332
1968	649	338	47	264
1969	665	309	58	298
1970	883	376	52	455
1971	897	344	30	523
1972	745	298	28	419
1973	751	215	24	512

As very little insight into the practical operation of the legislation can be obtained from an examination of the *Landlord and Tenant Act* itself, it became clear that only field research would provide the necessary evidence of the present weaknesses and the need for reform of the existing legislation and procedures. The field research undertaken consists of three interviews with the Secretary of the Victorian Rental Investigation Bureau, Mr S. K. Gogel,[2] one interview with the Stipendiary Magistrate constituting the Fair Rents Board for the Greater Melbourne area, Mr L. K. Griffin,[3] and a detailed analysis of twelve files of the Bureau provided by the Secretary.

During the initial interview with the Secretary of the Bureau, it became clear that a number of serious deficiencies exist in the present legislation. In order to reveal the problems caused by these deficiencies in the context of a number of actual cases, at the request of the writer the Secretary provided twelve closed case files of recent origin for analysis. A summary of the contents of these files is attached as an Appendix to this article. Eleven of the twelve cases concern premises inside the Greater Melbourne area, the twelfth being in Ballarat, and all the cases occurred since 1969.

[1] Information supplied by the Secretary of the Rental Investigation Bureau.
[2] Mr S. K. Gogel died in October 1973 and was replaced in office by Mr A. H. Clark.
[3] Mr L. K. Griffin retired in December 1973.

On the basis of these sources of information, plus the writer's personal assessment of the legislation, a number of reforms will be suggested.

THE ROLE OF THE RENTAL INVESTIGATION BUREAU

In order to understand fully the need for the recommended reforms, it is necessary to explain the relevant steps in the existing procedure for assisting a tenant who complains that his current rent is excessive. Although no mention of the Bureau is made in Part V of the *Landlord and Tenant Act*, it is this State body that is primarily responsible for investigating the validity of tenant complaints. Invariably the premises that are declared subject to Part V of the *Landlord and Tenant Act* are prescribed as a result of a recommendation of the Bureau to the Attorney-General[4] following a complaint by a tenant to the Bureau that the current rental is excessive. Thus, the Bureau, which has its office in Melbourne and has State-wide jurisdiction, wields a great influence in the practical operation of the Victorian rent control laws, although it only has power to make recommendations.

The following is an account of the procedure adopted by the Bureau in a typical case where a complaint is received from a tenant alleging that the rent he is paying is excessive.

Stage one: The Complaint

On receipt of a letter of inquiry from a tenant, the tenant is forwarded a copy of the Bureau's Complaints Form to complete. As soon as the completed Complaints Form is received the Bureau sends a letter to the tenant advising him of the date on which the premises are to be inspected. An examination of the twelve files reveals that the inspection takes place no later than two weeks after the receipt of the Complaints Form unless the tenant breaks the appointment for inspection.

Stage two: The Inspection

The Bureau has adopted an extremely detailed Assessment Form for use by its inspectors in order that no item of expense may be overlooked and to achieve uniformity. The current policy of the Bureau is to assess the rent at 8% of the capital value plus an allowance for legitimate expenses by the landlord. These legitimate expenses include rates, land tax, repairs, 20% depreciation on furniture, and a 5% agency collection fee. The capital value is adopted after a consideration of the size of the block and an examination of recent sales of comparable premises in the neighbourhood and recent assessments by the relevant municipal council.

[4] Although s.44(1) stated that the Governor in Council has the power to declare premises subject to Part V of the *Landlord and Tenant Act* in reality the power vests in the Attorney-General.

On the basis of the assessed rent the inspector puts forward a recommended rent. The recommended rent is usually the same as the assessed rent, although sometimes it is higher. Factors which may lead to a higher recommended rent are unclear. The files examined by the writer indicate that this may be the result of high rents being general in the neighbourhood or simply a "rounding up" of the assessed rent to the nearest whole dollar.

Stage three: The Negotiations

If the Bureau finds the complaint of excessive rent to be justified, a letter is written to the landlord by the Secretary of the Bureau requesting him to make an appointment to discuss the rent within seven days, and advising him that the tenant complaint seems prima facie justified.

If no reply is received, the Secretary of the Bureau submits a report on the premises to the Attorney-General without further delay, together with his recommendation that the premises be prescribed. If the landlord complies with the Bureau's request for an interview, the Secretary attempts to negotiate a lower rent while at the same time warning him that if he fails to comply the premises may be prescribed. The Bureau is sometimes willing to compromise and is prepared to accept a rental higher than the recommended rent. If an agreement is reached the landlord is advised that no further action will be taken provided that he does not attempt to eject the tenant without first consulting the Bureau. On the other hand, if no agreement is reached, the Secretary immediately submits his report and recommendation to the Attorney-General that the premises be prescribed.

Stage four: The Notice

After a three or four day delay, the Secretary to the Law Department, on behalf of the Law Department, sends out a notice pursuant to Section 45A to the landlord, inviting him to make representations concerning the possible declaration of the premises as being subject to Part V of the *Landlord and Tenant Act*.

A copy of any reply received from the landlord is sent by the Secretary to the Law Department to the Secretary of the Rental Investigation Bureau for his comments. On receipt of this reply, the file is forwarded to the Attorney-General for his decision whether to prescribe the premises. An examination of the twelve files shown to the writer reveals that the decision may take anywhere from three days to several months after the case is referred to the Attorney-General.

Stage five: The Hearing

If and when the premises are declared to be subject to Part V of the Act, the Secretary of the Rental Investigation Bureau immediately informs

the tenant of this and advises him of his right to apply formally for his rent to be assessed. The matter is then heard at the first available hearing of the Fair Rents Board.

A CASE FILE EVALUATION OF THE NEED FOR REFORM OF THE CURRENT PROCEDURE AND LEGISLATION

It is stressed that the twelve files extracted in the Appendix which form the basis for the ensuing case file evaluation do not purport to be a random or a representative selection of complaints handled by the Bureau. Table 1 shows that in the majority of complaints no action is taken by the Bureau to reduce the rent as the sum demanded by the landlord is not considered excessive. The writer specifically requested the Secretary of the Bureau to provide twelve files where the Bureau had encountered problems caused by alleged inadequacies in the present procedure and legislation. It is submitted that the fact that certain inadequacies are shown to exist in one or more of the selected files is sufficient evidence to suggest the need for reform to prevent the problems from recurring.

Evidence in the files suggests the need for eight major reforms.

1 *The Power to Declare Premises Subject to Part V of the Landlord and Tenant Act should be transferred from the Governor-in-Council to the Fair Rents Board*

Four reasons can be advanced for this recommended reform.

Firstly, it is submitted that the Attorney-General is not in a position to evaluate properly whether to exercise his power under section 44(1). Unlike a judge in open court, he is unable to observe the demeanour of the parties and to test the validity of their arguments under cross-examination. He does not even see the file prepared by the Bureau. All he has before him is a copy of the Bureau's report and recommendation, any submission made by the landlord, and the reply to the submission by the Secretary of the Bureau.

Secondly, the case files reveal that in some instances there are unaccountable delays between the forwarding of the case to the Attorney-General after the recommendation of the Bureau is made and the decision of the Attorney-General. A classic example of this is case nine. Here, the Bureau's first recommendation was made on 26th January, 1973, the formalities under section 45A were completed on 14th February, 1973, yet the premises were not prescribed by the Attorney-General until 13th June, 1973. No reason was advanced at any time by the Law Department as to when a decision was likely to be made or as to the reasons for the delay. The Secretary of the Bureau sent additional letters stressing the urgency in this case (the landlord had raised the allegedly already excessive rent and threatened the tenant with eviction even after the Bureau's

recommendation) on 30th March, 1973, and 21st May, 1973, but these were not answered. Such delay is undesirable for all parties, especially the tenant, who is at this stage still paying an excessive rent and often under strong pressure to quit the premises. Similar problems would not arise if the matter were decided by the Fair Rents Board. In addition to preventing unaccountable delays the parties would know in advance when a decision would be reached. At present it is impossible to predict when the decision will be reached, whereas under the proposed reform, unless an adjournment is granted, both parties know that the matter will be settled one way or the other on the date of the hearing.

