

PRICKLY-PEAR (AMENDMENT) ACT.

Act No. 6, 1944.

An Act to make provision for the extension of ^{George VI} the term of prickly-pear leases to leases in ^{No. 6, 1944.} perpetuity and for the fixing of the rents of prickly-pear leases; to make provision for the subdivision of prickly-pear leases and for the reference of certain matters to local land boards for report; for these and other purposes to amend the Prickly-pear Acts, 1924-1934, the Crown Lands Consolidation Act, 1913, and certain other Acts in certain respects; and for purposes connected therewith. [Assented to, 11th April, 1944.]

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 :—

1. (1) This Act may be cited as the "Prickly-pear ^{short title.} (Amendment) Act, 1944."

(2) The Prickly-pear Act, 1924, as amended by subsequent Acts, is in this Act referred to as the Principal Act.

(3) The Prickly-pear Act, 1924, as amended by subsequent Acts and by this Act, may be cited as the Prickly-pear Act, 1924-1944.

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Amendment
of Act No.
31, 1924.
Sec. 21.
(Consequen-
tial.)
New secs.
21A, 21B,
21C.

Extension
of term to
lease in
perpetuity.

2. The Principal Act is amended—

- (a) by omitting subsection two of section twenty-one;
- (b) by inserting next after the same section the following new sections:—

21A. (1) The holder of a lease granted under this Act or the Act hereby repealed may apply to have the term of the lease extended to a lease in perpetuity.

(2) An application shall be made in the manner and in or to the effect of the form and shall be accompanied by the deposit prescribed.

(3) The Minister may at his discretion, but subject to this section, grant the application either as to the whole or part of the land in the lease.

Where the Minister grants any such application the lease shall (in addition to any special or other conditions imposed under any other provision of this Act) be subject to such special conditions (if any) as the Minister, on the recommendation of the Commissioner, may impose.

Without prejudice to the generality of the foregoing provisions of this subsection such special conditions may include—

- (a) conditions designed to protect the land from soil erosion; and
- (b) conditions designed to prevent overstocking.

(4) The following provisions shall apply in respect of every such application:—

- (a) The application shall be granted only in respect of such part of the land comprised in the lease as in the opinion of the Minister will not, together with all other lands of the applicant and the spouse of the applicant which are to be taken into consideration under this paragraph, substantially exceed a home maintenance area.

For

For the purposes of this paragraph ^{No. 6, 1944.} "home maintenance area" means an area which when improved by necessary ringbarking, suckering, scrubbing, clearing, pear destruction, and provision for water supply, and when used for the purposes for which it is reasonably fitted, would be sufficient for the maintenance in average seasons and circumstances of an average family.

In considering what is a home maintenance area for the purposes of this paragraph the Minister shall take into consideration only such lands as under section two hundred and seventy-six of the Crown Lands Consolidation Act, 1913, as amended by subsequent Acts, he is required to take into consideration when determining what area is or will be sufficient for home maintenance under that Act, as so amended.

- (b) The application shall not be granted in respect of such part of the land comprised in the lease as is—
- (i) reserved from sale, conditional sale, conditional purchase or other alienation under the Crown Lands Acts (as defined by the Crown Lands Consolidation Act, 1913, as amended by subsequent Acts)—unless the Minister for the time being charged with the administration of the Crown Lands Acts so approves;
 - (ii) within a State forest or timber or forest reserve—unless the Forestry Commission so approves;
 - (iii) within a reserve for mining or for mining purposes or within an area exempted from alienation under the Mining Act, 1906,
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as amended by subsequent Acts—unless the Secretary for Mines so approves;

- (iv) within the area of erosion hazard constituted under the Soil Conservation Act, 1938, or within any area of erosion hazard notified under that Act or within a catchment area notified or constituted under that Act—except upon the recommendation of and subject to such special conditions as may be recommended by the Catchment Areas Protection Board.

(5) (a) Where an application under this section has been granted (whether as to the whole or as to part of the land in the lease) the annual rent of the lease shall be at the rate of two and one-half per centum of the capital value of the land comprised in the lease, as determined in accordance with this Act by the determination which is for the time being in force.

(b) The capital value of the land shall be determined by the local land board.

The first such determination shall be made as at the date of granting of the application, and shall remain in force for a period of ten years. Subsequent determinations shall be made at intervals of ten years and each such determination shall be made as at the date of expiration of the period of the last preceding determination and shall remain in force for a period of ten years from that date.

(c) The provisions of this subsection which prescribe the rate at which rent is payable shall, in their application to and in respect of any lease, take effect as from the date upon which rent under that lease is next payable after the date as at which the capital value of the land in that lease is determined.

(d)

(d) Where the term of the lease has ^{No. 6, 1944.} been extended to a lease in perpetuity as to part only of the land comprised therein, a determination of the capital value of such part shall be made as at the date upon which the term of the lease expires as to the part not so extended, and as from such date the annual rent shall be at the rate of two and one-half per centum of the capital value so determined.

Any determination under this paragraph shall continue in force until the next periodic determination made pursuant to paragraph (b) of this subsection comes into force.

