

WESTERN LANDS (AMENDMENT) ACT.

Act No. 66, 1932.

An Act to provide that the title conferred by certain leases shall be a lease in perpetuity; to amend the law relating to the withdrawal of lands held under lease; to validate certain matters; and for these and other purposes to amend the Western Lands Act of 1901, as amended by subsequent Acts; and for purposes connected therewith. George V.
No. 66, 1932
[Assented to, 30th December, 1932.]

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:—

1. This Act may be cited as the “Western Lands (Amendment) Act, 1932,” and shall be read and construed with the Western Lands Act of 1901, as amended by subsequent Acts, which Act as so amended is in this Act referred to as the Principal Act. Short title.

2. The Principal Act is amended by omitting section seventeen and by inserting in lieu thereof the following new section:— Amendment
of Act No. 70
of 1901.
New s. 17.

17. (1) The Governor, after report by the Commissioners, may withdraw any lands held under lease, other than a lease extended to a lease in perpetuity, whenever it may be deemed expedient so to do for the purpose of providing for settlement, and every such withdrawal shall be notified in the Government Gazette and a local newspaper. Withdrawal
for the pur-
pose of pro-
viding for
settlement.

(2)

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(2) All lands withdrawn from lease under this section shall be disposed of under the provisions of this Act.

(3) The lands which may be withdrawn under this section shall not exceed one-eighth of the area of the lease, and any withdrawal made under the provisions of the section which this section replaces, shall be deemed for the purposes of this section to be a withdrawal under this section.

(4) Where two or more leases whether adjoining or not are held in the same interest and are, in the opinion of the Commissioners, reasonably capable of being worked as one holding, the total area of such leases or of any two or more of such leases may be regarded as the area from which withdrawal may be made under this section, and subject to this section withdrawal may be made from any one or more of such leases. In calculating the total area of such leases, the area of any lease from which withdrawal has been made or deemed to have been made shall not be taken into consideration.

Where the carrying capacity of the leases within the holding or of the two or more of such leases from which the withdrawal is to be made, is not uniform, the land which may be withdrawn under this section shall not exceed in carrying capacity one-eighth of the aggregate carrying capacity of all the leases within the holding, or of the two or more leases from which the withdrawal is to be made.

Where the right of withdrawal has been exercised in full in respect of the leases within such a holding the withdrawal shall be deemed to be a withdrawal from each and every lease within the holding.

Where the right of withdrawal has been exercised only in respect of some of the leases within such a holding the withdrawal so made shall be deemed to be a withdrawal from each and every such lease.

(5) As compensation for withdrawal under this section the Governor shall, after report by the Commissioners, extend the term of any lease from
which

which withdrawal has been made or deemed to have been made, but in no case shall the term be extended by more than six years.

(6) Where the whole of the land within any lease is withdrawn in pursuance of this section, the liability of the lessee for payment of rent shall cease as from the date of such withdrawal.

Where part of the land held under a lease is so withdrawn the rent for the succeeding years of the lease shall be reduced in proportion to the area withdrawn, and the conditions of the lease during any extended term shall otherwise be the same as immediately prior to the commencement of such extension.

(7) After the exercise of such power the land so withdrawn shall remain under preferential occupation license to the lessee at the same rent per acre as the lease from which the land was withdrawn.

(8) Upon the disposal of any land so withdrawn the lessee shall be entitled to tenant-right as hereinafter provided in all improvements effected or paid for by him on such land.

(9) Any land surrendered prior to the commencement of the Western Lands (Amendment) Act, 1932, in pursuance of any agreement made between the Minister and the holder of any lease of land in the Western Division whereby any lease under the provisions of this Act was, in consideration of the surrender by the lessee of the whole or part of a lease of land within the Western Division, exempted from liability for withdrawals under the section which this section replaces, shall for the purposes of this section be regarded as having been withdrawn from the lease so exempted.

3. The Principal Act is further amended by inserting next after section 18b the following new section:—

18E. (1) The person who at the commencement of the Western Lands (Amendment) Act, 1932, is the holder of a lease may apply in the manner and within the time prescribed to have such lease extended to a lease in perpetuity.

