

Act No. 38, 1905.

WESTERN LANDS
(AMENDMENT).

An Act to amend and extend the provisions of the Western Lands Act of 1901; to amend the Crown Lands Acts, the Appraisement Act, 1902, and the Public Service Act, 1902; and for other purposes. [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.

1. This Act may be cited as the "Western Lands (Amendment) Act of 1905," and shall be read with and form part of the Western Lands Act of 1901.

In this Act the term "Principal Act" means the Western Lands Act of 1901, and the term "Western Lands Acts" means the Principal Act and this Act.

Amendment of
section 2.

2. Section two of the Principal Act is hereby amended by substituting the words "homestead selections and grants pastoral homestead settlement residential special artesian well" for the words "pastoral, homestead."

Extension of
section 3.

3. Section three of the Principal Act is extended by—

- (a) Inserting the sentence, "'Minerals,' means and includes minerals, as defined in the Mining Act of 1889, and any Act amending the same." after the sentence ending with the words "annual lease."
- (b) Inserting the words "preferential occupation license," after the words "occupation license," in the paragraph commencing "Pastoral holding."
- (c) Inserting the words "settlement lease," "special lease," "artesian well lease," "residential lease," after the words "homestead lease," in the paragraph commencing "Pastoral holding."
- (d) Inserting the words "homestead selections," and "homestead grants," after the words "lease of inferior lands" in the paragraph commencing "Pastoral holding."

Amendment of
section 4.

4. Section four of the Principal Act is amended by—

- (a) Inserting the words "or any one of them duly appointed by the Minister by special appointment in that behalf," after the words "such Commissioners."
- (b) Omitting the word "and" after the words "sitting in open court, may."

(c)

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(c) Inserting the words "and is" between the word "are," and the words "hereby empowered."

5. Section nine of the Principal Act is amended by inserting the words "or by any one of them as in the next section provided," after the word "Commissioners." Amendment of section 9.

6. Section ten of the Principal Act is extended by adding the words " : Provided, nevertheless, that for the purpose of conducting an inquiry or making a report for the information and guidance of the Commissioners in the determination by them of any matter, one Commissioner may be appointed, either generally or specially by the Minister for such purpose" after the words "attendance of the three Commissioners" at the end of the section. Extension of section 10.

7. Section eleven is hereby repealed, and the following section is substituted therefor, namely : Repeal of section 11.

(a) Subject to the provisions of the Public Service Act, 1902, the Governor may appoint such officers as may be necessary to carry out the provisions of the Western Lands Acts. Appointment of officers.

(b) All officers appointed under section eleven of the Principal Act, and employed in permanent offices at the passing of this Act, shall continue therein, subject to the provisions of the Public Service Act, and shall be entitled to all rights and subject to all conditions under the said Act as if they had been appointed thereunder.

(c) Service by any officer appointed to and employed in any office under section eleven shall be counted as service under the Public Service Act; and any such officer who has during his employment contributed to the Superannuation Account shall be entitled to the same payment, pension, or gratuity as though he had continued subject to the said Act throughout.

(d) Persons in temporary employment under the said section, and being so employed at the passing of this Act, shall be deemed to have been appointed on the date of such passing under the provisions of sections forty-four and forty-five of the Public Service Act.

8. Section thirteen of the Principal Act is amended by—

(a) Substituting the words, "homestead selection or grant pastoral homestead settlement residential special artesian well improvement" for the words, "pastoral or homestead improvement." Amendment of section 13.

(b) Omitting the words, "within six months of the commencement of this Act."

(c) Substituting the words, "holding as aforesaid" for the words, "lease or license," before the words, "under the provisions of this Act."

(d) Substituting the word "holding" for the words, "lease or license" between the word "such" and the word "shall."

(e)

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- (e) Inserting the words "special artesian well" after the words "to bring an improvement."
- (f) Adding at the end of the clause the words "Provided that no artesian well lease shall be brought under the provisions of this Act if in the opinion of the Commissioners the original application for such artesian well lease was not made bona fide, or that reasonable efforts were not made to discover water under the provisions of section forty-five of Act fifty-three Victoria number twenty-one."

