

THE TERRITORY FOR THE SEAT OF GOVERNMENT.

No. 30 of 1936.

AN ORDINANCE

To provide for the Appointment of a Land Commissioner and for the Constitution of a Land Court for the Australian Capital Territory, and for other purposes.

BE it ordained by the Deputy of the Governor-General in and over the Commonwealth of Australia, with the advice of the Federal Executive Council, in pursuance of the powers conferred by the *Seat of Government Acceptance Act* 1909 and the *Seat of Government (Administration) Act* 1910-1933, as follows:—

PART I.—PRELIMINARY.

1. This Ordinance may be cited as the *Land Valuation Ordinance* 1936. Short title.
2. This Ordinance shall commence on a date to be fixed by the Minister by notice in the *Gazette*. Commencement.
3. The *Land Commissioner Ordinance* 1933 is repealed. Repeal.
4. This Ordinance is divided into Parts, as follows:— Parts.
 - Part I.—Preliminary.
 - Part II.—Appointment and Powers of Land Commissioners.
 - Part III.—Constitution and Jurisdiction of Land Court.
 - Part IV.—Miscellaneous.
5. In this Ordinance, unless the contrary intention appears— Definitions.
 - “the Commissioner” means the Land Commissioner appointed under this Ordinance;
 - “the Court” means the Land Court of the Australian Capital Territory constituted under this Ordinance;
 - “the Judge” means the Judge of the Court;
 - “the Leases Ordinance” means the *Leases Ordinance* 1918 or that Ordinance as subsequently amended;

“the Registrar” means the Registrar of the Court and includes a Deputy Registrar;

“the Supreme Court” means the Supreme Court of the Australian Capital Territory.

PART II.—APPOINTMENT AND POWERS OF LAND COMMISSIONER.

Appointment
of Land
Commissioner.

6.—(1.) The Governor-General may appoint a Land Commissioner for the Territory.

(2.) The Commissioner shall hold office during pleasure.

(3.) In the event of the illness or absence from the Territory of the Commissioner, the Governor-General may appoint a Deputy Land Commissioner, and the Deputy Land Commissioner shall have and may exercise all the powers and perform all the duties of the Commissioner during his illness or absence.

Appeals by
lessees.

7.—(1.) Where the Minister offers or has offered in writing to a lessee under the Leases Ordinance the grant of a lease upon the expiration of, or in substitution for, his existing lease, the lessee may, within one month after his receipt of the offer or after the date of commencement of this Ordinance, whichever last happens—

(a) accept the offer; or

(b) apply in writing to the Minister to vary the rent reserved in, or any term or condition of, the lease so offered.

(2.) Where the Minister, in accordance with the conditions of any lease under the Leases Ordinance, determines or has determined the rent payable under that lease, the lessee, if dissatisfied with the determination, may, within one month after his receipt of notice of the determination or after the date of the commencement of this Ordinance, whichever last happens, apply in writing to the Minister to vary the rent as so determined.

(3.) The Minister shall consider every application made in pursuance of either of the last two preceding sub-sections, and may, by notice in writing, delivered to, or served by post on, the lessee, either—

(a) affirm the offer or determination in respect of which the application was made; or

(b) vary the offer or determination to such extent or in such manner as is specified in the notice.

(4.) The lessee may, within one month after the notice referred to in the last preceding sub-section is delivered to, or served on, him—

(a) where the decision of the Minister relates to an offer referred to in sub-section (1.) of this section—

(i) if the original offer is not varied by the decision, accept that offer;

(ii) if the original offer is varied by the decision, accept the offer as so varied; or

(iii) request the Minister to refer the decision to the Commissioner for review; or

(b) where the decision relates to a determination referred to in sub-section (2.) of this section, request the Minister to refer the decision to the Commissioner for review.

(5.) The Commissioner, on review, shall make such recommendation as he thinks fit to the Minister, and shall forward the recommendation, together with the evidence tendered at the hearing, to the Minister and, at the same time, cause a copy of the recommendation to be delivered to, or served by post on, the lessee.

