

## INCREASE OF RENT (WAR RESTRICTIONS).

3° and 4° GEO. VI., No. XLV.

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No. 45 of 1939.

**AN ACT** to restrict the increase of rent during  
wartime and for other relative purposes.

[*Assented to 20th December, 1939.*]

**BE** it enacted by the King's Most Excellent Majesty,  
by and with the advice and consent of the Legis-  
lative Council and Legislative Assembly of Western  
Australia, in this present Parliament assembled, and by  
the authority of the same, as follows:—

- Short title.      1. This Act may be cited as the *Increase of Rent  
(War Restrictions) Act, 1939.*
- Definitions.     2. In this Act, subject to the context—
- Court.            “Court” means a local court exercising jurisdiction  
                          under this Act and presided over by a resident  
                          or police magistrate.
- Land.             “Land” includes any land, messuages, and premises  
                          of any description, or any part thereof.
- Lease.            “Lease” means any lease, letting, or agreement,  
                          whether in writing or verbal, under which land  
                          is held by a lessee of a lessor for any term or  
                          period whatever.

- “Lessee” includes any sublessee or tenant. Lessee.
- “Lessor” includes any owner, sublessor, or landlord. Lessor.
- “Standard rent” means the rent at which the land was let on the thirty-first day of August, one thousand nine hundred and thirty-nine, or, where the land was not let on that date, the rent at which it was let before that date, and shall include any bonus, fine, premium, or other like sum paid or to be paid under the terms of the lease. In the case of a lease of any premises ordinarily leased for holiday purposes, the standard rent for any holiday season shall be the rent received for the said premises for any like holiday season during the twelve months preceding the thirty-first day of August, one thousand nine hundred and thirty-nine. Standard rent.
- “Rates” means any rates imposed under the Municipal Corporations Act, 1906-1938; the Road Districts Act, 1919-1938; the Health Act, 1911-1937; the Water Boards Act, 1904-1937; also all other water, sanitary, and stormwater drainage rates (excluding payments for excess water). Rates.

3. This Act shall be read and construed subject to the Commonwealth of Australia Constitution Act and to the Commonwealth National Security (Fair Rents) Regulations made under the National Security Act, 1939, so as not to exceed the legislative power of the State to the intent that where any provision of this Act would, but for this section, be in excess of that power, it shall nevertheless be a valid enactment to the extent to which it is not in excess of that power. Construction of Act.

4. (1) This Act shall apply and have effect to, and in respect of, all leases current or in operation at the said thirty-first day of August, one thousand nine hundred and thirty-nine, and all renewals, extensions, or transfers thereof, and also to any lease thereafter granted or entered into during the continuance of this Act. Application of Act.

(2) Any contract or agreement made or entered into by any lessee shall, in so far as it purports to annul or vary any of the provisions of this Act, or to deprive the lessee of the benefit thereof, be null and void, without

prejudice, however, to any provisions of the contract or agreement which are distinct and severable from the provisions hereby annulled.

Restriction  
on raising  
rent.

5. (1) Subject as hereinafter provided, no rent shall be charged in excess of the standard rent. Provided that—

- (i) where the landlord has since the said thirty-first day of August, one thousand nine hundred and thirty-nine, or partly before and partly since such date, incurred, or during the continuance of this Act incurs, expenditure on structural alterations an increase of rent over the rent which was payable prior to such alterations being effected at a rate which will give a net return to the landlord of a sum equal to six pounds per centum per annum;
- (ii) any transfer to a tenant of any burden or liability previously borne by the landlord shall for the purposes of this Act be treated as an alteration of the rent, and where, as the result of such a transfer, the terms on which any land is held are on the whole less favourable to the tenant than the previous terms, the rent shall be deemed to be increased, whether or not the sum periodically payable by way of rent is increased, and any increase of rent in respect of any transfer to a landlord of any burden or liability previously borne by the tenant where as the result of such transfer the terms on which any land is held are on the whole not less favourable to the tenant than the previous terms shall be deemed not to be an increase of rent for the purposes of this Act, and if any question arises under this proviso, the question shall be determined by a local court (under and by virtue of the jurisdiction conferred upon local courts by the provisions of this Act with respect to fair rents) whose decision shall be final and binding;
- (iii) where the rates are payable by the lessor the standard rent shall be increased by the amount of any increase of rates since the thirty-first day of August, one thousand nine hundred and thirty-nine;

(iv) no increase of the rent or standard rent shall take effect in the case of a lease until the expiry of two weeks after the lessor has served notice in writing on the lessee.

(2) (a) Save as hereinafter provided a lessor shall not, in consideration of the grant, renewal, or continuance of a tenancy of any land to which this Act applies, require and receive any bonus, fine, premium, or other like sum in addition to the payment of standard rent: Provided that, where the moneys payable as rent do not amount to the standard rent, the lessor shall be entitled to require and receive any such payment as aforesaid, so long as the amount thereof would not have the effect of increasing the standard rent.

(b) Where any such payment has been wrongfully required and received after the thirty-first day of August, one thousand nine hundred and thirty-nine, then the amount shall be recoverable by the lessee by whom it was made from the lessor who received the payment, and may, without prejudice to any other method of recovery, be deducted from any rent payable by such lessee to such lessor.

(c) This subsection (2) shall not apply to any payment under a lease or agreement entered into before the date aforesaid.

