

RURAL TENANTS' IMPROVEMENTS ACT.

—
Act No. 57, 1916.

George V, An Act to provide for compensation to tenants for
No. 57. improvements and other matters connected with rural holdings; to amend the law with regard to buildings and fixtures erected and affixed by such tenants; for the determination of certain disputes between such tenants and their landlords; to amend certain Acts; and for purposes consequent thereon or incidental thereto. [Assented to, 8th November, 1916.]

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

Short title. **1.** This Act may be cited as the "Rural Tenants' Improvements Act, 1916."

Definitions. **2.** In this Act, unless the context otherwise requires—

See Eng. Act, 1908, c. 28, s. 48. "Agreement" includes an agreement arrived at by means of valuation or otherwise, and "agreed" has a corresponding meaning.

"Contract of tenancy" means a letting of or agreement for letting land for a term of years, or for lives, or for lives and years, or from year to year.

"Determination of tenancy" means the cesser of a contract of tenancy by reason of effluxion of time, or from any other cause.

"Holding" or "rural holding" means any parcel of rural land held by a tenant, not being a tenant of the Crown, which is either wholly agricultural or wholly pastoral, or in part agricultural, and as to the residue pastoral.

"Local

- “Local Land Board” means the local land board constituted under the provisions of the Crown Lands Consolidation Act, 1913, for the district within which the holding or the larger part thereof is situated, and includes the Land Appeal Court in any case where an appeal to that Court shall have been made. George V.
No. 57.
- “Land Appeal Court” means the Land Appeal Court constituted under the provisions of the Crown Lands Consolidation Act, 1913.
- “Landlord” means any person not being the Crown for the time being entitled to receive the rents and profits of any rural land.

Compensation for improvements on rural holdings.

3. (1) Where a tenant of a rural holding has made thereon any improvement comprised in the First Schedule to this Act, he shall, subject as in this Act mentioned, be entitled at the determination of a tenancy, on quitting his holding, to obtain from the landlord as compensation under this Act for the improvement such sum as fairly represents the value of the improvement to an incoming tenant following the same occupation as the outgoing tenant. Right of
tenant to
compensation
for improve-
ments.
Eng. Act,
1908, c. 23,
s. 1.

(2) In the ascertainment of the amount of the compensation payable to a tenant under this section there shall be taken into account any benefit which the landlord has given or allowed to the tenant in consideration of the tenant executing the improvement.

(3) Nothing in this section shall prejudice the right of a tenant to claim compensation to which he may be entitled under custom, agreement, or otherwise, in lieu of any compensation provided by this section.

4. Compensation under this Act shall not be payable in respect of any improvements comprised in Part I of the First Schedule hereto, unless the landlord of the holding has, previously to the execution of the improvement, consented in writing to the making of the improvement, and any such consent may be given by the landlord unconditionally, or upon such terms as to compensation and otherwise as may be agreed upon between the landlord and the tenant, and if any such Consent of
landlord.
Ibid. s. 2.
agreement

George V. agreement is made, any compensation payable under
No. 57. the agreement shall be substituted for compensation
 under this Act.

Notice to
 landlord.
 Eng. Act,
 1908, c. 28,
 s. 3.

5. (1) Compensation under this Act shall not be payable in respect of any improvement comprised in Part II of the First Schedule hereto, unless the tenant of the holding has, not more than three nor less than two months before beginning to execute the improvement, given to the landlord in writing notice of his intention so to do, and of the manner in which he proposes to do the intended work, and upon such notice being given, the landlord and the tenant may agree on the terms as to compensation or otherwise on which the improvement is to be executed.

(2) If any such agreement is made, any compensation payable under the agreement shall be substituted for compensation under this Act.

(3) In default of any such agreement the landlord may, unless the notice of the tenant is previously withdrawn, execute the improvement in any reasonable and proper manner which he thinks fit, and recover from the tenant as rent a sum not exceeding seven per centum per annum on the outlay incurred, or not exceeding such annual sum payable for a period of twenty-five years as will repay that outlay in that period, with interest at the rate of six per centum per annum :

Provided that if the landlord fails to execute the improvement within six months, the tenant may execute the improvement, and shall in respect thereof be entitled to compensation under this Act.

