

TASMANIA.

 INCREASE OF RENT (WAR RESTRICTIONS) ACT
 1939.

ANALYSIS.

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1939.

ANNO TERTIO ET QUARTO

GEORGII VI. REGIS.

No. 39.



AN ACT to continue the restriction of the increase of rent authorised by the National Security (Fair Rents) Regulations made by the Governor-General under the *National Security Act 1939* of the Commonwealth; to restrict, in connection with the present War, the increase of the rent of dwelling-houses and shops; and to authorise the constitution of Fair Rents Boards for the purpose of determining the fair rents of dwelling-houses and shops.

[21 December, 1939.]

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WHEREAS, by the National Security (Fair Rents) Regulations made by the Governor-General under the *National Security Act 1939* of the Commonwealth (in this Act referred to as "the said regulations"), it is provided that

Preamble.

Increase of Rent (War Restrictions).

A.D. 1939. the Governor of a State may, by proclamation, declare that the rent payable by the lessee of any dwelling-house or shop in that State shall not, during the period commencing on the date of the commencement of those regulations and ending on the thirty-first day of December, one thousand nine hundred and thirty-nine, except as provided by the regulations, exceed the rent payable in respect of that dwelling-house or shop as at the thirty-first day of August, one thousand nine hundred and thirty-nine:

And whereas the Governor, by proclamation made in pursuance of the said regulations, dated the fifth day of October, one thousand nine hundred and thirty-nine, and published in the *Gazette* on the eleventh day of October, one thousand nine hundred and thirty-nine, declared that the rent payable by the lessee of any dwelling-house or shop should not, during the period aforesaid, exceed the rent payable in respect of that dwelling-house or shop as at the thirty-first day of August, one thousand nine hundred and thirty-nine:

And whereas it is desirable to continue the restriction of the increase of rent so authorised by the said regulations after the thirty-first day of December, one thousand nine hundred and thirty-nine, and during the present war and for a period of six months thereafter:

And whereas by the said regulations the Governor of a State is empowered to constitute fair rents boards with power to hear applications and to determine the fair rent of dwelling-houses and shops:

And whereas the Governor, in pursuance of the said regulations, on the twelfth day of October, one thousand nine hundred and thirty-nine, constituted fair rents boards at Hobart, Launceston, and Devonport:

And whereas it is desirable to make provision for the constitution of fair rents boards for the purposes of this Act:

Be it therefore 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:—

PART I.

PRELIMINARY.

Short title.

1 This Act may be cited as the *Increase of Rent (War Restrictions) Act 1939*.

Commencement and duration of Act.

2—(1) This Act, other than the provisions of Part III., shall come into operation on the first day of January, one thousand nine hundred and forty.

(2) Part III. shall come into operation on a date to be fixed by proclamation: Provided that no such proclamation shall be issued during the continuance of the operation of the said regulations.

(3) This Act shall continue in operation during the present war and for a period of six months thereafter, and no longer.

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- 3**—(1) In this Act, unless the contrary intention appears—
- “Application” means an application to a fair rents board under this Act:
- “Board” means a fair rents board constituted under this Act:
- “Determination” means the determination of the fair rent of any dwelling-house or shop made in pursuance of the said regulations or of this Act:
- “Dwelling-house” means any premises leased wholly or in part for the purposes of residence by a lessee, and includes—
- I. Any part of any such premises separately leased:
 - II. Any land or appurtenances leased with any such premises or part thereof:
 - III. The premises of any lodging-house or boarding-house: and
 - IV. Any premises, part of which is used for the purposes of residence and part as a shop—
- but does not include—
- (a) Any premises licensed for the sale of liquor under the *Licensing Act 1932*:
 - (b) Any premises ordinarily leased for holiday purposes: or
 - (c) The premises of any grazing area, farm, orchard, market garden, or dairy farm:
- “Lease” includes every contract for the letting of a dwelling-house or shop, whether the contract is made orally, in writing, or by deed:
- “Lessor” and “lessee” mean the parties to a lease, and include a sub-lessor and sub-lessee respectively; and “lessor” includes the agent of a lessor:
- “Rates” includes any rates or charges made or levied by any municipal or city council or any water authority:
- “Rent” means the actual rent payable under a lease, and includes—
- I. The value to the lessor of any covenants, conditions, or other provisions of, or relating to, the lease to be performed by the lessee other than covenants, conditions, and provisions usually entered into by a lessee: and
 - II. Any rates or taxes payable by a lessee in respect of a dwelling-house or shop other than excess water rates—
- and where, in any lease—
- (a) It is provided that a reduced amount as rent shall be accepted by the lessor upon

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Interpretation.

