

PRICKLY-PEAR (AMENDMENT) ACT.

Act No. 34, 1934.

George V,
No. 34, 1934.

An Act to make further provision for the eradication of prickly-pear; to validate certain actions; to amend the Prickly-pear Acts, 1924-1930, and certain other Acts; and for purposes connected therewith. [Assented to, 14th November, 1934.]

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. (1) This Act may be cited as the "Prickly-pear (Amendment) Act, 1934," and shall be read and construed with the Prickly-pear Acts, 1924-1930, as amended by subsequent Acts.

(2) The Prickly-pear Acts, 1924-1930, as so amended, are in this Act referred to as the Principal Act.

(3) The Principal Act as amended by this Act may be cited as the Prickly-pear Acts, 1924-1934.

Amendment of
Act No. 31,
1924.

Sec. 15.
(Existing
holdings.)

2. The Principal Act is amended—

(a) by omitting from subsection one of section fifteen the words and figure "sections four and 4A of" and by inserting in lieu thereof the words "the Closer Settlement Acts or";

(b) by inserting in subsection two of the same section after the words "in respect of the holding" the words "or any Crown improvement thereon";

(c)

- (c) (i) by inserting in subsection (3A) of the same section after the word "holding" the following words:—

"or any Crown improvement thereon.

It shall be lawful for the Minister to require the local land board to determine the price or capital value of the land comprising a holding in respect of which the price or capital value has not been notified or determined, and the local land board shall determine the price or capital value accordingly."

- (ii) by inserting in the same subsection after the words "any land" the words "or Crown improvement thereon";
- (d) by inserting in subsection five of the same section after the words "shall not" the words "except with the consent of the Minister";
- (e) by omitting subsection six of the same section and by inserting in lieu thereof the following new subsection:—
- (6) This section shall not apply to lands—
- (a) which are classified within Class I unless the Minister, after report by the Commissioner, is satisfied that the land, at the commencement of this Act, was infested with pear, and that the total amount expended after such commencement, other than amounts expended by the Crown in effectively destroying such pear was not less than one shilling per acre; or
- (b) which are classified within Class II unless the Minister, after report by the Commissioner, is satisfied that the total amount expended other than amounts expended by the Crown since the commencement of this Act, together with any amount required to be expended in effectively destroying the pear is not less than one shilling per acre.
- (f)

Prickly-pear (Amendment) Act.

No. 34, 1934.

(f) by inserting at the end of the same section the following new subsection:—

(7) The provisions of subsection one of this section shall extend to a holder of a lease under this Act, provided that—

(a) where such lease was granted before the commencement of the Prickly-pear (Amendment) Act, 1934, the notice referred to in the said subsection shall not be given before the expiration of ten years after such commencement; or

(b) where such lease is granted after such commencement the said notice shall not be given before the expiration of ten years after the date of the granting of the lease.

Further amend-
ment of Act
No. 31, 1924.

Sec. 16.

(Agreement
for grant of
Crown land
when freed
from pear.)

3. The Principal Act is further amended—

(a) (i) by omitting from paragraph (c) of subsection three of section sixteen the words “ten years” and by inserting in lieu thereof the words “twenty years; and”

(ii) by inserting at the end of the same subsection the following new paragraphs:—

(d) that the capital value of any improvements on the land shall be paid to the Crown; and

(e) that payment of survey fee shall be made in accordance with the scale prescribed by regulation under the Crown Lands Consolidation Act, 1913; and

(f) that the capital value of the improvements and the survey fee shall be paid in the manner and within the time specified in the agreement.

(b) by inserting next after subsection four of the same section the following new subsections:—

(4A) The Minister may upon the recommendation of the Commissioner permit an assignment in the prescribed form and manner, and upon payment of the prescribed fee of any person's interests under an agreement made in accordance with this section.

(4B)

Prickly-pear (Amendment) Act.

333

No. 34, 1934.

(4B) The Minister may upon the recommendation of the Commissioner and with the approval of the Governor vary or extend the provisions of any agreement subject to the limits prescribed by the foregoing provisions of this section.

(c) by inserting in subsection five of the same section after the words "survey fee" the words "capital value of improvements."

4. The Principal Act is further amended—

Further amend-
ment of Act
No. 31, 1924.

