

PRICKLY PEAR ACT 1987 No. 202

NEW SOUTH WALES



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SCHEDULE 1—SAVINGS, TRANSITIONAL AND OTHER PROVISIONS

PRICKLY PEAR ACT 1987 No. 202

NEW SOUTH WALES



Act No. 202, 1987

An Act to provide for the control and destruction of prickly pear; and for other purposes. [Assented to 8 December 1987]

See also Miscellaneous Acts (Prickly Pear) Repeal and Amendment Act 1987.

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The Legislature of New South Wales enacts:

PART 1—PRELIMINARY

Short title

1. This Act may be cited as the Prickly Pear Act 1987.

Commencement

2. This Act shall commence on 1 January 1988.

Definitions

3. (1) In this Act—

“approved” means approved by the Director-General;

“council” means the council of a municipality, shire or city or a county council;

“Director-General” means the Director-General of the Department of Agriculture;

“occupier”, in relation to land, means—

- (a) the person for the time being entitled to possession of the land and includes, where the person so entitled does not reside on the land, the resident manager or other person in charge of the land; or

- (b) the trustees of the land, if it is reserved or dedicated for any public purpose;

“prickly pear” means a plant of any species within the cactus tribe Cacteeae (or Cereeeae), Opuntieae or Pereskieae, but does not include any such plant that is of a kind prescribed for the purposes of this definition.

- (2) In this Act—

- (a) a reference to a function includes a reference to a power, authority and duty; and

- (b) a reference to the exercise of a function includes, where the function is a duty, a reference to the performance of the duty.

Act binds Crown

4. (1) This Act binds the Crown in right of New South Wales and, in so far as the legislative power of Parliament permits, the Crown in all its other capacities.

- (2) Nothing in this Act renders the Crown liable to be prosecuted for an offence.

PART 2—ADMINISTRATION OF ACT**Functions of Director-General**

5. (1) The Director-General has the following functions:

- (a) the clearing, control and prevention of prickly pear by any means, whether mechanical, biological or otherwise;
- (b) the carrying out of research into, and the gathering and dissemination of information about, prickly pear and any means of its clearing, control or prevention;
- (c) any functions relating to land infested with prickly pear conferred or imposed on the Director-General by the regulations;
- (d) the carrying out of the provisions of this Act and the regulations and the doing of all matters and things necessary for the proper administration of this Act.

(2) The Director-General is, in the exercise of any such function, subject to the control and direction of the Minister.

Delegation by Minister and Director-General

6. (1) The Minister may delegate to a person any of the Minister's functions under this Act, other than this power of delegation.

(2) The Director-General may delegate to a person any of the Director-General's functions under this Act, and any of the functions delegated under this Act to the Director-General by the Minister, other than this power of delegation.

Councils etc. may perform functions

7. (1) The Minister may, on the recommendation of the Director-General, arrange with a council or a pastures protection board to exercise, or to aid in the exercise of, a function of the Director-General under this Act.

(2) Any expenses incurred by a council or a pastures protection board, acting in accordance with such an arrangement, may (subject to the terms of the arrangement and the appropriation of the relevant amount) be paid out of the Consolidated Fund.

PART 3—CONTROL OF PRICKLY PEAR**Classification of land**

8. (1) The Director-General shall from time to time cause surveys and investigations to be made for the purpose of classifying land.

(2) The classes of land are:

Class 1—land which is not infested with prickly pear.

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Class 2—land which is lightly infested with prickly pear, which is being controlled, but which requires inspection at intervals ranging from 2 to 10 years.

Class 3—land which is heavily infested with prickly pear or requires frequent inspections to ensure that any prickly pear infestation is controlled.

Class 4—land which is very heavily infested with prickly pear and which could not be economically cleared of prickly pear within a 5 year period.

(3) In classifying adjoining or adjacent separate allotments or portions of land owned or occupied by the same person, the Director-General may classify all or part of the land as Class 3 or 4 even though it includes land which could be classified as Class 1 or 2.

(4) In determining the period within which land could be cleared of prickly pear, the Director-General shall consider—

- (a) the cost of clearing the prickly pear;
- (b) the situation and value of the land; and
- (c) all other circumstances of the case considered by the Director-General to be relevant.

