



New South Wales

Landlord and Tenant Regulation 2004

under the

Landlord and Tenant (Amendment) Act 1948

Her Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Landlord and Tenant (Amendment) Act 1948*.

REBA PAIGE MEAGHER, M.P.,

Minister for Fair Trading

Explanatory note

The object of this Regulation is to remake, with various modifications, the *Landlord and Tenant Regulation 1994* which will be repealed on 1 September 2004 by section 10 (2) of the *Subordinate Legislation Act 1989*. The new Regulation contains provisions with respect to the following matters:

- (a) prescribing forms for the purposes of the Act (clauses 4 and 6),
- (b) prescribing a variable amount (by reference to the maximum fortnightly rate for single age pensions under the *Social Security Act 1991* of the Commonwealth) in lieu of the fixed amount of \$4,000 prescribed in relation to the provisions of the Act relating to the determination of fair rents (clause 5),
- (c) prescribing certain military and air operations as war service in connection with the provisions of the Act relating to protected tenants (clause 7),
- (d) prescribing fees for the purposes of the Act (clause 8),
- (e) making other provisions of a minor, consequential or ancillary nature (clauses 1, 2, 3 and 9).

This Regulation (except clause 5) comprises or relates to matters set out in Schedule 3 to the *Subordinate Legislation Act 1989*, namely matters that are of a machinery nature and matters that are not likely to impose an appreciable burden, cost or disadvantage on any sector of the public.

2004 No 596

Landlord and Tenant Regulation 2004

Explanatory note

This Regulation is made under the *Landlord and Tenant (Amendment) Act 1948*, including section 96 (the general regulation-making power) and the sections referred to in the Regulation.

Contents

	Page
1 Name of Regulation	4
2 Commencement	4
3 Definitions	4
4 Prescribed form of statement: sec 5AB	4
5 Prescribed amount: sec 31MAA	4
6 Prescribed form of statutory declaration: sec 31MBA	5
7 Prescribed military and air operations: sec 99	5
8 Prescribed fees: secs 5A, 17A, 44, 52, 57, 58 and 94	5
9 Savings	7
Schedule 1 Forms	8

2004 No 596

Clause 1 Landlord and Tenant Regulation 2004

Landlord and Tenant Regulation 2004

under the

Landlord and Tenant (Amendment) Act 1948

1 Name of Regulation

This Regulation is the *Landlord and Tenant Regulation 2004*.

2 Commencement

This Regulation commences on 1 September 2004.

Note. This Regulation replaces the *Landlord and Tenant Regulation 1994* which is repealed on 1 September 2004 by section 10 (2) of the *Subordinate Legislation Act 1989*.

3 Definitions

- (1) In this Regulation:

the Act means the *Landlord and Tenant (Amendment) Act 1948*.

- (2) In this Regulation, a reference to a Form is a reference to a Form set out in Schedule 1.

- (3) Notes included in this Regulation do not form part of this Regulation.

4 Prescribed form of statement: sec 5AB

For the purposes of section 5AB of the Act, the prescribed form of statement (being a statement by a lessee of premises to the effect that the lessee did not enter into possession of the premises until on or after 1 January 1986) is Form 1.

5 Prescribed amount: sec 31MAA

- (1) For the purposes of the definition of ***prescribed amount*** in section 31MAA (1) of the Act, the amount prescribed in lieu of the amount specified in that definition is the amount calculated by multiplying the maximum fortnightly age pension by 65.

-
- (2) In this clause, a reference to the ***maximum fortnightly age pension*** is a reference to the maximum fortnightly rate at which an age pension is from time to time payable, under the *Social Security Act 1991* of the Commonwealth, to a person who is not a member of a couple.

6 Prescribed form of statutory declaration: sec 31MBA

For the purposes of section 31MBA (4) of the Act, the prescribed form of statutory declaration is Form 2, 3, 4 or 5, whichever is appropriate to the circumstances in which the declaration is made.

7 Prescribed military and air operations: sec 99

For the purposes of the definition of ***present war*** in section 99 (1) of the Act, the military and air operations that commenced after 28 June 1950 by Australian forces (whether acting alone or in association with other British Commonwealth forces) in Malaya (including the waters contiguous to the coast of Malaya for a distance of 10 nautical miles seaward from the coast) are prescribed operations.

8 Prescribed fees: secs 5A, 17A, 44, 52, 57, 58 and 94

The fees set out in the Table to this clause are prescribed in lieu of the fees prescribed by the provisions of the Act to which they relate.

Table

Column 1	Column 2	Column 3	Column 4
Item	Section of Act	Type of fee	Amount
1	5A (11) (c)	Application for a certificate that a section 5A lease has been registered	\$13
2	17A (7) (b)	Application for registration of a section 17A agreement to fix rent	\$13
3	17A (11) (c)	Application for a certificate that a section 17A agreement has been registered	\$13
4	44 (1A)	Request for issue of a summons	\$18

