

Act No. 21, 1909.

CLOSER SETTLEMENT
(AMENDMENT).

An Act to regulate the sale of private land for closer settlement; to amend the Closer Settlement Act, 1904; the Closer Settlement (Amendment) Act, 1906; the Closer Settlement (Amendment) Act, 1907; and for purposes consequent thereon or incidental thereto. [20th December, 1909.]

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:—

PRELIMINARY.

Short title.

1. This Act may be cited as the "Closer Settlement (Amendment) Act, 1909," and shall be construed with the Closer Settlement Act,

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Act, 1904 (hereinafter referred to as the Principal Act), the Closer Settlement (Amendment) Act, 1906, and the Closer Settlement (Amendment) Act, 1907.

2. In this Act, unless the context otherwise requires,— Definition,

“Home maintenance area” means area which, when used for the purpose for which it is reasonably fitted would be sufficient for the maintenance in average seasons and circumstances of an average family.

3. The Governor, by proclamation in the Gazette, may cancel or amend any proclamation under section four or section five of the Closer Settlement (Amendment) Act, 1907, as to all or any part of the land affected thereby. Cancellation of certain proclamations.

PRIVATE SUBDIVISION FOR CLOSER SETTLEMENT.

4. (1) At any time after the date of a proclamation under section four or section five of the Closer Settlement (Amendment) Act, 1907, the Minister and the owner may agree that any land, being the whole or part of the land covered by the proclamation, shall be subdivided and sold or leased in such areas and subject to such terms and conditions as may be agreed upon. Agreement for sale or lease of land by owner.

(2) Upon notification in the Gazette of such agreement, the Minister may further notify that in consideration of and subject to the fulfilment of the terms of such agreement, the power of resumption shall be suspended— Suspension of power of resumption.

- (a) for such period of time not exceeding two years, and
- (b) for such area (being the whole or any part of the land covered by the proclamation)

as may be agreed upon between the Minister and the owner.

Upon such further notification being made, no resumption of the land referred to therein shall be lawful under the provisions of the Closer Settlement Act, 1904, the Closer Settlement (Amendment) Act, 1906, the Closer Settlement (Amendment) Act, 1907, or of this Act, until after the expiry of the period of suspension named in such aforesaid notification.

5. A sale or lease of land made under such agreement, and any subsequent sale, mortgage, transfer, or lease of such land, or any part thereof, made within five years after such first-mentioned sale or lease, shall, within a time to be prescribed, or within such further time as the Minister may allow, be submitted to the Minister by one of the parties to the same. Sale, lease, &c., to be notified.

6. On any sale or lease by the owner being so submitted, the Minister may, within one month after such submission, refer the same to the local land board for inquiry as to whether the owner has carried out the terms and conditions agreed to as aforesaid; and in case it be decided that he has failed to fulfil the same, the suspension of the power of resumption shall cease. Minister may disallow sale or lease.

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AMENDMENT OF CLOSER SETTLEMENT ACT, 1904.

*Appeals.*Amendment of s. 18
of Principal Act.

7. Section eighteen of the Principal Act is amended by adding at the end thereof the following subsections:—

(5) Where a judge has been appointed for the purposes of this section the Governor may, in the case of the death, illness, incapacity, or absence of such judge, or at the request of the Chief Justice, or for any other reasonable cause, at any time appoint in the place of the judge first mentioned any other judge of the Supreme Court. The judge so appointed shall have the powers and authorities of a judge appointed in pursuance of this section.

(6) Where an assessor appointed under this section dies or becomes incapable of acting in his office, the Governor or the appellant, as the case may be, may at any time appoint any person to be assessor in the place of the assessor who has died or become incapable of acting as agreed. The person so appointed shall have the powers of an assessor appointed in pursuance of this section.

Applications.

New section 26.

8. Section twenty-six of the Principal Act is repealed and the following is substituted:—

Qualification to
apply for land.