Amendment of Act No. 70 of 1901.
New s. 18E.
Subsisting leases:
Extension.

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The application shall be accompanied by the prescribed fee.

(2) The Minister on the recommendation of The Western Land Board of New South Wales may grant the application as to the whole or part of the land in the lease.

The following provisions shall apply in respect of every such application:—

- (a) an application under this section shall not be entertained where the granting of the same appears to be contrary to the public interest or to be otherwise undesirable;
- (b) an application shall not be granted either wholly or in part in any case where the lands held by the applicant or his wife or her husband as the case may be substantially exceed a home maintenance area irrespective of whether the lands so held are or are not in the Western Division.

Lands held under annual lease, preferential occupation license, occupation license or permissive occupancy (where such permissive occupancy at the date of the granting of the application under this section has not more than one year to run) shall not be taken into account for the purpose of ascertaining a home maintenance area;

- (c) an application shall not be granted in respect of such part of the land comprised in the lease as is—
 - (i) reserved from sale, lease or license under any Act—unless the Minister so approves;
 - (ii) within a State forest or timber or forest reserve—unless the Forestry Commission so approves;
 - (iii) within a reserve for mining or mining purposes or within an area exempted from alienation under the Mining Act, 1906—unless the Secretary for Mines so approves.

(3)

(3) Where an application under subsection one of this section has been granted as to the whole of the land comprised in the lease the instrument of lease shall be lodged at the office of The Western Land Board in order that a notification of such extension and a note of any terms and conditions imposed pursuant to subsection five of this section may be endorsed thereon.

(4) Where an application under subsection one of this section has been granted as to part only of the land comprised in the lease—

(a) the instrument of lease shall be surrendered and separate leases issued for such part and for the residue of the land comprised in the lease, and any person having an interest in the original lease shall be deemed to have an equivalent interest whether by way of mortgage or otherwise in the new leases;

(b) the new leases shall commence on the date upon which the application under subsection one of this section is granted and the term of the lease for such residue shall be the balance of the term of the lease subsisting at that date:

Provided that in any case where the holder is entitled to any extended term as compensation for withdrawal under section seventeen of this Act or the section which it replaces the term of the lease for such residue shall be extended in accordance with the provisions of those sections;

(c) the lease for the residue of the land shall, subject to this section, be held subject to the conditions appertaining to the lease at the date of the said application;

(d) the cost of any necessary survey shall be paid by the holder in the manner and at the time prescribed and upon default of payment the leases shall become liable to forfeiture;

(e) no additional condition of residence shall attach to the new leases.

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(5) A lease in perpetuity granted in pursuance of this section shall, in addition to the conditions appertaining to the lease at the date of the application under subsection one of this section, be subject to such terms and conditions of improvement and maintenance thereof including water supply and the destruction of rabbits, wild dogs and other noxious animals as the Minister after report by The Western Land Board of New South Wales may consider necessary to reasonably increase the carrying capacity of the land, and may impose when granting the application.

A note of any terms and conditions so imposed shall be embodied in any new lease, or endorsed on any lease upon which a notification of extension is endorsed.

(6) All leases held in the same interest shall be included in one application.

(7) For the purpose of this section a home maintenance area of land which in the opinion of The Western Land Board of New South Wales is best adapted for grazing shall be deemed to be an area which when reasonably improved will carry in average seasons and conditions a sufficient number of stock to enable the holder to reasonably maintain an average family.

In arriving at the area which would be sufficient for this purpose due regard shall be paid to the situation of the land and the average carrying capacity thereof.

(8) Where the applicant is the holder of lands elsewhere than in the Western Division the average capacity for the purpose of determination of a home maintenance area in such case shall be the average carrying capacity of all the lands held.