(6.) The Minister shall, within sixty days after the receipt of the recommendation of the Commissioner, by notice in writing delivered to, or served by post on, the lessee, either—

(a) affirm the decision; or

(b) vary the decision to the extent or in the manner specified in the notice,

as the case may be.

(7.) The lessee may, within one month after the notice referred to in the last preceding sub-section is delivered to, or served on, him—

(a) where the decision of the Minister relates to an offer referred to in sub-section (1.) of this section—

(i) accept the original offer;

(ii) if that offer was varied by the decision given by the Minister before reference to the Commissioner, accept the offer, as so varied;

(iii) if that offer was varied or further varied by the decision given by the Minister after consideration of the recommendation of the Commissioner, accept the offer as so varied or further varied; or

(iv) object to the offer, as varied or further varied by the decision given by the Minister after consideration of the recommendation of the Commissioner, stating fully the grounds on which he relies and request the Minister to treat his objection as an appeal and to forward it to the Court; or

(b) where the decision relates to a determination referred to in sub-section (2.) of this section, object to the determination as varied or further varied by the decision given by the Minister after consideration of the recommendation of the Commissioner, stating fully the grounds on which he relies and request the Minister to treat his objection as an appeal and to forward it to the Court.

(8.) Where any request has been made to the Minister in accordance with paragraph (c) of sub-section (2.) of section six of the *Land Commissioner Ordinance 1933*, that request shall be deemed to have been made in accordance with and within the time prescribed by sub-section (1.) of this section, and the provisions of this Ordinance shall apply to the request accordingly.

(9.) Where, prior to the commencement of this Ordinance, an objection has been posted to or lodged with the Minister in accordance with the provisions of sub-section (3.) of section three AA of the *Leases Ordinance* or under sub-section (1.) of section four of the *Leases Ordinance 1933*, as amended by the *Leases Ordinance (No. 2) 1933*, that objection shall be deemed to be an application made in accordance with and within the time prescribed by sub-section (2.) of this section, and the provisions of this Ordinance shall apply to the objection accordingly.

(10.) For the purpose of the review of any decision of the Minister, the Commissioner shall sit in public, and the lessee in person or by his counsel, solicitor or agent, and the Minister or an officer thereto authorized by him may appear at the hearing and make such submissions in relation to the matter under review as they think fit, and may examine or cross-examine any witness on any matter which the Commissioner deems relevant to the inquiry, and any witness so examined or cross-examined shall have the same protection and be subjected to the same liabilities as if examined by the Commissioner.

Powers of the Commissioner.

8. The Commissioner may make recommendations to the Minister relating to any land, the subject of a lease under the *Leases Ordinance*, upon which the Minister desires the advice of the Commissioner.

Power to send for witnesses and documents.

9. For the purposes of this Part, the Commissioner may, by writing under his hand, summon any person to attend any hearing at a time and place mentioned in the summons, and then and there to give evidence and to produce any books, documents or writings in his custody or control which he is required by the summons to produce.

Power to examine upon oath or affirmation.

10. The Commissioner may administer an oath or affirmation to any person appearing as a witness before him whether the witness has been summoned or appears without being summoned, and may examine the witness upon oath or affirmation.

11.—(1.) If any person served with a summons to attend a hearing, whether the summons is served personally or by being left at his usual place of abode, fails without reasonable excuse to attend the hearing or to produce any documents, books or writings in his custody or control which he was required by the summons to produce, he shall be guilty of an offence.

Penalty for failing to attend or produce documents.

Penalty: Fifty pounds.

(2.) It shall be a defence to a prosecution under this section for failing without reasonable excuse to produce any documents, books or writings if the defendant proves that the documents, books or writings were not relevant to the proceedings before the Commissioner.

12. If any person appearing as a witness before the Commissioner refuses to be sworn or to make an affirmation or to answer any questions relevant to the proceedings before the Commissioner put to him by the Commissioner, he shall be guilty of an offence.

