

*Prickly-pear Destruction.*

Act No. 32, 1901.

An Act to consolidate the enactments relating to the eradication of the Prickly-pear. [31st October, 1901.]

PRICKLY-PEAR  
DESTRUCTION.

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:—

PART I.

PRELIMINARY.

1. This Act may be cited as the "Prickly-pear Destruction Act, 1901," and is divided into Parts, as follows:—

Short title and  
division.

PART I.—*Preliminary, ss. 1-3.*

PART II.—*Inspectors, ss. 4-6.*

PART III.—*Destruction of prickly-pear on certain lands not being private lands, ss. 7-11.*

PART IV.—*Destruction of prickly-pear on private lands, ss. 12-24.*

PART V.—*General provisions, ss. 25-27.*

PART VI.—*General penalties and procedure, ss. 28-37.*

2. (1) The Act fifty Victoria number two is hereby repealed.

Repeal and savings.

(2) All persons appointed under the Act hereby repealed, and holding office at the time of the passing of this Act, shall be deemed to have been appointed hereunder.

(3) All varieties of the cactus tribe declared by the Governor to be prickly-pear for the purposes of the Act hereby repealed, shall be deemed to have been declared to be prickly-pear for the purposes of this Act.

(4) All regulations made under the authority of the Act hereby repealed, and being in force at the time of the passing of this Act, shall be deemed to have been made under the authority of this Act.

(5) All certificates of allowance given under the authority of the Act hereby repealed, shall be deemed to have been given hereunder.

3. In this Act, unless the context or subject-matter otherwise indicates or requires,—

Interpretation.

50 Vic. No. 2, s. 2.

"Crown land" means land vested in His Majesty and not permanently dedicated to any public purpose, or granted or lawfully contracted to be granted in fee-simple, or included under the definition of "private land."

"eradicate"

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“eradicate” means to entirely consume by fire, or to completely bury three feet at least under ground, prickly-pear with the roots, seed, and every other part thereof.

“inspector” means any person acting under the authority of the Minister as inspector for the purposes of this Act.

“occupier” means every person holding any lease, agreement for lease, or license to occupy land, and every person in actual possession or occupation of any land.

“owner” means any person holding land on any freehold tenure, or permanently in trust, or upon any lease or promise of lease from the Crown, and includes the mortgagee of any such land.

“prickly-pear” means the plant known by the botanical name of *Opuntia vulgaris*, or the common prickly-pear, and any other variety of the cactus tribe which the Governor may declare to be prickly-pear for the purpose of this Act.

“private land” means land alienated from the Crown, or held under lease or promise of lease from the Crown, for any period exceeding one year, or permanently dedicated and vested in trustees, whether such trustees be persons or a body corporate.

## PART II.

## INSPECTORS.

Inspectors.

4. The Minister may authorise any person to act as inspector for the purposes of this Act.

Power of entry.  
50 Vic. No. 2, s. 3.

5. Any inspector may at all reasonable hours enter upon any Crown land or private land for the purpose of ascertaining whether any prickly-pear is growing thereon, and for such purpose shall have free right of entry.

Inspector on notice  
to ascertain if any  
prickly-pear is on  
land.

*Ibid.* s. 4.

6. Every inspector upon being required by notice in writing, delivered to him personally or left at his usual abode by any owner or occupier, shall attend at any place therein appointed within a reasonable time after the service thereof, for the purpose of ascertaining whether any prickly-pear is growing upon the land specified in such notice.

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## PART III.

## DESTRUCTION OF PRICKLY-PEAR ON CERTAIN LAND, NOT BEING PRIVATE LAND.

7. When any prickly-pear is found by an inspector upon Crown land, or upon any road not within the boundaries of any municipality and adjoining or dividing Crown land, a notice in the form of the First Schedule hereto shall be transmitted by such inspector to the Minister, describing the situation of such land or road.

Notice to Minister of prickly-pear on Crown land.  
50 Vic. No. 2, s. 6.  
First Schedule.

8. On receipt of such notice, the Minister shall forthwith authorise the employment of all necessary labour to eradicate such prickly-pear, and all expenses incurred in such eradication shall be defrayed out of such moneys as Parliament appropriates for that purpose.

Eradication thereof.  
*Ibid.* s. 6.

