

No. , 1922.

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## A BILL

To make better provision for the eradication of prickly-pear; to repeal the Prickly-pear Destruction Act, 1901; to amend the Crown Lands Acts and certain other Acts; and for purposes connected therewith.

[MR. WEARNE;— *July, 1922.*]

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**B**E 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  
5 the same, as follows:—

**1.** This Act may be cited as the "Prickly-pear Act, 1922," and shall come into operation on a date to be notified by the Governor in the Gazette.

Short title  
and com-  
mencement.

Repeal.

**2.** The Prickly-pear Destruction Act, 1901, is repealed.

Definitions.

**3.** In this Act, unless the context otherwise requires,—

“ Authorised person ” means any person acting under the authority of the Minister for the purposes of this Act. 5

“ Council ” means council of a municipality or shire.

“ Crown land ” means any land other than private land.

“ Eradicate ” means entirely destroy by fire, or in the manner prescribed. 10

“ Local land board ” and “ land district ” have the same meanings as in the Crown Lands Acts.

“ Minister ” means Secretary for Lands.

“ Occupier ” includes any person holding any lease, agreement for or promise of a lease of land, or a license to occupy land, or any person in actual possession or occupation of land, and includes the resident manager of land upon which the occupier does not reside. 15 20

“ Owner ” includes the person in whom the right to obtain the fee simple of land is vested, or the mortgagee of any such land, and includes the trustees of any land permanently dedicated for any public purpose. 25

“ Prescribed ” means prescribed by this Act or by any regulation made thereunder.

“ Prickly-pear ” or “ 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all varieties of the cactus tribe declared by the Governor to be prickly-pear for the purposes of the Act hereby repealed. 30

“ Private land ” means land alienated by the Crown, or land which the holder is in course of purchasing or has the right to purchase from the Crown, or land 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. 35 40

**4.**

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**4.** (1) The owner or occupier of private land on which there is growing any prickly-pear shall furnish or cause to be furnished to the Minister a return in the prescribed form stating—

Return to be furnished by owner or occupier.

- 5 (a) the area on which prickly-pear is growing; and  
 (b) what steps he has taken, is taking, or intends taking to destroy the prickly-pear; and  
 (c) any other particulars prescribed.

10 (2) Such return shall be furnished within such time as may be fixed by the Minister by notification published in the Gazette and in such other manner (if any) as the Minister may consider expedient.

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

**5.** Where land is infested with pear, the Colonial Treasurer may, on the recommendation of the Minister, make advances from the Consolidated Revenue Fund, by way of loan to the owner or occupier, or the council in control of such land, to be expended in the eradication of the pear on such land.

Advances for eradication.

Such advance shall be repaid in the manner prescribed by instalments or otherwise, and with interest at the rate prescribed: Provided that the Minister may extend the time for the repayment of any advance so made.

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

Eradication by a council.

If any council fails to carry out the provisions of this section, it shall be liable to a penalty not exceeding *twenty* pounds for the first offence, and not exceeding *fifty* pounds for the second and any subsequent offence.

An authorised person may also enter upon the said land and destroy any prickly-pear growing upon such land, or upon any road or street, and the Minister may recover the cost of such work from the council.

**7.**

Crown lands. **7.** Where prickly-pear is growing on Crown land, the Minister may employ such means as are necessary to eradicate such prickly-pear; and the expenses incurred may be defrayed out of such moneys as Parliament appropriates for that purpose. 5

Agreement with council. **8.** 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 binding upon and enforceable by the Crown. 10

Leasing of commons and reserves. **9.** 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 Minister requiring them to eradicate such prickly-pear, or within such further time as the Minister may allow; or  
 (b) the trustees of such land, within the time aforesaid, inform the Minister that they are unable to eradicate such prickly-pear; or  
 (c) there are no trustees of such land; or  
 (d) any lease granted under this section is forfeited,  
 the Minister may lease such land by auction or tender, or upon application made as prescribed, for any term not exceeding fifty years, in such areas, at such rent, nominal or otherwise, and upon such conditions as he may determine. Any rent received in respect of any such lease shall be paid into the Consolidated Revenue Fund. 15 20 25 30

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

Leasing of badly-infested land. **10.** Any Crown land infested with pear may be leased by the Minister by auction or tender, or upon application made as prescribed, for any term not exceeding fifty years, in such areas, at such rent (nominal or otherwise) and upon such conditions as he may determine. 35

*Prickly-pear.*

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**11.** (1) The Minister may grant a perpetual lease of any Crown land which is badly infested with pear, by auction or tender, or upon application made 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.

