

Prickly-pear (Amendment) Bill, 1933.

EXPLANATORY NOTE.

THE objects of this Bill are—

- (a) to extend the provisions of the law under which capital values, rentals, and conditions of holdings infested with prickly-pear may be reviewed by the Local Land Board and Minister;
- (b) to extend the terms of existing prickly-pear leases;
- (c) to vary the terms and conditions of certain agreements entered into by the Crown with persons for grants of Crown land when freed from heavy infestation of prickly-pear;
- (d) to grant tenant right upon the expiration by effluxion of time of the leases in improvements effected or paid for by holders of prickly-pear leases;
- (e) to provide for payment, at the option of the holders, of the capital or rental value of Crown improvements by holders of prickly-pear leases;
- (f) to provide for payment of survey fees at scale rates under the Crown Lands Consolidation Act, by holders of prickly-pear leases, and persons who enter into agreements to clear heavily infested Crown land in return for a free grant of the land;
- (g) to extend the present appropriation out of Consolidated Revenue to the Prickly-pear Destruction Fund;
- (h) to repeal the provisions relating to declaration of prickly-pear zones;
- (i) to provide for the delegation of power to the Commissioner, or other prescribed officer, to deal with certain formal matters on behalf of the Minister;
- (j) to validate certain administrative acts;
- (k) to amend certain machinery provisions of the law relating to the eradication of prickly-pear.

PROOF

No. , 1933.

A BILL

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.

[MR. BUTTENSHAW ;— , 1933.]

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, 1933," and shall be read and construed with the Prickly-pear Acts, 1924-1930, as amended by subsequent Acts.

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Prickly-pear (Amendment).

(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, 1924-1933.

Amendment of Act No. 31, 1924.

Sec. 15. (Existing holdings.)

2. The Principal Act is amended— **5**

- (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 10 after the words “ in respect of the holding ” the words “ or any Crown improvement thereon ”;
- (c) (i) by inserting in subsection (3A) of the same section after the word “ holding ” the following words:— 15

“ 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 20 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 25 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 ”; 30
- (e) by omitting from subsection six of the same section the words and figures “ Classes III and IV ” and by inserting in lieu thereof the words and figures “ Classes II, III, or IV, and to lands from which pear has been eradicated by 35 the efforts of the holder or his predecessors in title.”

3. The Principal Act is further amended—

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

(a) by inserting in subsection three of section six-
teen after paragraph (c) the following new
paragraphs:—

Sec. 16.
(Agreement
for grant of
Crown land
when freed
from pear.)

- 5 (d) that the capital value of any improvements
on the land shall be paid to the Crown;
- (e) that payment of survey fee shall be made
in accordance with the scale prescribed
by regulation under the Crown Lands
10 Consolidation Act, 1913;
- (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.

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

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

25 (4B) The Minister may upon the recommenda-
tion 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.

30 (c) by inserting in subsection five of the same sec-
tion 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.

35 (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)

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(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 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) 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

Prickly-pear (Amendment).

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

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The lease shall be liable to be forfeited—

(a) if default is made in any payment, when due, in respect of such improvements, or

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(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.”

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(iv) by inserting in the same section after the words “ per annum ” the following new paragraph:—

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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.

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(b) (i) by omitting from subsection two of section Sec. 20. twenty the words “ not exceeding in area (Leases.) one acre ”;

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(ii) by inserting at the end of the same subsection the words “ Upon such withdrawal the rent for the succeeding years of the lease shall be reduced in proportion to the area withdrawn ”;

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(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

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 "; 5
- (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 "; 10
- (vii) by omitting from the same subsection the word " prescribed " and by inserting in lieu thereof the words " of four per centum per annum "; 15
- (viii) 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. 25

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

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. 30 35

(7)

Prickly-pear (Amendment).

5 (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 predecessor in title.

10 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.

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

Sec. 11.
(Infested
lands.)

