

WESTERN LANDS (AMENDMENT) ACT.

Act No. 29, 1942.

George VI.
No. 29, 1942. **An Act to make further provision for the withdrawal of lands held under lease and for the resumption of certain lands in the Western Division; to validate certain matters; for these and other purposes to amend the Western Lands Act of 1901, as amended by subsequent Acts; and for purposes connected therewith. [Assented to, 23rd December, 1942.]**

BE

BE it enacted by the King's Most Excellent Majesty, No. 29, 1942.
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. (1) This Act may be cited as the "Western Lands (Amendment) Act, 1942." Short title and construction.

(2) This Act 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.

2. The Principal Act is amended—

(a) by inserting next after section 17c the following new section :— Amendment of Act No. 70, 1901.
New sec. 17cc.

17cc. (1) Notwithstanding anything contained in this Act, the Minister may, by notification published in the Gazette, which notification shall be in or to the effect of the form of Schedule H to this Act, at any time after the twenty-fourth day of August, one thousand nine hundred and forty-three, withdraw from lease the whole or any part of the land which is within the boundaries of any maximum area determined in accordance with section 17c of this Act or within such boundaries as varied pursuant to that section, and which has not been withdrawn under that section. Withdrawals and resumptions.

(2) (a) The Governor, by notification published in the Gazette, may, at any time after the twenty-fourth day of August, one thousand nine hundred and forty-three, resume the whole or any part of any land held in fee simple, or under conditional purchase or conditional lease, where such land, in pursuance of any agreement or arrangement made between the Minister (or the Commissioner on behalf of the Minister) and the holder thereof is to be surrendered to the Crown in part satisfaction of the right of the Minister to withdraw land under the provisions of section 17c of this Act. Resumption of certain freehold, C.P. and C.L. land.

Upon publication of any such notification the land therein described shall vest in His Majesty and shall be deemed to be Crown lands.

(b)

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(b) Every agreement or arrangement of the nature referred to in paragraph (a) of this subsection is hereby validated but nothing in this paragraph shall affect the right of the Governor to resume land in pursuance of this subsection.

(3) (a) Land may be withdrawn from lease under this section notwithstanding any dealing, whether by way of transfer, conveyance, assignment, mortgage, devolution, subdivision or otherwise, with the lease, made after the date of determination of the boundaries of the maximum area from which withdrawals affecting such lease may be made, and whether such dealing was made before or is made after the commencement of the Western Lands (Amendment) Act, 1942.

(b) Land may be resumed under this section notwithstanding any dealing, whether by way of transfer, conveyance, assignment, mortgage, devolution, subdivision, or otherwise, with the land made after the date of the agreement or arrangement referred to in subsection two of this section relating to such land, and whether such dealing was made before or is made after the commencement of the Western Lands (Amendment) Act, 1942.

For the purposes of this paragraph the date of the agreement or arrangement shall be deemed to be the date upon which the approval of the Minister or Commissioner to the agreement or arrangement was given.

(4) No land shall be withdrawn or resumed under this section in any case where on the fourteenth day of October one thousand nine hundred and forty-two, the lessee—

(a) held no land under lease other than land within the boundaries of any maximum area referred to in subsection one of this section, or

(b) if holding land under lease other than land within such boundaries, held it under lease granted as or extended to a lease in perpētuity.

Nothing

Nothing in this subsection shall affect the right of the Minister to withdraw land under section 17c of this Act. No. 29, 1942.

(5) No compensation shall be paid in respect of any land withdrawn or resumed under this section. cf. Act No. 70, 1901, s. 17c (11).

(6) The Minister, after report by the Commissioner, shall extend the term of the lease or of all or any of the leases held in the same interest at the date of the withdrawal (being the lease or leases which were taken into account in determining the boundaries of the maximum area) for such a period that the term in the lease or leases as so extended is equivalent in value to the value, immediately before such withdrawal, of the term in the lease or leases so held and taken into account.

