

## FAIR RENTS.

---

### No. 38 of 1956.

AN ACT to make provision for the determination of fair rents for dwelling-houses and for matters incidental thereto, and to make certain provision with respect to orders for the recovery of possession of dwelling-houses or the ejectment of lessees therefrom.  
[29 November 1956.]

BE it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:—

**1** This Act may be cited as the *Fair Rents Act 1956*. Short title.

- 2—**(1) In this Act, unless the contrary intention appears—
- |   |   |
|---|---|
| <p>“Arbitrator” means a Fair Rents Arbitrator appointed under this Act;</p> <p>“determination” means a determination of the fair rent of a dwelling-house made in pursuance of this Act;</p> <p>“dwelling-house” means any premises that are leased, wholly or in part, for the purposes of residence, and includes—</p> <ul style="list-style-type: none"> <li>(a) a part of any such premises that is separately leased; and</li> <li>(b) a boarding-house or lodging-house, but does not include—</li> <li>(c) licensed premises;</li> <li>(d) the premises of a registered club; or</li> <li>(e) premises that are ordinarily used for grazing, sheep farming, agriculture, fruit growing, market gardening, dairy farming, poultry farming, or pig farming, whether any part of the premises is leased for the purposes of residence or not;</li> </ul> <p>“fair rent”, used in relation to a dwelling-house or a dwelling-house leased together with goods, means the rent thereof as fixed by a determination, as in force for the time being;</p> | <p>Interpretation.</p> <p>Cf. 3 &amp; 4 Geo. VI No. 39 (Tas.), s. 3.</p> <p>No. 21 of 1949 (Tas.), s. 3.</p> <p>10 Geo. V No. 31 (Q’ld.), s. 2.</p> <p>No. 47 of 1951 (W.A.), s. 4.</p> |
|---|---|

- "lease" includes any contract for the letting of a dwelling-house, or of a dwelling-house together with goods, whether the contract is made orally, or in writing, or by deed;
- "lessor" and "lessee", respectively, mean the parties to a lease, and include a sub-lessor and sub-lessee respectively;
- "licensed premises" means premises in respect of which a licence under the *Licensing Act 1932* or a provisional certificate under that Act is in force;
- "prescribed date" means the date of the commencement of this Act;
- "rates" includes rates or charges made or levied under the authority of an Act by an authority constituted by or under an Act;
- "registered club" means a club in respect of which a certificate of registration under the *Licensing Act 1932* is in force;
- "rent" means the actual rent payable under a lease, and includes—
- (a) the value to the lessor of any covenant, condition, or other provision of, or relating to, the lease, to be performed by the lessee (other than a covenant, condition, or provision usually entered into by a lessee); and
  - (b) rates or taxes that are payable by a lessee, other than rates for excess water;
- "tax" includes a tax, whether on land or on income from land, that is imposed by or under a law of the Commonwealth or of this State.
- (2) For the purposes of this Act—
- (a) the expression "lessor" includes the agent of a lessor; and
  - (b) the expression "lessee" includes a person who remains in possession of premises after the termination of his lease of the premises, and the expression "lessor" has a corresponding meaning.
- (3) For the purposes of this Act, where, in a lease—
- (a) it is provided that a reduced amount, as rent, shall be accepted by the lessor upon a condition to be performed by the lessee, that reduced amount shall be deemed to be the rent payable under the lease; and
  - (b) any rebate, discount, allowance, or other reduction is provided for the amount payable after each rebate, discount, allowance, or reduction is made shall be deemed to be the rent payable under the lease.

(4) Where the lessor of a dwelling-house supplies or provides any services in connection with the dwelling-house and a separate charge is made for those services, the amount of that charge shall, for the purposes of this Act, be deemed to form part of the rent payable under the lease.

(5) For the purposes of this Act, the Arbitrator may declare an arrangement relating to the use of a dwelling-house, or of a dwelling-house together with goods, to be a lease of that dwelling-house or of that dwelling-house together with those goods, notwithstanding that the arrangement may be made otherwise than in the form of a lease, if the Arbitrator is of the opinion that it should, having regard to the substance of the arrangement, be regarded as a lease for the purpose of giving effect to the objects of this Act.

**3** For the purposes of this Act, each police magistrate shall, by virtue of his office, be a Fair Rents Arbitrator. Fair Rents Arbitrators.