(e) In determining capital value pursuant to this subsection the local land board shall take into consideration the following matters:—

- (i) the conditions of the lease and in particular the conditions relating to prickly-pear having due regard to—
 - (a) the state of the land with respect to prickly-pear;
 - (b) the compliance or non-compliance, as the case may be, by the holder with the conditions of the lease;
 - (c) the expenditure incurred by him and that may be required to be incurred by him in compliance with such conditions or any modification thereof;
- (ii) the extent to which the holding comprises land which is suitable for agriculture or mixed farming purposes;
- (iii) the proximity or otherwise of the holding to an existing or proposed line of railway or main road or to existing or probable agricultural settlement;
- (iv) the public interest;
- (v) the effectiveness or otherwise of biological means and methods in destroying prickly-pear on the land comprised in the lease,

and

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and such capital value shall be determined irrespective of the value of any improvements (other than those resulting from the adoption of biological means and methods) owned by the applicant or in respect of which he is liable to pay the value or an annual rental value.

(f) Any determination by the local land board of capital value under this subsection may be the subject of an appeal or reference to the Land and Valuation Court and that court shall have jurisdiction to hear and determine any such appeal or reference.

The provisions of section nineteen of the Crown Lands Consolidation Act, 1913, as amended by subsequent Acts, and the regulations thereunder, shall, mutatis mutandis, apply to and in respect of any appeal under this subsection.

A reference under this subsection may be made by the Minister within one month after receipt of any determination against which an appeal is not made, or if an appeal is made against the determination, then within one month after the receipt of the notice of appeal by the Under Secretary for Lands.

(6) The cost of any necessary survey shall be paid by the holder in the manner and at the time prescribed and upon default of payment the lease shall be liable to forfeiture.

Subdivision
of leases.

21B. (1) The holder of a lease granted under this Act or the Act hereby repealed may make application to the Minister for the subdivision of his lease into two or more portions.

An application may be made under this section whether or not the term of the lease has been extended to a lease in perpetuity.

(2) The application shall be made in the prescribed manner and in or to the effect of the prescribed form and shall be accompanied by the prescribed deposit which shall be available for the payment of the costs of any survey or reports which may be required.

(3)

(3) The Minister may grant or refuse No. 6, 1944. any application under this section or grant any such application with such modifications as he may think fit, and where he grants an application, with or without modifications, he shall settle the lines of subdivision and shall—

- (a) in any case where the term of the lease has been extended to a lease in perpetuity, cause a determination of the capital value of the land comprised in each of the portions to be made by the local land board as at the date of the application, and, for the period commencing on the date upon which rent is next payable after the granting of the application and ending on the date as at which the next periodic determination of the capital value of the land is made under section 21A of this Act, the rent payable in respect of each such portion shall be at the rate of two and one-half per centum of the capital value of that portion as so determined;
- (b) in any other case, apportion the rent as between the subdivided portions.

(4) The holder of the lease shall surrender such land as may be necessary for providing roads of access to the subdivided portions, which land shall thereupon become Crown land free from any claim thereto of such holder.

(5) Each portion of a subdivided lease shall be subject to the same conditions as attached to the lease before subdivision, and shall be subject to all the provisions of this Act, and to the provisions of section 193A of the Crown Lands Consolidation Act, 1913, as amended by subsequent Acts, as if it were a separate lease.

21c. The Minister upon the recommendation Surrender of leases. of the Commissioner may accept a surrender of any lease granted under this Act or the Act hereby repealed either as to the whole or any part of the land leased. This

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This section shall apply whether or not the term of the lease has been extended to a lease in perpetuity.

Further amendment of Act No. 31, 1924.

Sec. 11.
(Infested lands.)

3. The Principal Act is further amended—

- (a) by inserting in subsection two of section eleven after the words “may state” the words “a period of time within which the land shall be freed from prickly-pear to the satisfaction of the Commissioner or may state”;
- (b) (i) by omitting from section twenty-eight the words “or who scatters or causes to be scattered the leaves or seed of prickly-pear” and by inserting in lieu thereof the words “or purchases any prickly-pear or the leaves or any other part or the seed of prickly-pear or who scatters or causes to be scattered any prickly-pear or the leaves or any other part or the seed of prickly-pear”;
- (ii) by inserting in the same section after the words “leaves any prickly-pear” the words “or the leaves or any other part”.

Sec. 28.
(Penalty for selling or scattering seed, etc.)

Amendment of Act No. 7, 1913.

Sec. 17.
(Minister may refer to boards for reports.)

Sec. 193A.
(Conversion of prickly-pear leases.)

4. The Crown Lands Consolidation Act, 1913, as amended by subsequent Acts, is amended—

- (a) by inserting in section seventeen after the words and figures “or the Public Trusts Act, 1897,” the words and figures “or the Prickly-pear Act, 1924-1944”;
- (b) by omitting subsection seven of section 193A and by inserting in lieu thereof the following subsection:—

(7) The capital value of a homestead farm or Crown-lease or the price of a conditional purchase under this section or the price at which the land converted into a conditional lease under this section shall be convertible into an additional conditional purchase shall be—

- (a) the capital value of the land comprised in the prickly-pear lease where the same has been determined by the local land board; or

(b) ;

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- (b) where the capital value has not been so determined, but the capital value of the prickly-pear lease has been notified, the capital value as so notified; or
- (c) where the capital value has not been so determined or notified, such capital value as the local land board may, upon an application for conversion under this section, determine:

Provided that the local land board in determining the capital value of the land under this paragraph shall determine the same as at the date of application for the prickly-pear lease and irrespective of the value of any improvements owned by the applicant for conversion.