(a) (i) by omitting from section seventeen the words "and the conditions which will apply to the lease," and by inserting in lieu thereof the words "the value of the improvements thereon, the conditions which will apply to the lease, and the date on or after which the land will become available";

Sec. 17.
(Leasing
infested
land.)

(ii) by inserting in the same section after the word "notified" the following words:—

(cf. s. 85
(4), Act No.
7, 1913.)

"A notification under this section shall have the effect of revoking any reserves or parts of reserves within the boundaries of the land set apart, unless the contrary is expressly declared by the notification. Such revocation shall take immediate effect on the expiration of the day next preceding the day upon which the land becomes available in pursuance of the notification.

A notification which will effect the revocation of any reserve for mining or mining purposes or any timber reserve shall not be published unless in the case of a reserve for mining or mining purposes the consent thereto of the Secretary for Mines or in the case of a timber reserve of the Minister administering the Forestry Act, 1916, or any Act amending or replacing the same has been obtained.

A notification under this section shall also have the effect of revoking any previous notification in respect of the same land unless the contrary is expressly declared by the later notification."

(iii)

Prickly-pear (Amendment) Act.

No. 34, 1934.

- (iii) by omitting from the same section the words “ the rent shall include a rent for the use of such improvements ” and by inserting in lieu thereof the words “ the lessee shall pay the value of the improvements as specified in the notification published in pursuance of this section, and payment shall be made within three months after the commencement of the lease, or, at the option of the lessee, by equal annual instalments within the period specified in such notification, together with interest at the rate of four per centum per annum :

Provided that the lessee may with the consent of the Minister pay such annual rental value as the Minister may determine for the use of such improvements.

The lease shall be liable to be forfeited—

- (a) if default is made in any payment, when due, in respect of such improvements, or
- (b) if the said improvements are not maintained in a reasonably good condition during the currency of the lease in any case where the annual rental value is payable by the lessee.”
- (iv) by inserting in the same section after the words “ per annum ” the following new paragraph:—

The Minister may refer any applications for a lease of any area the subject of a notification under this section to the local land board for inquiry and report as to the merits of such applications, and the local land board shall inquire and report to the Minister accordingly.

Sec. 20.
(Leases.)

- (b) (i) by omitting from subsection two of section twenty the words “ not exceeding in area one acre ”;
- (ii) by inserting at the end of the same subsection the words “ Upon such withdrawal the
rent

rent for the succeeding years of the lease shall be reduced in proportion to the area withdrawn ”;

- (iii) by inserting in subsection three of the same section after the word “ assigned ” the words and parentheses “ (except by way of mortgage or discharge of mortgage) ”;
- (iv) by inserting next after the same subsection the following new subsection:—
 - (3A) A transfer of a lease granted under this Act or the Act hereby repealed shall be made in the prescribed form and manner; and registration thereof shall be subject to payment of such fee as is prescribed.
- (v) by inserting in subsection four of the same section after the word “ defined ” the words “ where necessary ”;
- (vi) by omitting from the same subsection the words “ The cost of survey ” and by inserting in lieu thereof the words and figures “ A survey fee in accordance with the scale prescribed by regulation under the Crown Lands Consolidation Act, 1913 ”;
- (vii) by omitting from the same subsection the word “ prescribed ” and by inserting in lieu thereof the words “ of four per centum per annum ”;
- (viii) by omitting from subsection five of the same section the words “ twenty-one years ” and by inserting in lieu thereof the words “ sixteen years.

Any person between the ages of sixteen and twenty-one years who, being the holder of a lease under this Act enters into any agreement, either personally or by an agent, for or in relation to the performance of any work or rendering of any services on such lease or in relation thereto or to the loan of money whether secured on such lease or otherwise, or the sale or purchase of goods and chattels of any description whatsoever, or who in like manner mortgages

cf. s. 240,
Act No. 7,
1913.

No. 34, 1934.

mortgages or transfers by way of mortgage such lease, or enters into any agreement connected with the occupation, management or general purpose of such lease—not being in violation of the provisions of this Act—shall be subject to the same liabilities and have the same rights in respect of such agreement, mortgage or transfer as if he were of the full age of twenty-one years: Provided, however, that no mortgage or transfer by way of mortgage by any such person shall be valid unless the consent in writing of the Public Trustee thereto has been first obtained. Application for such consent shall be made as prescribed.

