

Act No. 51, 1899.

CROWN LANDS
(AMENDMENT).

An Act to amend the law relating to the sale and leasing, disposal, and management of Crown lands; to provide for the determination of the capital value of land under conditional purchase, conditional lease, homestead selection or settlement lease, and for regulating payments in respect of such land on the basis of such value; and for the reappraisement of the rents of conditional leases; to provide for the enclosure of roads and water-courses; and in certain respects to amend the Crown Lands Acts. [29th December, 1899.]

BE it enacted by the Queen'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:—

Appraisalment of capital value of conditional purchases and conditional leases.

Application for
determination of
value of conditional
purchase or
conditional lease.

1. (1) On application within two years after the commencement of this Act in the prescribed form and accompanied by the prescribed declaration and fee, the holder of any land held under conditional purchase or conditional lease (not being a mining conditional purchase), who (except as hereinafter provided) from the commencement of this Act to the date of his application has been continuously in residence on some portion of the holding of which such conditional purchase or conditional lease consists or forms part shall be entitled to have the capital value determined by appraisalment (in accordance with the provisions of section six of the Crown Lands Act of 1889) of such of the land included in the application as comprises an area not more than sufficient, in the opinion of the local land board, to enable the applicant to maintain his home thereon: Provided that no application for appraisalment shall be granted unless the land board or the Land Appeal Court on appeal shall be satisfied that the land in respect of which the application is made is held *bonâ fide* for applicants sole use and benefit.

Where

Crown Lands (Amendment).

Where any such land is subject to any mortgage, the application shall be made with the consent of the mortgagee given as prescribed.

(2) The capital value to be determined shall be the value of the land at the date of the application for appraisal, but assuming that any improvements on the land at that date did not exist, and shall be appraised at an amount per acre. Determination of value.

(3) The capital value per acre so determined shall be a multiple of one shilling and eightpence. Capital value.

(4) The balance of purchase money due on a conditional purchase after any such determination shall be the value so determined (to which shall be added any interest payment of which has been suspended or is in arrear) less the amount paid and appropriated as purchase money on such conditional purchase; and no interest which has been paid shall go towards the reduction of the balance of the purchase money owing at the date of the determination of value as aforesaid, or be refunded or set-off against any instalments payable after such date. Determination to relate back.

If the total amounts which have been paid as instalments (exclusive of interest on the original value) exceed the value determined under the provisions of this section, such total amounts shall be deemed to be the value at which the conditional purchase has been so determined.

The annual payments in respect of a conditional purchase comprised in an application under this section, payable pending the determination of the value of such conditional purchase in accordance with the provisions of this section, shall be made as if this Act had not been passed; but any such annual payments payable after the date of such determination shall be made at the rate of five per centum of the value of the land as so determined, and shall (when not a first instalment) be taken to include interest at the rate of four per centum per annum on the balance of the purchase money.

(5) Every applicant who in pursuance of this section has obtained a reduction of the capital value of any land shall from the date of his application until the expiration of five years from such date live continuously and bona fide on some portion of the holding as his usual home without any other habitual residence; but the term of residence so imposed shall be reduced by any period, not being greater than a period of two and a half years, during which the applicant has, immediately preceding the date of his application, so resided upon some part of the holding: Conditions of residence in respect of land, the value of which has been reduced.

Provided that where any conditional purchase or conditional lease, other than a conditional purchase under section forty-seven of the Crown Lands Act of 1884, brought or applied to be brought under the Proviso.

Crown Lands (Amendment).

the provisions of this section is held by the original conditional purchaser or lessee, or any person on whom any such purchase or lease has devolved under the will or on the intestacy of such purchaser or lessee, or has not been transferred by such purchaser, lessee, or person, except by way of bona fide mortgage or security, or where in any other case the Local Land Board (on application as prescribed) decides that the circumstances of such case warrant the holder of the land being excused from the condition of residence, the condition of residence prescribed by this section shall not attach to the land either before or after the date of application for appraisement.