(9) Where the lands of the applicant are entirely within the Western Division and are in the opinion of The Western Land Board of New South Wales best adapted for grazing—

- (a) a home maintenance area where the holding consists of one parcel only and some part thereof is distant not more than forty miles from

from a railway trucking yards, shall be an area (in this subsection called the "standard area") which when reasonably improved will carry—

- (i) where the average carrying capacity is 1 sheep to 3 acres or better—3,500 sheep;
- (ii) where the average carrying capacity is less than 1 sheep to 3 acres but not less than 1 sheep to 4 acres—4,000 sheep;
- (iii) where the average carrying capacity is less than 1 sheep to 4 acres but not less than 1 sheep to 5 acres—4,500 sheep;
- (iv) where the average carrying capacity is less than 1 sheep to 5 acres but not less than 1 sheep to 6 acres—5,000 sheep;
- (v) where the average carrying capacity is less than 1 sheep to 6 acres but not less than 1 sheep to 7 acres—5,500 sheep;
- (vi) where the average carrying capacity is less than 1 sheep to 7 acres but not less than 1 sheep to 8 acres—6,000 sheep;
- (vii) where the average carrying capacity is less than 1 sheep to 8 acres but not less than 1 sheep to 9 acres—6,500 sheep;
- (viii) where the average carrying capacity is less than 1 sheep to 9 acres but not less than 1 sheep to 10 acres—7,000 sheep;
- (ix) where the average carrying capacity is less than 1 sheep to 10 acres but not less than 1 sheep to 11 acres—7,500 sheep;
- (x) where the average carrying capacity is less than 1 sheep to 11 acres but not less than 1 sheep to 12 acres—8,000 sheep;

(xi)

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- (xi) where the average carrying capacity is less than 1 sheep to 12 acres—8,500 sheep;
- (b) a home maintenance area, where the holding consists of one parcel only, and the distance from the nearest railway trucking yards to the nearest part of such holding is more than forty miles, shall be the standard area, together with an additional area of land for each twenty miles or part thereof by which such distance exceeds forty miles, sufficient to carry one-twentieth of the number of sheep specified in subparagraph (i) to subparagraph (xi) of paragraph (a) of this subsection;
- (c) a home maintenance area, where the holding consists of more than one parcel, shall be determined according to the following provisions:—
 - (i) where the nearest point of each of the parcels to the nearest railway trucking yards is less than forty miles the average carrying capacity of the holding for the purpose of this section shall be deemed to be the average carrying capacity of such parcels;
 - (ii) where the nearest point of each of the parcels to the nearest railway trucking yards is more than forty miles the average carrying capacity of the holding for the purpose of this section shall be deemed to be the average carrying capacity of such parcels; and the distance from the nearest railway trucking yards shall, for the purposes of this section, be deemed to be the average of the distances of the nearest points of the respective parcels from such railway trucking yards;
 - (iii) where the nearest points of one or more, but not all, of such parcels to the nearest railway trucking yards
are

are more than forty miles the average carrying capacity of the holding for the purpose of this section shall be deemed to be the average carrying capacity of all the parcels within the holding; and the distance from the nearest railway trucking yards shall, for the purposes of this section, be deemed to be the average of the distances of the nearest points of all the parcels within the holding from such railway trucking yards;

- (iv) where the average carrying capacity and the average distance have been ascertained in accordance with the provisions of subparagraphs (i), (ii) and (iii) of this paragraph the home maintenance area shall be calculated upon such average carrying capacity in accordance with the standard area or in accordance with paragraph (b) of this subsection according as such average distance does not or does exceed forty miles.

For the purpose of this subsection one head of large stock shall be regarded as the equivalent of six sheep.

(10) A lease extended to a lease in perpetuity in pursuance of this section shall not be transferred except by way of mortgage or discharge of mortgage to a person who at the date of the proposed transfer already holds an area of land which area when added to the area proposed to be acquired will in the opinion of the Minister substantially exceed a home maintenance area.

Any land held by the spouse of such person shall for the purpose of this subsection be deemed to be held by such person.

(11) The rent payable in respect of a lease extended to a lease in perpetuity shall be redetermined by The Western Land Board of New South Wales for the period commencing on the date when

x

rent

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rent is next payable after the thirty-first day of December, one thousand nine hundred and forty-eight.

In redetermining such rent the board shall have regard to the productive capacity of the land under fair average seasons, prices and conditions.