(4) The landlord and the tenant may, by the contract of tenancy or otherwise, agree to dispense with any notice under this section, and any such agreement may provide for anything for which an agreement after notice under this section may provide, and in such case shall be of the same validity and effect as such last-mentioned agreement.

Disagreement
 of landlord
 and tenant.

6. It shall be lawful for either the landlord or tenant in cases where they fail to agree upon any matter under clause five of this Act to refer such matter for the decision of the local land board in the manner prescribed.

7.

7. Where any agreement in writing secures to the tenant of a holding for any improvement comprised in Part III of the First Schedule hereto, fair and reasonable compensation, having regard to the circumstances existing at the time of making the agreement, the compensation so secured shall, as respects that improvement, be substituted for compensation under this Act.

George V,
No. 57.

Agreements,
Eng. Act,
1908, c. 28,
s. 4.

8. Subject to the foregoing provisions of this Act, any contract (whether under seal or not) made by a tenant of a holding, by virtue of which he is deprived of his right to claim compensation under this Act in respect of any improvement comprised in the First Schedule hereto, shall be void so far as it deprives him of that right.

Avoidance of
contract
inconsistent
with Act.
Ibid. s. 5.

9. (1) If the tenant of a holding claims to be entitled to compensation, whether under this Act or under custom or agreement or otherwise, in respect of any improvement comprised in the First Schedule to this Act, and if the landlord and tenant fail to agree as to the amount and time and mode of payment of the compensation, the difference shall be settled by the local land board, subject to appeal to the Land Appeal Court at any time within twenty-eight days after such settlement. Notice of appeal shall be given to the chairman of the local land board and to the other party to the proceeding, and shall be accompanied by the sum of five pounds as security for the costs of the appeal. Every such notice shall state the ground of appeal.

Determina-
tion of claims
to compensa-
tion.

See Eng. Act,
c. 28, s. 6.

(2) A claim by the tenant of a holding for compensation under this Act in respect of any improvement comprised in the First Schedule to this Act shall not be made unless notice of intention to make the claim has been given before the determination of the tenancy :

Provided that, where the claim relates to an improvement executed after the determination of the tenancy, but while the tenant lawfully remains in occupation of part of the holding, the notice may be given at any time before the tenant quits that part.

(3) Where any claim by a tenant of a holding for compensation in respect of any improvement comprised in the First Schedule to this Act is referred to the local land board, and any sum is claimed to be due to the tenant from the landlord in respect of any breach of contract

contract

George V,
No. 57. contract or otherwise in respect of the holding, or to the landlord from the tenant in respect of any waste wrongfully committed or permitted by the tenant, or in respect of breach of contract or otherwise in respect of the holding, the party claiming that sum may, if he thinks fit, by notice in writing given to the other party not later than seven days after the reference to the local land board, require that the settlement shall extend to the determination of the claim to that sum, and thereupon the provisions of this Act with respect to such settlement shall apply accordingly.

(4) Where a claim for compensation under this Act has been referred to the local land board, and the compensation payable under an agreement is by this Act to be substituted for compensation under this Act, such compensation as is to be so substituted shall be awarded in respect of any improvement provided for by the agreement.

Right of
tenant who
has paid
compensation
to outgoing
tenant.

Eng. Act,
1908, c. 28,
s. 7.

10. Where an incoming tenant of a holding has, with the consent in writing of his landlord, paid to an outgoing tenant any compensation payable under or in pursuance of this Act in respect of the whole or part of any improvement, the incoming tenant shall be entitled on quitting the holding, to claim compensation in respect of the improvement or part in like manner, if at all, as the outgoing tenant would have been entitled if he had remained tenant of the holding and quitted it at the time at which the incoming tenant quits it.

Change of
tenancy.
Ibid. s. 8.

11. A tenant who has remained in his holding during two or more tenancies shall not, on quitting his holding, be deprived of his right to claim compensation under this Act in respect of improvements by reason only that the improvements were not made during the tenancy on the determination of which he quits the holding.

Restriction
in respect of
improvements
by
tenant about
to quit.

Ibid. s. 9.

12. A tenant of a holding shall not be entitled to compensation under this Act in respect of any improvements begun by him—

- (a) in the case of a tenant from year to year within one year before he quits the holding, or at any time after he has given or received notice to quit which results in his quitting the holding; and
- (b) in any other case, within one year before the expiration of his contract of tenancy:

Provided

Provided that this section shall not apply in the case of any improvement— George V,
No. 57.