Cf. Comm. S.R. 1939, No. 104; N.S.W., No. 66, 1915; Q., 10 Geo. V. No. 31; Vict., No. 4626.

23 Geo. V. No. 55.

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any 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 such reduction is made shall be deemed to be the rent payable under the lease:

“Shop” means any premises leased wholly or in part for the purposes of a shop, and includes—

- I. Any part of any such premises separately leased:
- II. Any land or appurtenances leased with any such premises or part thereof:

“Tax” includes any tax, whether on land or on income derived from land, imposed by any Act or Commonwealth Act:

“The present war” means the war between His Majesty and Germany, which commenced on the third day of September, one thousand nine hundred and thirty-nine.

- (2) This Act shall bind the Crown.

PART II.

RESTRICTION OF INCREASE OF RENT.

Continuation
of restriction
of increase
of rent.

4—(1) Subject to this Act and to any determination, the rent payable by the lessee of any dwelling-house or shop in this State shall not, after the commencement of this Act, exceed the rent payable in respect thereof as at the thirty-first day of August, one thousand nine hundred and thirty-nine.

(2) The rent so payable as at that date, subject to any determination, shall be deemed to be the rent payable under the lease, notwithstanding any term or condition contained therein.

(3) Except in accordance with a determination, no person shall let a dwelling-house or shop at a rent exceeding the rent payable in respect thereof as at the date aforesaid, or knowingly receive any sum as rent exceeding the rent so payable.

(4) So long as the lessee of a dwelling-house or shop, in respect of which no determination has been made, duly pays the rent of the dwelling-house or shop as at the date aforesaid and otherwise performs the terms and conditions of the lease,

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no lessor shall give any notice or take any proceeding to terminate the tenancy except in the cases specified in paragraphs II. to VIII. of subsection (3) of section eleven.

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(5) Any notice or proceeding in contravention of the provisions of subsection (4) hereof shall be of no force or effect.

(6) Any sum paid as rent for, or in respect of the occupation of, a dwelling-house or shop in respect of which no determination has been made, in excess of the rent payable at the date aforesaid in respect thereof, shall be recoverable in an action of debt in any competent court by the lessee from the lessor to whom it was paid, or may be deducted by the lessee from any rent subsequently payable to the lessor under the lease.

(7) In the case of a dwelling-house or shop which was not let on the thirty-first day of August, one thousand nine hundred and thirty-nine, or was first let after that date—

- I. The rent at which the dwelling-house or shop was last let before that date: or
- II. The rent at which it was first let—

as the case may be, shall be deemed, for the purposes of this section, to be the rent payable in respect of the dwelling-house or shop as at the thirty-first day of August, one thousand nine hundred and thirty-nine.

PART III.

FAIR RENTS BOARDS.

5—(1) The Governor, for the purposes of this Act, may constitute fair rents boards at such places as he thinks fit.

Fair Rents Boards.

C. 5.
N.S.W. 4.
Q. 4.

(2) Each board shall consist of a police magistrate and, if the Governor thinks fit, two other persons.

(3) The member or members of a board shall be appointed by the Governor, and shall hold office during his pleasure.

(4) Where a board consists of three persons—

- I. The magistrate shall be the chairman of the board: and
- II. The powers and functions of the board may be exercised notwithstanding any vacancy in the membership of the board.

Application for determination and consideration thereof.

C. 6.
Q. 5.
Vic. 4.
N.S.W. 6.

6—(1) The lessor of a dwelling-house or shop, or the lessee of a dwelling-house or shop who has paid or tendered all rent due and payable under the lease, may apply to the board nearest to the place in which the dwelling-house or shop is situated to have the fair rent of the dwelling-house or shop determined by the board.