**4** Nothing in this Act applies to or in relation to any dwelling-house the contract for the letting of which is made in writing or by deed (being a writing or deed that is signed or executed after the commencement of this Act). Application of Act.

**5—(1)** Subject to subsection (3) of this section, the lessee of a dwelling-house, or of a dwelling-house leased together with goods, may, if he considers the rent thereof to be excessive, apply to the Arbitrator to have the fair rent of the dwelling-house, or of the dwelling-house together with the goods, determined by the Arbitrator. Application for determination and consideration thereof.  
3 & 4 Geo. VI  
No. 39, s. 6.  
Qld., s. 5.  
W.A., s. 13  
(3).

(2) An application under subsection (1) of this section may be made only by a person who is, and on the prescribed date was, the lessee of the dwelling-house to which the application relates.

(3) The Arbitrator shall not consider an application by a lessee under this section unless he is satisfied that the lessee has paid or tendered all rent due and payable under the lease up to a day not earlier than seven days before the date of the application.

(4) Upon receipt of an application under this section, the Arbitrator shall fix a time and place for the hearing of the application and shall cause notice of the making of the application and of the time and place so fixed to be given to the applicant and to all other persons who are parties to a lease of the dwelling-house, and each of those persons is entitled to be a party to the application.

(5) On the hearing of an application under this section, the Arbitrator—

- (a) shall make a thorough examination without regard to legal forms or solemnities; and
- (b) is not bound by formal rules of evidence, but may inform his mind in such manner as he thinks fit.

(6) In determining the fair rent of a dwelling-house, or of a dwelling-house together with goods, the Arbitrator shall have regard to the level of rents that might reasonably be demanded in respect of comparable premises.

(7) Where a dwelling-house is occupied by two or more lessees, the Arbitrator shall determine the fair rent of the whole and then determine the proportion thereof that he deems to be the fair rent of the portion of the dwelling-house of the lessee by whom the application was made.

(8) Where a dwelling-house is leased together with goods, the Arbitrator shall determine the fair rent of the dwelling-house irrespective of the goods, and shall also determine the amount of rent to be paid in respect of the goods.

(9) For the purposes of this section, the Arbitrator has, and may exercise, the powers and authority conferred by Division II of Part II of the *Evidence Act 1910* on persons holding inquiries on commission.

Operation  
and duration  
of determina-  
tion.

3 & 4 Geo. VI  
No. 39, ss. 7,  
8.

**6**—(1) The rent determined by the Arbitrator under section five shall be deemed to be the fair rent of the dwelling-house or, as the case may be, the dwelling-house together with goods, as from such date, not being earlier than the date of the application, as the Arbitrator may, subject to subsection (2) of this section, determine.

(2) Where the fair rent of a dwelling-house, as determined by the Arbitrator, exceeds the rent payable under the lease of the dwelling-house, the fair rent thereof, as so determined, is, as from the first day on which the lessor is lawfully entitled to determine the tenancy or recover possession of the dwelling-house (not being earlier than fourteen days after the date of the determination) payable by the lessee to the lessor as if it were expressly reserved by the lease, and, without prejudice to any other method of recovery, is recoverable by the lessor from the lessee accordingly by action in a court of competent jurisdiction.

(3) A determination remains in force for such period, being not less than three months or more than twelve months, as may be specified therein, but may, on the application of the lessor, be varied in accordance with section seven.

(4) A determination, while it is in force, applies to a subsisting lease of a dwelling-house, or of a dwelling-house together with goods, notwithstanding any change of ownership or tenancy.

Effect of  
determina-  
tion.

*Ibid.*, ss. 9, 10.

**7**—(1) During the period for which a determination is in force—

(a) no application for the variation of the determination shall be made to, or considered by, the Arbitrator except on the ground that—

(i) by an error or omission an injustice has been occasioned by the determination;

- (ii) increased outgoings or losses have been, or will be, incurred by the lessor by reason of the use made by the lessee of the dwelling-house, or dwelling-house together with goods, since the date of the determination; or
- (iii) substantial alterations of, or additions to, the dwelling-house, or the goods leased therewith, or the services supplied or provided by the lessor, as the case may be, have been made since the determination was made;
- (b) the rent payable by the lessee shall not exceed the fair rent, notwithstanding any term, covenant, condition, or provision of, or relating to, any lease in force at the time of the application or at any time thereafter during that period; and
- (c) no person shall—
  - (i) lease to another person the dwelling-house, or the dwelling-house together with goods, at a rent; or
  - (ii) knowingly receive, under a lease of the dwelling-house, or of the dwelling-house together with goods, a sum as rent,

in excess of the fair rent.