Amendment of
section 15.

9. Section fifteen of the Principal Act is amended by substituting the words "an extended" for the words "a new" in the first line.

Amendment of
section 17.

10. Section seventeen of the Principal Act is amended and extended by—

- (a) Inserting immediately after the sentence ending with the words "six years." the words "Upon such withdrawal 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 such added term shall be the same as immediately prior to the commencement of such term."
- (b) Substituting the words "hereinafter provided" for the words "defined in the Crown Lands Acts."
- (c) Omitting the words "payment for which shall be made to the said lessee in such manner and at such periods and subject to such conditions as the Commissioners shall direct; and any such sale or lease of the said land shall be liable to forfeiture by notification in the Government Gazette if such payments are not duly complied with."
- (d) Inserting after the word "acres" being the last word of the section, the words ": Provided that the Minister may, on application by the registered holder or holder of the equity of redemption, and on the recommendation of the Commissioners, declare by notification in the Gazette that any portion of the holding, not being more than one-eighth in one block, shall not be withdrawn under this section until after the thirty-first day of December, in the year one thousand nine hundred and twenty: Provided that not more than one such notification shall be made in connection with any lease."

Withdrawal from
lease for special
purposes.

11. The Governor may, on the recommendation of the Commissioners, and after report by them, withdraw from lease, without compensation, except for existing improvements, any land required for any of the purposes hereinafter specified, that is to say:—Accommodation house, accommodation paddock, fishing station, inn, jetty, landing place, mail station, recreation, sawmill, store, tramway, vegetable garden, race, well, woolscour, or any purpose declared by the Governor by notification in the Gazette to be a special purpose within the meaning

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meaning of this section. Such withdrawal may be made from any lease issued either before or after the passing of this Act, provided that the area granted to any one person for any one of such purposes shall not exceed eighty acres, and such area shall not, except with the consent of the lessee, extend to within one mile of any homestead or any other improvement owned by such lessee which in the opinion of the Commissioners would be materially affected by the leasing of such land.

Upon such withdrawal the rent for the succeeding years of the lease shall be reduced in proportion to the area withdrawn:

Provided further that the Commissioners may make such order against the incoming tenant as to fencing such area as they may think proper.

12. Section eighteen of the Principal Act is amended and extended by— Amendment of section 18.

- (a) Inserting the words “and special leases as hereinafter provided” after the words “preceding section.”
- (b) Inserting the words “or certificate of confirmation or grant” after the words “surrender of his present lease.”
- (c) Inserting the words “or annexed by law thereto:

Provided that the Minister may, on the recommendation of the Commissioners, waive or reverse, whether provisionally or otherwise, and on such conditions as he may think fit, any such forfeiture” after the words “therein contained” at the end of the section.

13. All leases, whether issued before or after the passing of this Act, shall be subject to a condition that the boundaries of the lands leased shall be fenced within such period and with such class of fencing as may be determined by the Commissioners, not being a rabbit-proof fence: Condition of fencing. Provided that the Commissioners may exempt any boundary or part of a boundary from fencing, and may allow a variation or modification of the character of the fencing, or extend the period for erection of the same, or may authorise the erection or use of any fence which, although not on a boundary, will, in the opinion of the Commissioners, serve all the purposes of a boundary fence, and any such fence, as well as any fence erected before the passing of this Act, provided that it is in the opinion of the Commissioners of a sufficiently useful and substantial kind, shall be deemed to be a boundary fence.

14. When a boundary of any land under lease has been fenced, Contribution towards fencing. the person who has erected or become the owner of such fence shall be entitled to claim from the holder of any lands, including freeholds adjoining the said fence, and in respect of so much of the said fence as forms, or in the opinion of the Commissioners should form and be used as a common boundary, a contribution of one-half the value of such fencing at the date of such claim, and may also claim an annual contribution

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contribution of one-half the cost of the maintenance and repair of such fencing. After the amount of such contribution has been determined as hereinafter provided, the person entitled to payment may sue for such amount and recover the same in any court of competent jurisdiction: Provided that no holder of an occupation license or of any lease having less than five years to run shall be liable as a contributory under this section towards the value of such fencing as aforesaid; and the side of a reserved, intended, proclaimed, or other road shall not be held to form or be a common boundary line within the meaning of this Act, unless the said Commissioners otherwise determine.