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

20 (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 ”;

25 (iii) by omitting from subsection four of the same section the word “ an ” and by inserting in lieu thereof the word “ such ”;

30 (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 ”;

35 (vi) by inserting next after subsection four of the same section 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

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 amendment of Act No. 31, 1924.

Sec. 22.
(Forfeiture.)

- may register in the aforesaid register the notice effecting the correction, amendment, modification, or cancellation.
- (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"; **5**
- (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"; **10**
- (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"; **15**
- (c) (i) by inserting in subparagraph (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:— **20**
- (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. **25**
- 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"; **30**
- (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"; **35**
- (iv) **40**

- (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";
- 5 (v) by omitting from the same subsection the words "the lease";
- (vi) by inserting next after the same subsection the following new subsection:—
- 10 (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.
- 15 (vii) by inserting in subsection four of the same section after the word "lease" the words and parentheses "(other than annual lease)";
- 20 (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—

- 30 (a) by inserting in subparagraph (h) of section seven after the word "operations" the words "on Crown land and private land";
- (b) by inserting next after subparagraph (i) of the same section the following new subparagraph:—
- 35 (j) 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.

Further amendment of Act No. 31, 1924.

Sec. 7. (Administrative functions.)

(cf. s. 17A, Act No. 7, 1913.)

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

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.

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

Sec. 6.
(Prickly-
pear zones.)

- (a) by omitting from the short heading to section six the words " Prickly-pear zones "; 5
- (b) by omitting subsection one of the same section;
- (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 "; 10
- (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 "; 15
- (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.

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

10. The Principal Act is further amended—

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; 25
- (ii) by omitting from subsection four of the same section the figures " 13 " and by inserting in lieu thereof the figures " 15 "; 30
- (iii) by omitting from the same subsection the words and figures " Division 2.—Private lands within a prickly-pear zone—ss. 14, 15 ";

(iv)

- (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";
- 5 (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";
- 10 (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"; Sec. 3.
(Definitions.)
- 15 (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"; Sec. 7.
(Administrative functions.)
- 20 (d) by inserting in section nine after the word "behalf" the words "to clear and"; Sec. 9.
(Duties of all owners and occupiers of land free from pear.)
- (e) by omitting section ten; Sec. 10.
(Return to be furnished by owner or occupier of land on which pear is growing.)
- 25 (f) (i) by inserting in section 12A after the word "fence" where firstly occurring the words "or a fence used as a common boundary fence"; Sec. 12A.
(Give and take fence.)
- (ii) by omitting from the same section the words "give and take" where secondly occurring;
- 30 (iii) 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 omitting the heading to Division 2 of Part III; Division 2,
Part III.
- (h)

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

- (h) (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";

Sec. 15.
(Existing
holdings.)

- (i) 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 infested with prickly-pear";

Division 3,
Part III.

- (j) (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 ";

Sec. 17.
(Leasing in-
fested land.)

- (k) by omitting from section seventeen the words " within a zone ";

Sec. 21.
(Extension of
term.)

- (l) 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 ";

Division 4,
Part III.

- (m) by omitting from the heading to Division 4 of Part III the figure " 4 " and by inserting in lieu thereof the figure " 3 ";

Sec. 25.
(Prickly-pear
destruction
fund.)

- (n) by inserting in section twenty-five after the word " rents " and within the parentheses, the words " and payments received in respect of improvements and survey fee ";

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

- (o) (i) by inserting in section twenty-eight after the word " any," where thirdly occurring, the words " ocean, harbour, estuary, lake, lagoon ";
- (ii) by inserting in the same section before the word " banks " the words " foreshores of any ocean, harbour, estuary, lake or lagoon or the ";
- (iii) by omitting from the same section the words " by reason of floods or otherwise ";
- (iv) by inserting in the same section after the word " such " the words " ocean, harbour, estuary, lake, lagoon."

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.)

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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 sections fifteen and 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.

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