(2) The board shall hear the application and determine the fair rent of the dwelling-house or shop.

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A.D. 1939. (3) The applicant shall give notice of the application to the lessee or lessor, as the case may be, and the lessee or lessor shall be entitled to be a party to the application.

C. 6 (4). (4) On the hearing of the application, the board shall make a thorough investigation without regard to legal forms or solemnities, and shall not be bound by any rules of evidence, but may inform its mind in such manner as it thinks fit.

1 Geo. V.
No. 20. (5) The provisions of Division II. of Part II. of the *Evidence Act* 1910 shall apply in the case of any board as if the Governor had issued a commission to the board to make an inquiry, and those provisions, so far as they are applicable and except as provided by the regulations, shall be deemed to be incorporated with this Act.

Application
of deter-
mination.

C. 7.
Vic. 4 (8).
Q. 5 (9).

7—(1) The rent determined by the board shall be the fair rent of the dwelling-house or shop as from a date to be fixed by the board, not being earlier than the date of the application, or, if the board determines the rent at an amount exceeding the rent payable under the lease at the date of the application, not earlier than the expiration of fourteen days after the date of the determination.

Q. 9.
N.S.W. 10.

(2) When a dwelling-house or shop is occupied by two or more lessees, the board shall determine the fair rent of the whole, and then determine the proportion thereof which it deems to be the fair rent of the portion of the dwelling-house or shop of the lessee making the application, or, in the case of an application by the lessor, of the portions of the dwelling-house or shop separately occupied.

Q. 10.
V. 6 (2).
N.S.W. 12.

(3) In the case of the lease of a furnished dwelling-house, the board shall determine the fair rent of the dwelling-house irrespective of the furniture, and shall also determine the amount of rent to be paid in respect of the furniture.

Duration of
determina-
tion.

C. 8.
N.S.W. 13.
Vic. 7.
Q. 11.

8—(1) A determination shall remain in force for such period, not less than three months nor more than one year, as is specified in the determination, but may be varied in accordance with this Part.

(2) A determination, while it is in force, shall apply to any subsisting lease of the dwelling-house or shop (or portion thereof to which the determination relates), and to the lessor and lessee thereof, notwithstanding any change of ownership or tenancy.

Effect of
determina-
tion.

C. 9.
Q. 11 (2).
N.S.W. 13.
Vic. 7 (3).

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

- I. No application shall be made to vary the determination or to determine the fair rent of the dwelling-house or shop (or portion thereof to which the determination relates), except by the lessor where the board is satisfied that substantial alterations or additions have been made to the premises since the determination, or that the outgoing of the lessor in respect of the premises have been increased:

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- II. The rent payable by the lessee shall not exceed the rent determined by the board, notwithstanding any term or condition in any lease in force at the time of the application or at any time thereafter during that period: and
- III. No person shall let the dwelling-house or shop at a rent exceeding the rent determined by the board, or knowingly receive any sum as rent exceeding the rent so determined.

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(2) The legal remedies for enforcing any covenant or agreement—

Vic. 7 (4).
N.S.W. 15,
16.

- I. To pay rent for a dwelling-house or shop in excess of that fixed in respect thereof by a determination: or
- II. Which, directly or indirectly, would secure to any person the payment of rent, or of money in respect of the occupation of a dwelling-house or shop, so that the amount received by such person would exceed the rent fixed by the determination in respect of the dwelling-house or shop—

shall be limited to enforcing payment of the rent so fixed.

10 Any sum paid as rent for, or in respect of the occupation of, a dwelling-house or shop in excess of the rent fixed by a determination in respect of that dwelling-house or shop shall be recoverable in an action for debt in any competent court by the lessee from the lessor to whom it was paid, or may be deducted by the lessee from any rent subsequently payable to the lessor under the lease.