Such period shall be ascertained by actuarial calculation; and for the purposes of such calculation the value immediately before such withdrawal of the term in the lease or leases so held and taken into account shall be ascertained—

- (a) as if the right of withdrawal conferred by this section did not exist; and
- (b) as if the lease or leases did not include so much of the land comprised therein as might be withdrawn under section 17c of this Act not less than nine years from the date of the commencement of the Western Lands (Amendment) Act, 1934; and
- (c) as if the lease or leases were, as to so much of the land comprised therein as might be withdrawn under section 17c of this Act not less than fourteen years from the date of the commencement of the Western Lands (Amendment) Act, 1934, for a term commencing on the date of withdrawal and expiring on the twenty-fourth day of August, one thousand nine hundred and forty-eight.

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The basis to be used in any actuarial calculation under this subsection shall be four per centum per annum compounded with annual rests.

Notwithstanding anything in the foregoing provisions of this subsection, the term of any lease shall not be extended in pursuance of this subsection—

- (i) by more than three years and three months, where the lease is situated wholly or partly within the tract described in Schedule F of this Act; or
- (ii) by more than four years where the lease is situated wholly outside such tract.

(7) (a) Nothing in this section shall affect the right of the Minister to withdraw land under section 17c of this Act in any case in which withdrawal is not made under this section.

(b) Where withdrawal has been made under this section or under section 17c of this Act of the whole of the land within the boundaries of the maximum area determined in accordance with section 17c of this Act or within such boundaries as varied pursuant to that section, the lease shall cease to be subject to the special conditions referred to in paragraphs (a) and (b) of subsection four of that section.

cf. Act No.
70, 1901,
s. 29 (3).

(8) Upon withdrawal or resumption under this section, the lessee or holder, as the case may be, shall be entitled to tenant right in accordance with the provisions of this Act in improvements upon the land withdrawn or resumed: Provided that where at the date of withdrawal or resumption any sum is owing to the Crown in respect of any such improvements the local land board, when determining the value of the improvements in accordance with this Act, shall apportion such value between the Crown and the person having tenant right in such improvements in such manner as it may deem reasonable.

(9)

(9) Where the whole of the land within any lease is withdrawn or resumed under this section, the liability of the lessee for payment of rent shall cease as from the date of such withdrawal or resumption, as the case may be.

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cf. Act No.
70, 1901,
s. 17c (12).

Where part of the land within any lease is so withdrawn or resumed, the rent for the remainder of the current period of the lease shall, as from the date of such withdrawal or resumption, be reduced in proportion to the area withdrawn or resumed or in proportion to the relative value of the area withdrawn or resumed to that of the remainder of the lease where the qualities and capabilities of the lease are not uniform, and any rent paid in advance shall be adjusted on the same basis.

(10) Any land withdrawn or resumed under this section shall, until otherwise disposed of, be held by the lessee or holder, as the case may be, under preferential occupation license at a fee which shall, in the case of any land withdrawn from lease, be at the same rate as was payable at the date of the withdrawal, for the lease from which the land was withdrawn; and, in the case of any land resumed, at the rate payable at the date of resumption for the lease adjoining such land.

cf. *Ibid.*
s. 17c (13).

(11) (a) Upon the commencement of the Western Lands (Amendment) Act, 1942, the lease or any part thereof of any land which the Minister is authorised by this section to withdraw, shall not be transferred, conveyed, assigned or otherwise dealt with except by way of mortgage or discharge of mortgage without the consent of the Minister being first obtained.

(b) Where the lease was transferable, immediately before such commencement, without the consent of the Minister being first obtained, the provisions of paragraph (a) of this subsection shall, in respect of such lease, cease to operate after the twenty-fourth day of August, one thousand nine hundred and forty-five.

(c)

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(c) Where the right of withdrawal has been exercised in full in relation to any lease the provisions of paragraph (a) of this subsection shall, notwithstanding anything in paragraph (b) of this subsection, thereupon cease to have effect.

(12) Where the land held under any lease is withdrawn or resumed under this section the Commissioner may make such endorsement on the instrument of lease as shall appear to him to be necessary or proper.

New Sch. H.

(b) by inserting next after Schedule G the following new Schedule:—

Sec. 17cc.

SCHEDULE H.