(2) The legal remedies for the enforcement of a covenant or agreement—

- (a) to pay rent for a dwelling-house, or for a dwelling-house together with goods, exceeding the fair rent thereof; or
- (b) that, directly or indirectly, would secure to a person the payment of rent or of money in respect of the occupation of a dwelling-house, or of the occupation of a dwelling-house and the use of goods leased therewith, so that the amount received by that person would exceed the fair rent thereof,

are limited to the enforcement of payment of the fair rent thereof.

(3) A sum paid as rent—

- (a) for or in respect of the occupation of a dwelling-house; or
- (b) for or in respect of the occupation of a dwelling-house and the use of goods leased therewith,

exceeding the fair rent thereof, is, to the extent of the excess, recoverable by the lessee from the lessor to whom it was paid by action in a court of competent jurisdiction.

Powers of  
entry and  
inspection.

No. 21 of 1949,  
s. 82.

**8** The Arbitrator or a person who is authorized in writing by the Arbitrator in that behalf may, at any reasonable time, enter on and inspect a dwelling-house that is the subject of an application for a determination of fair rent under this Act.

Service of  
notices, &c.

No. 21 of 1949,  
ss. 83, 84.

**9**—(1) A notice or other document that is required or permitted by or under this Act to be given to, or served upon, a person, may be given to or served upon that person—

(a) by delivering the notice or other document to him personally; or

(b) by forwarding it by post in a prepaid letter addressed to him at his usual or last-known place of abode or business or at any address notified to the Arbitrator as the address at which notices may be given to or served upon him.

(2) A notice or other document that is required or permitted by or under this Act to be given to, or served upon, the Arbitrator may be given or served by leaving it at the office of the Arbitrator with some person apparently employed thereat, or by sending it by post in a prepaid letter addressed to the Arbitrator.

(3) Where a notice or other document is required or permitted by or under this Act to be given to, or served upon, a person whose address is unknown, it may be given to or served upon him by publishing it in the *Gazette* and in a daily newspaper circulating in the district in which the dwelling-house concerned is situated.

(4) A notice or other document that is required by or under this Act to be given to, or served upon, a lessor or lessee is, if the notice or document has once been duly given to, or served upon, that lessor or lessee, binding upon all persons claiming by, from, or under that lessor or lessee and upon all subsequent lessors and lessees, to the same extent as if it had been given to or served upon the persons so claiming or the subsequent lessors or lessees respectively.

(5) A notice or other document that is required or permitted by or under this Act to be given to, or served upon, a lessor under the lease of a dwelling-house shall be deemed to have been duly given or served if it is given to, or served upon, the person to whom the rent payable under the lease is customarily paid.

(6) A notice or other document that is required or permitted by or under this Act to be given to, or served upon, a lessee under the lease of a dwelling-house shall be deemed to have been duly given or served if it is given to, or served upon, the person by whom the rent payable under the lease is customarily paid.

(7) If two or more persons are lessors or lessees under a lease of a dwelling-house, it is a sufficient compliance with a provision of this Act requiring or permitting a notice or other document to be given to, or served upon, the lessors or lessees, if the notice is given to, or served upon, any one of the lessors or lessees.

**10** The Arbitrator shall, on application, furnish to a person information as to the fair rent of a dwelling-house (being the fair rent thereof as determined by the Arbitrator).

Information as to fair rent.  
3 & 4 Geo. VI No. 39, s. 16 (1).  
Q'd., s. 18.  
Arbitrator's decisions final.  
3 & 4 Geo. VI No. 39, s. 15 (1).  
Q'd., s. 6.

**11** A determination is final, and is not subject to appeal or open to be challenged, quashed, reviewed, or called in question before any court or in any legal proceedings, or restrained, removed, or otherwise affected by prohibition, certiorari, mandamus, or otherwise.

**12** A party to an application for a determination may, with the approval of the Arbitrator, be represented by a barrister, solicitor, or agent who may examine witnesses and address the Arbitrator on the party's behalf.

