

Act No. 42, 1905.

CROWN LANDS
AMENDMENT.

—

An Act to provide for the setting apart and disposal of Crown lands as conditional purchase leases; to better regulate the setting apart and disposal of Crown lands as original and additional holdings; to provide for the allotment of lands the subject of conflicting applications; and generally to further regulate the sale, leasing, disposal, and management of Crown lands, by amending the Crown Lands Acts in certain respects; and for purposes consequent thereon and incidental thereto. [9th December, 1905.]

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:—

Short title and commencement.

1. This Act may be cited as the "Crown Lands Amendment Act of 1905," and—

- (a) shall come into force on the first day of January, one thousand nine hundred and six; and
- (b) shall be read and construed with the Principal Acts.

Interpretation.

2. For the purposes of this Act and of the Principal Acts, the words within inverted commas in this section shall have the meaning set against them respectively:—

"Principal Acts" means the Crown Lands Act of 1884; the Crown Lands Act, 1889; the Crown Lands Act, 1895; together with the Acts read, construed with, or amending the same.

"Conditional purchase under this Act" means a conditional purchase into which a conditional purchase lease has been converted.

Repeals.

Repeal of sections 3,
4, and 20, Crown
Lands Act Amend-
ment Act, 1903.

3. Sections three, four, and twenty of the Crown Lands Act Amendment Act, 1903, are hereby repealed, but such repeal shall not of itself affect anything done or lawfully commenced to be done under those sections.

Setting

*Crown Lands Amendment.**Setting apart areas of land for holdings.*

4. (1) Notwithstanding anything to the contrary in the Principal Acts contained the Minister may, by notification in the Gazette, set apart areas of land (to become available on and after such dates as may be specified) for either—

- (1) Original holdings, which include—
 - (a) original conditional purchases;
 - (b) original conditional purchases and conditional leases to be taken up in virtue of and at the same time as the original conditional purchases within the said area;
 - (c) homestead selections;
 - (d) settlement leases.
- (2) Additional holdings, which include—
 - (a) additional conditional purchases;
 - (b) conditional leases, other than those mentioned in subsection one (b) of this section;
 - (c) additional homestead selections;
 - (d) additional settlement leases;

but the Minister shall not in such notification set apart an area in such a way as to be available for original holdings at the same time as for additional holdings; but, save as aforesaid, land may be made available for one or more of the foregoing classes of holdings, and shall not be available for any class of holding not specified in the notification.

(2) The Minister may also by the same or subsequent notification specify the prices capital values or rentals of such land, but if such prices capital values or rentals are not so notified, they shall be determined in accordance with the provisions of section six of the Crown Lands Act of 1889.

(3) For the purpose aforesaid, the Minister shall have all the powers vested in the Governor under sections ten thirteen and twenty-four of the Crown Lands Act of 1895, and the provisions of section ten shall apply to such notification, and to the effect thereof.

Additional holdings.

5. (1) Where any Crown lands are set apart for additional holdings as aforesaid, the holder of any—

- (a) original conditional purchase, other than a conditional purchase under section forty-seven of the Crown Lands Act of 1884,
- (b) homestead selection,
- (c) settlement lease,

may, subject to the provisions of section four, make application as prescribed, accompanied by a provisional deposit and survey fee as prescribed, for land to be held by him as an additional holding under the

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the same class of tenure as that under which he holds the land by virtue of which the application is made, except that the holder of an original or additional conditional purchase may apply for a conditional lease subject to the limitation of section twenty-six of the Crown Lands Act of 1889.

(2) No application shall be made by virtue of the same conditional purchase homestead selection or settlement lease while any previous application under this section remains undisposed of.

(3) No application under this section shall be made by the transferee of an original conditional purchase unless the applicant shall have been in residence on his holding for twelve months immediately prior to his application, or the Board find that the applicant was forced to discontinue his residence by reason of adverse conditions beyond his control.

(4) The mere fact that the land applied for does not adjoin the original conditional purchase or any purchase or lease of the series, or the original homestead selection or settlement lease, shall not be a bar to the additional purchase homestead selection or lease applied for.