Thirdly, if the power under section 44(1) were to be a judicial function, the fact that a decision had been made would be obvious. This is not the case at present. If there is a delay after the Secretary of the Bureau recommends that certain premises be prescribed, none of the parties know whether this is because the Attorney-General has decided not to prescribe the premises or whether he has not yet made a decision. The only time a communication is made by the Law Department is when there has been a positive decision to prescribe the premises. Thus, when there is a delay, the Bureau is uncertain how to advise the tenant, the tenant is uncertain whether to remain in the premises or to look for alternative accommodation, and the landlord is similarly uncertain how to deal with the property. There is a considerable advantage to be gained by all parties to the dispute by a definite answer to the issue.

Finally, the judicial system ensures that all facts are introduced in court and their relevancy is tested. There can be no suggestion that additional untested evidence is considered. Unfortunately, this is not the situation at present. There is nothing to prevent anyone making submissions to the Attorney-General and no assured procedure whereby the other parties to the dispute can even know that a submission has been made, let alone know the contents of the submission. Case seven is a case in point. Here the Secretary of the Bureau made his recommendation that the premises be prescribed on 16th March, 1971, additional information on the case required by the Secretary to the Law Department was furnished by 29th March, 1971, the formalities under section 45A were completed by mid-April, yet no communication had been received by the Bureau by mid-May, by which time the tenant had been served with an eviction order. At this stage the Secretary of the Bureau telephoned the Secretary to the Law Department to inquire as to the reasons for the delay and was informed that although the case was still under consideration by the Attorney-General it was unlikely that he would be taking any action as the M.L.A. for the district had been making representations on behalf of the landlord. No further communication was ever received. The obvious objection to this procedure is that the Secretary of the Bureau and the tenant had no means of challenging the validity of the representations.

2 *The Fair Rents Board should be Empowered to Make a Conditional Order Prescribing the Premises*

Serious delays can sometimes occur when the landlord forestalls the declaration of his premises as subject to Part V of the *Landlord and Tenant Act* by promising to make needed repairs and/or reduce the rent yet fails to fulfil his promise. The ensuing delays can be disastrous for the tenant in that he still has to continue paying an excessive rent all this time and continue to live in sub-standard premises. These delays may well force some tenants to look for alternative accommodation, which is exactly what most of these landlords would wish. Case eleven illustrates how effective these delaying tactics on the part of the landlord can be. In this case the original complaint by the tenant was made on 10th May, 1972, the premises were inspected on 22nd May, 1972, and the meeting between the landlord and the Bureau took place on 13th June, 1973. At this meeting the landlord indicated that he had no intention of reducing the rent from the current $22 per week to the recommended $16 per week, or to effect needed repairs and as a result of this the Secretary of the Bureau immediately recommended that the premises be prescribed. In reply to the section 45A notice, the landlord wrote to the Attorney-General indicating his willingness to reach an amicable settlement and to reduce the rent and make repairs. As a result of this promise, the Attorney-General refrained from prescribing the premises. A further inspection of the premises on 17th September, 1972, revealed that the rent was still $22 per week and the repairs that had been effected were minimal. It was then again necessary for the Secretary of the Bureau to recommend to the Attorney-General that the premises be prescribed and for the Attorney-General to send out a section 45A notice. The premises were not finally prescribed until 10th January, 1973. Thus, the landlord was able to forestall the imposition of rent control for several months and was able to reap the benefit of an excessive rent during that period.

It is submitted that a new procedure is required to counteract this problem. One solution would be for legislation to be enacted permitting the Fair Rents Board to make a conditional order for the premises to be prescribed. In cases where there is evidence of the charging of excessive rent by the landlord, yet the landlord promises to remedy the defects, it should be open for the Bureau or tenant to apply to the Fair Rents Board for an order prescribing the premises and for its imposition to be delayed for a period of weeks or months to give the landlord time to fulfil his promise. If this conditional order were imposed, it would then be the responsibility of the landlord to apply to the Fair Rents Board before the expiration of the period to show cause why the order should not come into effect. Notice of intention to apply would have to be sent to the Bureau and the tenant. The Bureau would then re-inspect the premises

and recommend to the Fair Rents Board whether the order should be given effect to or revoked. This procedure would result in a considerable saving of time. In case eleven discussed above, the recommendation for a conditional order could have been made on 13th June, 1972, the case could have been heard at the next sitting of the Fair Rents Board, and an order could have been made at that time that the premises would be prescribed unless certain repairs were effected within four or six weeks. This would have ensured that the matter would have been resolved at the latest by the first week in August, a saving of five months over the actual procedure in that case.

3 *The Fair Rents Board should be given Discretionary Power at the time of Prescribing the Premises to Prescribe at the same time other Rented Premises Owned by the Same Landlord*

A special problem can sometimes arise in cases where an owner has more than one dwelling that he is renting. Although it does not automatically follow that if one tenant is being charged an excessive rent that all his tenants are being charged excessive rents, this can often be the situation. Under the present law, each tenancy is dealt with entirely separately in respect of proceedings to declare the premises subject to Part V of the *Landlord and Tenant Act.* A separate complaint by each tenant is necessary and separate consideration is given to each premises by the Attorney-General before the premises are prescribed. In many cases, especially in those involving multi-unit dwellings, the Bureau becomes aware that all the tenants of a certain landlord are paying excessive rents, yet is only able to assist the tenant who initiated the complaint.

This is the situation which existed in case nine. The landlord in this case was the owner of a large house in South Yarra consisting of five flats. The tenant of Flat 4A made a complaint to the Bureau, and following inspection a fair rent for the flat was assessed at $22 per week, whereas the actual rent being charged was $26 per week. In the course of its investigation, the Bureau discovered that the rents of two other flats in the same building which were of similar design and size were $45 and $32. In his report to the Attorney-General on the premises enclosed with the recommendation that Flat 4A be prescribed, the Secretary of the Bureau commented

> "The rentals of $45 and $32 are so out of proportion to a reasonable charge that I am astounded that any person would pay such amounts."

In addition to this, the Bureau had a long history of complaints made in the past by various tenants against this landlord.

It is recommended that the Fair Rents Board should be given discretionary power at the time of prescribing a premises to prescribe other rented residential premises owned by the same landlord. This would then permit the Bureau to advise the tenants of the possibility of applying

immediately for a reduced rent. The advantages of this change would be two-fold. Firstly, considerable time and effort would be saved in securing the reduction of all the excessive rents charged by a particular landlord. Secondly, the threat of having all his premises prescribed would bring strong and effective pressure to bear on the landlord to reduce the rent or make repairs without delay.

A more drastic alternative was considered by the writer, but rejected. This alternative would be for the introduction of legislation whereby any order of the Fair Rents Board declaring the premises subject to Part V of the Act would be deemed at law to include all other rented residential premises in the State owned by the same landlord. This possibility was rejected on two grounds. Firstly, it is unfair to the landlord in that it does not necessarily follow that a landlord proved to be charging an excessive rental in relation to one of his premises is automatically overcharging other tenants. Secondly, there is the practical difficulty of the Bureau ascertaining the number and location of all other residential premises let by the same landlord and advising the tenants that the premises have been prescribed.

4 *Prescribed Premises should remain subject to Control When the Incumbent Tenant Vacates*

One clearly undesirable feature of the present legislation is the fact that premises brought under the provisions of Part V of the Act by order of the Governor in Council under section 44(1) are automatically released from control when the incumbent tenant vacates the premises.

This situation was created as recently as 1972, by an amendment to section 47, effected by section 7 of the *Landlord and Tenant (Amendment) Act, 1971.*

Under the principal 1958 Act, section 47 read

> "(1) Except as provided in sub-sections (2) and (3) of this section where a lease (whether or not in writing) is entered into in respect of any prescribed premises . . . and when the lessee goes into occupation of the premises under that lease the premises shall cease to be prescribed premises. . .
>
> (2) The provisions of the last preceding sub-section shall not apply—
>
> . . .
>
> (c) in respect of any lease of premises which are for the time being the subject of an Order, made under section forty-four or section forty-five of this Act or either of the corresponding previous enactments, declaring the premises to be premises to which this Part or the Acts previously in force apply or to be special premises."

However, under the 1971 amendment, section 47(2)(c) was repealed. It is recommended that section 47(2)(c) be restored. The problems of

the present situation are obvious. In the words of the Secretary of the Bureau

> "The repeal of this sub-section gives the green light to the avaricious. The lessor who has had his premises declared because he is charging an unreasonably excessive rent, is not likely, on the change of tenancy, to re-let at the figure considered reasonable by the Bureau or the Board. There have been cases of this nature where the lessor has re-let at a figure greatly in excess of that which was originally considered to be unreasonably excessive."