Any such person may be sued for any moneys due to the Crown or to any other person as if he were of the full age of twenty-one years.”

- (ix) by inserting next after subsection five of the same section the following new subsections:—

(6) Upon the expiration of the term of any lease granted under this Act or the Act hereby repealed, the land formerly held under such lease shall be deemed to be reserved from sale or lease (other than annual lease) under any Act until otherwise notified in the Gazette.

Upon the forfeiture, surrender, or expiration of the term of any such lease situated wholly or in part within the external boundaries of any occupation license, the lands therein or so much thereof as are within the external boundaries of the license shall be added to the land under such license; and in any such case the license fee payable for such lands so added if unimproved shall be at the same rate per acre as for the rest of the land held under license; and for any land which contains improvements the license fee shall be determined by the local land board.

(7)

cf. s. 165
(1), s. 165
(3), Act
No. 7, 1913.

Prickly-pear (Amendment) Act.

337

(7) Upon the expiration by effluxion of time of the term of any lease granted under this Act or the Act hereby repealed the last holder thereof shall have tenant right in improvements effected or paid for by him or his predecessors in title.

No. 34, 1934.

Such tenant right shall have the same effect as is expressed in the Crown Lands Consolidation Act, 1913, in respect of tenant right in improvements accrued or granted under that Act.

*cf. s. 223,
Act No. 7,
1913.*

5. The Principal Act is further amended—

**Further amend-
ment of Act
No. 31, 1924.**

- (a) (i) by inserting at the end of subsection two of section eleven the words—

**Sec. 11.
(Infested
lands.)**

“ The notice may be registered by the Commissioner in the register of causes, writs and orders affecting land.”

- (ii) by inserting in subsection three of the same section after the word “ served ” the words “ and in a case in which the notice is registered as aforesaid of every subsequent successor in title through or under such owner or occupier ”;
- (iii) by omitting from subsection four of the same section the word “ an ” and by inserting in lieu thereof the word “ such ”;
- (iv) by omitting from the same subsection the word “ fails ” and by inserting in lieu thereof the words “ or successor in title fails contrary to his duty in that behalf ”;
- (v) by omitting from the same subsection the words “ upon him ”;
- (vi) by inserting next after the same subsection the following new subsection:—

(5) The Commissioner may in like manner correct, amend, modify, or cancel any notice served in accordance with this section and may register in the aforesaid register the notice effecting the correction, amendment, modification, or cancellation.

(b)

Prickly-pear (Amendment) Act.**No. 34, 1934.**

Sec. 12.
(Commissioner may enter and clear.)

(cf. s. 30 (4),
sub-para. (a)
of second
proviso, Act
No. 35, 1912.)

Sec. 13.
(Assistance
in clearing.)

Further amend-
ment of Act
No. 31, 1924.

Sec. 22.
(Forfeiture.)

- (b) (i) by inserting in subsection one of section twelve after the word "served" the words "or any successor in title to such owner or occupier";
- (ii) by inserting in subsection two of the same section before the word "owner" the words "person who at the date of eradication of the prickly-pear from the land is the";
- (iii) by inserting in the same subsection after the word "repaid," where secondly occurring, the words "or until recovered, such costs and expenses together with interest thereon at the rate prescribed";
- (c) (i) by inserting in paragraph (a) of section thirteen after the word "appliances" the words "or services";
- (ii) by inserting at the end of the same section the following new subsection:—
- (2) The Minister may upon the recommendation of the Commissioner extend or vary the terms of any agreement in any respect subject to the limits prescribed by the foregoing provisions of this section.

6. The Principal Act is further amended—

- (a) (i) by omitting from subsection two of section twenty-two the word "lease," wherever occurring, and by inserting in lieu thereof the word "holding";
- (ii) by omitting from the same subsection the word "lessee" and by inserting in lieu thereof the word "holder";
- (iii) by omitting from the same subsection the words "Crown Lands Acts" and by inserting in lieu thereof the words and figures "Crown Lands Consolidation Act, 1913, the Closer Settlement Acts, and the Returned Soldiers Settlement Act, 1916";
- (iv) by inserting in subsection three of the same section after the word "lessee" the words "or holder referred to in subsection one and subsection two hereof respectively";
- (v) by omitting from the same subsection the words "the lease";
- (vi)

Prickly-pear (Amendment) Act.