26. Any male person not being under the age of eighteen years, and any female person not being under the age of twenty-one years, and not being the holder under any tenure other than annual tenure of any land except—

- (a) land which, when added to the area applied for will not, in the opinion of the local land board, substantially exceed a home maintenance area; or
 - (b) land held as a tenant from a private holder without a right of purchase, and being less than a home maintenance area,
- may apply for a settlement purchase under this Act, subject to the following provisions:—
- (c) If any person divests himself of any land for the purpose of so applying for a settlement purchase his application shall be disallowed unless he has obtained before or after such divesting the Minister's consent in writing to such application being made.
 - (d) The person applying, 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: Provided that with the Minister's consent a married woman not living apart from her husband may apply for a settlement purchase in which case the lands held

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held by her husband shall be considered in estimating whether the area as held together with that applied for exceeds the limitation of subsection (a) hereof and in considering any application by a married man not so living apart the total area held by husband and wife shall be similarly considered :

Provided that, in the case of conflicting applications and subject to any preference granted by or under this Act, or the Closer Settlement (Amendment) Act, 1906, the land board shall take into consideration all lands held by the applicants, and may give preference to the applicant who is substantially most in need of land, if he is otherwise eligible, and is likely to satisfactorily work and develop the land applied for.

9. Section twenty-seven of the Closer Settlement Act, 1904, is amended by omitting the word "registered." Section 27 of Act of 1904.

10. Section twenty-eight of the same Act is amended— Section 28 of Act of 1904.

- (a) by inserting after "simultaneously" the words "on the Monday aforesaid, or, if that day is a public holiday, on the first business day thereafter."
- (b) by inserting after "merits of each" the words "whether conflicting or not."
- (c) by inserting after "by such board" the words "No error, uncertainty, omission, or misdescription in any application for a settlement purchase, or in any declaration prescribed and made in connection with any such application, shall invalidate the application in any case where the board is satisfied that such error, omission, uncertainty, or misdescription was not wilful, or made with intent to deceive; and the board shall have full power to authorise the correction of any error or omission in any application or declaration, so as to bring the same into conformity with the statutory requirements. Where any prescribed declaration has not been lodged, the board may permit such omission, if not wilful, to be supplied. The provisions of this section shall extend to applications and declarations made before but not finally disposed of at the commencement of this Act."

Postponement of payment of instalments.

11. Section twenty-nine of the same act is amended— Section 29 of same Act.

- (a) by omitting the word "thereon" in paragraph (a) and inserting in lieu thereof the words "on the amount owing from time to time" and
- (b) by adding at the end thereof the following subsections :—

(2) Provided that with respect to a settlement purchase made after the nineteenth day of December, one thousand nine hundred and seven, the payment of the instalment due at the end of the first year Postponement of payment of instalments in certain cases.

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year from the date of application for the purchase may be postponed by the Minister on application being made to him. Payment of any other instalment may also be so postponed on the purchaser satisfying the Minister of his inability to pay it.

With respect to a settlement purchase made before the said day, the payment of any instalment may be postponed as aforesaid, on the purchaser satisfying the Minister of his inability to pay it: Provided that not more than two such payments shall remain postponed and unpaid under this section in respect of a settlement purchase, whether made before or after the nineteenth day of December, one thousand nine hundred and seven.

In either such case the postponement of any such payment shall, unless the Minister otherwise determines, be on condition that improvements to the value of the amount of any instalment the payment of which has been postponed shall be made on the land within twelve months after the date of the postponement. Such postponement shall also be subject to such other conditions as the Minister may impose. The improvements aforesaid shall be in addition to those required by the Principal Act or any Act amending the same.

Where any such postponement has been granted interest shall be charged each year at the rate of four per centum per annum on the amount (including unpaid interest) owing at the end of the preceding year; and the balance of purchase money and interest owing at the end of the thirty-seventh year after the application for the purchase shall, together with interest thereon, be paid as follows:

- (a) Where payment of one instalment has been postponed, by one payment at the end of the thirty-eighth year after the application for the purchase;
- (b) Where the payment of two instalments has been postponed, by two equal payments at the end of the thirty-eighth and thirty-ninth years after the application for the purchase.

But the postponement of the payment of any instalment shall cease upon the non-fulfilment of any condition attached to such postponement.

(3) Any holder of a settlement purchase may, at any time prescribed for the payment of any instalment in respect of his purchase, pay, in addition to the amount of the instalment, the whole or any part of any other instalment not then due; whereupon interest on the amount of such payment shall cease to be charged.

Restrictions on purchase or transfer.