In addition, the repeal of the sub-section acts as an inducement for an unscrupulous landlord of prescribed premises to harass his tenant in the hope that he will leave, so that he may immediately look for a new tenant who will pay a much increased rent.

The re-introduction of section 47(2)(c) would have assisted the Bureau in case 10. Here, the landlord was charging $35 per week, $10 more than was considered fair by the Bureau. The tenant had complained to the Bureau on 20th June, 1973, but because of the inevitable delays, told the Secretary of the Bureau on 15th August, 1973 that he could no longer bear to live in the unhealthy premises and would seek alternative accommodation. At this point, the Secretary of the Bureau was obliged to withdraw his recommendation to the Attorney-General that the premises be prescribed as the imminent departure of the tenant made further action pointless. The Secretary of the Bureau pointed out to the Attorney-General by letter that in his opinion there was no doubt that the next tenant would be charged the same rent or more. Section 47(2)(c) would have allowed the Bureau to continue to press for the premises to be prescribed, in which case any new tenant would have been immediately protected.

5 *The Legislation Stipulating that Before Premises can be Prescribed the Landlord must be given a Notice Informing him of his Right to make Representations to the Attorney-General Should be Abolished*

Section 6 of the *Landlord and Tenant (Amendment) Act 1971*, which introduced a new section 45A into the Principal Act, has been the subject of much criticism on several grounds. The relevant part of the new section reads

> "45A. (1) Before the Governor in Council makes an Order under sub-section (1) of section 44 or sub-section (1) of section 45 the lessor or his agent shall be served with notice in writing by the Secretary to the Law Department that consideration is being given as to whether an Order is to be made under either of those sub-sections and that before a date specified in the notice he may place in writing before the Minister any matters that he wishes to be taken into consideration."

The section was introduced as it was felt desirable to give the lessor the opportunity to be heard before the Attorney-General made his decision

whether to prescribe the premises. The rationale for the introduction of this section was hotly disputed at the time by the Secretary of the Bureau. In a letter to the Secretary to the Law Department giving his personal views on the proposed legislation, the Secretary of the Bureau commented

> "It is pointed out that the existing procedure has been in force for 11 years, that is, since the date I took over the administration of the Rental Investigation Bureau. . . It has always been the practice to give a landlord every opportunity to state his case. If any dispute arises, he is given the opportunity to make representations in writing so that these may be conveyed to the Honourable, the Attorney-General. Seldom has this suggestion been followed. I am not aware of any complaints made, with justification, of the Bureau's handling of these matters and I am at a loss to appreciate why such an amendment is thought to be necessary. In my opinion there is no reason why the landlord who refuses to negotiate or to co-operate should be given a second opportunity."

Several other criticisms can be advanced against section 45A. Firstly, and most important, is the fact that the procedure established by the section causes serious delays in effecting relief for the tenant. The notice sent out by the Secretary to the Law Department allows the landlord two weeks in which to make a submission, and it usually takes a minimum of one week between the time the Secretary of the Bureau submits his recommendation that the premises be prescribed until the time that the Secretary to the Law Department sends out the notice to the landlord. It is the policy of the Secretary to the Law Department to send a copy of any submission received by the Attorney-General to the Secretary of the Bureau for his comments, and this exchange of letters usually consumes a further week. Thus, there is a minimum delay of four weeks caused directly by section 45A, and an examination of the twelve case files extracted in the Appendix reveals that in many instances the delay is considerably longer.

Secondly, it is obvious that many landlords and their lawyers are using section 45A as a tactical device rather than using it in order to make genuine submissions. This becomes apparent from a study of the submissions received in the twelve case files. The irrelevancy of some of the arguments is striking. For example, in case two, the argument was that the landlord was a Lebanese migrant who had bought the premises by dint of hard work as a labourer and process worker in a factory, that he had had to transfer to light duties because of health reasons, and that he wished to sell the house with vacant possession. Similarly, in case five, much play was made of the fact that the landlord was a pensioner, was of Yugoslav origin, had very little knowledge of English, and was unable to read or write.

Thirdly, it is sometimes difficult to discover the whereabouts of the landlord in order that he may be served with the section 45A notice. In this event, no further action can be taken to assist the tenant until the

landlord is traced, and the tenant must continue to pay the excessive rent. Case one is a good example of this problem. In this case, despite efforts by Bureau and tenant, the landlord could not be traced for a four week period. A recommendation by the Secretary of the Bureau that the requirements of section 45A be waived in this case was met by the comment of the Secretary to the Law Department that compliance with section 45A is mandatory. As the Secretary of the Bureau remarked in his reply to the Secretary to the Law Department

> "It is regrettable that in cases of this nature, the service of a notice pursuant to section 45A is mandatory. The Bureau finds many similar cases where the address of the lessor is unknown to the lessee or to the local council. Even though the lessor may call regularly for rent, the difficulty in serving the notice may well be insurmountable."[5]

Finally, as shown by case eleven, the delay caused by section 45A is seriously aggravated in those cases where the original recommendation by the Secretary of the Bureau that the premises be prescribed is withdrawn on the undertaking by the landlord to compromise on the issue of rent and/or repairs, but has to be re-submitted when the landlord later refuses to compromise. Although the wording of section 45A does not cover this issue, the Law Department insists that the procedure under the section be followed. Thus, in case eleven, although a section 45A notice was sent to the landlord by the Secretary to the Law Department in mid-June, 1972, a further notice was sent out only four months later, with the inevitable delay ensuing.

The writer believes that despite the many criticisms levelled against this new legislation, section 45A is justified under the existing framework whereby the power to prescribe premises is vested in the Attorney-General. Without section 45A, the Rental Investigation Bureau effectively has the power of judge and jury over the issue of whether the premises will be prescribed. In most cases, before the introduction of section 45A, the only information on the premises available to the Attorney-General at the time of his decision was the report and recommendation of the Secretary of the Bureau. In this event it was obvious that the Attorney-General would follow the recommendation of the Secretary. In other words, the Bureau, a branch of the civil service, had effectively made the decision. There is no reason to suggest that landlords were not encouraged to express their grievances to the Attorney-General, but appropriate statutory safeguards in the form of section 45A are desirable. In the event that the power to prescribe premises remains vested in the Attorney-General, the writer simply recommends that section 45A be modified to give the Governor in Council discretionary power to waive the requirements of the section. This would adequately solve the problem of difficulty

[5] Letter from Mr S. K. Gogel to Mr R. Glenister, Secretary to the Law Department: 27th July, 1973.

in serving notice and the problem of sending out a second notice after proceedings to prescribe the premises are dropped and later revived.

However, if the recommendation to transfer the power to prescribe premises under section 44(1) from the Attorney-General to the Fair Rents Board is accepted, the rationale for section 45A disappears. Notice of a hearing before the Fair Rents Board would be sent out to the landlord and he would have ample opportunity to present his arguments. In this event it is strongly recommended that section 45A be abolished in its entirety. Its abolition will greatly accelerate relief to tenants from landlords who have been found to charge excessive rents and who despite this have refused to negotiate with the Bureau for their reduction.

6 The Determination of the Fair Rent should be Backdated to the Date of the Original Complaint by the Tenant to the Rental Investigation Bureau

In addition to problems connected with section 45A, delays cause injustice to the tenant in another way.

Section 60(1) of the Act as amended by section 10 of the *Landlord and Tenant (Amendment) Act 1971*, reads

> "(1) A determination of the fair rent of prescribed premises made by the Board shall come or be deemed to have come into force on a date fixed by the Board, but the date so fixed shall not be earlier than the date on which the application in relation to that determination was received by the Board."

Thus, as a result of this section, the landlord benefits from any delay in the case reaching the Fair Rents Board for determination of a fair rent in that in the meantime the tenant must continue to pay an excessive rent. We have seen already that there are numerous factors contributing to the delay: the section 45A procedure; the time taken by the Attorney-General to reach a decision; the procedure adopted by the Attorney-General when a submission is received from the landlord; and the absence of power for the Attorney-General to make a conditional order.