Minister's decision
as to fencing.

15. The Minister after report by the Commissioners shall determine all disputes and claims whatsoever as to fencing, and such determination shall in all cases be final and conclusive.

Provisions
governing leases.

16. The following provisions shall govern all leases granted or issued either before or after the passing of this Act and the holders of such leases, namely:—

- (i) No lease other than a special lease for that purpose shall confer any right to remove material from the leased land or to prevent the entry and removal of material by authorised persons.
- (ii) A lessee may take from land under lease to him and not comprised within a timber or forest reserve such timber and other material for building and other purposes on the land as may reasonably be required by him as such lessee.
- (iii) No lessee shall prevent any persons duly authorised in that behalf from cutting or removing timber or material or from searching for any mineral within the land under lease.

Amendment of
section 19.

17. Section nineteen of the Principal Act is amended and extended by—

- (a) Inserting the words “or as soon thereafter as practicable” after the words “nine hundred and four” in line two of subsection (c).
- (b) Adding, immediately after subsection (c), the following subsection, namely:—

Such lessee or licensee shall not be entitled to maintain any claim whatsoever for the refund of any difference so credited as aforesaid, whether credited before or after the passing of this Act, but the amount of such difference shall from time to time be appropriated for the purpose of the payment of any rent, fee, or other moneys due or to become due to the Crown in respect of such lease or license, and shall be dealt with in no other manner.

(c)

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- (c) Adding at the end of the section the following subsection, namely:—

When, in virtue of an application made after the passing of this Act, a lease or license has been brought under the provisions of the Principal or this Act, the rent or license fee shall be determined as soon as practicable after the issue of the lease, or after the approval by the Minister of the application to bring the license under the Act, as the case may be; and subject to the periodical determination of rent provided for in the Principal Act, the rent or license fee so determined shall be paid on the due dates of payment of rent or license fees for leases or licenses for the year next succeeding the year current at the date of the application above mentioned, and thereafter annually until the expiration of the lease or license: Provided that in cases where the rent for the period current at the date of the application has not been appraised or determined pursuant to the provisions of the Crown Lands Acts, the rent determined under this Act shall relate back to, and be paid from, the commencement of such period.

18. Section twenty of the Principal Act is amended by—

Amendment of section 21.

- (a) Inserting the words “on application and” after the words “The Minister may.”
- (b) Substituting the words “extend over a period not exceeding five years” for the word “postpone.”
- (c) Substituting the words “or the Crown Lands Acts to such dates and subject to such terms and conditions relating to such payment as he may determine” for the concluding words of the section, after the words “under this Act.”

19. Section twenty-two of the Principal Act is amended by—

Amendment of section 22.

- (a) Substituting the word “special” for the word “specific.”
- (b) Substituting the words “other than for grazing stock” for the words “for business or residential purposes, near centres of settlement or elsewhere.”

20. Section twenty-three of the Principal Act is amended by substituting the words “the estimated value thereof or the amount to be paid therefor, as the case may be, shall be stated.” for the words “they shall fix the amount to be paid therefor which may be sued for in any court of competent jurisdiction by the Crown or other the party entitled to be paid for such improvements.”

Amendment of section 23.

21. Section twenty-four of the Principal Act is amended by—

Amendment of section 24.

- (a) Inserting the words “and the estimated” after the words “area, rent.”
- (b)

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Amendment of
section 26.

- (b) Inserting the words "or the amount to be paid therefor, as the case may be," after the words "upon such land."
- (c) Omitting the words "in cases where the land is not under lease or promise of lease."

22. Section twenty-six of the Principal Act is amended by—

- (a) Inserting the word "may" after the words "and the Commissioners."
- (b) Inserting the words "into the merits of such applications as may have been lodged within the period notified in the Gazette" immediately after the words "after inquiry."
- (c) Omitting the word "shall" after the words "after inquiry."
- (d) Substituting the words "after the applications received within such period have been disposed of" for the words "as having been received at the same time and."