Representation of parties.  
3 & 4 Geo. VI No. 39, s. 15 (3).  
Q'd., s. 5 (7).

**13** No costs shall be allowed in proceedings before the Arbitrator on an application for a determination.

Costs.  
3 & 4 Geo. VI No. 39, s. 15 (2).  
Q'd., s. 7.

**14—(1)** No person shall—

- (a) by any threat, endeavour to dissuade a lessee from making or proceeding with an application for a determination;
- (b) being the owner of a dwelling-house or the agent of the owner of a dwelling-house, refuse, or procure any other person to refuse, to lease the dwelling-house to a person who desires to lease it, unless the reason for the refusal is other than the fact that the last-mentioned person has made an application for a determination (whether in respect of that dwelling-house or any other dwelling-house);
- (c) do, or procure to be done, any act or thing for the purpose of imposing a detriment or disadvantage on a lessee because the lessee has made an application for a determination; or
- (d) contravene or fail to comply with any provision of this Act that is applicable to him.

Offences and penalty.  
3 & 4 Geo. VI No. 39, ss. 13, 14, 17.  
Q'd., ss. 13, 16, 19.

Penalty: One hundred pounds or imprisonment for six months.

(2) In proceedings in respect of an offence against paragraph (b) or paragraph (c) of subsection (1) of this section, the onus of proving that the reason to refuse to lease a dwelling-house to a particular person, or, as the case may be, that the reason for doing any act imposing a detriment or disadvantage on a lessee, was not the fact that that person or lessee had made an application for a determination lies on the defendant.

(3) Where a person who is convicted of an offence against this Act is a body corporate, every person who, at the time of the commission of the offence, was a director or officer of the body corporate shall be deemed to have committed the like

offence, and is liable accordingly to the pecuniary penalty or imprisonment prescribed by subsection (1) of this section, unless he proves that the offence was committed without his knowledge, or that he used all due diligence to prevent the commission of the offence.

Orders for  
recovery of  
possession or  
for ejectment.

**15**—(1) Notwithstanding any other law or rule of law to the contrary, during the continuance of this Act—

- (a) except with the approval in writing of the Arbitrator, where a lessee makes an application for a determination under this Act, the lessor of the dwelling-house shall not (whether that application has been finally determined or not) give any notice to terminate that lessee's tenancy of the dwelling-house to which the application relates, or take or continue any proceedings for the recovery of possession of that dwelling-house from that lessee or for the ejectment of that lessee therefrom;
- (b) where proceedings are brought in any court for the recovery of possession of, or for the ejectment of a lessee from, a dwelling-house, the court may, on the application of a lessee who is a party to the proceedings, postpone the date for recovery of possession or for ejectment specified in any order or judgment made or given in those proceedings, or the date for the execution of any warrant of execution or writ of possession, for such period, not exceeding six months after the date of the order or judgment, as the court may think just, having due regard to any hardship that would or might be caused to any party to the proceedings by the granting or refusing of the application; and
- (c) section sixty-nine of the *Landlord and Tenant Act* 1935 has effect (but only in relation to the recovery of possession of dwelling-houses) as if from subsection (1) thereof the words "twenty-eight days" were omitted and the words "six months" were substituted therefor.

(2) Notwithstanding any other law or rule of law to the contrary, a notice to quit given in contravention of paragraph (b) of subsection (1) of this section does not operate so as to terminate the tenancy in respect of which the notice is given.

(3) In this section, "court" includes the Supreme Court.

**16** The Governor may make regulations under this Act, Regulations. and in particular for regulating the making and hearing of applications for determinations and for the variation of determinations, and generally regulating the procedure of the Arbitrator on the hearing of applications therefor.

**17** This Act shall expire on the thirty-first day of December Expiry of Act. 1957.

---

## INDUSTRIAL DEVELOPMENT.

---

No. 39 of 1956.

AN ACT to amend the *Industrial Development Act* 1954. [29 November 1956.]

**B**E it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:—

**1**—(1) This Act may be cited as the *Industrial Development Act* 1956. Short title and citation.

(2) The *Industrial Development Act* 1954 is in this Act referred to as the Principal Act.

**2** Section eighteen of the Principal Act is amended by omitting therefrom the numerals “1956” and substituting therefor the numerals “1959”. Expiry of Act.

---