- (i) where the tenant, previously to beginning the improvement, has served notice on his landlord of his intention to begin it, and the landlord has either assented or has failed for a month after the receipt of the notice to object to the making of the improvement; or
- (ii) in the case of a tenant from year to year, where the tenant has begun the improvement during the last year of his tenancy, and, in pursuance of a notice to quit thereafter given by the landlord, quits his holding at the expiration of that year.

Compensation in case of tenancy under mortgagor.

13. Where a person occupies a holding under a contract of tenancy with a mortgagor, which is not binding on the mortgagee, then— Compensation
to tenants
when mort-
gagee takes
possession.
Eng. Act,
1908, c. 28,
s. 12.

- (1) the occupier shall, as against the mortgagee who takes possession, be entitled to any compensation which is, or would but for the mortgagee taking possession, be due to the occupier from the mortgagor as respects crops, improvements, or other matters connected with the holding, whether under this Act or custom or an agreement authorised by this Act;
- (2) if the contract of tenancy is for a tenancy from year to year or for a term of years, not exceeding twenty-one, the mortgagee shall, before he deprives the occupier of possession otherwise than in accordance with the contract of tenancy, give to the occupier six months' notice in writing of his intention so to do, and, if he so deprives him, compensation shall be due to the occupier for his crops, and for any expenditure upon the land which he has made in the expectation of remaining in the holding for the full term of his contract of tenancy, in so far as any improvement resulting therefrom is not exhausted at the time of his being so deprived; (3)

George V,
No. 57.

- (3) any sum ascertained to be due to the occupier for compensation, or for any costs connected therewith, may be set off against any rent or other sum due from him in respect of the holding, but unless so set off shall, as against the mortgagee, be charged and recovered in accordance with the provisions of this Act relating to the recovery of compensation due from a landlord who is a trustee.

Procedure in references to local land boards.

Procedure in arbitrations.
See Eng. Act, 1908, c. 28, s. 13.

14. (1) All questions which under this Act or under the contract of tenancy are referred to the local land board shall, whether the matter to which the reference relates arose before or after the passing of this Act, be determined, notwithstanding any agreement under the contract of tenancy or otherwise providing for a different method of settlement, in accordance with the provisions set out in the Second Schedule of this Act.

(2) Where any claim which is referred to the local land board relates to an improvement executed or matter arising after the determination of the tenancy, but while the tenant lawfully remains in occupation of the holding, the local land board may, if it thinks fit, make a separate award in respect of that claim.

(3) Any person who wilfully and corruptly gives false evidence before the local land board in any settlement under this Act shall be guilty of perjury, and may be dealt with, prosecuted, and punished accordingly.

Recovery of compensation and other sums due.
Eng. Act, 1908, c. 28, s. 14.

15. Where any sum agreed or awarded under this Act to be paid for compensation, costs, or otherwise by a landlord or tenant of a holding is not paid within fourteen days after the time when the payment becomes due, it shall, subject as in this Act provided, be recoverable as a debt.

Fixtures and buildings.

Tenant's property in fixtures and buildings.
See *Ibid.* s. 21.

16. Any engine, machinery, fencing, or other fixture affixed before or after the commencement of this Act to a holding by a tenant, and any building erected before or after such commencement by him thereon
for

for which he is not under this Act or otherwise entitled to compensation, and which is not so affixed or erected in pursuance of some obligation in that behalf or instead of some fixture or building belonging to the landlord, shall be the property of and removable by the tenant before or within a reasonable time after the determination of the tenancy :

George V,
No. 57.

Provided that—

- (i) before the removal of any fixture or building the tenant shall pay all rent owing by him, and shall perform or satisfy all his other obligations to the landlord in respect of the holding ;
- (ii) in the removal of any fixture or building the tenant shall not do any avoidable damage to any other building or other part of the holding ;
- (iii) immediately after the removal of any fixture or building the tenant shall make good all damage occasioned to any other building or other part of the holding by the removal ;
- (iv) the tenant shall not remove any fixture or building without giving one month's previous notice to the landlord of his intention to remove it ;
- (v) at any time before the expiration of the notice of removal, the landlord, by notice in writing given by him to the tenant, may elect to purchase any fixture or building comprised in the notice of removal, and any fixture or building thus elected to be purchased shall be left by the tenant, and shall become the property of the landlord, who shall pay to the tenant the fair value thereof to an incoming tenant of the holding ; and any difference as to value shall be settled by the local land board, subject to appeal to the land appeal court.