Withdrawal of Land from Lease.

By virtue of the provisions of section 17cc of the Western Lands Act of 1901, as amended by subsequent Acts, I, Minister for Lands, do hereby withdraw the land described in the Schedule hereunder from the (a) particularised therein.

(a) Insert "lease" or "leases" as the case may be.

Minister for Lands.

(Date).....

SCHEDULE.

Administrative District of
 Name of Lessee
 Western Lands (a)..... No.
 Area withdrawn acres, being the land within the boundaries of the maximum area (b)
 in accordance with section 17c of the abovementioned Act and which has not been withdrawn under that section on or before the 24th day of August, 1943.

(b) Insert "determined" or "determined and varied" as the case may be.

Sec. 17c.
 (Extensions of leases and withdrawals of areas from leases.)

(c) by inserting at the end of paragraph (e) of subsection four of section 17c the following words and symbols "or subsection ten of section 17cc of this Act."

Further amendment of Act No. 70, 1901.
 Sec. 44.
 (Power to withdraw.)

3. The Principal Act is further amended—

(a) (i) by omitting from section forty-four the words "Western Lands lease" where firstly occurring and by inserting in lieu thereof the words "lease under this Act";
 (ii)

- (ii) by inserting in the same section after the word "acquisition" the following words "the land shall be deemed to be Crown lands, and";
- (iii) by omitting from the same section the words "for purposes of agriculture" and by inserting in lieu thereof the words "for any other purpose";
- (iv) by inserting in the same section after the word "withdrawn," where thirdly occurring the words "or acquired";
- (v) by omitting from the same section the words "under the Western Lands lease" and by inserting in lieu thereof the words "under the lease";
- (vi) by inserting at the end of the same section the following new subsections:—

(2) (a) Notwithstanding anything contained in this Act, but subject to the provisions of subsection three of this section, the total amount paid by the Minister as compensation for the withdrawal or acquisition of any land in pursuance of this section shall be charged upon any lease of such land thereafter granted under this Act, or, where more than one such lease is so granted, upon such leases in such proportions as the Minister may determine.

Charge on lease.
cf. Act No. 46, 1919, s. 12.

(b) In determining any such proportions, the Minister shall have regard to the qualities and capabilities of the land and to the improvements existing thereon.

(c) The provisions of section thirty-one of this Act shall not apply to any such lease.

(3) Upon the expiration, forfeiture, surrender or other determination of any such lease, the charge under subsection two of this section, if not previously vacated, shall be deemed to have been extinguished: Provided that upon any redisposal of the land

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land the Minister, upon the recommendation of the Commissioner, shall determine the amount, if any, which shall be charged upon any lease granted in respect of the land, and thereupon such amount shall be charged accordingly.

The amount so determined shall not include the value of any improvements, but the provisions of section thirty-one of this Act shall apply upon any such redisposal.

Payment of amount charged. cf. Act No. 70, 1901, s. 31.

(4) (a) Payment of the amount charged upon any lease pursuant to this section shall be made to the Colonial Treasurer within such period, by such instalments and with interest at such rate as the Minister may determine.

(b) The Colonial Treasurer may credit the whole or any part of any moneys so paid, to the Consolidated Revenue Fund or to such other fund or account as he may elect.

cf. *Ibid.* s. 18.

(c) If any such instalment or interest remains unpaid for a period of six months after the date for payment thereof the lease shall become liable to be forfeited.

Priority of charge. cf. Act No. 46, 1919, s. 12.

(5) Any such charge shall have priority over any other charge, mortgage or encumbrance.

Sec. 44A. (Enhancement due to public works.)

(b) by inserting in subsection one of section 44A before the word "value" where firstly occurring the word "market";

Sec. 45. (Appeal.) Further amendment of Act No. 70, 1901.

(c) by omitting section forty-five.

Sec. 6. (Public Service Act, 1902, not to apply to appointment of, or to Commissioner or chairman.)