Amendment of
section 27.

23. Section twenty-seven of the Principal Act is amended by—

- (a) Substituting the words "Upon approval by the Minister of" for the word "Upon," being the first word of the section.
- (b) Inserting the words "and upon the execution thereof by the applicant within the time and in the manner prescribed," immediately after the word "Act."
- (c) Inserting the word "and" between the word "area" and the words "the rent."
- (d) Omitting the words "and the amount to be paid for improvements, if any."

Amendment of
section 28.

24. Section twenty-eight of the Principal Act is amended by omitting the words "at such time and in such manner as the Minister, upon the report of the Commissioners, shall direct, and shall execute the lease within the time and in the manner prescribed."

Special leases may be
granted.

25. The following section is inserted after section twenty-eight of the Principal Act, namely :—

Notwithstanding anything in Part VII of the Principal Act contained, the Governor may, on the report of the Commissioners, lease by auction or otherwise any Crown lands, or lands held under occupation license or annual lease, or lands under any lake, river, creek, or lands resumed, withdrawn or surrendered under the provisions of the Crown Lands Acts, the Principal or this Act, for any purpose declared by the Governor, by proclamation in the Gazette, to be a special purpose within this section; but no lands held under occupation license or annual lease shall be leased under this section for grazing purposes only unless with the consent of the occupation licensee or annual lessee.

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Any such lease shall be for a term, to expire not later than the thirtieth day of June, one thousand nine hundred and forty-three, of such area, at such annual rental, or at such upset rental, where any such land is let by auction—the provisions of section nineteen of the Principal Act to the contrary notwithstanding—and on such terms, conditions, and reservations, and subject to such provisions as the Minister, after report by the Commissioners, may recommend.

The term of any special lease granted under the Crown Lands Acts may, on application, be extended under the provisions of this Act for any period up to the thirtieth day of June, one thousand nine hundred and forty-three. Where such extension has been granted, the lessee shall surrender his present lease, if any, and a new lease shall be issued to him from the date of such surrender upon such terms and conditions and for such period and for such rental, the provisions of section nineteen notwithstanding, as the Minister may, after report by the Commissioners, think fit.

If it should appear to the satisfaction of the Governor that the land comprised in any special lease is not used and occupied bona fide for the purpose for which the same has been made, or that default has been made in any condition, he may declare such lease forfeited, together with any improvements erected on the land and any rent paid in respect thereof.

- 26.** Section twenty-nine of the Principal Act is amended by—
- (a) Omitting all the words of the section after the word “ Crown ” in line three of that section.
 - (b) Adding the following words, namely :—

Provided, nevertheless, that the Minister, on application, and on the report of the Commissioners, may assure or grant tenant right as hereinafter defined in the following improvements, namely :—artesian and other wells, tanks and dams, scrubbing, clearing noxious growths, ringbarking, and fencing, and such other improvements as the Minister may approve, including improvements of the class hereinbefore mentioned which were on the land at the date of commencement of any new lease. No improvements if effected without the consent in writing of the Minister, shall carry tenant right therein. Tenant right may also be assured or granted by the Minister as aforesaid in any additions to or extensions of improvements which, under the provisions of the Principal Act, will become the property of the Crown on the expiration of any lease. Tenant right if such additions or extensions as aforesaid shall be subject to such terms and conditions as the Minister, after report by the Commissioners, may determine.

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Amendment of section 29.
Determination of value of and terms of payment for improvements.

27. The Minister, after report by the Commissioners, and required by the lessee or owner, shall determine the value of, the amount to be paid, and the terms of payment for all improvements upon the land at the commencement of any new lease. The value of such improvements, and of improvements in which tenant right as hereinbefore provided has been granted,—

- (i) shall be their value at the date of commencement of title of incoming tenant; and
- (ii) shall be their value to such tenant; and
- (iii) shall not include any value which may be due to the inherent capabilities of the land; and
- (iv) shall in no case exceed the cost of making the improvements.

Value of improvements may be recovered.