Miscellaneous rights of landlord and tenant.

17. The landlord of a holding, or any person authorised by him, may at all reasonable times enter on the holding for the purpose of viewing the state of the holding.

Power of
entry by land-
lord.
Eng. Act, 1908,
c. 28, s. 24.

18.

George V,
No. 57.

Provision as
to limited
owners.

Eng. Act,
1908, c. 23,
s. 34.

18. A landlord of a holding, whatever may be his estate or interest in the holding, may give any consent, make any agreement, or do or have done to him any act in relation to improvements in respect of which compensation is payable under this Act, which he might give or make or do or have done to him if he were owner in fee simple or, if his interest is an interest in a leasehold, were absolutely entitled to that leasehold.

Recovery of
compensa-
tion, &c.,
from trustee.
Ibid. s. 35.

19. Where any sum agreed or awarded to be paid for compensation, or any sum awarded under this Act to be paid by a landlord, is due from a landlord entitled to receive the rents and profits of the holding otherwise than for his own benefit, whether as trustee or in any other character, the sum due shall be charged and recovered as follows, and not otherwise (that is to say):—

- (i) The amount so due shall not be recoverable personally against the landlord, nor shall he be under any liability to pay that amount, but it shall be a charge on and recoverable against the holding only.
- (ii) The landlord shall, either before or after having paid to the tenant the amount due to him, be entitled to obtain from the local land board a charge on the holding to the amount of the sum which is required to be paid or which has been paid, as the case may be, to the tenant.
- (iii) If the landlord neglects or fails to pay to the tenant the amount due to him for one month after it has become due, the tenant shall be entitled to obtain from the local land board a charge on the holding to the amount of the sum due to him, and of all costs properly incurred by him in obtaining the charge.
- (iv) Charges under this section shall be made on application to the local land board.

Estate not to
be forfeited
by reason of
charge.

20. Where the estate or interest of a landlord is determinable or liable to forfeiture by reason of his creating or suffering any charge thereon, that estate or interest shall not be determined or forfeited by reason of his obtaining a charge under this Act, anything in any deed, will, or other instrument to the contrary thereof notwithstanding.

Supplemental

Supplemental provisions.

George V,
No. 57.

21. The cost of proceedings before the local land board or the Land Appeal Court under this Act shall be in the discretion of such board and court respectively.

Costs.
Eng. Act,
1908, c. 28,
s. 44.

22. Any notice, request, demand, or other instrument under this Act may be served on the person to whom it is to be given, either personally or by leaving it for him at his last known place of abode in New South Wales, or by sending it through the post in a registered letter addressed to him there; and in the case of a notice to a landlord, "the person to whom it is to be given" shall include any agent of the landlord duly authorised in that behalf.

Service of
notice, &c.
Ibid. s. 45.

23. Except as in this Act expressed, nothing in this Act shall prejudicially affect any power, right, or remedy of a landlord, tenant, or other person vested in or exercisable by him by virtue of any other Act or law, or under any custom of the country or otherwise in respect of a contract of tenancy or other contract, or of any improvements, waste, emblements, tillages, away-going crops, fixtures, tax, rate, rentcharge, rent, or other thing.

General
saving of
rights.
Ibid. s. 46.

24. The local land board and the Land Appeal Court shall respectively have and may exercise under this Act the powers and authorities conferred by the Acts constituting them. Any appeal to the land appeal court against the local land board's decision or award shall be lodged in the prescribed manner within twenty-eight days after the same has been given or made.

Powers of
local land
board and
Land Appeal
Court.

25. The Governor may make regulations regulating the references to local land boards under this Act, regulating the procedure of local land boards exercising any jurisdiction conferred by this Act, prescribing the forms to be used in pursuance of this Act, and generally for carrying out the provisions of this Act.

Power to
make
regulations.

Such regulations shall—

- (i) be published in the Gazette;
- (ii) take effect from the date of publication, or from a later date to be specified in such regulations; and

(iii)

George V,
No. 57.