Section 30 of Act of 1904.

12. Section thirty of the same Act is amended by adding the following at the end of the section:—

(3) If the said person does not become so qualified within such period or further period, the Minister may invite applications from

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from qualified persons who desire to acquire the settlement purchase, and may approve of any one of such applications, and may, on behalf of the person on whom the settlement purchase has devolved as aforesaid, sell such settlement purchase to any person so qualified at a price and upon conditions to be determined by the Minister. The person upon whom the settlement purchase has devolved shall, upon payment to him of the purchase money, transfer the settlement purchase to the person whose application has been approved; failing such transfer the settlement purchase shall be forfeited.

13. Section thirty-one of the same Act is amended by omitting the words "before grant." Amendment of s. 31.

14. Section thirty-four of the same Act is amended by adding the following at the end of the section:—"All grants of land issued under the authority of the Closer Settlement Acts shall contain a reservation of all minerals in such land, and shall contain such other reservations and exceptions as may by the Governor be deemed expedient in the public interest." Amendment of s. 34 of same Act.

AMENDMENT OF CLOSER SETTLEMENT (AMENDMENT) ACT, 1906.

15. Section three of the Closer Settlement (Amendment) Act, 1906, is amended— Section 3 of Act of 1906.

(a) by inserting the following subsection next after subsection one:—

(1A) The Minister may allow—

- (a) any person who is not a lessee as aforesaid, but who holds any part of such land on terms of sharing profits with his landlord (hereinafter referred to as a share-farmer); or
- (b) any person employed on such land, and who has established his home and resided on any part thereof for at least two years,

to remain in occupation of such part of the land acquired for such period and upon such terms as he thinks fit.

(b) in subsection two by inserting after "tenancy" the words "or occupation"; by inserting after "tenant" the words "share-farmer or employee"; and by adding, at the end of the subsection, the words "if the land board after inquiry reports that he is otherwise qualified and likely to satisfactorily work and develop the land."

16. Section five of the same Act is repealed. Repeal of s. 5 of Act of 1906.

17. Section seven of the same Act is amended by inserting after "revoke" the words "alter or modify." Section 7 of same Act.

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AMENDMENT OF CLOSER SETTLEMENT (AMENDMENT) ACT, 1907.

Section 3 of Act of 1907.

18. Section three of the Closer Settlement (Amendment) Act, 1907, is amended by omitting the words in paragraph (a) within brackets, "not being, in the opinion of the board, of a value less than ten thousand pounds, exclusive of the value of the improvements thereon," and by inserting in paragraph (d) after "property" the words "it shall state if," and after "residue" the words "exceeds twenty thousand pounds or not."

Section 5 (1) of Act of 1907.

19. (1) Subsection one of section five of the same Act is amended—

- (a) by omitting the words "by proclamation in the Gazette";
- (b) by inserting after "notify" the words "in the Gazette a list of estates situated, wholly or partly, within fifteen miles on either side of the line of the proposed railway, whereupon no disposition by the owner of any such estate shall operate to defeat the power of the Governor to resume such estate or any part thereof under this Act. Such proclamation shall cease to have effect after the expiration of six months from its date, except as to any land included in a proclamation made as hereinafter in this section mentioned :

Provided that a proclamation under this paragraph may at any time be rescinded or altered in whole or in part by the Minister by notice in the Gazette.

While such restriction is in force the Governor may, by proclamation in the Gazette, notify "

(2) Subsection two of the same section is amended by inserting at the end of paragraph (b) "or which has so accrued from the proposed construction of such line."

Section 9 of same Act.

20. Section nine of the Closer Settlement (Amendment) Act, 1907, is amended by adding the following paragraphs:—

The owner or mortgagee shall set out in such notice of appeal the amount which he claims as the value of the land and of the improvements thereon.

Where such owner or mortgagee fails to set out the amount he claims as aforesaid, the valuation of the advisory board shall be deemed to be the fair market value of the land and of the improvements thereon.

AMENDMENT OF ACTS OF 1904 AND 1906.

Setting apart for closer settlement.