Such improvements shall be paid for as so determined, together with interest at the rate of five per centum per annum on all amounts overdue, and the purchase money, with any accrued interest owing for such improvements, shall be a debt due to the Crown or the owner, as the case may be, recoverable in any court of competent jurisdiction:

Improvements may be removed.

Provided that before the determination of the value of any improvement of a removable nature, the Commissioners may permit the owner of such improvement to remove the same, and upon such permission being granted the owner shall have full power, by himself or his agents, to enter upon the land within such period as the Commissioners may allow, and to do all things necessary for such removal.

Definition of tenant right.

28. Tenant right shall accrue upon the determination of the lease by reason of which the tenant right is expressed to be conferred, and shall entitle the person in whom for the time being the tenant right is vested to receive the value to an incoming tenant of the improvements from any person who may become the holder of the land containing the improvements:

Provided always that the tenant right shall lapse after the expiration of twelve years from the date of its first accruing, and thereafter the improvements shall be the property of the Crown; but such lapsing shall not affect any agreement, appraisalment, or order for payment previously made.

Unpaid value of improvements charge on land.

29. Payment of the value of any improvements, including contributions in respect of boundary fencing, and the maintenance thereof, whether erected before or after the passing of this Act, or erected during the term of any lease under this or the Principal Act, or whether such value has or has not been determined in the manner hereinbefore provided, shall be and remain a charge upon the land containing such improvements from the date of the issue of such lease, or upon the land the boundaries of which have been fenced, as the

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the case may be, to the extent of so much of the amount as remains unpaid for such improvements, boundary fencing, or maintenance thereof during the currency of the lease.

30. Section thirty-two of the Principal Act is amended by— Amendment of section 32.

- (a) Inserting the words “of any homestead selection or grant, or” after the words “The holder,” being the first words of the section.
- (b) Omitting the words “on or before the thirtieth day of June next.”
- (c) Inserting the words “otherwise than by purchase or lease direct from the Crown” at the end of subsection (a).

31. Section thirty-three of the Principal Act is amended by— Amendment of section 33.

- (a) Inserting the words “and a lease shall be issued in respect of such land” after the words “Western Division.”
- (b) Substituting the words “no additional area shall be allotted except out of vacant Crown lands or lands held under annual lease or occupation license” for the last sentence commencing with the words “Any area added.”

32. Permission to enclose any road may be granted by the Commissioners upon such terms and conditions, including payment of rent, as they may determine. Where such road forms part of an occupation license or annual lease, the granting of such permission shall have the effect of withdrawing the area of land comprised in such road from such license or lease. Permission to enclose roads.

33. Thirty days after the notification of approval of the issue of a lease, or upon the sale of lands held under occupation license or preferential occupation license or annual lease, the holder’s right of occupation or lease of the area sold or leased shall cease, but he shall be entitled to a refund of so much of the license fee or rent paid in advance, and to such reduction in future rent, calculated from the date of such withdrawal, as is proportionate to the area withdrawn. Termination of annual lease or license.

34. The Minister may, after report by the Commissioners, by notice in the Gazette, add any forfeited homestead selection or grant, conditional purchase, or any lease or lands surrendered under the provisions of the Crown Lands Acts to any adjoining lease, license, purchase, homestead selection, or grant, upon such conditions as to rent, license fee, value of improvements, or purchase money, as may be determined; or such forfeited or surrendered lands may be leased under the provisions of the Principal or this Act. Forfeited or surrendered lands may be added.

35. Any resumed area added to land under pastoral lease in accordance with section eight of the Crown Lands Act of 1895 shall be deemed to be added subject to the provision that the Governor may, Withdrawal of lands added to pastoral lease under the Crown Lands Acts. (Part of sec. 8 of the C.L. Act of 1895.)
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by notice in the Gazette, withdraw, without compensation, the whole or any part or parts thereof from pastoral lease whenever he deems it necessary or expedient to make the land available under any provisions of the Western Lands Acts. Upon such withdrawal (which shall not take effect until the expiration of six months from the date of notice thereof), the lessee shall, on application within the prescribed time and payment of license fee as prescribed, be entitled to hold the withdrawn area under preferential occupation license; and any improvements upon the withdrawn area (not forfeited or forfeitable to or vested in the Crown) shall be taken to be the property of the lessee for all purposes and subject to the provisions of section forty-four of the Crown Lands Act of 1889.