Inquiry by Board

6. (1) The Board shall inquire into the merits of every application under section five for an additional holding, and may disallow, permit withdrawal of, or confirm the same for the area so applied for, or, with the applicant's consent, for an area greater or less than or in a different position from that applied for: Provided such area, together with all other lands held by the applicant under any tenure (other than annual tenure), does not in the aggregate exceed such an area as, in the opinion of the Board, is sufficient for the maintenance of his home thereon in average seasons and circumstances, notwithstanding that the area so confirmed may, by itself, or with the area of the other land of whatever tenure, as aforesaid, held by him, exceed the maximum prescribed by the Principal Acts.

(2) In the case of simultaneous applications, preference shall be given to the applicant whose land adjoins or is nearest to the land applied for, unless, in the opinion of the Board, such applicant is substantially less in need of additional land than an applicant whose land does not adjoin or is not nearest to the land applied for.

(3) The Board may disallow any application if, in their opinion, the applicant should have applied for available land nearer the land in virtue of which the application is made, or if such land is not within a reasonable working distance of the land applied for.

(4) The Board may impose a penalty for the withdrawal or disallowance of any application, by retaining the whole or such portion of the provisional deposit money as may, after due inquiry, seem justifiable.

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7. There shall be no appeal to the Land Appeal Court from the decision of the Board, under the preceding section, on any question as to—

- (1) reasonable working distance as aforesaid;
- (2) the area sufficient for the maintenance of a home as aforesaid;
- (3) the area which the Board shall, or shall not, have allotted to any applicant;
- (4) the position of any area allotted; or
- (5) that nearer available land should have been applied for:

Provided that the Minister may, within twenty-eight days after the decision has been given, refer for determination to the Land Appeal Court a decision of the Board on any of the foregoing questions. In such case the decision of the Appeal Court shall be final.

8. The general provisions and conditions of the Principal Acts shall apply to every purchase selection or lease of land set apart under section four hereof, except that the condition of residence attached to the original and additional holdings may be fulfilled on one of such holdings, and that no application for an additional holding of any of the classes specified herein shall be invalid by reason only of the fact that the area available is less than forty acres, where, in the opinion of the Board, it is desirable to allot a lesser area. The Board may attach any of the prescribed conditions to any additional homestead selection or additional settlement lease.

9. Original and additional homestead selections or settlement leases shall be deemed to be one holding, and shall not be transferred apart or held separately. Notwithstanding anything in the Principal Acts, where any original homestead selection is legally transferable, any additional homestead selection held in virtue thereof shall also be transferable with such original homestead selection as aforesaid.

Conditional purchase lease.

10. The Minister may, by notification in the Gazette, set apart any Crown lands for disposal by way of conditional purchase lease; and any lands so set apart shall be dealt with as follows, that is to say—

- (a) a subdivision thereof shall be made into blocks, and the standard to be adopted in regulating the area of each such block shall be that the lessee thereof may, by agriculture, dairy-farming, or grazing, either separately or combined, be enabled to establish and maintain his home thereon;
- (b) the capital value of each such block shall be fixed by the Minister for the period of the first ten years of the lease, according to the capabilities and situation of the land, the timber thereon, and means of access thereto: Provided that the

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the lessee may, within six months of confirmation, apply in the prescribed manner, and on payment of such costs as may be ordered, not exceeding five pounds, shall be entitled to have such capital value determined under the provisions of section six of the Crown Lands Act of 1889. For each succeeding period of ten years the Board shall determine the capital value on a similar basis;

- (c) the rental of each such block shall be at the rate of two and a half per centum per annum of such capital value;
- (d) the Minister shall also notify in the Gazette particulars of the said blocks, and of their respective areas, capital values, and rentals, and of the estimated value of any improvements thereon, and specify a date on and after which leases of the said blocks may be applied for;
- (e) the value to an incoming tenant of any improvements on any such block shall be appraised by the Board in the prescribed manner, and such appraisement shall, as between the Crown or the owner of the improvements, as the case may be, and any person leasing the said block, be conclusive evidence of the value of the improvements at the date of the appraisement: Provided that where the improvements do not belong to the Crown, and an agreement as to payment therefor has been arrived at between the applicant and the owner, no appraisement shall be necessary;
- (f) the Minister may also notify what special conditions as to improvements, cultivation, and preservation or planting of timber, and such other matters as require to be regulated in the public interest, shall be made conditions of the lease of any such block;
- (g) any notification under this section may be corrected, amended, modified, or revoked, whether as to the whole or any part thereof, by notice in the Gazette;
- (h) any subdivision, whether made before or after any notification under this section, may be taken to be a subdivision within the meaning of this section, and one or more measured portions may, by notification under this section, constitute a block:

Provided that a notice under this section shall not affect—

- (a) the reservation for public purposes of any Crown lands; or
- (b) the granting or renewing of occupation licenses and annual leases, unless the same be expressly excluded; or
- (c) any lease in existence at the date thereof.