10 (2) The Colonial Treasurer, on the recommendation of 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; but no part of such bonus shall be paid until the Minister is satisfied that a sum at least  
15 equal to the amount of the bonus has been expended by the lessee on the eradication of pear on the land leased.

**12.** Any lease granted under this Act shall contain such provisions as may be deemed advisable by the Minister for the eradication of pear, and for keeping the  
20 land free from pear.

**13.** The boundaries of leases under this Act shall be sufficiently defined by survey. The cost of survey, not to exceed two pounds per mile, shall be paid by the lessee, and may be paid in instalments extending over a  
25 period of ten years, with interest at the rate prescribed.

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.

30 **14.** The Minister, by notice in the Gazette, may forfeit any lease granted under this Act, or any Act hereby repealed, if the terms and conditions of such lease are not complied with by the lessee, and all improvements thereon shall become the property of the  
35 Crown. The Minister may also by a like notice forfeit any lease granted under the Crown Lands Acts, where he is satisfied that the lessee has failed to eradicate pear, whether or not a condition of the lease requires pear to be destroyed; and in any such case an inquiry  
40 by the local land board will not be necessary, notwithstanding any provision in any Act, or a condition of any

any lease. Such forfeiture shall take effect on the publication in the Gazette of such notice, and thereupon the land shall be reserved from sale or lease under any Act until otherwise notified by the Minister in the Gazette. 5

Surrender of lease.

**15.** 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 included in such surrender shall be freed from all obligations of such lease as to the land included in the surrender. 10

Transfer and subletting.

**16.** A lease granted under this Act shall not be transferred or assigned or sublet without the consent of the Minister. Application for such consent shall be made in the manner prescribed.

Extension of term of lease.

**17.** The Minister may extend the term of any lease granted under this Act or the Act hereby repealed on such conditions as he may determine: Provided that the term of the lease including any such extension shall not exceed fifty years from the commencement of the lease. 15  
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Agreement for grant of Crown land when freed from pear.

**18.** (1) It shall be lawful for the Minister to enter into an agreement with any person providing for the grant to such person of any portion of Crown land specified in the agreement, in consideration of such person freeing such land from pear without cost to the Crown. 25

(2) The area of land to be included in any such grant under any one agreement shall not exceed five thousand acres, which need not be in one block. But more than one agreement may be made with the same person. 30

(3) Every such agreement shall be in writing, and shall be signed by the Minister and the other party to the agreement, and shall contain such provisions as, in the opinion of the Minister, are necessary and proper for effectively securing the eradication of pear, and shall provide, inter alia,— 35

(a) that during each year of the period mentioned in the agreement a specified portion of land shall be freed from pear; and 40

(b)

*Prickly-pear.*

- (b) that land which has been freed from pear, and land which, at the date of the agreement, is not infested with pear, shall be kept free from pear; and
- 5 (c) that the whole of the land required to be freed from pear under the agreement shall be so freed within a specified period, and kept free from pear during a period of not less than two years thereafter.
- 10 (4) Any such agreement shall be binding upon, and may be enforced by, the Crown.

(5) When the land agreed to be freed from pear has been kept free from pear for a period of two years, the person who made the agreement with the Minister, 15 or his successor in title, shall be entitled, if the terms of the agreement have been complied with, upon payment of the survey fee, deed fee and stamp duty, to a grant in fee simple of the land, and the Governor shall issue such grant in the form prescribed.

- 20 **19.** The Minister may, from time to time, by notice in the Gazette, declare specified areas of land to be—
  - (a) free from pear; or
  - (b) infested with pear, but reasonably capable of being freed from pear; or
  - 25 (c) badly infested with pear.

