

6 GEO. VI. No. 22, 1942. *Leases (War Damage) Act.*

An Act to make Special Provision in regard to Lessors and Lessees in the event of War Damage, and for other purposes.

6 GEO. VI.
No. 22.
THE
LEASES (WAR
DAMAGE)
ACT OF 1942.

[ASSENTED TO 12TH NOVEMBER, 1942.]

BE it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Legislative Assembly of Queensland in Parliament assembled, and by the authority of the same, as follows:—

1. This Act may be cited as "*The Leases (War Damage) Act of 1942.*" Short title.

2. (1.) This Act shall be deemed to have commenced on the first day of September, one thousand nine hundred and forty-two, and shall have effect in respect of all leases made before and existing on that date and all leases made on or after that date. Commence-ment of Act.

(2.) This Act shall continue in force until the last day of the first year to commence after the date on which His Majesty ceases to be engaged in the present War : Duration of Act.

Provided that the Governor in Council may from time to time if in his discretion he thinks fit by Order in Council published in the *Gazette* extend the provisions of this Act for such time as may be expressed in any such Order in Council.

3. In this Act, unless the context otherwise indicates or requires, the following terms have the meanings set against them respectively, that is to say:— Definitions.

"Court" means the Supreme Court of Queensland or any judge thereof: Court.

Provided that in any case where the rent under the lease does not exceed (on a yearly basis) three hundred and twelve pounds per annum (or on a monthly basis) twenty-six pounds per month (or on a weekly basis) six pounds per week, the term "Court" shall mean the Magistrates Court constituted pursuant to *"*The Magistrates Courts Act of 1921,*" and constituted by a

stipendiary magistrate sitting alone and held nearest to the premises the subject of the lease concerned ;

- Lease.** “ Lease ” includes every letting of premises for any term of not less than six months or for a life or lives, and made in writing or by deed ;
- Lessor and lessee.** “ Lessor and lessee ” means the parties to a lease ; the term respectively includes a mesne lessor and a mesne lessee, and also any person from time to time deriving title under the original lessor or lessee ;
- Without in any wise limiting the definition of “ lessee ” the term “ lessee ” also includes a mortgagee of a lease in possession of the leased lands whether such mortgage was given with or without the knowledge of the lessor ;
- Premises.** “ Premises ” includes land and/or buildings thereon, and also includes any part of a building separately leased ;
- Prescribed.** “ Prescribed ”—Prescribed by this Act ;
- Regulations.** “ Regulations ”—Regulations made under the authority of this Act ;
- Rent.** “ Rent ” includes yearly, quarterly, weekly, or other rent, toll, duty, royalty, or other reservation by the area, the ton, or otherwise, and any payment, benefit, or consideration in the nature of a fine, premium, or foregift ;
- Rules of Court.** “ Rules of Court ”—Rules of Court made under the authority of this Act ;
- This Act.** “ This Act ”—This Act and all regulations and Rules of Court made thereunder ;
- War damage.** “ War damage ” means damage caused by, or in or for the purpose of, repelling, enemy action, or in or for the purpose of taking the offensive against the enemy, in the present war, or by measures taken to avoid the spreading of the consequences of damage caused by or in repelling enemy action, or in or for the purpose of taking the offensive against the enemy.

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4. Notwithstanding the provisions of any Act, or law, or rule, or process or practice of law, or of any covenants in a lease and whether such covenants are express or implied covenants or operate by virtue of any statute or otherwise whatsoever, it is hereby enacted that—

Special provisions relating to leases.

- (i.) Where in any lease there is a covenant to pay the rent reserved, the following provision shall be and be deemed to be contained in the lease and to be construed as a covenant thereof, namely :—

In case the demised premises (including any goods leased therewith) or any part thereof shall suffer war damage so as to render the same unfit for the occupation and use of the lessee, then and so often as the same shall happen, the rent thereby reserved or a proportionate part thereof according to the nature and extent of the damage sustained shall abate, and all or any remedies for recovery of the rent or such proportionate part thereof shall be suspended until the demised premises (including any goods leased therewith) shall have been rebuilt or made fit for the occupation and use of the lessee.

The lessor and the lessee may agree between themselves as to what adjustment should be made in respect of the matters herein referred to, and in default of agreement the matter shall be referred to the Court for determination by either or both of the parties concerned ;

- (ii.) Where in any lease there is a covenant by the lessee that he will, during the continuance of the lease, keep the demised premises in good and tenantable repair or that he will at the termination of the lease yield up the demised premises in good and tenantable repair, it shall be implied in such covenant that war damage shall be excepted.

5 Every agreement, or covenant, or term of any agreement or covenant made or entered into, whether before or after the passing of this Act, whereby any

Contracting out prohibited.

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person agrees or covenants that this Act or any provision thereof shall not apply to any lease shall be void for all purposes.

Jurisdiction
of the Court.

6. Where a Court makes a determination in pursuance of this Act, such determination shall have authority and effect as a judgment and/or order of the Court and shall be enforceable accordingly and obeyed by all persons concerned.

The practice of the Court in question as to the time and place of hearing and method of service and otherwise shall apply in respect of matters under this Act within its jurisdiction.

Application
of Rules of
Court.

7. Subject to this Act the provisions of **“The Supreme Court Acts, 1867 to 1941,”* and Rules of Court thereunder, and, as the case may be, of †*“The Magistrates Courts Act of 1921,”* and Rules of Court made thereunder shall so far as the same are applicable apply and extend in respect of any act matter or thing under this Act, where such Supreme Court, or, as the case may be, the Magistrates Court has jurisdiction thereunder, and the power and authority to make Rules of Court under such Acts concerned shall apply and extend to all acts matters and things in respect of this Act accordingly.

* 31 V. No. 23 and amending Acts. See v. 9, pp. 287 *et seq.*

† 12 G. 5 No. 22. See v. 4, p. 492.