Term of lease.

11. A lease of land set apart under section ten of this Act shall have a term of forty years from the date of application therefor, and the Governor may do all things necessary for the execution and issue of such lease.

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12. Any lands within the boundaries of any area set apart under section ten of this Act which may be forfeited shall (subject to the provisions of section thirty-two of the Crown Lands Act of 1889) be added to and form part of the area so set apart. Addition of forfeited lands.

Applications for conditional purchase lease.

13. On and after the date specified by the Minister as aforesaid, Applications. any person who is qualified as hereinafter provided may apply for a conditional purchase lease of a block so notified. The application shall be made and lodged in the prescribed manner, and shall be accompanied by a deposit of a half year's rent in advance, and a survey fee according to the prescribed scale; or, if the applicant desires to defer the payment of such survey fee the same may be paid in five equal yearly instalments with four per centum per annum added; the first of such instalments to accompany the application.

14. Any person not being under the age of eighteen years Qualification of applicants. in the case of a male, or twenty-one years in the case of a female, who is not disqualified under the provisions of section forty of the Crown Lands Act of 1889 as amended by this Act, and is not the holder of any land except—

- (a) town or suburban land as defined in the Principal Acts, or
- (b) land held as a tenant from a private holder,

may apply for a conditional purchase lease under this Act, subject to the following provisions:—

- (1) Such person shall not, for the purpose of qualifying for applying under this Act, have divested himself or herself of any land held by him or her within twelve months before the date of application.
- (2) Such person if a female shall be unmarried or widowed, or, if married, be living apart from her husband under an order for judicial separation made by a court of competent jurisdiction.

15. Applications for conditional purchase leases shall be dealt with by the Board or the Chairman in the same manner as applications for conditional purchases, settlement leases, and homestead selections under the Principal Acts and this Act. Applications, how dealt with.

16. The provisions as to title and withdrawal from lease or title, license contained in section twelve of the Crown Lands Act of 1889, shall apply to conditional purchase leases.

17. A condition of ten years' residence shall attach to every conditional purchase lease, and the lessee shall within twelve months after the confirmation of his application commence to perform such condition: Provided that the commencement of residence may be extended to any date within five years of such confirmation, on such terms Residence condition.

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terms and conditions as to improvements and cultivation as may be agreed upon between the Board and the lessee. For the purposes of this Act, residence shall be taken to mean continuous and bona fide living, as the lessee's or purchaser's usual home, without any other habitual residence. On application in the prescribed form, the Board may permit the residence condition to be performed in any adjacent village or town. Such permission may be conditional or unconditional. The Minister may, at any time after application in the prescribed form, and for due cause shown, suspend the condition of residence either unconditionally or on conditions.

The provisions of section nineteen of the Crown Lands Act Amendment Act, 1903, as regards residence by members of one family are hereby extended to conditional purchase leases or conditional purchases under this Act.

Conditions.

18. The lessee shall perform and observe to the satisfaction of the Board the following conditions—

- (a) he shall within the prescribed time pay the balance (if any) of the survey fee with interest as prescribed; and
- (b) he shall pay the value of the improvements as appraised within three months of the date of appraisement, or, at his option the payment may be made in four equal yearly instalments with interest at the rate of four pounds per centum per annum, on the dates and in the manner prescribed;
- (c) he shall pay the rent in advance in equal half-yearly instalments, and, if not paid within thirty days of due date, interest on the sum overdue shall accrue thereon day by day, and be charged at the rate of five per centum per annum.

*Conversion of conditional purchase lease into conditional purchase.***Conditional lease purchase.**

19. At any time after the confirmation of an application for a conditional purchase lease, the holder thereof may, on application in the prescribed form, and payment of a deposit at the rate of five per centum of the capital value of the land, and provided the lease is not liable to forfeiture, convert the same into a conditional purchase under this Act, which shall be held subject to all the conditions of the lease unperformed at the date of conversion, except the payment of rent.

Conditions of payment.

20. (1) Upon approval by the Minister of any conversion as aforesaid the rent of the lease shall cease and determine, and any rent paid in respect of the lease for any period after application for conversion as aforesaid shall be refunded.