Land may be declared to be free from pear or infested.

**20.** Where a specified area is declared by notice in the Gazette to be free from pear, it shall thereupon be the duty of every owner and occupier of land within the area, without any further or other notice in that behalf, to 30 keep and maintain any land in the area of which he is the owner or occupier entirely free from pear, and if he fails to do so without reasonable excuse such owner or occupier shall be liable to a penalty not exceeding *twenty* pounds for the first offence and not exceeding *fifty* 35 pounds for any subsequent offence.

Duty of owner and occupier where land declared to be free from pear.

**21.** (1) Where a specified area is declared, by notice in the Gazette, to be infested with pear, but reasonably capable of being freed from pear, the Minister may, by a further notice in the Gazette, state a time within which 40 any specified portion of such area shall be freed from pear.

Duty of owner and occupier where land declared to be infested.

(2) Upon publication of such further notice in the Gazette, it shall thereupon be the duty of every owner and occupier of land within the portion of the area specified in such notice, and without any further or other notice in that behalf, to free from pear any land 5 within such area of which he is such owner or occupier within the time stated in such notice; and if he fails to do so, such owner or occupier shall be liable to a penalty not exceeding *twenty* pounds for the first offence and not exceeding *fifty* pounds for any 10 subsequent offence.

Last two preceding sections to apply to a council.

Expenses recoverable from person guilty of default.

**22.** The last two preceding sections shall apply, mutatis mutandis, to a council, and to any road street or land under the control of a council.

**23.** Where any default has been made in complying 15 with the requirements of any notice under this Act with regard to any land, an authorised person may enter upon the land and do all such things as he may deem necessary to free the land from prickly pear, and any expense thereby incurred may be recovered by the 20 Minister in any court of competent jurisdiction, from the person guilty of such default, as a debt due to the Crown by such person. The payment of any such sum shall not exempt any person from any other liability imposed by this Act. 25

Rate to defray council's expenses.

**24.** For the purpose of defraying the expenses incurred by it in the eradication of prickly-pear, a council may, under the Local Government Act, 1919, and any Act amending it, make and levy a special or a local rate on the unimproved or on the improved 30 capital value of ratable land in its area or in a portion of its area :

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 35 notwithstanding that the amount of rates levied in the area would exceed or exceeds that prescribed by the said Acts :

Provided further that where the expenses to be defrayed do not exceed two hundred and fifty pounds in 40 any one year the council may, in its discretion, defray such expenses from the general fund. **25.**

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**25.** 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.

5 **26.** Any person who 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  
10 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.

15 **27.** Any person who hinders or obstructs any authorised person 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.

20 **28.** Any person who 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.

25 **29.** Any penalties imposed by this Act or by any regulation thereunder may be recovered before any stipendiary or police magistrate or any two justices in petty sessions. Proceedings for recovery.

**30.** 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 any question of title to land is involved or on the ground that the defendant does not reside within the boundaries of the jurisdiction of the court or justices where the  
35 action or proceeding was instituted if the land in respect of which the claim arose or in respect of which an offence is alleged to have been committed is situated within the boundaries of the jurisdiction of such court or justices. Jurisdiction.

Regulations.

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**31.** (1) The Governor may make regulations prescribing the forms to be used under this Act, and providing for payment of fees, and generally as to all matters necessary or convenient for giving effect to the objects and provisions of this Act. 5

(2) Such regulations may impose a penalty, not exceeding *ten* pounds, for any breach thereof.

(3) Such regulations shall—

- (i) be published in the Gazette;
  - (ii) take effect from the date of publication, or 10 from a later date to be specified in such regulations; and
  - (iii) be laid before both Houses of Parliament within fourteen days after publication if Parliament is in session, and if not, then 15 within fourteen days after the commencement of the next session. If either House of Parliament passes a resolution of which notice has been given at any time within fifteen sitting days after such regulations have been laid 20 before such House, disallowing any regulation or part thereof, such regulation or part shall therefrom cease to have effect.
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