Provided that the Minister may cause such Crown land to be offered for lease by auction or tender, and may let the same in areas not exceeding six hundred and forty acres, and for any term not exceeding twenty-one years, upon condition that the lessee shall destroy and eradicate such prickly-pear, and at such rent and subject to such other conditions and penalties as may be prescribed by regulations in that behalf, anything in the Land Act of 1884 or any Act amending the same to the contrary notwithstanding.

9. If any prickly-pear is found upon any land vested in the Railway Commissioners of New South Wales, or upon any land, roads, or streets within the boundaries of any municipality, the said Commissioners or the council of such municipality (as the case may be) shall be taken to be the owner or occupier of such land, roads, or streets for the purpose of being served with the notice in the next succeeding section mentioned, and shall be liable to the penalties imposed by this Act.

Prickly-pear growing on railway or lands within a municipality.  
*Ibid.* s. 7.

10. If prickly-pear is found upon any common or upon any land which has been vested by the Crown in trustees, other than the council of any municipality, and if—

Leasing of commons, &c.  
*Ibid.* s. 8.

- (a) the same is not effectually eradicated within three months after notice in the form of the Second Schedule hereto has been served upon the trustees of such common or land or upon any one of them or within such further period as the Minister in any case allows; or
  - (b) the trustees of such common or land, within three months after the receipt of a notice in the form of the Second Schedule hereto, inform the Minister that they are unable to eradicate the prickly-pear thereon; or
  - (c) there are no trustees of such common or land;
- then the Minister may cause such common or land to be offered for lease by auction or tender, and may let the same for any term not exceeding

Second Schedule.

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exceeding twenty-one years upon condition that the lessee destroys and eradicates such prickly-pear, and at such rent and subject to such other conditions or penalties as are prescribed by regulations in that behalf, and any rent received for such land shall be paid to the Consolidated Revenue, anything in the Commons Regulation Act, 1898, to the contrary notwithstanding.

Commons lease  
freed from  
commonage rights.  
50 Vic. No. 2, s. 9.

11. Any common or land so leased shall during the currency of such lease be absolutely freed from all the rights of commonage or the trusts, as the case may be, and the Minister may, upon proof to his satisfaction of the non-fulfilment by the lessee of the conditions of the lease or any of them, declare such lease forfeited and again lease the common or land as hereinbefore provided.

## PART IV.

## DESTRUCTION OF PRICKLY-PEAR ON PRIVATE LANDS.

Inspector may serve  
notice on owners to  
eradicate prickly-pear.

*Ibid.* s. 10.

Second Schedule.

Penalty for neglect  
to comply with  
notice.

*Ibid.* s. 11.

12. Any inspector may serve or cause to be served upon any owner or occupier of any private land on which any prickly-pear is found a notice in the form of the Second Schedule hereto requiring such owner or occupier forthwith to eradicate the same.

13. If within one month after the service of such notice such owner or occupier does not commence to do and thereafter continue to do all such acts as the Minister in writing directs, to eradicate the prickly-pear on the land mentioned in such notice, such owner or occupier shall be liable to a penalty not exceeding ten pounds for the first offence and for every subsequent offence to a penalty of not less than five pounds nor more than twenty pounds, and neglect to take such means to eradicate as aforesaid for a space of twenty-eight days at any time after the date of each conviction shall be deemed to be a fresh offence.

In addition to  
penalty inspector  
may enter upon  
private land.

*Ibid.* s. 12.

14. If any owner or occupier fails to comply with any such notice then in addition to or in lieu of proceedings for the recovery of such penalty any such inspector or other person upon being authorised by the Minister to do so may enter upon the land mentioned in such notice and do all such things as to him appear necessary to eradicate the prickly-pear on the land of such owner or occupier, and for that purpose the inspector or authorised person and any person employed by either of them shall have free right of entry for such period as is in the opinion of the inspector or authorised person necessary for the purposes of such eradication.

Power to withdraw  
from lands after  
entering to clear.

*Ibid.* s. 13.

15. If at any time after the expiration of one month as aforesaid such inspector is satisfied that the owner or occupier is doing all things necessary

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necessary to eradicate such prickly-pear, then such inspector may abstain from entering upon such land or having entered upon it may withdraw therefrom upon the owner or occupier paying all costs and expenses incurred to the time of such withdrawal.