(2) The capital value as determined for the period of the lease current at the date of application for conversion shall be the amount of the purchase money payable in respect of such land.

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(3) The payment of the balance of purchase money shall be made by equal annual instalments at the rate of five per centum per annum of such purchase money ; each such annual instalment to consist of principal and interest at the rate of two and a half per centum per annum on the unpaid balance, and the first of such annual instalments shall be paid twelve months after the date of application for conversion : Provided that it shall be lawful for the conditional purchaser to pay off the whole or any number of such instalments at any time.

21. In default of payment of any moneys due for three months after the day when such payment shall have fallen due, the conditional purchase may be declared by the Minister to be forfeited, and upon the expiration of thirty clear days after notification of such forfeiture in the Gazette the conditionally purchased land in respect of which such payment is due shall revert to His Majesty and become Crown lands for the purposes of this Act. And any payment made in respect of such purchase and improvements thereon shall in such case be forfeited to His Majesty.

22. Upon the finding of the Board that the conditions attaching to a conditional purchase under this Act have been fulfilled, and on payment of the balance of purchase money, stamp duty, and deed fee, the Governor may issue a deed of grant of the land.

23. No person, unless qualified as provided by section fourteen of this Act, shall acquire by transfer or otherwise a conditional purchase lease or a conditional purchase under this Act, and no person whosoever who holds either a conditional purchase lease or conditional purchase under this Act, shall be qualified to acquire another holding of either of such classes. No transfer or conveyance or assignment in contravention of the provisions of this section shall be valid for any purpose whatsoever :

Provided that—

- (1) this section shall not apply to transfers by way of mortgage ;
- (2) if a conditional purchase lease or a conditional purchase under this Act devolve under a will or intestacy upon a person who is not qualified as aforesaid to hold the same, such person may nevertheless hold such lease or purchase for a period of three years, or such further period as the Minister may permit, and if before the expiration of such period or periods the said person shall become qualified as aforesaid, such person shall be deemed to have been so qualified as from the date of such devolution.

The provisions of this section shall apply to a conditional purchase under this Act, whether before or after grant.

24. No holder of a conditional purchase lease, or of a conditional purchase under this Act before grant, shall transfer convey assign mortgage or charge such lease or purchase with the repayment of moneys

Forfeiture on default of payment by conditional purchaser.

Where consent of Minister requisite.

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moneys advanced on the security thereof, or sublet such lease, or lease such purchase, without first having obtained the written consent of the Minister thereto. And before giving such consent the Minister shall be satisfied that all conditions imposed by this Act (except the payment of balance of purchase money) have been and are being duly complied with.

Conditions to attach
to transferees.

25. The conditions and obligations imposed by this Act shall, unless it be otherwise provided, be equally applicable and attach to persons deriving title through or under lessees or purchasers under this Act, and to all persons upon whom title shall devolve or be cast by operation of law, and in the event of the death or declared lunacy of any person holding under this Act land to which conditions attach, such conditions shall be performed by the representatives of the deceased person or lunatic holder, either personally or by an agent approved by the Board or the Chairman.

Modification of
conditions by Board.

26. The Board may, on application as prescribed, and for sufficient cause, modify the conditions notified as attaching to any conditional purchase lease or conditional purchase under this Act.

Inquiries respecting
fulfilment of
conditions.

27. The provisions of the Principal Acts relating to inquiries by the Board into the several matters connected with the fulfilment of conditions attached to the holding of land thereunder, and to the forfeiture, lapsing, or voidance for any breach thereof shall, mutatis mutandis, be applied to conditional purchase leases and conditional purchases under this Act.

Conflicting applications.

Conflicting
applications, how
dealt with.

28. The following provisions are substituted for the provisions contained in section twenty of the Crown Lands Act Amendment Act, 1903:—

Subject to regulations which may be made hereunder,

- (a) The order of priority of conflicting applications for original holdings made, tendered, or lodged to or with the land agent simultaneously shall be determined by the Board; and where, in the opinion of the Board, any such applications have equal claims to priority, the order of their priority shall be determined by ballot. The Board may impose a penalty on the withdrawal or disallowance of any application by retaining the whole or 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 such period as it may determine.
- (b) Conflicting applications shall be dealt with by the Board in the order of their priority as determined in accordance with this section.