Conditional leases.

36. Every conditional lease shall expire on the thirtieth day of June, one thousand nine hundred and forty-three, and on application before the thirtieth day of June, one thousand nine hundred and eight, the annual rental of such lease shall be determined by the Commissioners for the period ending at the end of the year of the lease current on the thirtieth of June, one thousand nine hundred and thirteen, and thereafter such rental shall be determined for periods ending at the end of the year of the lease current on the thirtieth days of June, one thousand nine hundred and twenty-three and one thousand nine hundred and thirty-three, and for the period ending thirtieth of June, one thousand nine hundred and forty-three, but the holder of any conditional lease may, at any time, exercise his right to make an additional conditional purchase of the whole or any part of such conditional lease.

Rent payable on homestead selections. (Sec. 7 of C.L. Act of 1903.)

37. The holder of any homestead selection, where the grant of such homestead selection has not issued, shall from and after the expiration of the first six years of such selection pay an annual rent of two and a half per centum of the capital value of the selection.

Personal representatives may hold leased land. (Sec. 10 of the C.L. Act, 1903.)

38. If any holder of a homestead selection or any lease of land under the Crown Lands Acts dies or is declared a lunatic, his interest in such land may be held by his representatives, subject to the fulfilment by them of all unfulfilled conditions except the condition of residence (if any such condition of residence attaches to the holding) in trust for the benefit of the persons entitled :

Provided that such representatives shall, where a condition of residence attaches to the holding, either sell and assign the lessee's or selector's interest in the land to a bonâ fide purchaser within twelve months from the date of their becoming entitled to possession hereunder, or else with the approval of the Minister, and for such time as he may permit, appoint a person as their nominee to reside upon the land.

39.

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39. Where the holder of any conditional purchase in the Western Division is entitled to apply, under the provisions of the Appraisement Act, 1902, to have the capital value of the land so held by him determined thereunder, such holder may include in such application land held under conditional purchase only; and in case of any such application being so made as aforesaid, the condition of residence imposed by the said Act shall not, unless the board, owing to the circumstances of the case think otherwise, apply, where such applicant held an area which, together with all other lands under any tenure whatsoever held and worked by him on the first day of November, one thousand nine hundred and five, did not exceed twelve thousand eight hundred acres.

Amendment of
Appraisement Act,
1902.

The provisions of this section shall apply only to a conditional purchase held by the applicant on the first day of November, one thousand nine hundred and five, or to an additional conditional purchase made out of a conditional lease held by the applicant at the date aforesaid, or by any person on whom such purchase or lease has devolved under the will or on the intestacy of such purchaser or lessee.

There shall be no appeal from the decision of the board in respect of the excuse of the condition of residence under this section.

40. Any married woman (the provisions of the Crown Lands Acts to the contrary notwithstanding) may in the Western Division, with the consent of the Minister, out of moneys belonging to her for her separate use, acquire by purchase or otherwise, a conditional purchase, conditional lease, homestead selection, or settlement or homestead lease, and she shall have the same power of dealing with and disposing of the same, both at law and in equity, as if she were a femme sole, and it shall be a sufficient compliance with the Principal Acts, so far as residence is concerned, if she shall reside upon any conditional purchase, conditional lease, homestead selection, or settlement lease held by her husband; or her husband may fulfil the condition of residence on any conditional purchase, conditional lease, homestead selection, or settlement lease held by himself, or any holding held by his wife under this section. In either case, notice as prescribed shall be forwarded to the chairman of the local land board of the intention so to reside.

Married women.
(Sec. 17 of the C.L.
Act of 1903.)

41. Paragraph (a) of Schedule A of the Principal Act is extended by adding at the end the following sentence, namely:—

Amendment of
Schedule A (a).

To pay any moneys owing to the Crown under the provisions of the Crown Lands Acts.