16. Any owner or occupier upon whose land any inspector or authorised person has entered as aforesaid for the purpose of eradicating any prickly-pear shall, within thirty days from service of a notice in the form of the Third Schedule hereto, pay to the person or one of the persons mentioned in such notice as authorised to receive such payment the amount mentioned therein as being the cost and expenses incurred in the eradication of any prickly-pear, which amount when so paid shall by the person receiving the same be forthwith paid into the Consolidated Revenue.

Owners within thirty days of service of notice to pay cost of destruction. 50 Vic. No. 2, s. 14. Third Schedule.

17. If any owner or occupier upon whom a notice as mentioned in the next preceding section has been served fails to pay the amount mentioned therein within the said period of thirty days the inspector issuing such notice or any person authorised in that behalf by the Minister may sue either the owner or the occupier for and recover the same as a debt due to the Crown, either in the Supreme Court or in any Court having jurisdiction nearest to the place where the land in respect of which the claim was made is situated, whether the defendant resides within the limit of the jurisdiction of such Court or not.

If cost not so paid inspector to sue for same. Ibid. s. 15.

18. If a notice is served upon any owner who is not entitled to the occupation for the time being of the land mentioned in such notice then, unless the person in actual occupation or entitled to actual occupation of such land, within fourteen days from the service of such notice, arranges with such owner and to his satisfaction for the eradication of prickly-pear on the said land, the said owner shall be deemed as regards such lands to have all the powers of an inspector under this Act.

If notice to destroy served upon owner not entitled to occupation he may enter and eradicate. Ibid. s. 16.

19. Wherever there are more owners or occupiers than one of any private land and one of such owners or occupiers is under this Act in any way compelled to pay more than his proportionate share of the cost of eradicating the prickly-pear on such land, he may in any Court of competent jurisdiction sue for and recover from the other owners or occupiers of such private land such proportion of the costs, charges, and expenses incurred by him in or about such eradication as is in the opinion of the Court fairly proportionate to the respective interests of the owners in such land.

Contribution between owners. Ibid. s. 17.

20. If the owner or occupier of any such land as mentioned in the next preceding section is unknown or absent from New South Wales, and the cost of eradicating the prickly-pear on his land, or any penalty incurred in respect of such land, cannot be recovered from him and remains unpaid for twelve months after the right to recover the same first accrued, the Minister may let such land for any term not

Lease in default of contributions. Ibid. s. 17.

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exceeding twenty-one years, upon such terms and conditions as are prescribed by regulations for that purpose, and may receive the rents and profits thereof and apply the same in payment of such amount or penalty as aforesaid with interest thereon at the rate of ten pounds per centum per annum so long as the same is unpaid, and the surplus (if any) shall be paid to the Colonial Treasurer to be held by him upon trust for the persons entitled to the same.

Contribution between  
landlord and tenant.  
50 Vic. No. 2, ss.  
1 & 18.

**21.** In every case where, on the first day of September, one thousand eight hundred and eighty-six, a lease was held and has since then been continuously and now is held of any land (the same not being Crown land) for an unexpired period, and there is no provision in such lease with respect to the cost of the eradication of prickly-pear on such land, the landlord and tenant shall each contribute an equitable share of such cost.

Proceedings in  
default of  
contribution.  
*Ibid.* s. 18.

**22.** If the tenant under such lease as mentioned in the next preceding section when called upon by the landlord, or, as the case may be, the landlord when called upon by the tenant, does not agree to pay an equitable share of such eradication, then either party may apply to the court of petty sessions nearest to the place where such eradication has been done to issue a summons to such other party, requiring him to appear before such or some other such court to show cause why such other party should not pay to the first-mentioned party such a proportion of the cost of such eradication as is just and equitable, having regard to the circumstances and duration of the lease of such tenant:

Provided, however, that nothing in this Act shall in any way affect any agreement with respect to the eradication of prickly-pear made between a landlord and tenant previous to the first day of September, one thousand eight hundred and eighty-six.

Adjudication in  
proceedings  
for contribution.  
*Ibid.* s. 19.