Forfeiture of land
for non-fulfilment of
conditions, &c.

(6) If the local land board, after due inquiry, finds that the condition of residence prescribed in this section has not been fulfilled, or that, by any transfer, conveyance, assignment or otherwise, the ownership of any land under conditional purchase or lease has been wrongfully acquired or transferred or has purported to have been so acquired or transferred in order to evade the condition of residence prescribed, or to obtain an appraisement or determination of capital value under this section, or to obtain such appraisement or determination in respect of a larger area than he would otherwise be entitled to have appraised, the Minister may declare every conditional purchase and conditional lease of such land or any part thereof to be forfeited.

If any instalment or other sum due in accordance with this section is not duly paid in respect of any conditional purchase or conditional lease, the Minister may declare such conditional purchase or conditional lease forfeited.

The holder of land under a conditional purchase shall not be entitled to a grant in fee-simple of the land, unless and until the condition of residence prescribed by this section has been certified by the local land board, after due inquiry, to have been fulfilled, and unless and until all other conditions required by law to be performed before the issue of such grant have been duly performed.

A forfeiture under this section shall be a forfeiture to Her Majesty of the land, together with all moneys paid in respect of the same, and all improvements on the land.

Value of lease taken
under additional
purchase.

(7) Where the value of land under conditional lease has been determined in pursuance of this section, such land, or any part thereof, if applied for under additional conditional purchase during the currency of the lease, shall be taken at the value so determined.

Definition of holding.

(8) "Holding," for the purposes of this section, means one portion of land or two or more portions of land contiguous to one another, or separated only by roads or water-courses, and held in fee-simple or as conditional purchases or conditional leases of the same or of different series by one person bona fide in his own interest.

Appraisement

*Crown Lands (Amendment).**Appraisement of rents of conditional leases.***2.** The rate of rent—

- (a) for the first period of fourteen years of any conditional lease applied for after the commencement of this Act; and
- (b) on the application of the holder of the lease within the prescribed time and accompanied by the prescribed fee for such portion of the first period of fourteen years of any conditional lease current at the said commencement as remains to run after the day on which the rent was payable last preceding the date of such application; and
- (c) on similar application, for any period of seven years of any conditional lease immediately succeeding any first period of fourteen years or any such period of seven years of the lease shall be determined by appraisement in accordance with the provisions of section six of the Crown Lands Act of 1889, and when so determined shall be the rate of rent payable for the period or portion of the period of the lease.

Appraisement of
rents of conditional
leases.

Appraisement of homestead selections and settlement leases.

3. On the application of the holder of any homestead selection, in respect of which a grant has not issued, or of any settlement lease, within the prescribed time, and accompanied by the prescribed deposit, the capital value of the land held under such homestead selection or settlement lease shall be determined by appraisement in accordance with the provisions of section six of the Crown Lands Act of 1889.

Capital values of
homestead selections
and settlement leases
may be appraised.

In the case of a homestead selection any rent accruing due from the day on which rent was last payable before the date of application for appraisement until the expiration of ten years after issue of the grant of such homestead selection, and in the case of a settlement lease, any rent accruing due from the day on which rent was last payable before the date of the application for appraisement, shall be computed on the capital value so determined, of the land held under such selection or lease.

The capital value of any homestead selection (whether the grant has or has not issued) or settlement lease into which any lease or leases have been converted under the provisions of the Act No. 20, 1897, shall, on application as aforesaid, be determined by appraisement under the provisions of this section, and the rent of such homestead selection or settlement lease shall be computed on the capital value so determined, and the payments of such rent shall be made in accordance with the provisions of the Crown Lands Act of 1895.

Lands

*Crown Lands (Amendment).**Lands may be set apart for conditional purchase at special prices.*

Conditional
purchases at special
prices.