Land to be kept free from prickly pear

9. (1) An occupier of land which is, or becomes, free from prickly pear shall keep and maintain the land entirely free from prickly pear.

(2) An occupier who contravenes subsection (1) without a reasonable excuse is guilty of an offence and liable to a penalty not exceeding 20 penalty units.

Infested land

10. (1) If the Director-General is satisfied that—

- (a) prickly pear is growing on any land; and
- (b) the occupier of the land is not taking reasonable and effective measures to free the land from prickly pear,

the Director-General may give a notice, in the form approved for the purpose, to the occupier.

(2) Such a notice may state a period or periods of time after which the land is, or specified parts of the land are, required to be free from prickly pear to the satisfaction of the Director-General.

(3) The Director-General may, by a further notice in the form approved for the purpose and given to the occupier, revoke or amend a notice previously given under this section.

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(4) An occupier of land to whom a notice under this section is given, or a successor in title to the occupier who has notice of such a notice, shall not fail to comply with the notice.

Penalty: 20 penalty units.

(5) This section does not apply to land occupied by, or under the control of, a council or a pastures protection board.

Director-General may enter land and clear prickly pear

11. (1) The Director-General may, after giving notice in the form approved for the purpose to an occupier of land (by agents or by officers or employees of the Department of Agriculture, authorised in writing by the Director-General)—

- (a) enter the land; and
- (b) take such measures to free the land from prickly pear as the Director-General thinks appropriate in the circumstances.

(2) The Director-General may take action under subsection (1) only if the occupier, or a predecessor in title to the occupier, has been given a notice under section 10 and—

- (a) has failed to comply with the notice; or
- (b) is, in the opinion of the Director-General, not taking prompt and effective measures to free the land to which the notice relates from prickly pear in accordance with the notice.

Recovery of expenses by Director-General

12. (1) Any expense incurred by or on behalf of the Director-General in taking action under section 11 is payable by the occupier of the land concerned, on demand by the Director-General.

(2) The amount of any unpaid expense—

- (a) may be recovered by the Director-General from the occupier as a debt in a court of competent jurisdiction; and
- (b) is, together with interest thereon at the prescribed rate, a charge on the land when registered as such by the Registrar-General in the manner prescribed by regulations made under the Conveyancing Act 1919 or the Real Property Act 1900, as the case requires.

(3) The Director-General shall, on written application by a person and on payment of the prescribed fee, issue a certificate, in the approved form, showing if there is a charge on land under this section or any unpaid expense which may result in such a charge being imposed, and the amount of any such charge or unpaid expense.

(4) A certificate under subsection (3) is admissible in any legal proceedings as evidence of the matters certified and is conclusive evidence in relation to any claim made by the Director-General.

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Control of prickly pear by councils and pastures protection boards

13. (1) If the Director-General is satisfied that prickly pear is growing on any road, street, stock route, reserve or other land occupied by, or under the control of, a council or a pastures protection board, the Director-General may give a notice, in the form approved for the purpose, to the council or pastures protection board.

(2) Such a notice may state a period or periods of time after which the road, street, stock route, reserve or other land is, or specified parts of the road, street, stock route, reserve or land are, required to be free from prickly pear to the satisfaction of the Director-General.

(3) The Director-General may, by a further notice in the form approved for the purpose and given to the occupier, revoke or amend a notice previously given under this section.

(4) A council or a pastures protection board to which a notice is given under this section shall not fail to comply with the notice.

Penalty: 20 penalty units.

Entry on to council or pastures protection board land and recovery of expenses

14. (1) The Director-General may (by agents or by officers or employees of the Department of Agriculture, authorised in writing by the Director-General)—

- (a) enter a road, street, stock route, reserve or other land occupied by, or under the control of, a council or a pastures protection board; and
- (b) take such measures to free the road, street, stock route, reserve or other land from prickly pear as the Director-General thinks appropriate in the circumstances,

whether or not the council or pastures protection board has been served with a notice under section 13.

(2) Any expense incurred by or on behalf of the Director-General in taking action under subsection (1) is payable by the council or the pastures protection board, on demand by the Director-General.

(3) The amount of any unpaid expense may be recovered by the Director-General from the council or the pastures protection board as a debt in a court of competent jurisdiction.