**23.** At the time and place appointed by such summons the court as aforesaid shall inquire into the matter therein referred to and shall hear and examine all persons who appear to give evidence concerning the same, and shall thereupon make such order as to the amounts to be contributed respectively by such landlord and tenant as appears to be just and equitable, having regard to all the circumstances and the duration of the lease, and the presiding magistrate shall give a certificate under his hand and seal certifying what amounts are so payable, and such sums shall thereupon be recoverable as hereinafter provided.

As to description  
of private lands in  
notices, &c.  
*Ibid.* s. 20.

**24.** (1) The description of any private land required to be inserted in any notice under this Act need not particularly define the land referred to therein, but shall be sufficient if it makes such reference to the land either by name, number of section, or allotment, or by boundaries or otherwise, as to allow of no reasonable doubt as to what land is referred to.

(2)

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(2) All references to private land in any such notice shall be deemed to extend to the roads bounding or intersecting the same, and any owner or occupier, or inspector, or other person having power hereunder to enter upon private land and to eradicate the prickly-pear thereon shall be deemed to have power to enter upon the roads bounding or intersecting such land and to eradicate the prickly-pear growing on such roads.

## PART V.

## GENERAL PROVISIONS.

25. Any person who is authorised by this Act to enter upon any land and to destroy prickly-pear thereon may take such indigenous timber growing on the land of the owner or occupier of such land as is required by him for the purpose of burning or destroying such prickly-pear, and may dig pits and bury the same therein.

Authorised persons may take timber for purposes of Act.  
50 Vic. No. 2, s. 21.

26. All costs, charges, and expenses incurred by an inspector or any person authorised in clearing any private land of prickly-pear under the provisions of this Act shall be a first charge upon such land and shall take precedence of all mortgages or other charges whatsoever upon such land:

Expense of eradication to be a first charge upon land.  
*Ibid.* s. 22.

Provided that a certificate under the hand of the Minister shall be a full discharge of all such costs, charges, and expenses up to the date of such certificate.

27. The Governor may make regulations for declaring how and in what manner prickly-pear is to be destroyed otherwise than provided for in this Act, and also with respect to all other matters of detail necessary for carrying out the objects of this Act, and may impose penalties not exceeding five pounds for the breach of any such regulation, and every such regulation shall, upon publication in the Gazette, have the force of law.

Regulations.  
*Ibid.* s. 23.

## PART VI.

## GENERAL PENALTIES AND PROCEDURE.

28. Whosoever—
- (a) falsely represents himself to be or personates an inspector or a person authorised under this Act; or
  - (b) not being an inspector or a person authorised in writing by the Minister, or a person lawfully acting under the provisions hereof, trespasses upon any private land for the apparent purpose of eradicating prickly-pear; or
  - (c)

Penalties for personating inspector,

for trespassing upon private lands

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for interfering with notices.

50 Vic. No. 2, s. 24.

(c) destroys, injures, alters, or removes any notice signed by an inspector or person authorised under this Act, and placed or exhibited upon any land by the owner thereof, or by any inspector or person authorised under this Act as aforesaid; shall be liable to a penalty not exceeding twenty pounds.

Inspector neglecting his duty.

*Ibid.* s. 5.

29. Any inspector or person duly authorised under this Act who refuses or wilfully neglects to perform any of the duties imposed upon him by this Act shall be liable to a penalty not exceeding ten pounds.

Penalty for wilfully obstructing inspectors, &c.

*Ibid.* s. 23.

30. (1) Whosoever wilfully, assaults, obstructs, hinders, interrupts, or misleads, or causes to be assaulted, obstructed, hindered, interrupted, or misled, any inspector or any person authorised in writing by the Minister or any owner or person in the exercise of any power or authority vested in him by this Act whilst in the performance or execution of his duty under this Act shall for every such offence if not otherwise specially provided for be liable to a penalty not exceeding twenty pounds.

(2) No proceeding for the recovery of such penalty nor the payment thereof shall be a bar to any action at law by any of the persons aforesaid for or in respect of any such assault as aforesaid, but every such action may be commenced and proceeded with as if this Act had not been passed.

Penalty for disseminating prickly-pear.

*Ibid.* s. 23.

31. Whosoever grows or cultivates upon any land or premises any prickly-pear, or scatters the seed thereof upon any land, or throws or places or causes to be thrown or placed the same into any river, stream, creek, or watercourse, whether containing water or not, or cuts and leaves any prickly-pear in such a position on the banks of any river, stream, creek, or watercourse, that by reason of floods or otherwise it is liable to be swept or floated into such river, stream, creek, or watercourse shall be liable to a penalty not exceeding twenty pounds.