4. Lands declared by notification under the provisions of section ten of the Crown Lands Act of 1895 to be set apart for conditional purchase or conditional lease shall, subject to the provisions of the said section (on and after such date as may be specified in such notification and during any period named in such notification) be available for conditional purchase in accordance with the provisions of the Crown Lands Acts and the Acts amending the same, at such prices specified in the notification, whether below one pound per acre or not, as are determined by the Governor, and shall be available also for any other form of purchase, or any form of lease or license under the Crown Lands Acts and the Acts amending the same unless it is expressly provided to the contrary by the notification or unless the lands are specially reserved :

Provided that in the case of any such conditional purchase the deposit shall be ten per centum, and each of the annual instalments (the second and subsequent of which shall be deemed to include interest at the rate of four per centum per annum on the balance of purchase money) shall be five per centum of the price of the land determined and specified as aforesaid.

Applications for holdings under the Crown Lands Acts.

Governor may
prescribe manner,
&c., of making
applications for
holdings.

5. The Governor may make regulations prescribing—
- (a) the manner, form, and conditions in and under which applications for any holdings under the Crown Lands Acts and Acts amending the same may be made, lodged, or tendered, and thereupon applications shall be made in accordance with the regulations ;
 - (b) the period during which applications for the same land or any part thereof may be received by a land agent in order that they may be deemed to be and to have been made, lodged, or tendered simultaneously.

Conflicting applications.

Conflicting
applications, how
dealt with.

6. So much of section eleven of the Crown Lands Act of 1889 as relates to conflicting applications and to ballots, and the whole of section thirty-eight of the Crown Lands Act of 1895 shall on and after the first day of March, one thousand nine hundred, be repealed, and the following provisions substituted in lieu thereof :—

The order of priority of conflicting applications made, tendered, or lodged to or with the land agent simultaneously shall be determined by the local land board. Where, in the opinion of the board, any such applications have equal claims to priority, the order of their priority shall

Crown Lands (Amendment).

shall be determined by ballot, and the Governor may make regulations prescribing the persons by whom and the manner in which the ballot shall be held: Provided that if the application which by the ballot is determined to be first in order of priority is withdrawn or disallowed a fresh ballot shall be held to determine the order of priority of those applications which remain and were included in the previous ballot, and the board may impose a penalty for such withdrawal or disallowance, by retaining such portion of the deposit money as may after due inquiry seem justifiable, and at its discretion disqualify such applicant from making any fresh application for a period to be determined by such board.

No determination of the order of priority shall be the subject of an appeal to the Land Appeal Court.

Conflicting applications shall be dealt with by the local land board in the order of their priority as determined in accordance with this section.

Applications for conditional purchases and conditional leases of the same series shall, for the purposes of any ballot, be deemed to form together a single application for the whole of the land comprised within the said applications taken conjointly.

7. Section thirty-one of the Crown Lands Act of 1895 shall be deemed to have applied and shall apply to any conditional purchases and conditional leases the applications for which were made before the day of the commencement of that Act, although such conditional purchases or conditional leases were not confirmed before that day.

Section 31 of Crown Lands Act of 1895 to apply to applications for conditional purchases made prior to commencement thereof.

Where any application has already been disallowed or disposed of under the provisions of the section aforesaid the Board may, at the request of the applicant, and on such terms as the Board may prescribe, deal with such application as if it had not been disallowed or disposed of: Provided that this enactment shall not operate to validate any application so as to affect any conflicting application or title made or created before the day of the commencement of this Act.

Applications disallowed may be dealt with by Board.

Enclosing of roads and water-courses.

8. Section fourteen of the Act fifty-two Victoria number seven is hereby repealed.

Roads and water-courses may be enclosed.