Limit on council or pastures protection board expenditure

15. A council or a pastures protection board is not liable to a penalty under section 13 and the Director-General is not entitled to recover any expense under section 14 if, in the period of 12 months immediately preceding the commencement of the prosecution or the carrying out of the measures, the council or pastures protection board incurred an expenditure of \$5,000 or more because of a notice given under section 13.

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Levying of prickly pear rates by councils

16. (1) For the purpose of defraying expenses incurred by it in relation to prickly pear, a council may, under the Local Government Act 1919, make and levy a special or a local rate on the land value or on the improved capital value of ratable land in its area or in a portion of its area.

(2) Such a rate may be made and levied even though the amount of rates levied in the area would exceed or exceeds the amount permitted by or under the Local Government Act 1919 or any other Act.

(3) No poll shall be taken on the question of whether any such rate will be made.

Levying of prickly pear rates by pastures protection boards

17. (1) For the purpose of defraying expenses incurred by it in relation to prickly pear, a pastures protection board may make and levy in any year a special rate on each occupier of land within the district of the board who is liable to pay a general rate within the meaning of the Pastures Protection Act 1934.

(2) The Governor may by order published in the Gazette impose a maximum rate under this section.

(3) The provisions of sections 31–33, 35, 37–39 and 40A of the Pastures Protection Act 1934 apply to a special rate made under this section in the same way as they apply to a rate made under that Act.

Waiver of expenses

18. The Director-General may, with the approval of the Minister, and shall, at the direction of the Minister (but not otherwise)—

- (a) waive payment of the whole or part of any expense or interest thereon payable by an occupier, a council or a pastures protection board under this Part; or
- (b) refund to an occupier, a council or a pastures protection board the whole or part of any such expense or interest paid under this Part.

PART 4—MISCELLANEOUS**Grants to aid public bodies**

19. The Minister may, on the recommendation of the Director-General, make grants of money to assist councils, pastures protection boards and trustees of commons or reserves in carrying out their obligations under this Act.

Offences

20. (1) A person shall not sell or offer for sale or purchase any prickly pear or the leaves or any other part of prickly pear or the seed of prickly pear.

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(2) A person shall not scatter or cause to be scattered on any land any prickly pear or the leaves or any other part of prickly pear or the seed of prickly pear.

(3) A person shall not throw or place or cause to be thrown or placed any prickly pear or the leaves or any other part of prickly pear or the seed of prickly pear into any ocean, harbour, estuary, lake, lagoon, river, stream, creek or watercourse, whether containing water or not.

Penalty: 20 penalty units.

Prohibited entry on to land

21. A person who, to gain entry on to land, falsely represents himself or herself to be a person lawfully acting under the provisions of this Act or the regulations is guilty of an offence.

Penalty: 20 penalty units.

Obstruction

22. A person shall not obstruct any person acting under the authority of this Act in the discharge of a duty imposed or authorised or the doing of work required or authorised by this Act or the regulations, or cause any such person to be obstructed.

Penalty: 20 penalty units.

Notices

23. (1) A notice under this Act may be given to a person—

- (a) by leaving it with the person or with another person at the person's usual or last known place of address; or
- (b) by sending it by post to the person.

(2) In any legal proceedings, evidence of service may be given by affidavit.

(3) For the purpose of a notice under this Act, land is sufficiently described if the description of the land allows no reasonable doubt as to the land to which the notice relates.

Proceedings for offences

24. Proceedings for an offence against this Act or the regulations shall be dealt with summarily before a Local Court constituted by a Magistrate sitting alone.

Offences by corporations

25. (1) If a corporation contravenes any provision of this Act or the regulations, each person who is a director of the corporation or who is concerned in the management of the corporation shall be deemed to have contravened the same provision if the person knowingly authorised or permitted the contravention.

(2) A person may be proceeded against and convicted under a provision pursuant to subsection (1) whether or not the corporation has been proceeded against or convicted under that provision.

(3) Nothing in this section affects any liability imposed on a corporation for an offence committed by the corporation against this Act or the regulations.

Recovery of charges or fees

26. Any charge or fee payable under this Act may be recovered as a debt in a court of competent jurisdiction.

Regulations

27. (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) A regulation may create an offence punishable by a penalty not exceeding 10 penalty units.