The provisions of section nineteen of this Act shall not apply to a redetermination of the rent under this section, nor shall such provisions apply to a lease extended to a lease in perpetuity after a redetermination has been made under this subsection.

Amendment of
Act No. 70 of
1901.

Sec. 16.
(Particulars of
extension to be
laid before
Parliament.)

Sec. 17A.
(Withdrawal
for special
purposes.)

Sec. 18.
(Duration of
leases.)

Sec. 21.
(Increased
rentals in
certain
cases.)

Sec. 28A.
(Special
leases.)

Sec. 28B.
(Conversion
of lease.)

1. The Principal Act is further amended—

- (a) by omitting from section sixteen the word “extension” and by inserting in lieu thereof the word “issue”;
- (b) by omitting from section 17A the words “for the succeeding years”;
- (c) by inserting in section eighteen after the word “shall” where firstly occurring the words “except as otherwise provided in this Act”;
- (d) (i) by omitting from section twenty-one the words “during the term of any lease or extension thereof or during the currency of any occupation license”;
- (ii) by omitting from the same section the words “previous section” and by inserting in lieu the words “section nineteen”;
- (iii) by omitting from the same section the words “until the end of the period of the lease then current” and by inserting in lieu the words “in respect of the lease or license”;
- (e) by inserting in section 28A after the words “Any such lease shall” the words “unless extended to a lease in perpetuity under the provisions of section 18E of this Act”;
- (f) (i) by inserting in subsection one of section 28B after the words “for any such purpose” the words “or for mixed farming or for a similar purpose or purposes”;
- (ii)

- (ii) by inserting in subsection three of the same section after the word " shall " where firstly occurring the words " unless extended to a lease in perpetuity under the provisions of section 18E of this Act "; No. 66, 1932.
- (g) (i) by inserting in section twenty-nine after the word " expiration " the words " or forfeiture "; Sec. 29.
(Improvements.)
- (ii) by inserting at the end of the same section the following words:—
- "The action of the Minister in assuring or granting tenant-right in any improvements or in any additions to or extensions of improvements which had been effected prior to his consent in writing having been obtained is hereby validated, and notwithstanding anything contained in this section the Minister may for a period of six months after the commencement of the Western Lands (Amendment) Act, 1932, assure or grant tenant right in any improvements or in any additions to or extension of improvements notwithstanding that such improvements, additions or extensions may have been effected prior to his consent being first obtained."
- (h) by inserting in section 29A after the word " improvements " where thirdly and fourthly occurring the words " or any additions to or extensions of improvements "; Sec. 29A.
(Determination of value of improvements.)
- (i) (i) by inserting in section 35c after the word " adjoining " the words " or adjacent "; Sec. 35c.
(Forfeited or surrendered lands may be added.)
- (ii) by omitting from the same section the words " as to rent, license fee, value of improvements or purchase money " and by inserting in lieu thereof the words " and at such rent, license fee or purchase money as may be determined ";
- (j)

No. 66, 1932.**Sec. 35E.**
(Conditional leases.)

- (j) by inserting in section 35E after the words "conditional lease" where firstly occurring the words "not extended to a lease in perpetuity under the provisions of this Act";

Sec. 39.

(Leases of subdivided area.)

- (k) (i) by omitting from section thirty-nine the words "to such person as may be nominated in that behalf by the owner as aforesaid or to the owner himself" and by inserting in lieu thereof the words "to the owner";

- (ii) by inserting at the end of the same section the following new subsection:—

(2) Where the subdivided lease has before subdivision been extended to a lease in perpetuity each subdivided portion shall be held as a lease in perpetuity.

Sec. 41.

(Conditions of leases.)

- (l) by inserting in section forty-one after the word "shall" where firstly occurring the words "unless extended to a lease in perpetuity under the provisions of this Act";

Sec. 44A.

(Enhancement due to public works.)

- (m) (i) by omitting from subsection one of section 44A the words "during the term or extended term of any lease";

- (ii) by omitting from the same subsection the word "such lease" and by inserting in lieu thereof the words "any lease."