

No. , 1918.

A BILL

To make better provision for the eradication of prickly-pear; for the leasing of lands infested; to conduct experiments for the eradication or utilisation of prickly-pear; to repeal the Prickly-pear Act, 1901; and to amend other Acts; and for purposes consequent thereon or incidental thereto.

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.

Commencement and definitions.

1. (1) This Act may be cited as the "Prickly-pear Act, 1918." Short title and commencement

It shall commence and come into force on the day of one thousand nine hundred and

(2) The Prickly-pear Destruction Act, 1901, is repealed. Repeal of Act of 1901.

2. This Act is divided into Parts, as follows:— Division of Act.

PART I.—PRELIMINARY—*ss.* 1-4.

PART II.—ERADICATION OF PRICKLY-PEAR—*ss.* 5-14.

PART III.—LEASES—*ss.* 15-21.

PART IV.—GENERAL AND SUPPLEMENTAL—*ss.* 22-34.

3. In this Act, unless the context requires another meaning— Definitions.

"Commissioners" means commissioners appointed under this Act, and includes any such commissioner when duly authorised to act alone.

"Council" means council of a municipality or shire.

"Crown land" means land vested in His Majesty, and not included in definition of "private land."

"Eradicate" means entirely consume by fire, or completely bury three feet at least under ground, prickly-pear with the roots, seed, and every other part thereof, or to destroy in any manner prescribed.

"Inspector"

- “ Inspector ” includes any person acting under the authority of the Minister as inspector for the purposes of this Act.
- “ Local land board ” and “ land district ” have the same meanings as in the Crown Lands Acts.
- “ Minister ” means Secretary for Lands.
- “ Occupier ” means person holding any lease, agreement for or promise of a lease, or a license to occupy land, and every person in actual possession or occupation of land.
- “ Owner ” means person holding land on any freehold tenure, or permanently in trust, and includes the mortgagee of any land so held.
- “ Prescribed ” means prescribed by the regulations.
- “ Prickly-pear ” means the plant known by the botanical name of “ *Opuntia*,” and any varieties of the cactus tribe which the Governor may declare to be prickly-pear; and includes all varieties of the cactus tribe declared by the Governor to be prickly-pear for the purposes of the Act hereby repealed.
- “ Private land ” means land alienated by the Crown or held under lease or promise of lease from the Crown for any period exceeding one year, or permanently dedicated for any public purpose and vested in trustees.
- “ Public purpose ” includes any purpose declared by the Governor by notification in the Gazette to be a public purpose within the meaning of this Act.
- “ Regulation ” means regulation made under this Act.

The commissioners.

4. The Governor may appoint two persons to be commissioners under this Act. The commissioners.

Such commissioners shall act jointly, except where the Minister authorises one or each of them to act alone, in which case such one or each of the commissioners may so act.

Any

Any such commissioner may, for the purpose of the exercise of any powers or the discharge of any duties enforced or imposed on him or on the commissioners, enter any land.

PART II.

ERADICATION OF THE PRICKLY-PEAR.

Classification of private land.

5. (1) The owner or occupier of land on which there is growing any prickly-pear shall within three months after the commencement of this Act furnish or cause to be furnished to the Minister a return in the prescribed form stating—

Return to be furnished by owner or occupier.

- (a) particulars of the area on which such prickly-pear is growing ;
- (b) whether there is little or much prickly-pear growing on the area ;
- (c) what steps he has taken, is taking, or intends taking to destroy the prickly-pear.

(2) The owner or occupier of land within a land district shall also furnish such return within such time as may be fixed by the Minister by notification published in the Gazette and in a local newspaper circulating in such district calling upon the owners and occupiers within such district to furnish such return.

(3) If such return is not furnished in pursuance of this section in respect of any land, the owner or occupier of the land shall be liable to a penalty not exceeding *fifty* pounds.

6. The commissioners may by document under their hands forwarded to the Minister classify any private land as—

Classification of private land.

- lightly infested ;
- infested ; or
- badly infested.

A description of any land so classified shall be notified by the Minister in the Gazette.

Eradication

Eradication on private land.

7. (1) Upon such notification being so made with ^{Eradication.} respect to any private land, the commissioners may—

(a) where the land is classified as “lightly infested,” direct by notice served on the owner or occupier of such land, that he shall within the period specified eradicate all prickly-pear thereon ;

(b) where the land is classified as “infested” or “badly infested,” direct from time to time, by notice served on the owner or occupier of such land, that he shall, within the period specified, eradicate all prickly-pear on such portions of such land as are described in the notice.

(2) If any owner or occupier served with any such notice fails to comply with it, he shall pay to the Minister such sum, by way of fine, not exceeding *fifty* pounds, as the Minister, on the recommendation of the Commissioners, may fix.

Such sum may be recovered by the Minister as a Crown debt.