4. The Principal Act is further amended—

(a) (i) by inserting at the end of subsection three of section six the words "or to any person who was such an officer at the time he was so appointed and who may be reappointed as Commissioner or chairman, as the case may be, or who, having been appointed as chairman, may be appointed or reappointed as Commissioner";

(ii)

- (ii) by inserting in subsection four of the same section after the word "appointed" the words "or any such person so reappointed or appointed"; No. 29, 1942.
- (b) by omitting from section eight the word "Governor" wherever occurring and by inserting in lieu thereof the word "Minister"; Sec. 8.
(Appoint-
ment of
deputy.)
- (c) by inserting next after section 10A the following new section:— New sec.
10B.
- 10B. Any question of lapse, voidance or forfeiture arising under the Crown Lands Acts in so far as holdings under those Acts within the Western Division are concerned or arising under this Act, may be referred to a local land board, and the decision thereon of the local land board after due investigation in open court shall, unless appealed from or referred to the Land and Valuation Court, be final. Questions
of lapse
voidance
or for-
feiture.
cf. Act No.
7, 1913, s.
18.
- The provisions of subsection six of section nine of this Act shall, mutatis mutandis, apply to and in respect of any appeal or reference under this section.
- (d) (i) by omitting from paragraph (a) of subsection three of section twenty-four the words "and the estimated values of any improvements thereon, which are or are not the property of the Crown" and by inserting in lieu thereof the words "and such other particulars as the Minister may deem desirable"; Sec. 24.
(Power to
set apart
Crown
lands.)
- (ii) by omitting from subsection six of the same section the words "any reserves or parts of reserves" and by inserting in lieu thereof the words "any reserves from lease or from license or from lease and license or parts of such reserves";
- (e) (i) by omitting from subsection one of section 28B the words "or (c) a homestead farm"; Sec. 28B.
(Conversion
of lease.)
- (ii) by omitting from subsection three of the same section the words "or the capital value of a homestead farm into which a lease under

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- under the Western Lands Acts has been converted under this section”;
- (iii) by omitting from subsection four of the same section the words “The rent of a homestead farm into which any portion of a lease under the Western Lands Acts has been converted shall be two and one half per centum of the capital value as determined by the local land board”;
- (iv) by omitting from the same subsection the words “or homestead farm”;
- (v) by omitting from the same subsection the words “The provision contained in subsection two of section 19c allowing the holder of a lease in lieu of paying rent to expend a sum not less than the rent in effecting on the land improvements of a permanent, fixed and substantial character shall not be applicable to a homestead farm into which any portion of the lease has been converted in any case where the lease had been in existence for five years, and where the lease had been in existence for less than five years the provision hereinbefore referred to shall cease to be applicable to the homestead farm upon the expiration of five years after the commencement of the lease”;
- (vi) by omitting subsection nine of the same section;
- (vii) by omitting from subsection ten of the same section the words “subsection eight or subsection nine” and by inserting in lieu thereof the words “or subsection eight”;
- (f) by inserting next after section 28b the following new sections:—

New secs.
28c & 28d.

Execution
of leases.

Power to
require
lodgment of
instrument
of lease.

28c. Wherever in this Act power is vested in the Minister to grant leases, it shall be lawful for the Minister to execute such leases on behalf of His Majesty.

28d. (1) Where by or under this or any other Act the Commissioner is required or authorised to make any endorsement on any instrument

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instrument of lease the Commissioner may by notice in writing served personally or by post on the lessee, direct the lessee to lodge such instrument of lease with the Commissioner within a period to be specified in the notice, which period shall not expire earlier than two months after the date of service of the notice.

If the instrument of lease be not so lodged the lease shall be liable to be forfeited.

(2) Service by post of any such notice may be effected by prepaid letter post addressed to the lessee at his last known place of business or abode in New South Wales, and such service shall be deemed to have been effected at the time when it would, in the ordinary course of post, have arrived at the place to which it was addressed or at the post town or post office nearest to that place, whether or not it has in fact been received by the lessee.

cf. Act No.
48, 1941,
s. 333.

(g) by inserting at the end of subsection one of section forty-one the following words "and to such other conditions as may be agreed upon between the Minister and the lessee."

Sec. 41.
(Conditions
of lease.)