21. (1) Land acquired under the Principal Act or any Act amending the same, together with any adjacent Crown lands, may be set apart by the Minister as a settlement purchase area by notification in the Gazette, and he may at any time in the like manner modify, alter, or revoke such setting apart. (2)

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(2) Before disposal of any land under the said Acts a plan of subdivision showing the areas and value per acre of the proposed settlement purchases shall be approved by the Minister and shall be the design plan of the land. Approval of subdivision and price.

(3) The Minister may, at any time and in any respect, alter any design plan, whether made before or after the commencement of this Act and whether the land affected has or has not been disposed of: Provided that, if the land has been disposed of, the consent of the owner shall be obtained. Alteration of design plan.

After measurement of the areas according to the design thereof, the plans may be approved by the Minister or any officer duly authorised in that behalf.

(4) Land acquired under the Principal Act or any Act amending the same and such adjacent Crown lands as may at any time have been set apart as aforesaid shall be dealt with and disposed of under the provisions of the said Acts, and in no other way, any provisions of the Crown Lands Acts to the contrary notwithstanding. Disposal of land.

(5) Every such settlement purchase area shall be notified for disposal under the design plan, and may be notified in three classes, namely:— Notification of land for disposal.

- (a) Agricultural land.
- (b) Grazing land.
- (c) Agricultural and grazing land.

Such notification shall describe the land and declare it to be available for application, and shall set out inter alia the class of land, the conditions and restrictions which shall attach thereto, the capital value and area of each farm which may comprise two separated portions.

(6) Any land within a settlement purchase area which for any reason is unsuitable for disposal under the provisions of this Act, or of any Act amending the same, may be disposed of by sale or lease, by auction or tender, upon such terms and conditions as may be determined by the Minister. Land unsuitable for disposal under Acts.

Any movable improvements on an area acquired for closer settlement may be disposed of in a similar manner separately from the land.

(7) Sections twenty-five and thirty-seven of the Closer Settlement Act, 1904, and section four of the Closer Settlement (Amendment) Act, 1906, are repealed. Repeal.

22. (1) The holder of a settlement purchase may, with the consent of the Minister sell any part of the land included in such purchase as a site for a church, school of arts, or cemetery, or for any purpose approved by the Minister. Settlement purchase sold as a site for church, school of arts, or cemetery.

(2) On such sale—

- (a) the land so sold shall cease to form part of the settlement purchase, and the provisions of any Act so far as they relate to settlement purchases shall cease to apply to it; and

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- (b) the balance of purchase money for such land shall forthwith be payable to the Crown, and on payment of such balance a Crown grant of such land may be issued.

GENERAL AND SUPPLEMENTAL.

Costs of proceedings
on appeals as to
value.

23. (1) The following provisions shall apply to the costs of all proceedings by way of appeal for determining the value of land resumed under the Principal Act, or any Act amending the same:—

- (a) Where the value determined by the court hearing the appeal is equal to or less than the amount at which the Governor has offered to purchase the land, or where no such offer has been made, the amount of the valuation of the advisory board, the owner shall pay the costs of the appeal.
- (b) Where the value so determined is equal to or greater than the amount which the owner claims as the value of the land the Crown shall pay such costs.
- (c) Where the value so determined is greater than the amount of the offer or valuation referred to in paragraph (a), but is less than the amount of the claim of the owner aforesaid, the Crown shall pay to the owner as costs the amount to be fixed by multiplying the owner's taxed costs by a fraction of which the numerator is the amount by which the value determined by the court exceeds the offer or valuation aforesaid, and the denominator is the difference between the amount of the claim of the owner and the amount of the said offer or valuation.

(2) Subsection two of section twenty-two of the Principal Act is repealed.

(3) Provided that this section shall not apply to proceedings in any such appeal which has been commenced before the commencement of this Act.

Governor may
cancel resumption.

24. With the consent of the owner of any land resumed under the Principal Act or the Closer Settlement (Amendment) Act, 1907, the Governor may, at any time, cancel such resumption as to the whole or part of the said land, or may modify the boundaries thereof.

For that purpose the Governor may revoke any proclamation or notification made by him or by the Minister under any such Act.

Regulations.

25. The Governor may make regulations for the purpose of carrying this Act into effect and prescribing any procedure for that purpose; and in particular prescribing the form in which any application shall be submitted to the Minister for his approval and the particulars to be therein contained; and requiring and prescribing the verification of such particulars.