The commissioners, on being authorised by the Minister, may also enter the land and destroy any prickly-pear thereon, and may recover the cost of such work from such owner or occupier, or from any person claiming under or through such owner.

(3) The provisions of this section shall not apply to—

land vested in the Chief Commissioner for Railways and Tramways ; or
roads and other land under the control of a council.

8. Where the land is classified as badly infested, the Minister, on proof that such owner or occupier is unable, owing to the low value of the land and the cost of eradicating the prickly-pear thereon, to comply with the provisions of this Act, may accept a surrender to the Crown of such land without compensation other than for substantial improvements thereon, such as buildings, fences, tanks, and dams. The amount of compensation for such improvements shall be fixed by the local land board.

Surrender of
land badly
infested.

9. Where the land is classified as badly infested, the Colonial Treasurer may, on the recommendation of the Minister, and on the advice of the commissioners, make advances from the Consolidated Revenue Fund, by way of loan to such owner or occupier, to be expended under the direction of the commissioners exclusively in the eradication of the prickly-pear on such land. Advances for eradication.

Such advance shall be repaid, with interest at the rate of four per centum per annum, by ten equal annual instalments: Provided that the Minister, on the recommendation of the commissioners, may extend the time for the payment of any such instalment.

Railway and other lands.

10. The Chief Commissioner for Railways and Tramways shall within the time specified by a notice in that behalf served on him by the commissioners, or within such further time as the commissioners may allow, eradicate prickly-pear on any land vested in him, and shall keep the same free from prickly-pear. Eradication by Chief Commissioner for railways.

A council shall within the time specified in a notice in that behalf served on it by the commissioners, or within such further time as the commissioners may allow, eradicate prickly-pear on any road, street, or land under its control, in its area, and shall keep the same free from prickly-pear. By a council.

If the said commissioner or any council fails to carry out the provisions of this section, he or it shall pay to the Minister such sum by way of fine, not exceeding *fifty* pounds, as the Minister, on the recommendation of the commissioners, may fix.

Such sum may be recovered by the Minister as a Crown debt.

The commissioners, on being authorised by the Minister, may also enter the land and destroy any prickly-pear thereon, and may recover the cost of such work from the Commissioner for Railways and Tramways or the council, as the case may be.

11. The Minister may afford such assistance to any council towards the eradication of prickly-pear in such manner and by such means as he may prescribe. Assistance to a council.

Crown

Crown and other lands.

12. When it is reported by the commissioners that prickly-pear is growing on Crown land, the Minister may authorise the employment of all necessary labour to eradicate such prickly-pear; and the expenses incurred may be defrayed out of such moneys as Parliament appropriates for that purpose.

13. The Minister may enter into an agreement with any council for the eradication of prickly-pear on any Crown land within its area, upon such terms as may be agreed upon, and such agreement shall be enforceable in any court of competent jurisdiction.

Government reserves.

14. (1) The Minister, on the recommendation of the commissioners, may expend such moneys as may be appropriated by Parliament for that purpose in eradicating prickly-pear growing on any travelling stock, camping, mining, or forest reserve, or on any reservation specially notified in the Gazette as coming within the scope of this section, or on any land dedicated for public purposes and not under the control of a council.

(2) A pastures protection board may out of its fund expend moneys for the eradication of prickly-pear in travelling stock or camping reserves within its district.

PART III.

LEASES.

Commons and reserves.

15. If there is prickly-pear on any land which is a common, or which has been reserved or dedicated by the Crown for public purposes; and if—

- (a) the prickly-pear on such land is not eradicated within three months after service on the trustees of such land of a notice by the commissioners requiring

requiring them to eradicate such prickly pear, or within such further time as the commissioners may allow; or

(b) the trustees of such land, within the time aforesaid, inform the commissioners that they are unable to eradicate such prickly-pear; or

(c) there are no trustees of such land,

the Minister may lease such land by auction or tender, or upon application made as prescribed, for any term not exceeding forty-five years, at such rent and upon such terms as the commissioners recommend. Any rent received in respect of any such lease shall be paid into the Consolidated Revenue Fund.

Any land so leased shall, during the currency of the lease, be free from all trusts and all rights of common.

If in pursuance of the terms of any such lease the lease is forfeited, it may be re-leased for the residue of the term of the original lease, at such rent and upon such terms and conditions as the commissioners recommend.

Badly infested land.

16. (1) Any Crown land classified as badly infested Leasing of badly infested land. may be leased by the Minister by auction or tender, or upon application made as prescribed, for any period not exceeding fifty years, in such areas and at such rental (nominal or otherwise) as he deems expedient.

(2) The Minister may, on the recommendation of the commissioners, grant a perpetual lease of any Crown land which is badly infested with prickly-pear, by auction or tender, or upon application as prescribed, in such areas and at such rental (nominal or otherwise) as he deems expedient: Provided that on the expiration of the first fifty years of such lease, and every twenty years thereafter, the annual rental value shall be determined by the local land board, and shall be paid by the lessee.