Penalty for refusing to be sworn or to give evidence.

Penalty: Fifty pounds.

13. A statement or disclosure made by any witness in answer to any question put to him by the Commissioner shall not (except in proceedings for an offence against this Ordinance) be admissible in evidence against him in any civil or criminal proceedings in any Court.

Statements made by witness not admissible in evidence against him.

14. Any person before the Commissioner who knowingly gives false testimony in any evidence given by him to the Commissioner shall be guilty of an offence.

Giving false testimony.

Penalty: Imprisonment for twelve months.

15. The Commissioner shall receive by way of remuneration for his services such fees and allowances as the Governor-General thinks fit.

Fees and allowances.

PART III.—CONSTITUTION AND JURISDICTION OF LAND COURT.

16.—(1.) There shall be a Land Court of the Australian Capital Territory, which shall be a Court of record, and shall be constituted in the manner provided by this Ordinance.

Constitution of Land Court.

(2.) The Court shall have an official seal and all courts, judges and persons acting judicially shall take judicial notice of the seal affixed to any document or order issuing out of the Court and shall deem that it was duly affixed.

(3.) The Judge of the Court shall be appointed by the Governor-General from among persons holding the office of Judge of the Land and Valuation Court of a State, or being practising barristers or solicitors of the High Court or the Supreme Court of a State of not less than five years' standing.

(4.) The Judge shall hold office for such period as is specified in his appointment and shall receive such remuneration as the Governor-General determines.

(5.) The Judge shall, before proceeding to discharge the duties of his office, take, before a justice of the High Court or a Judge of the Supreme Court of the Australian Capital Territory or of a State, an oath or affirmation of allegiance in accordance with the form in the Schedule to the Constitution, and also an oath or affirmation in accordance with the following form:—

“I, A.B. do swear that I will well and truly serve our Sovereign Lord the King in the office of Judge of the Land Court of the Australian Capital Territory and that I will do right to all manner of people according to law without fear or favour, affection or ill-will: So help me God;” or

“I, A.B. do solemnly and sincerely promise and declare that (&c. as above, except the words ‘So help me God’).”.

Officers.

17.—(1.) The Minister may appoint a Registrar of the Court and such other officers of the Court as are necessary.

(2.) In the absence, from whatever cause, of the Registrar, the Minister may appoint a person to be Deputy Registrar, and that person while so appointed may exercise the powers and discharge the duties of the Registrar.

Place of sitting.

18. The Court shall sit at such places in the Territory as the Judge directs.

Lessee limited to grounds stated in objection.

19. A lessee shall be limited on the hearing of the appeal to the grounds stated in his objection.

On receipt of deposit, Minister to forward objection to the Court.

20. Every request to the Minister in pursuance of sub-paragraph (iv) of paragraph (a) or paragraph (b) of sub-section (7.) of section seven of this Ordinance shall be accompanied by a deposit of Five pounds, and the Minister shall forthwith forward the objection, together with all the departmental papers relevant thereto, to the Court.

Objections to be heard by Court.

21.—(1.) The Court shall hear and determine any objection forwarded to it, and may confirm, reduce, increase or vary the rent, or confirm, delete or vary any term or condition, objected to by any lessee in any such objection.

(2.) The lessee objecting may appear and be heard before the Court personally or by counsel or solicitor or by agent authorized in writing.

(3.) The Minister may, in any case, appear and be heard before the Court by counsel or solicitor or by any officer authorized in that behalf.

(4.) The decision of the Court on any objection shall be final and conclusive and binding on the lessee and the Minister.

Proceedings to be heard in open Court.

22. All proceedings before the Court shall, unless the Court otherwise orders, be heard in open Court.

Issue of process, &c.

23.—(1.) A summons or other process issuing out of the Court shall be under the seal of the Court, and shall be signed by the Judge or the Registrar.