The local land board or the chairman of such board, on application being made to the chairman in the prescribed form and within the prescribed time by any holder of any holding whatsoever under any Crown Lands Act or any Acts amending the same, may grant permission to such holder to enclose, wholly or in part, any road or water-course traversing or bounding such holding, subject to payment of such annual rental as may be determined, and shall direct that gates or suitable substitutes such as the board or chairman

of

Crown Lands (Amendment).

of such board may consider necessary shall be erected or made so as not to unnecessarily interfere with any traffic, or, to any large extent, divert the natural flow of water.

Any such gate may on application to, and approval of, the Minister who may administer the Public Gates Act of 1875 be made a public gate within the meaning, and subject to the provisions, of that Act.

Upon complaint being made in the prescribed form to the chairman of the local land board, such board may, for any sufficient reason, cancel any permission granted under this section or under the said section fourteen, and may order any fence, gate, or other structure on any road or water-course to be removed by such person, and within such period as such board may determine.

Where permission is granted to enclose a road situated between lands held by different persons, and the person to whom such permission is granted derives, in the opinion of the board, a benefit from or uses any fence on or adjoining such road, such person (or any transferee of the land held by him) shall, so long as such permission remains unrevoked, be liable as a contributory towards the cost of maintaining in good repair such part of the fence as benefits, or is used by, him.

Surrenders.

Amendment of
section 47 of the
Crown Lands Act of
1895.

9. The words in section forty-seven of the Crown Lands Act of 1895, "Lands so surrendered shall become Crown lands for the purposes of the Crown Lands Acts, but shall not be available for the purposes of any application until a notification to that effect has been published in the Gazette" are hereby repealed, and the following words are hereby substituted therefor: "Lands so surrendered shall become vested in Her Majesty, but shall not be available for the purposes of the Crown Lands Acts or any Acts amending the same until a notification has been published in the Gazette declaring the lands to be Crown lands."

Rent may be charged on Crown improvements.

Rent on Crown
improvements.

10. Where land containing improvements the property of the Crown becomes the subject of any lease the holder of the lease may be charged (instead of the capital value of such improvements) a rent for the use of such improvements; and where before the commencement of this Act such rent has been charged, the charge shall be deemed to have been and to be legal and valid. Any default on the part of the lessee to pay such rent when due, whether such rent was charged before or after the said commencement, or to maintain the improvements in a reasonably good condition during the currency of the

Crown Lands (Amendment).

the lease, shall render the lease liable to forfeiture: Provided that the lessee shall not be compelled to make good any damage caused by fire, flood, or other inevitable accident.

Interest on overdue payments.

11. The words "rate of five" is hereby substituted for the words "rate of ten" in section forty-eight of the Crown Lands Act of 1895, but such substitution shall not affect the amount of any interest payable in accordance with the provisions of the said section before the commencement of this Act. Reduction of interest on overdue payments.

The Minister may grant an extension of time for the payment of all or any part of any such interest payable before or after the commencement of this Act in any case in which he is of opinion that the circumstances of such case warrant the extension.

Additional conditional purchases in classified areas.

12. (1) Section eleven of the Crown Lands Act of 1895 is hereby repealed. Additional conditional purchases and conditional lease in classified areas.

(2) A notification that Crown lands comprised within any tract or area are set apart for holdings of any kind shall not affect the granting or renewing of occupation licenses and annual leases unless the notification expressly prohibits the granting or renewing of such licenses or leases within such tract or area; or

(3) Such notification shall not operate to prevent the lands (not being lands within a population area or suburban lands) situated within the tract or area being or becoming available for an additional conditional purchase or conditional lease of a series of which the original conditional purchase was made before the date of the notification in any case where the application for such additional conditional purchase or conditional lease is made not later than forty days after the date of the notification, and the applicant is at the date of the notification and has been for six months immediately preceding such date in bona fide residence on some conditional purchase or conditional lease of the same series.