(3) Any lease under this section shall contain such provisions as the commissioners may recommend, and as may be deemed advisable by the Minister for the eradication of prickly-pear.

(4) On the recommendation of the commissioners, the Colonial Treasurer, with the approval of the

the Minister, may grant to any such lessee, by way of bonus, an amount of money per acre during the first five years of his lease; no part of such bonus shall be paid until the commissioners have certified that a sum at least equal to the amount of the bonus has been expended by the lessee on the eradication of prickly-pear on the land leased.

Leases generally.

17. The boundaries of leases under this Act shall be sufficiently defined by survey. The cost of survey, not to exceed two pounds mile, shall be paid by the lessee in instalments extending over a period of ten years, with interest at four per centum per annum; the instalments to be paid at the same time as the rent, but two or more instalments may be paid at any such time. Survey, and cost thereof.

It shall be a condition of any such lease that the Minister may without paying any compensation withdraw from the lease any land required for any public purpose.

18. The Minister may forfeit, for non-payment of rent or survey fee or for breach of conditions, any lease granted under this Act, or the repealed Act, and all improvements thereon shall become the property of the Crown. Such forfeiture shall take effect on the expiry of thirty days after the Gazette notice. Forfeiture of lease.

19. The Minister may accept a surrender of any such lease as to the whole or any part of the land leased, and thereupon the land shall be freed from all obligations of such lease as to the land included in the surrender. Surrender of lease.

20. Any such lease may be transferred, or the land included therein or any part thereof may be sublet only with the consent of the Minister and in the prescribed manner and on payment of the prescribed fees. Transfer and sub-letting.

Leases under repealed Acts.

21. The Minister may extend the term of any prickly-pear lease granted under the Act hereby repealed: Provided that the term including any such extension shall not exceed fifty years from the commencement of the lease. Extension of term of lease.

PART IV.

GENERAL AND SUPPLEMENTAL.

General provisions.

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

Powers of persons authorised to enter land to destroy prickly-pear.

23. For defraying the expenses incurred by it in the eradication of prickly-pear, a council may, under the Local Government Act, 1906, and any Act amending it, make and levy a special or a local rate on the unimproved or on the improved capital value of ratable land in its area or in a portion of its area :

Rate to defray council's expenses.

Provided that no poll shall be taken on the question whether the rate shall be made :

Provided also that such rate may be made and levied notwithstanding that the amount of rates levied in the area would exceed or exceeds that prescribed by the said Acts.

Inspectors.

24. The Minister may appoint inspectors under this Act.

Inspectors—right of entry of.

An inspector may at any reasonable hour enter any Crown land or private land in the discharge of his duties under this Act or the regulations.

Experiments in eradication, &c.

25. The Minister may expend such sums as may be voted by Parliament in undertaking experiments for the eradication or utilisation of prickly-pear, such experiments to be conducted under the supervision of the commissioners. Annual reports of all such experiments and the moneys expended thereon shall be furnished to Parliament.

Experiments.

Notices.

Notices.

26. Notices under this Act or the regulations shall be in the form prescribed. Notices—
service of.

Any such notice, unless otherwise 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 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 the locality in which the land to which it relates is situated.

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

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

27. The description in a notice under this Act of any private land need not particularly define the land, but shall be sufficient if it allows no reasonable doubt as to what land is referred to. Description
of land in
notices.

28. Whosoever wilfully scatters or causes to be scattered the seed of prickly-pear 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 *fifty* pounds. Penalty for
scattering
seed, &c.

Offences—Penalties.

29. Whosoever—

- (a) falsely represents himself to be or personates a commissioner or an inspector; or
- (b) Penalty for
impersonat-
ing a commis-
sioner or an
inspector, &c.

- (b) not being a commissioner or an inspector or a person authorised in writing by the Minister, or a person lawfully acting under the provisions of this Act, trespasses upon any private land for the apparent purpose of eradicating prickly-pear, shall be liable to a penalty not exceeding *twenty* pounds.

30. Whosoever hinders or obstructs a commissioner or inspector, or any person acting under the authority of the Minister, or of a commissioner or an inspector, in the discharge of any duty, or the doing of any work imposed or authorised by this Act, or causes him to be so hindered or obstructed, shall be liable to a penalty not exceeding *twenty* pounds. Penalty for hindering work, &c.

Regulations.

31. The Governor may make regulations for carrying out the provisions of this Act, and may in such regulations impose any penalty not exceeding *twenty* pounds for the breach of the same. Regulations.

Such regulations shall be published in the Gazette and laid before both Houses of Parliament without delay.

Legal procedure.

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

33. All proceedings for the recovery of penalties imposed by this Act or by the regulation may be heard and determined before any two justices in a summary manner. Proceedings for recovery.

34. In any proceedings under this Act for the recovery of money or for the recovery of any penalty, 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. Jurisdiction.