General penalty.

*Ibid.* s. 28.

32. Whosoever commits a breach of this Act or of any regulation hereunder for which a penalty is not specially provided shall for every such offence be liable to a penalty not exceeding ten pounds.

Recovery of penalties under regulations.

33. All proceedings for the recovery of penalties imposed by any regulation made under this Act may be heard and determined before any two justices in a summary manner, according to the provisions of the Act or Acts for the time being regulating proceedings before justices.

Jurisdiction not ousted on ground of title or residence of defendant.

*Ibid.* s. 29.

34. In any proceedings for the recovery of money under the provisions hereof or for the recovery of any penalty hereunder, the jurisdiction of the court or justices before whom the proceedings are pending shall not be ousted on the ground that the defence raises any question of title to land or that the defendant does not reside within the boundaries of the jurisdiction of the court or justices where the action was commenced if the land in respect of which the claim arose is situated within the boundaries of the jurisdiction of such court or justices.



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**35.** Any notice or order required by this Act to be in the form Form of notices, &c. given in any of the Schedules hereto shall be sufficient if in a form 50 Vic. No. 2, s. 31. substantially similar thereto.

**36.** (1) Such notices, or any other required to be given by this Service of notices. Act, or by the regulations to be made hereunder, unless otherwise Ibid. prescribed, shall be deemed to be sufficiently given or served—

- (a) if left with the person to whom it is addressed, or left with some person at his usual or last-known place of residence; or
- (b) if sent to him by a registered letter through the general post; or
- (c) if inserted twice a week for two consecutive weeks in some newspaper published in Sydney, and once a week for two consecutive weeks in some newspaper published in or near to (as the case may be) the district in which such land is situated.

(2) (a) In case of service under paragraphs (a) or (b) of Proof of service. the preceding subsection, a statutory declaration of such service shall be sufficient proof thereof.

(b) In case of service under paragraph (c) of the preceding subsection, the production of the newspapers containing such insertions shall be proof of the due service of such notice.

**37.** (1) For the purposes of this Act in any proceeding to recover Allowance of police magistrate to be sufficient evidence of the expenses incurred. from the owner of any land the expenses of and attending the eradication of prickly-pear, and in any appeal relating to or concerning such expenses it shall be sufficient to produce a certificate of the allowance of such expenses purporting to be under the hand and seal of the magistrate presiding at the court of petty sessions nearest to the place where such work was done, and such allowance and certificate shall be evidence that the expenses so allowed were actually incurred in such eradication, and that such eradication was duly authorised, and that such notice was given and proceedings taken pursuant to the requirements of this Act. Ibid. s. 32.

(2) For the purpose of giving such certificate such magistrate shall, upon request and ex parte, inquire into such expenditure, and examine the vouchers of the same, and shall take evidence of the same if he deems it necessary.

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SCHEDULES.  
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Section 6.

## FIRST SCHEDULE.

*Report by inspector of existence of prickly-pear on land.*To the Minister for  
Sir, (Place and date.)I hereby give you notice that prickly-pear is upon the land or road situated  
as hereunder described. (Signed) A.B.  
Inspector.

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*Description of land.*

Sections 10, 12.

## SECOND SCHEDULE.

*Notice to owner to destroy prickly-pear.*To owner (or owners) of the land hereunder described.  
TAKE notice that pursuant to the Prickly-pear Destruction Act, 1901, you are hereby  
required forthwith to eradicate the prickly-pear on the land situated as hereunder  
described. (Signed) A.B.  
Inspector.

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*Description of land.*

NOTE.—When the notice is given by the council of a municipality the notice must be signed by  
the council clerk.

Section 16.

## THIRD SCHEDULE.

*Notice to defaulter to pay cost of eradication.*To owner of the land hereunder described.  
TAKE notice that pursuant to the Prickly-pear Destruction Act, 1901, costs and expenses  
to the amount of have been incurred in the eradication of prickly-pear  
under my direction on the land situated as hereunder described, which amount you are  
hereby required to pay to (Signed) A.B.  
Inspector.

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*Description of land.*

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