£39

No. 34, 1934.

- (vi) by inserting next after the same subsection the following new subsection:—

(3A) Where a lease granted under this Act or the Act hereby repealed becomes liable to forfeiture for non-payment of rent, or other moneys due to the Crown, the provisions of subsection three of this section shall not apply.

- (vii) by inserting in subsection four of the same section after the word "lease" the words and parentheses "(other than annual lease)";

- (viii) by inserting after the same subsection the following new subsection:—

(5) The Minister may by notice published in the Gazette reverse any such forfeiture upon such conditions as he may deem desirable. Such reversal shall relate back to the date when the forfeiture was notified and the forfeiture so reversed shall for all purposes be deemed never to have been notified.

7. The Principal Act is further amended—

Further amend-
ment of Act
No. 31, 1924.

- (a) by inserting in subparagraph (h) of section seven after the word "operations" the words "on Crown land and private land";

Sec. 7.
(Administra-
tive func-
tions.)

- (b) by inserting next after section seven the following new section:—

New sec. 7A.

7A. The Commissioner and any other prescribed person shall have power on behalf of the Minister to deal with such classes of matters arising under this Act or the regulations as may from time to time be prescribed.

Delegation
of Minister's
powers.
cf. s. 17A,
Act No. 7,
1913.

8. The Principal Act is further amended by omitting from subsection two of section twenty-six the words "During a period of five years."

Further amend-
ment of Act
No. 31, 1924.
Sec. 26.
(Grant from
Consolidated
Revenue.)

9. (1) The Principal Act is further amended—

Further amend-
ment of Act
No. 31, 1924.

- (a) by omitting from the short heading to section six the words "Prickly-pear zones";

Sec. 6.
(Prickly-
pear zones.)

- (b) by omitting subsection one of the same section;

(c)

Prickly-pear (Amendment) Act.**No. 34, 1934.**

- (c) (i) by omitting from subsection two of the same section the words "as soon as practicable after any such notification is published in the Gazette and";
- (ii) by omitting from the same subsection the words "thereafter as prescribed";
- (iii) by omitting from the same subsection the words "the lands situated within the zone" and by inserting in lieu thereof the words "lands infested with prickly-pear";
- (d) by omitting subsections five, six and seven of the same section.

(2) Any declaration made by the Governor in pursuance of subsection one of section six of the Principal Act and which has not been revoked prior to the commencement of this Act is hereby revoked.

10. The Principal Act is further amended—Further amend-
ment of Act
No. 31, 1924.Sec. 1.
(Short title,
application
of Act, and
Division into
Parts.)

- (a) (i) by omitting from subsection two of section one the word "Act" where secondly occurring;
- (ii) by omitting from subsection four of the same section the figures "13" and by inserting in lieu thereof the figures "15";
- (iii) by omitting from the same subsection the words and figures "Division 2.—Private lands within a prickly-pear zone—ss. 14, 15";
- (iv) by omitting from the same subsection the word and figure "Division 3" and by inserting in lieu thereof the word and figure "Division 2";
- (v) by omitting from the same subsection the word and figure "Division 4" and by inserting in lieu thereof the word and figure "Division 3";

Sec. 3.
(Defini-
tions.)

- (b) by inserting in the definition of owner in section three after the word "vested" the words "or the person who is entitled to receive or is in receipt of or if the land was let to a tenant would be entitled to receive the rents and profits therefrom whether as beneficial owner, life tenant, trustee or otherwise";

(c).

Prickly-pear (Amendment) Act.

341

No. 34, 1934.

- (c) by omitting from section seven wherever occurring the words "within a prickly-pear zone" and by inserting in lieu thereof the words "infested with prickly-pear";
- (d) by inserting in section nine after the word "behalf" the words "to clear and";
- (e) by omitting section ten;
- (f) (i) by omitting from section 12A the words "give and take fence" where secondly occurring and by inserting in lieu thereof the words "fence or any fence used as a common boundary fence";
- (ii) by omitting from the same section the word "fence" where lastly occurring and by inserting in lieu thereof the words "of a holding";
- (g) by inserting at the end of section 13A the words "and for the purposes of section sixteen of this Act the land referred to in such section to the extent of such waiver or remission shall be deemed to have been freed from pear without any cost to the Crown";
- (h) by omitting the heading to Division 2 of Part III;
- (i) (i) by inserting in subsection one of section fourteen before the word "land" where secondly occurring the words "whole or part of the";
- (ii) by omitting from the same subsection the words "owner or";
- (j) by omitting from subsection one of section fifteen the words "within or partly within a zone" and by inserting in lieu thereof the words "which is or has been infested with prickly-pear";

Sec. 7.
(Administrative functions.)