6. (1) (a) In the case of—

- (i) land which is first leased after the said thirty-first day of August, one thousand nine hundred and thirty-nine, and in respect of which either the lessor or the lessee shall within three months from the date of the first lease thereof make an application for the determination of a fair rent;
- (ii) a lease of the premises of any shop, dwelling-house, lodging-house or boarding establishment situated at any recognised holiday resort;
- (iii) a lease of any farm, grazing area, orchard, market garden or dairy farm which prior to the said thirty-first day of August, one thousand nine hundred and thirty-nine, was leased at a nominal or caretaking rent;

Fair rent for  
land first  
leased after  
31st August,  
1939.

- (iv) the existence of special circumstances which in the opinion of the court make it just and reasonable that the rent shall be in excess of or less than the standard rent,

the rent to be charged and payable under a lease of such land or premises shall be a fair rent, to be determined as hereinafter provided.

(b) (i) Where any premises are first leased after the thirty-first day of August, one thousand nine hundred and thirty-nine, no bonus, fine, premium or other like sum in addition to the rent shall be charged unless upon application to the court as hereinafter provided an order is made determining the amount, if any, which may be charged as a bonus, fine, premium or other like charge.

(ii) For the purpose of this paragraph "bonus, fine, premium or other like charge" shall be deemed to be "fair rent" within the meaning of this Act, and the whole of the provisions of this Act with respect to fair rent shall, *mutatis mutandis*, apply to applications for the right to charge a bonus, fine, premium or other like charge.

Applications  
to determine  
rent.

(2) (a) An application to have the fair rent of such land determined may be made to the court held nearest to the situation of such land by—

- (i) any lessor thereof; or  
(ii) any lessee thereof.

(b) The application shall be made to the clerk and shall be in the form prescribed.

(c) The court shall hear the application and determine the fair rent.

(d) If the land is subject to any mortgage, the mortgagee shall be entitled to notice of the application and to be a party to the proceedings.

Evidence.

(e) Upon such hearing the court may receive as evidence statutory declarations made as prescribed; but the court may, if it thinks fit, require the attendance of any declarant for purposes of cross-examination on the contents of his declaration, and, failing such attendance, the declaration shall not be receivable as evidence.

Representa-  
tion.

(f) In any proceedings before any court any party may be represented by his agent duly appointed in writing in that behalf, or by counsel or solicitor.

(g) In all cases the rent determined by the court shall be the rent of the land as from a date to be fixed by the court as the date on which the determination is to come into force, not being earlier than the date of such application.

7. The court shall have jurisdiction to inquire and decide whether the subject-matter of any application made to the court is within its jurisdiction, and whether the application is one which the court has authority to deal with under this Act.

Court may decide whether subject-matter of application is within its jurisdiction.

8. (1) Where the value of the land exceeds two thousand pounds, any party to an application to the court under section five of this Act may within the prescribed time appeal to a Judge of the Supreme Court against any determination of a fair rent made by such court.

Appeal to Judge of Supreme Court.

(2) On the hearing of the appeal the Judge may confirm or vary the determination appealed from.

(3) The decision of the Judge shall be final.

(4) Rules of the court may be made for regulating the practice and procedure to be observed in proceedings under this section.

9. No costs shall be allowed in any proceedings under this Act unless in the opinion of the court or judge the grounds of the application or the opposition to such application are unreasonable.

No costs.

10. In determining the fair rent the court shall take into consideration the rent which is being paid for any land of the same or similar type in the vicinity. The court may also take into consideration, where there is any building or premises leased with the said land, which said building or premises has been completely or partly built after the said thirty-first day of August, one thousand nine hundred and thirty-nine, the increased cost of such building or premises directly or indirectly due to the present war.

Basis of determination of fair rent.

11. Where the land is to be occupied by two or more separate lessees, the court shall determine the fair rent of the whole, and then determine the proportion of such

Lessee of part of land.

fair rent which it deems to be the fair rent of the portion of the land of the intending lessee making the application, or (if the intending lessor makes the application) of the several portions of the land so separately occupied.

No order for recovery of possession if agreed or fair rent paid.

12. No order for the recovery of possession of land to which this Act applies, or for the ejectment of a tenant therefrom, shall be made so long as the tenant continues to pay the standard rent, or the fair rent as determined under this Act, and performs the other conditions of the tenancy, except on the ground that the tenant has committed waste, or has been guilty of conduct which is a nuisance or an annoyance to adjoining or neighbouring occupiers, or that the premises have been sold by a mortgagee under the power of sale contained in the mortgage, or that the premises are reasonably required by the landlord for the occupation of himself or some other person in his employ, or in the employ of some tenant from him, or on some other ground which may be deemed satisfactory by the court making such order, and where such order has been made but not executed before the passing of this Act, the court by which the order was made may, if it is of opinion that the order would not have been made if this Act had been in operation at the date of the making of the order, rescind or vary the order in such manner as the court may think fit for the purpose of giving effect to this Act.

Regulations.

13. The Governor may make such regulations as he may deem necessary, in order to provide for the effective operation of this Act and for facilitating the achievement of the objects thereof and may, by such regulations, prescribe forms for use under this Act, and authorise such fees as he may deem to be reasonable to be charged by the Government of the State in connection with applications under this Act.

Act not to apply to leases granted by the Crown.

14. This Act shall not apply in relation to any lease granted by the Crown or by any Crown instrumentality.

Duration of Act.

15. This Act shall continue in force during the continuance of the war in which His Majesty is at the commencement of this Act engaged and for a period of six

months thereafter and no longer; but the expiration of this Act shall not render recoverable any rent which during the continuance thereof was irrecoverable, or affect the right of a tenant to recover any sum which, during the continuance thereof, was under this Act recoverable by him.

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