If the landlord takes full advantage of the present legislation and procedure the total time elapsing from the date of the original complaint by the tenant to the date of application to the Fair Rents Board can be considerable. For example, in case six, although the complaint was first made on 20th February, 1973, it was not until 4th July, 1973, that the premises were prescribed. Thus, because an application to the Fair Rents Board cannot be made until the premises have been prescribed, even if the tenant had made immediate application to the Fair Rents Board, the Board could not under the existing legislation relieve the tenant from the excessive rent paid since the date of his complaint, four-and-a-half months before. The delays in case eleven were far more considerable. Here exactly eight months elapsed between the date of the complaint (10th May, 1972) and the date the premises were prescribed (10th January, 1973) and, as in case six, no relief could be granted.

While delays of eight months are rare, delays up to six months, as in case six, are commonplace. It is submitted that it is both unfair to the tenant to insist that no relief can be granted until the date of application to the Fair Rents Board and unwise to allow legislation to exist which implicitly encourages the landlord to use tactical delays. Reform of section 60(1) is therefore urgently required.

The reform could take one of a number of alternatives. The most sweeping reform would be to substitute the phrase "date of the complaint by the tenant to the Rental Investigation Bureau" for the clause "date on which the application in relation to that determination was received by the Board". Alternative forms of modification would be to substitute "date of the recommendation of the Secretary of the Rental Investigation Bureau to the Governor in Council that the premises be prescribed", or "the date that the premises are declared by the Governor in Council to be subject to Part V of the Act" for the clause "date on which application in relation to that determination was received by the Board".

It is submitted that the first of the three above-mentioned reforms is the most desirable. This would give the greatest scope to the Fair Rents Board to grant relief to the tenant. The other two alternatives, while both an improvement on the existing legislation, would still give a certain advantage to a landlord prepared to use delaying tactics.

It may be argued that the existing legislation should be retained in that it is unfair to the landlord to require him to make a substantial re-payment to the tenant as he may have already spent the money or committed the funds in some way, or he may have been acting in good faith and did not realize that he was charging an excessive rent. It is submitted that these arguments are spurious. In relation to the last-mentioned argument, the landlord would have been informed by the Bureau in the normal course of events within three weeks of the date of the complaint that he was prima facie charging an excessive rent. As for the other arguments, it should be noted that section 60(1) does not compel the Fair Rents Board to backdate any order. Thus, if convincing arguments are advanced by the landlord at the hearing, the Board may decide not to backdate the order at all. There is no suggestion that this discretion should be removed from the Board.

7 *The Fair Rents Board should be Empowered to make Repair Orders*

Several of the files show that the interrelation of the powers and functions of the Housing Standards Section of the Housing Commission and the Rental Investigation Bureau is causing a number of difficulties.

In many cases tenants who complain that they are having to pay an excessive rent also have considerable difficulty in persuading their landlord to do necessary repairs to the premises. Unfortunately, however, there is no one government agency that deals with both problems.

Case three illustrates how Housing Commission repair and demolition orders[6] can thwart the efforts of the Rental Investigation Bureau to assist the tenant in fighting against an unscrupulous landlord. Here the rental being charged, $13 per week, was considered grossly excessive, the fair rent being assessed by the Bureau at $7.50 per week. The premises were speedily declared to be subject to Part V of the *Landlord and Tenant Act* within three weeks of the date of the tenant's complaint following the service of a notice to quit on the tenant. After one adjournment at the request of the landlord, the Fair Rents Board determined the rent at $7.50 per week on 15th October, 1970, two-and-a-half months after the date of the initial complaint. The Board was, of course, powerless to order the landlord to repair the premises. Following a complaint by the tenant to the Housing Commission several months later the Commission inspected the premises and on 16th April, 1971, declared them unfit for human habitation and required them to be demolished. This order was later modified on 23rd June, 1971, the Commission agreeing to the repair and reconstruction of the premises instead of demolition. The landlord used the repairs order as an excuse to rid himself of the tenant, and applied immediately to the Attorney-General for permission to eject the tenant in order to carry out the necessary repairs.[7] Permission was granted and the tenant vacated the following month. An inspection of the premises by the Bureau twelve months later showed that the landlord had sold the premises and that no repairs had been effected at all.

Thus, the later events suggest that the landlord in case three used the Housing Commission repairs order as an excuse to evict the tenant and had no serious intention of doing the required repairs. In addition, of course, he was able to sell the premises with vacant possession, thereby presumably enhancing the purchase price. On the other hand the tenant, in seeking assistance from the Housing Commission, instigated a chain of events that led to his eviction!

Case one shows that similar difficulties arise for the Bureau when a Housing Commission order is made, although the result in this instance was more satisfactory for the tenant. Here the Bureau's initial recommendation to the Attorney-General that the premises be prescribed was

[6] The *Housing Act 1958*, s.56(1), states
"Where the Commission after making due enquiries and obtaining all necessary reports is satisfied that any house or the land on which any house is situate does not comply with the regulations made under this section the Commission may declare the house to be—
(a) unfit for human habitation; or
(b) in a state of disrepair."
Where a declaration is made pursuant to s.56(1) the Housing Commission is empowered to order the owner to make the house comply with the regulations or to demolish it.

[7] One of the twenty-five valid grounds for a notice to quit in respect of prescribed premises under the *Landlord and Tenant Act 1958*, s.82(6) is
"(o) that the premises are reasonably required by the lessor for reconstruction, demolition, or removal."

withdrawn after the landlord agreed to reduce the rent from the existing rent of $21 per week to the assessed rent of $16 per week. However, on 16th February, 1972, a Housing Commission repairs order was served on the landlord and the following month he demanded that the tenant vacate so that repairs could be effected. The tenant refused to move and no repairs were attempted by the landlord until a final notice was sent out by the Housing Commission on 20th June, 1973, threatening penalties if the repairs were not effected within seven days. Following this, on 26th June, 1973, the landlord requested permission of the Bureau to commence ejectment proceedings against the tenant so as to carry out the repairs. It was finally on 10th July, 1973, that the Bureau and the Housing Commission started to work in unison. The Secretary of the Bureau pointed out to the Commission that the landlord was using the Commission order as an excuse to evict the tenant and requested the Commission either to provide temporary accommodation for the tenant or to permit the owner of the premises to delay repairs until the tenant could be provided with the permanent Commission rented accommodation that he had applied for. The matter was resolved the following month by the Housing Commission agreeing to hold compliance with their requirements in abeyance until it could provide permanent accommodation.

The problems in cases one and three would never have arisen if the Bureau had been able to assist the tenant in the repairs problem in addition to the rent problem. The Housing Commission had no means of knowing that the Rental Investigation Bureau was involved in the case and that to order repairs would have an adverse effect on the tenant.

It is recommended that the Fair Rents Board be given power to order the landlord to effect repairs as an alternative to or in addition to fixing the maximum rent. A maximum penalty of $1,000 should be provided for failure to comply with such a repairs order. A register of current repair orders should be compiled by the Board and made available on request to the Housing Commission. It is not intended that power to make repair or demolition orders should be taken away from the Commission. However, it should be obligatory for the Housing Commission to check whether there is an outstanding Fair Rents Board repairs order and, if so, it should not act without consulting with the Bureau.

Even in the absence of reforming legislation it is recommended that a much closer liaison should be kept between the Housing Standards Section of the Housing Commission and the Bureau. In this way the possibility of the Housing Commission unknowingly assisting the landlord to overcome the efforts made on behalf of the tenant by the Bureau would be minimized.

8 *The Need for the Creation of Certain New Offences*

The writer believes that one of the major weaknesses in the existing

legislation is that the listed offences contained in the *Landlord and Tenant Act* are too narrowly defined. Three new offences are proposed. The landlord should be guilty of an offence:

(a) If he or his agent give the tenant a notice to quit knowing that the notice is ineffective at law.

(b) If he or his agent eject or attempt to eject the tenant by claiming falsely that the premises are reasonably required by the lessor for occupation by himself, or by his son, daughter, mother, father, brother or sister, or by some person who ordinarily resides with and is wholly or partly dependent upon him.

(c) If he or his agent uses tactics designed to harass a tenant who has made a complaint to the Rental Investigation Bureau into quitting the premises.

A maximum penalty of $1,000 is recommended in respect of a breach of any of these three offences.

The present legislation does not encompass any of these suggested offences and a study of the twelve case files indicates the desirability of the necessary amending legislation.