(4) The area which may be added to any series by the taking of any additional conditional purchases and conditional leases in any area set apart by any such notification shall not, together with any land held by the applicant under conditional purchase or conditional lease, exceed the area sufficient in the opinion of the local land board to enable the holder thereof by agriculture, or by agriculture combined with any other ordinary pursuits, to maintain his home thereon, and shall not, in any case, exceed the area which may be taken under the Crown Lands Acts and Acts amending the same.

Crown Lands (Amendment).

(5) Additional conditional purchases and conditional leases shall be taken so as to conform to the general design of the subdivision, if any, of the tract or area in which they are taken.

(6) Whether the notified capital value of the land applied for is more or less than one pound per acre, the price to be paid for an additional conditional purchase taken in any area set apart by any such notification, or for an additional conditional purchase into which a conditional lease so taken is converted, shall be such notified capital value. In any case the deposit on any additional conditional purchase shall be ten per centum, and the annual instalments of purchase money shall be five per centum, of the said capital value.

(7) Both an applicant for any holding of the class for which the land may have been set apart and an applicant under this section for an additional conditional purchase or for a conditional lease shall be deemed to be parties in any proceedings before the local land board or the Land Appeal Court in respect of their applications, if such applications refer wholly or in part to the same land.

Additional conditional purchases in conditional leases.

Additional
conditional
purchases not
adjoining the
original.

13. The mere fact that land held under conditional lease granted under the provisions of section fifty-two of the Crown Lands Act of 1884 does not adjoin the land by virtue of which such conditional lease was granted shall not prevent any additional conditional purchase or purchases being made of the land held under such conditional lease by the holder thereof.

Leases or licenses offered and not sold.

Sale of leases by and
leases after auction,
selection, or tender.

14. When the lease or license of any Crown land has, before or after the commencement of this Act, been offered for sale or tender, and has not been sold or tendered for at the date fixed or within the period limited for the purpose, nothing in the Crown Lands Acts or any Acts amending the same shall prevent the acceptance of any tender for the whole or any part of such land made after such date or after the expiration of such period if the amount tendered is not less than the upset rent or fee; provided that nothing herein shall require the acceptance of any such tender.

Suspension of conditions on settlement or other leases.

Suspension
conditions.

15. Any local land board may, from time to time, suspend, for a specified period, the conditions of residence, fencing, or other improvements attaching to any settlement or other lease (subject to such conditions, if any, as the board may prescribe) in any case where the board is satisfied that the holder thereof is prevented, or should be relieved, from fulfilling such condition by reason of illness, drought, flood,

Tonnage Rates (Amendment).

flood, or other cause sufficient in the opinion of the board. No one suspension under the provisions of this section shall be granted for a period exceeding six months.

16. No application made under section one of this Act shall be invalid on the ground that it is made in respect of two or more holdings provided that the total area of such holdings is not more than sufficient in the opinion of the local land board to enable the applicant to maintain his home thereon. Holdings of two or more areas not to be invalidated unless in excess of prescribed area.

Residence on additional conditional purchases.

17. The words in section thirty of the Crown Lands Act of 1895, "so long as the person upon whom the performance of the said condition would for the time being devolve is the person who applied for the original conditional purchase of the series, and for the said additional conditional purchase or conditional lease" are hereby repealed, and the words "if the applicant for such additional conditional purchase or conditional lease is the person who applied for the original conditional purchase of the series" are hereby substituted therefor. Amendment of sec. 30 of Crown Lands Act 58 Vic. No. 18.

Supplemental.

18. In the Crown Lands Acts and any Act amending the same, "series" or "the same series," when used in connection with conditional purchases and conditional leases, shall mean and be deemed to have meant an original conditional purchase, or a conditional purchase under section twenty-two of the Crown Lands Alienation Act of 1861, and any additional conditional purchases and conditional leases made by virtue of any such conditional purchase or conditional purchases. Definition.

19. This Act shall be construed with the Crown Lands Acts and any Acts amending the same, and may be cited as the "Crown Lands (Amendment) Act, 1899." Incorporation and short title.