Sec. 9.
(Duties of all owners and occupiers of land free from pear.)

Sec. 10.
(Return to be furnished by owner or occupier of land on which pear is growing.)

Sec. 12A.
(Give and take fence.)

Sec. 13A.
(Effect of waiver or remission.)

Division 2,
Part III.

Sec. 14.
(Surrender of very heavily infested land.)

Sec. 15.
(Existing holdings.)

(k)

Prickly-pear (Amendment) Act.

No. 34, 1934.

Division 3,
Part III.Sec. 17.
(Leasing in-
fested land.)Sec. 20.
(Leases.)Sec. 21.
(Extension of
term.)Division 4,
Part III.Sec. 25.
Prickly-pear
destruction
fund.)Sec. 28.
(Penalty for
scattering seed,
etc.)

(k) by inserting after subsection five of section fifteen the following new subsection:—

(5A) Where the total amount which has been appropriated to purchase money in respect of any holding taken into consideration under the provisions of this section exceeds the price or value so determined no refund shall be made.

(l) (i) by omitting from the heading to Division 3 of Part III the figure “ 3 ” and by inserting in lieu thereof the figure “ 2 ”;

(ii) by omitting from the same heading the words “ within a prickly-pear zone ”;

(m) by omitting from section seventeen the words “ within a zone ”;

(n) by inserting at the end of section twenty the following new subsection:—

(8) To remove doubt it is hereby declared that a lease may be granted to a company.

(o) by inserting in subsection one of section twenty-one after the word “ repealed ” the words “ either as to the whole or part of the lease ”;

(p) by omitting from the heading to Division 4 of Part III the figure “ 4 ” and by inserting in lieu thereof the figure “ 3 ”;

(q) by inserting in section twenty-five after the word “ rents ” and within the parentheses, the words “ and payments received in respect of improvements ”;

(r) (i) by inserting in section twenty-eight after the word “ person ” the words “ who sells or offers for sale or ”;

(ii) by inserting in the same section after the word “ any,” where thirdly occurring, the words “ ocean, harbour, estuary, lake, lagoon ”;

(iii) by inserting in the same section before the word “ banks ” the words “ foreshores of any ocean, harbour, estuary, lake or lagoon or the ”;

(iv) by omitting from the same section the words “ by reason of floods or otherwise ”;

(v)

Prickly-pear (Amendment) Act.

243

(v) by inserting in the same section after the word "such" where secondly occurring the words "ocean, harbour, estuary, lake, lagoon";

No. 34, 1931.

(s) by inserting at the end of subsection one of section thirty-four the words "The Governor may also make regulations prescribing the application of any of the provisions of the Crown Lands Consolidation Act, 1913, as amended by subsequent Acts, to matters arising under the provisions of this Act."

Sec. 34.
(Regulations.)

11. (1) The action of the Minister in incorporating in leases granted under the Principal Act a condition that the lessees shall be liable for payment of survey fee in accordance with the scale prescribed by regulation under the Crown Lands Consolidation Act, 1913, is hereby validated.

Validations.
(Survey fees.)

(2) All actions purported to have been taken by the Minister in pursuance of the provisions of the Principal Act on or after the ninth day of November, one thousand nine hundred and thirty, up to and including the thirteenth day of September, one thousand nine hundred and thirty-one, are hereby validated.

12. The Acts mentioned in the Schedule to this Act are to the extent therein indicated hereby repealed.

(Repeals Schedule.)

SCHEDULE.

No. of Act.	Short title.	Extent of Repeal.
1925, No. 4 ...	Prickly-pear (Amendment) Act, 1925.	Subparagraph (i) of paragraph (a) and paragraph (h) of section two; also paragraph (k) of the same section so far as it amends section seventeen of Act No. 31, 1924.
1930, No. 13 ..	Prickly-pear (Amendment) Act, 1930.	Subparagraphs (i), (iv), and (v) of paragraph (b), and paragraph (c) of section eight.

PASTURES