(a) *Knowingly deliver an ineffective notice to quit*

Under Part V of the Act, a notice to quit may only be given on one of a number of prescribed grounds enumerated in section 82(6). Section 86 declares that the notice to quit is invalid if the ground relied upon is not specified. Further legislation on notices to quit protecting the tenant is to be found in section 84, section 85 and section 88. Section 84 declares that the landlord shall not, after the tenant has made an application for a determination, or after he has received from the Fair Rents Board notice of its intention to determine the fair rent of its own motion, except with the consent of the Board, give a notice to quit on eleven of the twenty-five grounds specified in section 82(6) until six months have elapsed after the making of a determination on the application or in pursuance of the notice.[8] Section 85(1) prevents a notice to quit by reason of section 82(6)(g) being given by a purchaser of the premises within twelve months of the date of the purchase agreement. Section 88(1) prevents a landlord,

[8] The most important of these eleven grounds are: that the premises are within the twelve-month period following the service of the notice to quit reasonably required by the landlord for occupation by himself or his family (paragraph (g)), for the occupation of an employee of the landlord (paragraph (1)), or for the occupation of a person who is employed by the landlord in connection with the carrying out of operations on a farm, orchard, or garden (paragraph (m)); that the premises are reasonably required by the landlord for reconstruction, demolition, or removal (paragraph (o)); that (with certain specified exceptions) the premises, being shared accommodation, are required by the landlord (paragraph (r)); and where the financial circumstances of the tenant are such that he could without undue financial hardship purchase or lease other residential premises at current property values (paragraph (x)).

who has taken proceedings in any court to recover possession or for the ejectment of the tenant and who has been refused relief by the court, from giving the tenant any notice to quit (whether on the same ground as a previous notice to quit or on any other ground) within twelve months after the court decision unless he has first obtained leave of the court. Finally, section 45A provides

> "(2) On the service of the notice [to the landlord that he may make a submission to the Attorney-General] . . . any notice to quit given in respect of those premises shall . . . be suspended as from the day of the service of the notice . . . for one month, and the period of that suspension shall not be taken into account in determining the period of time for the quitting of the premises.
>
> (3) . . . a notice to quit given in respect of those premises within one month after the service of the notice . . . shall be invalid and have no force or effect."

Thus, the legislation determining whether a notice to quit is valid is very well defined. However, if a notice to quit is given in contravention of any of the above-mentioned sections the only effect at law is that the notice to quit is void. No penalty is provided against a landlord or agent who gives a void notice.

One of the less obvious but nevertheless most real problems in this area of law is that a tenant may be duped into quitting the premises on receiving an invalid notice to quit and thinking wrongly that it is valid. It is unrealistic to assume that every tenant of prescribed premises knows the legislation relating to notices to quit in Part V of the Act. However, it is reasonable to assume that most agents and many landlords are aware of them. It is tempting for landlords who are anxious to get rid of their tenants and so have the premises automatically de-prescribed to "try their luck" and give the tenant a notice to quit, knowing that it is ineffective at law, but nevertheless hoping that the tenant will believe that it is valid and so voluntarily quit the premises. In this way the landlord is able to avoid court action and so circumvent the legislation in Part V of the Act designed to protect the tenant.

It is impossible to determine accurately how frequently ineffective notices to quit are served, and how often such notices are served by landlords who know that they are ineffective, but the fact that they are served cannot be doubted. The most blatant example of this practice in the case files examined occurred in case ten. Here the landlord was served with a section 45A notice on 25th July, 1973, and the same day he gave the tenant a notice to quit the premises the very next day. Not only was this notice a flagrant violation of section 45A(2) but it also failed to give adequate notice. In this case the tenant was advised by the Bureau to ignore the notice, as it was invalid, but another tenant in the same situation

could easily have assumed that the notice was valid and complied with its terms.

By the introduction of legislation making it an offence for a void notice to quit to be given, together with appropriate penalties, this practice could be curtailed or abolished.

(b) *Falsely claiming that the premises are required for the lessor or various members of his family*

One of the dangers of the existing statutory grounds for a landlord to give a tenant of prescribed premises a valid notice to quit is that section 82(6) of the Act, which enumerates the acceptable grounds, is susceptible to abuse by an unscrupulous landlord.

The most easily abused ground is section 82(6)(g)

"(g) that the premises—

(i) being a dwelling-house—are or within twelve months after service of the notice to quit will be reasonably required by the lessor for occupation by himself, or by his son, daughter, mother, father, brother or sister, or by some person who ordinarily resides with and is wholly or partly dependent upon him."

The legislature has already realized the dangers attached to this ground and has responded by enacting section 101

"(1) If a notice to quit is given on any of the grounds specified in paragraphs (g), (h), (i), (k), (l), or (m) of sub-section (6) of section eighty-two of this Act and the premises in respect of which the notice is given are vacated in accordance with or as a result of or consequent upon the notice or if an order for the recovery of possession of the premises or for the ejectment therefrom of the lessee is made on any such ground, a person shall not, without the consent of the appropriate court—

(a) again lease or sell or agree to lease or sell the premises, or

(b) (where the premises were used by the lessee for purposes of residence therein immediately prior to his vacating the premises or to the making of the order) use the premises or permit the premises to be used for any purpose other than residence—

until after the expiration of a period of three years immediately succeeding the date on which the premises were vacated, possession of the premises was recovered, or the ejectment effected."

While this section is useful it is submitted that it is unsatisfactory in its present form. Firstly, there is no procedure available whereby each landlord who succeeds in ejecting a tenant under section 82(6)(g) is subject to periodic checks over the following three years to see whether the terms of section 101 have been breached. The vast majority of landlords who contravene section 101 must escape detection. Secondly, if the landlord complies with section 101 and asks for court consent, there are no guidelines stipulating the relevant considerations. In view of the detailed and

numerous guidelines in section 64(1) of the Act specifying matters to be considered by the Fair Rents Board in determining a fair rent, the complete absence of such guidelines in section 101 is surprising.

Finally, and most important, the present legislation does not permit immediate and effective action to be taken against a landlord where the evidence is clear that the landlord has acted in bad faith in claiming the benefit of section 82(6)(g). The premises may still be vacant, so section 101 is not breached, yet it may be clear that the landlord does not intend to use the premises for his own personal occupation or that of his family. Case nine would seem to involve such a landlord. This landlord owned a number of premises in the Melbourne area and was well known to the Bureau for charging excessive rentals. In making his recommendation to the Attorney-General that a flat of this landlord in South Yarra be prescribed, the Secretary of the Bureau commented that in the past when all premises were subject to rent control the landlord repeatedly went to court to obtain warrants of ejectment against tenants of his flats on the ground that he or some other family member wished to occupy them: in every case he re-let the premises without occupying it himself or obtaining the consent of the court to re-let. In this case, in answer to the section 45A notice sent to him, the landlord replied that he required the flat for his own purposes. The premises were eventually prescribed by the Governor in Council on 13th June, 1973, despite the submission of the landlord. At the time of the writer's examination of the case file (August 1973) no action to eject the tenant had been brought by the landlord. However if such an action were brought later and the landlord showed no signs within a short period of using the flat for family occupation then under the new suggested offence the landlord would be liable to conviction. The fact that a certain state of mind has to be proved to exist in the landlord may well be difficult in many cases, but it is submitted that this should not prevent the introduction of the legislation. Such legislation could well have a significant deterrent effect upon landlords.

(c) *Harassing a tenant who has made a complaint to the Bureau with a view to making him quit the premises*

When tenants are protected under Part V of the Act it is inevitable that some landlords will resort to extra-legal methods to induce their tenants to leave the premises. The problem is allied to that of retaliatory eviction, but is not identical. Retaliatory eviction occurs when a landlord serves what would under normal circumstances be a valid notice to quit on a tenant because the tenant has made a complaint concerning the tenancy to a governmental agency. The situation under discussion arises when a landlord, knowing that a notice to quit would be futile, harasses or threatens the tenant in order to make him quit of his own volition.

Situations of this nature seemed to occur in cases one and nine. In case nine there was documented evidence in the file of a history of

extreme unpleasantness on the part of the landlord, consisting of a tirade of letters, verbal abuse, and demands that the tenant quit, plus occasional threats. In this case the complaining tenant alleged that the landlord threatened to take legal action when he refused to leave on request and later threatened to report him to the Ombudsman if he refused to pay an increase in an allegedly already excessive rent. While unpleasantness cannot be prevented by legislation it is submitted that threats and intimidation to make a tenant quit, even if the threatened action is incapable of fruition should be outlawed. In case one, after he had complained to the Bureau, the tenant was visited by the landlord's agent and ordered to quit, and shortly afterwards the tenant returned home one day to find the back doors of the house smashed in. This behaviour, if proved to be the work of the landlord, should be made subject to a penalty.