Savings, transitional and other provisions

28. Schedule 1 has effect.

SCHEDULE 1—SAVINGS, TRANSITIONAL AND OTHER PROVISIONS

(Sec. 28)

Definition

1. In this Schedule—

“Commissioner” means the Prickly-pear Destruction Commissioner appointed under the Prickly-pear Act 1924.

Commissioner holding office immediately before 1.1.1988

2. The person who, immediately before the commencement of this Act, held office as Commissioner is entitled to be appointed to some position in the Public Service not lower in classification and salary than that which the person held immediately before being appointed as Commissioner.

*Prickly Pear 1987*SCHEDULE 1—SAVINGS, TRANSITIONAL AND OTHER PROVISIONS—
*continued***Transfer of money in Prickly-pear Destruction Fund**

3. (1) On the commencement of this Act, the Prickly-pear Destruction Fund established under the Prickly-pear Act 1924 shall be closed and any money contained in the Fund shall be paid into the Consolidated Fund.

(2) Any money payable into or out of the Prickly-pear Destruction Fund after the commencement of this Act shall be paid into or out of the Consolidated Fund.

References to Prickly-pear Act 1924

4. On and from the commencement of this Act, a reference in any other Act, in any instrument made under any such Act or in any other instrument of any kind—

- (a) to a provision of the Prickly-pear Act 1924, shall be read as a reference to the corresponding provision, if any, of this Act; or
- (b) to the Commissioner, shall be read as a reference to the Director-General.

Temporary continuation of provisions relating to prickly pear and other leases

5. (1) Sections 14 (2)–(4), 15 (5), (5A) and (7), 16 (4)–(5) and (7), 17, 18, 19, 20–21c and 21E–22B of the Prickly-pear Act 1924 continue in force as if the Miscellaneous Acts (Prickly Pear) Repeal and Amendment Act 1987 had not been enacted.

(2) Regulations 15, 15A, 16–18 and 20–31 of the Prickly-pear Regulations in force under the Prickly-pear Act 1924 immediately before the commencement of this Act continue in force as if the Miscellaneous Acts (Prickly Pear) Repeal and Amendment Act 1987 had not been enacted.

(3) This clause ceases to have effect on a day to be appointed by a proclamation published for the purposes of this Schedule.

Classification of land

6. For the purposes of this Act, land classified as Class I, II, III or IV under the Prickly-pear Act 1924 shall be deemed to have been classified as Class 1, 2, 3 or 4 land under section 8, but may be reclassified under that section.

Certain charges not affected

7. A charge on land created under section 12 of the Prickly-pear Act 1924 and in force immediately before the commencement of this Act has effect as if the Miscellaneous Acts (Prickly Pear) Repeal and Amendment Act 1987 had not been enacted.

Certain agreements to continue in force

8. An agreement made under section 13 or 19 of the Prickly-pear Act 1924 and in force immediately before the commencement of this Act has effect as if the Miscellaneous Acts (Prickly Pear) Repeal and Amendment Act 1987 had not been enacted.

Rates

9. (1) Nothing in this Act affects the validity of, or the liability of any person to pay, any rate made or levied by a council pursuant to section 23, or by a pastures protection board pursuant to section 24, of the Prickly-pear Act 1924 before the commencement of this Act.

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SCHEDULE 1—SAVINGS, TRANSITIONAL AND OTHER PROVISIONS—
continued

(2) The liability to pay any such rates may be enforced as if the Miscellaneous Acts (Prickly Pear) Repeal and Amendment Act 1987 had not been enacted.

Certain regulations to continue in force

10. Except as provided by clause 5 (2), any regulations in force under the Prickly-pear Act 1924 immediately before the commencement of this Act are repealed.

Regulations

11. (1) The regulations may contain other provisions of a savings or transitional nature consequent on the enactment of this Act or the Miscellaneous Acts (Prickly Pear) Repeal and Amendment Act 1987.

(2) A provision referred to in subclause (1) may, if the regulations so provide, take effect from the commencement of this Act or a later day.

(3) To the extent to which a provision referred to in subclause (1) takes effect from a day that is earlier than the date of its publication in the Gazette, the provision does not operate so as—

- (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication; or
- (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

(4) A provision referred to in subclause (1) shall, if the regulations so provide, have effect notwithstanding any other clause of this Schedule.