2004 No 596

Clause 8

Landlord and Tenant Regulation 2004

Column 1	Column 2	Column 3	Column 4
Item	Section of Act	Type of fee	Amount
5	52 (1A)	For applications for information as to fair rent on shared accommodation:	
		(a) each application (unless paragraph (b) applies)	\$13
		(b) applications made simultaneously in respect of 2 or more prescribed premises contained within the same premises (each application relating to a separate prescribed premises)	\$13 for all of the applications
6	52 (2)	For applications for information as to fair rent on prescribed premises:	
		(a) each application (unless paragraph (b) applies)	\$13
		(b) applications made simultaneously in respect of 2 or more prescribed premises contained within the same premises (each application relating to a separate prescribed premises)	\$13 for all of the applications
7	57 (1B)	For enquiries as to the fair rent on prescribed premises:	
		(a) each enquiry (unless paragraph (b) applies)	\$13
		(b) enquiries made simultaneously in respect of 2 or more prescribed premises contained within the same premises (each enquiry relating to a separate prescribed premises)	\$13 for all of the enquiries

Column 1	Column 2	Column 3	Column 4
Item	Section of Act	Type of fee	Amount
8	58 (3)	Application for a certificate as to a fixed fair rent	\$13
9	94 (4)	Application for a certificate as to exclusion of certain premises	\$13

9 Savings

Any act, matter or thing that, immediately before the repeal of the *Landlord and Tenant Regulation 1994*, had effect under that Regulation is taken to have effect under this Regulation.

2004 No 596

Landlord and Tenant Regulation 2004

Schedule 1 Forms

Schedule 1 Forms

(Clause 3)

Form 1 Statement by lessee

(Clause 4)

(Section 5AB of Landlord and Tenant (Amendment) Act 1948)

Date of taking possession of premises

1. *I/We, *[Name(s) in block letters]*, *am/are the lessee(s) of the premises at *[Address]*.
2. *I/We did not enter into possession of the premises until on or after 1 January 1986.

Lessee's signature:

Witness' signature, name in block letters and address:

Lessee's signature:

Witness' signature, name in block letters and address:

Date

*[*Delete, where appropriate. If there are more than two lessees, each additional lessee should also sign the form and have the signature witnessed.]*

Form 2 Information as to net income of lessee and names of all residents residing in prescribed premises

(Clause 6)

(Section 31MBA (4) of Landlord and Tenant (Amendment) Act 1948)

Statutory declaration

I/We, *[Name]* of *[Address]*, do solemnly and sincerely declare that:

1. I/We are the lessee/s of prescribed premises situated at *[Address]*.

2. My/Our net income for the last financial year ending 30 June [Year] was \$ [Amount].

3. The following persons are residents of the prescribed premises:

[Do not include in the list of residents the names of the lessee, any sub-lessee, any relative of a sub-lessee ordinarily residing with the sub-lessee, any person under the age of 16 years or any boarder or lodger.]

4. There are [Number] boarders or lodgers ordinarily residing in the prescribed premises.

[This item is not required to be completed by a lessee whose prescribed premises are, with the lessor's consent, sub-let in whole or in part in the course of the lessee's business of sub-letting for residential purposes, or by a lessee who or which is a partnership or company.]

And I/We make this solemn declaration conscientiously believing the same to be true, and by virtue of the provisions of the *Oaths Act 1900*.

Taken and declared at [Place and date]
before me [Print name and insert
signature of person taking and
receiving declaration]

}

[Signature of declarant]

Form 3 Information as to net income of resident of prescribed premises

(Clause 6)

(Section 31MBA (4) of Landlord and Tenant (Amendment) Act 1948)

Statutory declaration

I, [Name] of [Address], do solemnly and sincerely declare that:

1. I am a resident of the prescribed premises situated at [Address].
2. My net income for the last financial year ending 30 June [Year] was \$ [Amount].

2004 No 596

Landlord and Tenant Regulation 2004

Schedule 1 Forms

And I make this solemn declaration conscientiously believing the same to be true, and by virtue of the provisions of the *Oaths Act 1900*.

Taken and declared at *[Place and date]*
before me *[Print name and insert
signature of person taking and
receiving declaration]* } *[Signature of declarant]*

Form 4 Information as to net income of lessees who hold the lease as members of a partnership

(Clause 6)

(Section 31MBA (4) of Landlord and Tenant (Amendment) Act 1948)

Statutory declaration

We, *[Names]* of *[Address(es)]*, do solemnly and sincerely declare that:

1. We are the members of a partnership holding the lease of prescribed premises situated at *[Address]*.
2. The partnership net income for the last financial year ending 30 June *[Year]* was \$ *[Amount]*.

And we make this solemn declaration conscientiously believing the same to be true, and by virtue of the provisions of the *Oaths Act 1900*.

Taken and declared at *[Place and date]*
before me *[Print name and insert
signature of person taking and
receiving declaration]* } *[Signature of declarants]*

**Form 5 Information as to net income of lessee, being a
company or other corporation**

(Clause 6)

(Section 31MBA (4) of Landlord and Tenant (Amendment) Act 1948)

Statutory declaration

I, *[Name]* of *[Address]*, do solemnly and sincerely declare that:

1. The company or corporation registered as *[Name]* is the lessee of prescribed premises situated at *[Address]*.
2. The net income of the company or corporation for the last financial year ending 30 June *[Year]* was \$ *[Amount]*.

And I make this solemn declaration conscientiously believing the same to be true, and by virtue of the provisions of the *Oaths Act 1900*.

Taken and declared at *[Place and date]*
before me *[Print name and insert
signature of person taking and
receiving declaration]*

}

[Signature and capacity of declarant]