Section 108(1) of the Act partly covers this problem but does not seem to go far enough. The section reads

> "No person shall by any threat or in any other manner endeavour to dissuade or prevent a lessor or lessee from making or prosecuting any application under this Part or taking or continuing any proceedings in relation to which this Part applies."

This section would not appear to help the tenants in cases one and nine. Even if the facts as alleged by the tenant were proved to the satisfaction of the court it would be open to the landlord to argue that he had acted in order to make the tenant quit rather than to prevent him from prosecuting any application under Part V. It would be a simple matter for section 108 to be amended so as to cover the situation envisaged.

APPENDIX

Case 1

File No. D.6756

1 November 1972
Complaint filed by tenant.

17 November 1972
Investigation conducted by Bureau. The existing rent of the premises was $21. Rent assessed at $16, and the recommended fair rent was $16.

22 November 1972
Bureau wrote to the landlord requesting him to make an appointment for an interview within seven days. The letter was to be hand-delivered by the tenant when the landlord next called at the premises to collect the rent, as the address of the landlord was unknown.

4 December 1972
Tenant informed the Bureau that he was still unable to locate the landlord and give him the letter, as he had not been to the premises to collect the rent. The landlord's sister had called for the rent and had given the tenant a verbal notice to quit. She said that the tenant would have to do needed repairs at his own expense, and if he did not, she would have the police throw him out.

4 December 1972
Bureau contacted the Footscray Health Inspector in an unsuccessful attempt to discover the landlord's address.

6 December 1972
Bureau recommended that the premises be prescribed and that the procedure under section 45A be waived.

14 December 1972
The Secretary of the Law Department advised the Bureau that section 45A is mandatory.

18 December 1972
Landlord was finally traced and section 45A notice was served on him.

19 December 1972
Landlord and his father had an interview with the Bureau. According to the Bureau, both made contradictory and untrue statements. The Secretary of the Bureau recommended, following the interview, that the premises be prescribed at the earliest possible date, and expressed regret that the procedure under section 45A is mandatory.

22 December 1972
The landlord's solicitor wrote to the Attorney-General that the landlord would reduce the rent to $16 and asked that the premises not be prescribed. He alleged that the premises were in excellent condition at the time of the letting, but that the tenant had since damaged them.

28 December 1972
The Bureau wrote to the Attorney-General recommending that as the landlord had agreed to reduce the rent no further action should be taken provided that no notice to quit was served.

16 February 1973
A Housing Commission Repair Order was placed on the premises.

28 March 1973
Tenant phoned the Bureau and told the Secretary that the landlord had insisted that he vacate the premise so that repairs ordered by the Housing Commission could be effected. The agent had also called and told him to vacate. The previous week the back doors of the premises had been broken open.

24 May 1973
Tenant advised Bureau that no attempt had been made by the landlord to make any repairs even though the sixty days allowed for Group A repairs had expired a month before.

20 June 1973
Housing Commission threatened the landlord with penalties if various repairs were not effected within seven days.

26 June 1973
The landlord's solicitor wrote to the Bureau requesting permission to commence ejectment proceedings against the tenant as the landlord needed vacant possession in order to carry out repairs. The Bureau promised to investigate the matter.

2 July 1973
The Housing Commission inspector responsible for the order advised the Bureau that in his opinion vacant possession was not necessary, although the tenant would be inconvenienced if he remained.

10 July 1973
The Secretary of the Bureau wrote to the Housing Commission informing them that the landlord was using their order as an excuse to eject the tenant. He requested the Commission to adopt one of two alternatives: (a) that the owner be permitted to delay repairs under the order until such time as the Commission is

able to provide the tenant with alternative accommodation, or (b) that the Commission provides the tenant with alternative accommodation, even if it is only temporary, pending permanent accommodation being available.

3 August 1973

The tenant was offered permanent rental flat accommodation by the Commission. In the meantime, while formalities were being completed, compliance with the Housing Commission requirements for repair were held in abeyance.

Case 2

File No. D.6599

25 July 1972

Complaint filed by tenant.

8 August 1972

Investigation conducted by Bureau. The existing rent of the premises was $26. Rent assessed at $18.86, and the recommended fair rent was $20.

11 August 1972

Bureau wrote to landlord requesting him to make an appointment for an interview within seven days.

23 August 1972

The landlord attended the Bureau for an interview. The landlord refused to reduce the rent to $20 or to compromise at $22. The Bureau agreed to delay any further action for a few days at the request of the landlord to give him time to contact a solicitor.

5 September 1972

The landlord attended the Bureau again and agreed to reduce the rent to $22. The Bureau advised him that no further action would be taken provided that no notice to quit was served.

11 October 1972

The tenant became two weeks in arrears of rent. The landlord served a notice to quit on the tenant and refused to accept the offer of payment of arrears.

13 October 1972

The Bureau recommended that the premises be prescribed.

20 October 1972

The Secretary of the Law Department sent out a notice to the landlord under section 45A.

31 October 1972

The landlord's solicitor made a submission to the Attorney-General. He stated that the landlord is a Lebanese migrant who had bought the premises by dint of hard work as a labourer and process worker in a factory and by virtue of the fact that his wife was also working: however, his wife was now in poor health and had to quit work, and the landlord has had to transfer to light duties because of several heart attacks. He requested that the premises not be prescribed so that the landlord could advertise the premises for sale with vacant possession: the landlord was quite happy to let the tenant remain at $22 per week until a contract of sale was signed.

20 November 1972

The Bureau replied to the landlord's letter pointing out the irrelevancies contained therein. The Secretary commented that the landlord did not think about selling the premises until the reduction in rent was negotiated.

6 December 1972

The premises were prescribed by the Governor in Council.

11 December 1972

The landlord's solicitor again wrote to the Attorney-General asking that the premises be deprescribed as it had been agreed by the Bureau that the premises

would not be prescribed provided that no proceedings for the recovery of possession were commenced. No proceedings had been commenced.

5 January 1973
The Bureau replied to the solicitor's letter. The Secretary commented that there was no reason for the Attorney-General to review the matter as it was clearly the landlord's intention to commence proceedings for recovery of possession.

20 March 1973
The Consul for Lebanon wrote to the Attorney-General requesting that the premises be deprescribed so that the landlord could get a fair price at a future sale of the property.

10 April 1973
The Bureau (following its usual practice) recommended that the premises be deprescribed if evidence of a genuine contract of sale were given.

13 June 1973
A copy of a contract of sale was sent to the Attorney-General by the landlord.

18 June 1973
The Bureau recommended that the premises be deprescribed.

4 July 1973
The premises were deprescribed.

Case 3

File No. D.5366

28 July 1970
Complaint filed by tenant.

7 August 1970
Investigation conducted by Bureau. The existing rent of the premises was $13. Rent assessed and recommended at $7.50. Bureau wrote to the landlord requesting him to make an appointment for an interview within seven days.

11 August 1970
The landlord attended the Bureau for an interview. The landlord refused to reduce the rent and blamed the agent for not effecting badly needed repairs. The landlord was warned by the Bureau not to take ejectment proceedings against the tenant prior to some communication from the Bureau.

14 August 1970
The tenant was served with a notice to quit by the agent.

18 August 1970
The Bureau recommended to the Attorney-General that the premises be prescribed.

19 August 1970
The Bureau received an offensive letter from the landlord in which he threatened to contact the press. A letter attacking the Bureau was sent to the Attorney-General.

25 August 1970
The premises were prescribed.

1 October 1970
The Fair Rents Board hearing to determine the fair rent was adjourned at the request of the landlord, who asked for time to obtain an independent valuation.

15 October 1970
The landlord requested a further adjournment of the Fair Rents Board hearing, as he claimed the Secretary to the Law Department had given an undertaking that the premises would be deprescribed. The request was refused and the rent was determined at $7.50 per week.

16 April 1971
A Housing Commission demolition order was imposed on the premises.

23 June 1971
The Housing Commission agreed to the repair and reconstruction of the premises in lieu of demolition. The landlord immediately requested the permission of the Attorney-General to eject the tenant in order to carry out necessary repairs.

21 July 1971
Permission was granted to the landlord to eject the tenant.

11 July 1972
The premises were reinspected by the Bureau. The premises had been sold to new landlords, who were letting them at $20 per week. The premises were in the same state of disrepair as before.