(iii) be laid before both Houses of Parliament within fourteen days after publication if Parliament is in session, and, if not, then within fourteen days after the commencement of the next session. If either House of Parliament passes a resolution at any time within fifteen sitting days after such regulations have been laid before such House disallowing any regulation, such regulation shall thereupon cease to have effect.

SCHEDULES.

FIRST SCHEDULE.

PART I.

Improvements to which consent of landlord is required.

1. Erection, alteration, or enlargement of buildings.
2. Works of irrigation.
3. Making of gardens.
4. Making or improvements of watercourses, ponds, wells, or reservoirs, or of works for the application of water power, or for the supply of water for agricultural purposes.
5. Making or removal of permanent fences other than boundary fences.
6. Planting of orchards or fruit bushes.
7. Embankments and sluices against floods.
8. Ringbarking.
9. Clearing.
10. Suckering.
11. Formation of silos.
12. Liming of land.
13. Laying down of permanent pastures.
14. Permanent boundary fences.
15. Wire-netting on boundary fences.

PART II.

Improvements in respect of which notice to landlord is required.

16. Drainage.
17. Destruction of prickly pear, briars, or other noxious growths.
18. Making or improvements of necessary roads or bridges.
19. Domestic water supply.

PART

PART III.

George V,
No. 57.

Improvements in respect of which consent of or notice to landlord is not required.

20. Application to land of purchased artificial or other purchased manure.

21. Repairs to buildings being buildings necessary for the proper cultivation or working of the holding other than repairs which the tenant is himself under an obligation to execute: Provided that the tenant before beginning to execute any such repairs shall give to the landlord notice in writing of his intention, together with particulars of such repairs, and shall not execute the repairs unless the landlord fails to execute them within three months after receiving such notice.

SECOND SCHEDULE.

RULES AS TO SETTLEMENT BY LOCAL LAND BOARD.

1. Neither party shall have power to revoke the reference to the local land board without the consent of the other party.

2. Every reference, notice, revocation, and consent under this part of these rules must be in writing.

Time for award.

3. The local land board shall make and sign its award within twenty-eight days after the hearing of the reference or within such longer period as the board may (whether the time for making the award has expired or not) direct.

Evidence.

4. The parties to the reference, and all persons claiming through them respectively, shall, subject to any legal objection, submit to be examined by the local land board on oath or affirmation, in relation to the matters in dispute, and shall, subject as aforesaid, produce before the local land board all samples, books, deeds, papers, accounts, writings and documents, within their possession or power respectively, which may be required or called for, and do all other things which during the proceedings the local land board may require.

5. The local land board shall have power to administer oaths, and to take the affirmation of parties and witnesses appearing, and witnesses shall, if the local land board thinks fit, be examined on oath or affirmation.

Award.

6. The local land board shall, on the application of either party, specify the amount awarded in respect of any particular improvement or any particular matter the subject of the award, and the award shall provide

George V, provide for the payment of the money awarded as compensation, costs,
No. 57. or otherwise in one sum or by instalments on such day or days as it may fix. Such award shall be in such form as may be prescribed by the Minister.

7. The award to be made by the local land board shall be final and binding on the parties and the persons claiming under them respectively.

8. The local land board may correct in an award any clerical mistake or error arising from any accidental slip or omission.

9. When the local land board or a member thereof has misconducted itself or himself, or a settlement or award has been improperly procured, the land appeal court may set the award aside.

Costs.

10. The costs of and incidental to the settlement and award shall be in the discretion of the local land board, who may direct to and by whom and in what manner these costs or any part thereof are to be paid, and the costs shall be subject to taxation by the registrar of the Land Appeal Court on the application of either party, but that taxation shall be subject to review by the president of the Land Appeal Court.

11. The local land board shall, in awarding costs, take into consideration the reasonableness or unreasonableness of the claim of either party in respect of amount or otherwise, and any unreasonable demand for particulars or refusal to supply particulars and generally all the circumstances of the case, and may disallow the costs of any witness whom it considers to have been called unnecessarily, and any other costs which it considers to have been incurred unnecessarily.

Forms.

12. Any forms for proceedings in settlement under this Act which may be prescribed by the Minister shall, if used, be sufficient.