(c)

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- (c) 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.
- (d) No determination of the order of priority, or decision of the Board as to whether an applicant is or is not entitled to be included in a ballot to determine priority, shall be the subject of an appeal to the Land Appeal Court.

Amendment of Acts.

29. The several additions, omissions, and alterations set out in ^{Amendments} the schedule hereto shall be made in the sections of the Acts mentioned ^{specified in Schedule.} in such Schedule.

30. The provisions of section seventeen of the Crown Lands ^{Section 17 of Crown Lands Act, 1889.} Act of 1889, respecting ring-fences, are hereby extended to include settlement leases held under similar circumstances.

31. Section fourteen of the Crown Lands Act Amendment Act, ^{Amendment of s. 14 of Crown Lands Act, 1889.} 1903, is hereby amended by the omission of the words "per acre per ^{Amendment Act,} annum" at the end of the section, and the insertion in lieu thereof of ^{1903.} the words "for each pound of the purchase-money."

This section shall be held to have applied and shall apply to all conditional purchases made before or after the passing of this Act to which the last sentence of section fourteen of the Crown Lands Act Amendment Act, 1903, applies.

32. Notwithstanding anything to the contrary in section five ^{Determination of rent of settlement leases.} of the Crown Lands Act Amendment Act, 1903, any applicant for an original or additional settlement lease, after the commencement of that Act, who has not had the annual rental for the first period of ten years of his settlement lease determined by the Board, may, on application lodged by him prior to the thirty-first day of March, one thousand nine hundred and six, have the rental for the unexpired portion of such term (commencing from the date when rent is next payable after the date of application for such determination) determined in accordance with the provisions of section six of the Crown Lands Act of 1889.

MISCELLANEOUS.*Regulations.*

33. For the purposes of this Act, the Governor may exercise ^{Regulations.} the powers of making regulations conferred upon him by section one hundred and forty-five of the Crown Lands Act of 1884 and section fifty-three of the Crown Lands Act of 1889.

Application

*Crown Lands Amendment.**Application of Act.*

Application of Act.

34. This Act shall apply only to the Central and Eastern Divisions of the State.

SCHEDULE.

Act.	Section.	Amendment.
Crown Lands Act of 1884...	92	The words "and for the purposes of this section may grant permission to construct and maintain tramways across any roads subject to such conditions as the Minister may approve after report by the Board" are added after the word "therewith" in the fifth line.
Crown Lands Act of 1884...	133	The words, "or by cutting or removing timber other than firewood not for sale thereon, or by obtaining stone therefrom, or driving piles or otherwise, or who shall strip or remove, or cause to be stripped or removed, the bark of any tree thereon," are omitted, and the words, "or by driving piles, or who shall cut or remove or cause to be cut or removed any timber or products thereon, or obtain or cause to be obtained any stone, clay, shells, earth, gravel, or similar material therefrom, or who shall strip or remove or cause to be stripped or removed the bark of any tree thereon," are added in lieu thereof.
Crown Lands Act of 1889...	7	The words "direction to survey" are added after the word "decision."
Crown Lands Act of 1889...	32	The words "or expiration" are added after the word "surrender" and the words "or expired" are added after the word "surrendered."
Crown Lands Act of 1895...	26 subsection (iv)	The words "attention shall be invited thereto by advertisement" are added after the word "and" following the word "Gazette."
Crown Lands Act of 1895...	40	The words "conditional purchase leases" are added after the word "selections" in the first line.
Crown Lands Act of 1895...	42	The words "or conditional purchase lease" are added after the word "purchase" in the second line.
Crown Lands Act of 1899...	4	The words "and during any period named in such notification" are omitted.
Crown Lands Act Amendment Act, 1903.	27	The words "together with the area of the series" are added after the word "application," and the words "twelve hundred and eighty acres in the Eastern Division, or two thousand five hundred and sixty acres in the Central Division" are added after the word "exceed" in lieu of the words "six hundred and forty acres."

*Country Towns Water and Sewerage (Amendment).*SCHEDULE *continued.*

Act.	Section.	Amendment.
Crown Lands Act Amendment Act, 1903.	30	The words "under and subject to the provisions of section three," and the words "and shall be entitled to the benefit and subject to the conditions of the said section" are omitted.
Crown Lands Act Amendment Act, 1903.	32	The words, "(v) Withdrawals of applications. The chairman may deal with any of the matters aforesaid at any convenient place within any land district under his jurisdiction," are added.