27 July 1972
A complaint was filed by the new tenants.

14 August 1972
Investigation conducted by Bureau. The fair rent was assessed at $14 per week.

29 August 1972
The matter was dropped after the receipt of a letter by the Bureau from the tenant requesting that no action be taken.

Case 4

File No. D.5770

16 March 1971
Complaint filed by tenant.

29 March 1971
Investigation conducted by Bureau. The existing rent of the premises was $20, which was to be increased shortly to $22. The rent was assessed at $15.69, and the recommended fair rent was $18.

19 April 1971
Bureau wrote to the landlord requesting him to make an appointment for an interview within seven days.

26 April 1971
The landlord attended the Bureau for an interview and agreed to reduce the rent to $18. The landlord was advised that no further action would be taken and promised not to commence proceedings for recovery of possession without making prior reference to the Bureau.

24 June 1971
Despite the landlord's undertaking, a notice to quit was issued and the rear section of the building was demolished, leaving the tenant without a bathroom, laundry, or toilet.

25 June 1971
Bureau recommended that the premises be prescribed.

12 July 1971
Tenant was served with a complaint and summons to appear at the Magistrates' Court on 21 July 1971 to answer ejectment proceedings.

14 July 1971
Premises were prescribed.

21 July 1971
Despite the premises now being prescribed, a warrant of ejectment was made.

5 August 1971
Fair Rents Board determines the rent at $7 per week.

August 1971
The tenant, at the suggestion of the Bureau, requested a rehearing on the issue of ejectment. This was granted, but $20 costs were ordered against him.

8 September 1971
At the rehearing, the Magistrate ruled that the previous order would stand, with a three-month stay of execution of the warrant. The rent could be increased from $7 to $18 once the services were restored.

December 1971
Warrant of ejectment executed.

Case 5

File No. D.6625

8 August 1972
Complaint filed by tenant.

25 August 1972
Investigation conducted by Bureau. The existing rent of the premises was $17, which the landlord was about to increase to $20. The Bureau assessed and recommended $12 as a fair rent.

28 August 1972
Bureau wrote to the landlord requesting him to make an appointment for an interview within seven days.

11 September 1972
Further request for interview sent by the Bureau to the landlord. No reply received to either letter.

22 September 1972
Bureau recommended that premises be prescribed.

24 October 1972
The landlord's solicitor made a submission to the Attorney-General after receiving a notice under section 45A. He stated that the landlord is a pensioner, had very little knowledge of English, was of Yugoslav origin, and was unable to read or write: the landlord wanted to return to the property and wanted proceedings deferred pending negotiations with the tenant for possession.

14 November 1972
Bureau wrote to the Attorney-General pointing out the irrelevancies contained in the solicitor's letter and recommending that proceedings be deferred for one month to allow negotiations to take place.

7 March 1973
No contact had been made with the tenant by the landlord. The premises were prescribed.

14 March 1973
The landlord refused to carry out structural repairs requested by the tenant.

30 April 1973
A municipal health officer visited the premises and said he would contact the owner to request him to effect certain repairs; failing this, he would take action to have a disrepair order made.

Case 6

File No. D.6919

20 February 1973
Complaint filed by tenant.

13 March 1973
Inspection conducted by Bureau. The existing rent of the premises was $22. Rent assessed at $18.50. It was recommended that the rent should be reduced to $18.50 pending compliance with a Housing Commission repair order and until a hot water service was installed.

22 March 1973

Bureau wrote to the landlords (Mr and Mrs B.) requesting them to make an appointment for an interview within seven days.

28 March 1973

The landlords' solicitor requesting that no further action be taken as repairs were being effected and would be completed within four to five weeks.

29 March 1973

Bureau agreed to hold the matter in abeyance pending completion of the repairs.

30 March 1973

The tenant contacted the Bureau and advised that the landlords were pressing him to withdraw his complaint to the Bureau, and that no repairs had commenced.

21 May 1973

The tenant advised the Bureau that still no repairs had been done or H.W.S. installed. The roof was in such poor condition that a downpour flooded into the bedroom every time it rained. The agent had allegedly threatened to increase the rent to $30.

24 May 1973

The Bureau recommended that the premises be prescribed.

1 June 1973

Secretary to the Law Department sent the landlords (Mr and Mrs B.) a notice under section 45A. The notice was difficult to serve as a contract of sale of the premises had just been signed. The vendors refused to accept, saying that the house was sold, and the purchasers refused, saying that the sale was not yet finalized. The notice was eventually served on the purchasers (Mr and Mrs W.).

7 June 1973

The purchasers' solicitors wrote to the Attorney-General requesting that proceedings be deferred to enable the purchasers to resolve certain problems connected with the sale of the premises.

13 June 1973

The purchasers' solicitors again wrote to the Attorney-General requesting an extension of time until the repairs could be completed.

18 June 1973

The Bureau recommended that the premises be prescribed. The Secretary stated that the previous owners (Mr and Mrs B.) had used delaying tactics to dispose of the premises before the premises were prescribed and to avoid doing repairs, and because of this, the tenants have had to pay an excessive rent: no further delays should be tolerated, as if Mr and Mrs W. were acting in good faith they would surely agree to some rent reduction pending the completion of repairs.

4 July 1973

Premises were prescribed

10 July 1973

The landlords' solicitor wrote to the Attorney-General requesting that the premises be deprescribed, on the ground that the landlord was suffering hardship in that he had bought the premises on the basis that it was returning $22 per week. In addition, the landlords had assumed that the premises would not be prescribed if the repairs were done: half of the defects listed by the Housing Commission had already been remedied.

31 July 1973

The Secretary of the Bureau responded to the solicitor's letter of 10 July 1973. A further inspection conducted on 30 July 1973 showed that no serious effort had been made to comply with the Housing Commission order. The complaint that the purchasers were sold the property on the basis that it returned the amount set out in the tenancy agreement was no reason for deprescribing the premises. He recommended that the premises remain prescribed.

Case 7

File No. D.5697

2 March 1971
Complaint filed by tenant.

4 March 1971
Investigation conducted by Bureau. The existing rent of the premises was $20. The rent was assessed at $12.58.

5 March 1971
Bureau wrote to the landlord requesting him to make an appointment for an interview within seven days.

6 March 1971
The landlord served a notice to quit on the tenant. No reason for the notice was specified.

10 March 1971
The landlord wrote to the Bureau stating that the tenant was in arrears of rent.

16 March 1971
The Bureau recommended that the premises be prescribed. The Secretary commented that the Bureau had had dealings with this landlord before and felt that the landlord's allegations could not be trusted.

19 March 1971
The landlord arranged to attend the Bureau for an interview, but did not keep the appointment.

25 March 1971
The landlord's solicitor wrote to the Attorney-General alleging that the tenant owed $458 arrears of rent, had torn up a drain, and had pulled down a building on the property to accommodate racing dogs. He said that the notice to quit had been decided upon some time before the tenant complained to the Bureau, and alleged that the Bureau had taken further proceedings because the Secretary was annoyed with the landlord for breaking his appointment.

1 April 1971
Landlord served a summons and complaint upon the tenant.

2 April 1971
Bureau replied to the landlord's solicitor's letter denying the allegations contained therein and stating that they had no knowledge whether the tenant had damaged the property.

5 April 1971
Secretary of the Law Department advised the Bureau that the landlord's allegations must be investigated before the premises could be prescribed.

7 April 1971
The Bureau reported to the Secretary of the Law Department on the landlord's allegations. It appeared that the tenant had torn up a drain and altered a building, but this was allegedly with the consent of the landlord.

14 May 1971
Tenant was served with an eviction order. The tenant did not appear at the hearing on 20 April, 1971, and the order was made in his absence.

17 May 1971
The Secretary of the Bureau telephoned the Secretary of the Law Department to inquire into the likelihood of the premises being prescribed. The Secretary of the Law Department replied that the file was still with the Attorney-General; however, the local M.L.A. had been making representations on behalf of the owner and it was unlikely that any action would be taken.

Case 8

File No. D.4800

16 May 1969
Complaint filed by tenant.

27 May 1969
Investigation conducted by Bureau. The existing rent of the premises was $20. Rent was assessed at $14.70.

29 May 1969
Bureau wrote to the landlord requesting him to make an appointment for an interview within seven days. The landlord phoned frequently and pleaded frequent absences in the country for his failure to comply with the request of the Bureau.

15 July,1969
The landlord attended for an interview and agreed to advise them of his intentions by 18 July, 1969, but failed to do so.