Overpay-
ments may
be recov-
ered.C. 10.
N.S.W. 14.
Q. 11

11—(1) So long as any applicant for a determination, being a lessee, duly pays the rent of the dwelling-house or shop in respect of which the application is made and otherwise performs the terms and conditions of the lease, the lessor shall not, without the consent of the board, demand any increased rent or give any notice or take any proceeding to terminate the tenancy while the application is pending, or during the period for which the determination of a fair rent in respect of the dwelling-house or shop is in force.

Rent not to
be increased
pending
application
and while
determination
in force.C. 11.
Q. 12, 13.
N.S.W. 11.
Vic. 8.

(2) Any demand, notice, or proceeding made, given, or taken in contravention of the provisions of subsection (1) hereof shall be of no force or effect.

(3) It shall not be deemed to be a contravention of the provisions of subsection (1) hereof if the lessor takes proceedings to obtain possession of the dwelling-house or shop or does anything in furtherance of that object in any case where—

- I. The lessee has failed to pay the rent at the rate determined by the board or to perform any other terms or conditions of the lease:
- II. The lessee has failed to take reasonable care of the premises or has committed waste:

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- III. The lessee has been guilty of conduct which is a nuisance or annoyance to adjoining or neighbouring occupiers:
- IV. The premises are used for any immoral purpose:
- V. The premises are required in good faith by the lessor for his own occupation as a dwelling-house or shop and the lessor gives at least twenty-eight days' notice to the lessee requiring him to quit the dwelling-house or shop:
- VI. The lessor has, upon sale of the dwelling-house or shop, agreed to give vacant possession thereof to the purchaser and gives at least twenty-eight days' notice to the lessee requiring him to quit the dwelling-house or shop:
- VII. The lessee, by sub-letting the dwelling-house or shop or any part thereof, is making a profit.

Contracting out prohibited.

C. 12.
Vic. 10.
Q. 15.
N.S.W. 21.

12 Any covenant or agreement by which any person purports to limit his right to proceed under this Act for the determination of the fair rent of a dwelling-house or shop or to limit or affect any other rights to which he would be entitled under this Act shall be void.

Threats and boycotts prohibited.

C. 13.
Vic. 11.
Q. 16.
N.S.W. 17.

13—(1) No person shall, by any threat, endeavour to dissuade or prevent a lessee from making or prosecuting any application under this Act.

(2) No owner of a dwelling-house or shop, and no agent of such owner, shall refuse, or procure any person to refuse, to lease the dwelling-house or shop to any other person who desires to lease the same unless the reason for that refusal (proof whereof shall lie upon the owner or agent) was other than the fact that that other person had made an application to a board under this Act.

(3) No person shall do, or procure to be done, any act or thing for the purpose of imposing any detriment or disadvantage upon a lessee because the lessee has made an application under this Act.

Bonus, &c., unlawful.

Vic. 9.
Q. 13.
N.S.W. 17A.

14—(1) No person shall give or receive, or offer, promise, or agree to give or receive, any bonus or premium or any sum of money other than rent in consideration of the grant or acceptance of any lease of a dwelling-house.

(2) Every agreement, whether oral or in writing, which in any way contravenes the provisions of subsection (1) hereof shall to that extent be null and void.

Board's decisions to be final; costs: representation of parties.

C. 14.
Vic. 4 (9).
N.S.W. 18.
Q. 6.
C. 16.
Q. 7.
Vic. 4 (10).
N.S.W. 20.
C. 17.
N.S.W. 8A.

15—(1) Every determination of a board shall be final and without appeal, and no writ of prohibition or *certiorari* shall lie in respect thereof.

(2) No costs shall be allowed in any proceedings under this Part before a board.

(3) Any party to an application may, with the approval of the board, be represented by counsel, solicitor, or agent, who may examine witnesses and address the board on the party's behalf.

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16—(1) A board shall, on application, furnish to any person information as to the fair rent of any dwelling-house or shop determined by the board.

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Information
as to fair
rent; varia-
tion of
determina-
tion.

(2) An application for the variation of a determination shall be made in the same manner as an application to the board for a determination.

17 No person shall contravene or fail to comply with any of the provisions of this Act.

Penalty.

Penalty: One hundred pounds.

18 The Governor may make regulations for the purposes of this Act and, in particular, for prescribing the procedure of boards.

Regulations.