(2.) All courts shall take judicial notice of the signature of the Judge, Registrar or Deputy Registrar when attached to any document issuing out of the Court.

24.—(1.) The Judge shall have all such powers, rights and privileges as are vested in the Supreme Court or the Judge thereof, in respect of the following matters:—

Powers of Judge as to production of evidence.

- (a) Compelling the attendance of witnesses and examining them on oath, affirmation or declaration;
- (b) Compelling the production, discovery and inspection of books, documents and writings;
- (c) Compelling witnesses to answer questions which the Judge deems to be relevant to any proceeding before him;
- (d) The punishment of persons guilty of contempt, or of disobedience of any order made by the Judge, or of any summons issuing out of the Court; and
- (e) Directing the prosecution of witnesses for perjury.

(2.) Any warrant to apprehend and to detain and bring before the Court, or to keep in any gaol or other place of detention, any person liable upon the order of the Court to be so dealt with shall be valid and effectual if it is in accordance with the prescribed form, or to the effect thereof, and all persons to whom the warrant is addressed shall obey the warrant.

Provided that no such warrant shall be issued against a person who fails to appear as a witness when called, unless it be proved to the satisfaction of the Court that he has been duly served with a summons, and that payment or tender of his reasonable expenses has been made to him.

25. In any proceeding before the Court, the Court may allow further evidence to be given upon such terms as to costs or otherwise as the Court thinks fit.

Power of Court to allow further evidence.

26. In any proceeding before the Court, the Court shall have power at any stage of the proceedings to order any amendments to be made which in the opinion of the Court are necessary in the interests of justice, and upon such terms as to costs or otherwise as the Court thinks fit.

Power of amendment.

27. The Court may, if it considers the objection to be frivolous or unreasonable, order the forfeiture of the whole or part of the deposit; otherwise it shall, subject to this Ordinance, be returned to the objector.

Deposit may be forfeited.

28.—(1.) The Court shall have power to make such order as to the costs of, or incidental to, any proceeding before the Court as it thinks fit, and may direct that the costs be taxed.

Costs.

(2.) Where the Court directs that any costs be taxed, the Registrar shall tax the costs accordingly in accordance with the rules made by the Judge.

(3.) The Judge may review any decision of the Registrar in respect of costs.

Enforcement
of order
for payment
of money.

29.—(1.) Any order of the Court for payment of money as costs or otherwise shall be conclusive upon the parties and have the force of a judgment of the Supreme Court.

(2.) The party in whose favour any such order is finally made may obtain from the Registrar a certificate of the amount due thereunder, and, upon production thereof to the Registrar of the Supreme Court, shall be entitled to have judgment entered thereon without any Judge's order, and to have execution for the amount and costs issued and enforced in the same way as is done upon judgments in the Supreme Court:

Provided that the deposit made by the objector shall, unless forfeited, be available in payment or part payment of any sum he may be ordered to pay, and the balance (if any) shall be returned.

Procedure and
practice.

30. The procedure and practice of the Court shall be governed by Rules of Court, and, where no special provision is contained in this Ordinance, and until provision is made by Rules of Court, or where no special provision is contained in the Rules of Court, it shall be governed by the procedure and practice of the Land and Valuation Court of the State of New South Wales, so far as applicable, and, otherwise by the procedure and practice of the Supreme Court so far as applicable.

Rules.

31.—(1.) The Judge may make rules to regulate the procedure and practice of the Court.

(2.) Rules made under this section shall be deemed to be regulations within the meaning of the *Interpretation Ordinance 1914-1933*.

PART IV.—MISCELLANEOUS.

Regulations.

32. The Minister may make regulations, not inconsistent with this Ordinance, prescribing all matters which by this Ordinance are required or permitted to be prescribed or which are necessary or convenient to be prescribed for carrying out or giving effect to this Ordinance.

Dated this seventeenth day of July, 1936.

HUNTINGFIELD

Deputy of the Governor-General.

By His Excellency's Command,

T. PATERSON

Minister of State for the Interior.