22 July 1969
The Bureau recommended that the premises be prescribed, claiming that the landlord had been stalling.

29 July 1969
The Secretary of the Law Department phoned the Bureau and asked for some information regarding the lease signed by the tenant.

29 July 1969
Bureau wrote to the tenant requesting him to phone as soon as possible. This letter, and a further letter dated 7 August, 1969, was ignored.

17 September 1969
Bureau recommended to the Attorney-General that no further action be taken.

3 February 1971
New tenants to the premises filed a complaint.

16 February 1971
Investigation conducted by Bureau. The rent was still $20, no improvements had been made, and the valuation of the house had not increased. However, the Bureau declined to take action as the tenants were using premises for the sale of soft goods.

Case 9

File No. D.6495

N.B. This case file concerned a house containing five separate flats.

26 October 1972
Complaints filed by tenants of flats 3A and 4A.

3 November 1972
Investigation conducted by Bureau of both flats. The existing rent of flat 3A was $21, but the landlord had advised the tenant to pay $26 in future or to move out. Rent assessed at $17. The rent of flat 4A was $26, and was assessed at $22.

20 November 1972
Bureau wrote to the landlord requesting him to make an appointment for an interview within seven days.

23 November 1972
The landlord phoned the Bureau, claiming that the tenant in flat 3A was a heavy drinker and that the notice to quit had been served at the direction of the tenant's son.

1 December 1972
The tenant in flat 4A advised that he had been under heavy pressure from the landlord to quit the premises, but had decided to stay. He claimed that the tenant in flat 3A was vacating because of extreme unpleasantness on the part of the landlord, and that the allegations against the tenant were false. He said that he himself

had been asked by the landlord when he was leaving and was threatened with an injunction when he refused to answer.

2 December 1972
The tenant in flat 3A quit the premises, allegedly because of pressure by the landlord.

6 December 1972
The landlord attended the Bureau, and made no attempt to justify the rent.

14 December 1972
Bureau recommended that flat 4A be prescribed. The Secretary commented in the report that the landlord had a history of being avaricious: two other flats in the building similar to flats 3A and 4A were being let for $45 and $32, grossly excessive sums; it was a pity that all the premises could not be prescribed at the same time. He pointed out that the tenant of 3A had quit as a result of a constant tirade of letters, verbal abuse, and demands to quit, and he feared the same would happen to the tenant of 4A. Finally, he observed that in the past when all premises were subject to rent control the landlord repeatedly went to court to obtain warrants of ejectment against tenants of his flats on the ground that he or some other family member wished to occupy them, but every time he re-let the premises without occupying himself or obtaining the consent of the court.

21 December 1972
The Secretary to the Law Department sent a notice under section 45A to the landlord.

5 January 1973
The landlord's solicitor advised the Bureau that the rent would be reduced to $22. The Bureau agreed to take no further action.

23 January 1973
The landlord's solicitor notified the Bureau that the landlord required the flat for his own purposes.

25 January 1973
The Bureau informed the landlord's solicitor that it did not consider that the landlord was bona fide.

26 January 1973
Tenant received a notice to quit.

26 January 1973
The Bureau recommended that the premises be prescribed.

12 February 1973
The landlord's solicitor wrote to the Attorney-General advising him that the tenant had been offered alternative accommodation, that the landlord was prepared to sign a statutory declaration that it was his intention to reside in the premises, and that the landlord had recently spent a large sum of money on furniture for the new premises.

14 February 1973
The Bureau responded to the solicitor's letter advising the Attorney-General that flat 3A, which was identical to flat 4A, had recently become vacant, but the landlord showed no interest in occupying it.

23 February 1973
The landlord raised the rent of flat 4A to $27. The tenant was threatened with eviction and a report to the Ombudsman if he refused to pay the increased rent.

30 March 1973
The Bureau again urged that the premises be prescribed.

21 May 1973
The Bureau again urged that the premises be prescribed.

13 June 1973
Premises were finally prescribed.

Case 10

File No. D.7144

20 June 1973
Complaint filed by tenant.

10 July 1973
Investigation conducted by Bureau. The existing rent of the premises was $35. Rent was assessed (8%) at $18; recommended rent was $25.

17 July 1973
Bureau wrote to the landlord requesting him to make an appointment for an interview within seven days.

24 July 1973
Landlord attended Bureau, but refused to discuss any reduction in rent and allegedly adopted a rude and overbearing attitude.

24 July 1973
Bureau recommended that the premises be prescribed.

25 July 1973
The Secretary to the Law Department sent the landlord a notice under section 45A.

25 July 1973
The landlord served the tenant with a notice to quit, allegedly effective the following day.

27 July 1973
The landlord wrote to the Attorney-General stating that the tenant had breached the tenancy agreement by keeping pets and being in arrears of rent, and that the valuation of the Bureau was unrealistic: he promised to pay $5,000 to any public charity if the Bureau could find him similar premises on a similar sized block in the neighbourhood at their valuation price.

22 August 1973
Bureau advised the Attorney-General that there was no point in taking further action as the tenant intended to move out as a result of continual pressure by the landlord.

Case 11

File No. D.6474

10 May 1972
Complaint filed by tenant.

22 May 1972
Investigation conducted by Bureau. The existing rent of the premises was $22. Rent assessed at $16, and the recommended fair rent was $17.

31 May 1972
Bureau wrote to the landlord requesting him to make an appointment for an interview within seven days.

13 June 1972
The landlord attended the Bureau for an interview. According to the Bureau, the landlord agreed that the present tenant was a good one but refused to reduce the rent: the landlord seemed to think that this tenant should subsidize previous tenants who had damaged the premises and stolen some of the goods.

13 June 1972
Bureau recommended that the premises be prescribed.

20 June 1972
The Secretary to the Law Department sent the landlord a notice under section 45A.

4 July 1972
The landlord wrote to the Attorney-General saying that he was prepared to reduce the rent and come to an amicable arrangement regarding the improvement of living conditions and facilities in the premises. No further action was taken by the Bureau.

17 September 1972
The Bureau re-inspected the premises and found that the rent was still $22 and that only very minor repairs had been made.

4 October 1972
The landlord called on the tenant, allegedly told him that he had been causing too much trouble, and gave him a verbal notice to quit. The Bureau told him to ignore this notice.

12 October 1972
Bureau recommended that the premises be prescribed.

20 October 1972
The Secretary to the Law Department sent a notice to the landlord under section 45A.

1 November 1972
The landlord wrote to the Attorney-General stating that he was still prepared to negotiate an amicable settlement.

11 December 1972
The Bureau informed the Attorney-General that, despite his statements, no efforts had been made by the landlord to reach an amicable settlement.

10 January 1973
Premises were prescribed.

Case 12

File No. D.5283

1 July 1970
Complaint filed by tenant.

14 July 1970
Investigation conducted by Bureau. The existing rent on the premises was $14.70, which the landlord was about to raise to $17. The rent was assessed at $14.74, and the recommended fair rent was $14.70.

21 July 1970
Bureau wrote to the landlord requesting him to make an appointment for an interview within seven days.

28 July 1970
The landlord wrote to the Bureau indicating that he would not lower the rent.

3 August 1970
Bureau recommended that the premises be prescribed.

6 August 1970
The landlord served a fourteen-day notice to quit on the tenant. The Bureau advised the tenant to ignore the notice.

12 August 1970
Premises were prescribed.

26 August 1970
The Clerk of the Court, Ballarat, advised the Bureau that it was pointless to proceed with an application to fix the fair rent as the tenant had agreed to vacate.

28 September 1970

The tenant informed the Bureau that he was being taken to court on the issue of ejectment the following week.

5 October 1970

An order for ejectment based on consent was made. No further notice to quit had been served on the tenant. The court believed that, if the consent of the tenant was obtained, the fact that no ground for the notice was given or that the ground was not one of those specified in section 82(6) was irrelevant.

20 October 1972

The Secretary of the Bureau wrote to the Secretary to the Law Department requesting that assistance be given to enable the tenant to apply for a re-hearing. He stated that the tenant and his wife had been under severe pressure to quit and that it would have been easy for the landlord to obtain the consent of the tenant: regardless of consent, a ground must be specified under section 82(6) and proved to exist.

27 October 1972

The Magistrates' Court in Ballarat granted a stay of the ejectment order for four weeks to enable the tenant to appeal. The tenant moved into other premises and took no further action.