

AGRICULTURAL LANDS PURCHASE.

9° GEO. V., No. XXXVII.

No. 7 of 1919.

AN ACT to amend the Agricultural Lands Purchase Act, 1909.

[Assented to 3rd January, 1919.]

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 Western Australia, in this present Parliament assembled, and by the authority of the same, as follows:—

1. This Act may be cited as the *Agricultural Lands Purchase Act Amendment Act, 1918*, and shall be read as one with the Agricultural Lands Purchase Act, 1909, hereinafter referred to as the principal Act. Short title.

2. In this Act the expressions "Discharged Soldier" and "Dependant" shall have the same meanings respectively as in the Discharged Soldiers Settlement Act, 1918. Interpretation.

3. Subsection two of section four of the principal Act is hereby amended— Amendment of Sec. 4.

(a) by omitting the words "four pounds per centum per annum," and inserting in place thereof "the rate prescribed for the time being under the General Loan and Inscribed Stock Act, 1910"; and

(b) by omitting the words "twenty-five years," and inserting in place thereof "forty years."

4. Section five of the principal Act is amended by omitting the word "five," in subsection one, and inserting the word "nine" in place thereof, and by adding the following words to subsection two:—"and, unless the Minister shall Amendment of Sec. 5.

otherwise direct, not more than three members shall act for the purpose of reporting on any offer of land or on any land proposed to be compulsorily acquired under this Act.”

Amendment of
Sec. 7.

5. Section seven of the principal Act is hereby amended by omitting paragraphs (b), (d), and (e) thereof.

Amendment of
Sec. 8.

6. Section eight of the principal Act is hereby amended by omitting the words “and is likely to be immediately selected for agricultural settlement, and that there is no sufficient quantity of Crown lands in the neighbourhood available for such settlement.”

Amendment of
Sec. 9.

7. Section nine of the principal Act is hereby amended by omitting the words “surrendered to,” and inserting “acquired by” in place thereof.

Amendment of
Sec. 15.

8. Section fifteen of the principal Act is hereby amended by omitting the words “surrendered to,” and inserting “acquired by” in place thereof.

Extension of
the term of
leases.

9. Notwithstanding anything contained in the principal Act to the contrary—

(1.) The selling price of land selected thereunder after the commencement of this Act, with interest, shall be payable—

(a) by half-yearly instalments extending over a period of not exceeding thirty years; or

(b) if the selection is by a discharged soldier or a dependant, by half-yearly instalments extending over a period not exceeding forty years;

and the amount of each half-yearly instalment, as prescribed by the Second Schedule to the principal Act, shall be proportionately reduced.

(2.) If the land is selected by a discharged soldier or a dependant, the following provisions shall apply:—

The Minister—

(a) may dispense with the pre-payment with the application of the said first half-year’s instalment;

(b) may impose on the lessee the liability to pay during the first five years of the term interest at the prescribed rate on the cost of survey of and the value of the improvements on the land, and free him from liability to make any other payments

during that period, but in that case the lease shall provide for the payment during the remainder of the term of the purchase money with interest added by equal half-yearly instalments in advance; and

- (c) may dispense with payment of all or any interest during the first year of the term of the lease, but in that case such interest shall be capitalised and added to and treated for all purposes as part of the purchase money.

(3.) The Governor may extend the term of any conditional purchase lease granted under the principal Act on and after the first day of January, One thousand nine hundred and nine, from twenty to not exceeding thirty years, and increase the number of half-yearly instalments of purchase money, with interest, from forty to not exceeding sixty instalments, and the amount of each half-yearly instalment may be proportionately reduced.

(4.) For the purposes of this section, the table in the second schedule to the principal Act may be adjusted by regulations under this Act.

(5.) In section fourteen of the principal Act the words "term of the lease" are hereby substituted for the words "term of twenty years."

10. The interest chargeable to the lessee of any selection shall, in regard to discharged soldiers or dependants, be the rate payable for the money raised and applied to the acquisition of the land selected, except that the interest on the value of improvements may, during the first five years, be reduced, and shall be payable as prescribed.

Rate of interest payable by lessees.

11. The Minister may, under and subject to such conditions as may be prescribed, defer for a period not exceeding five years the payment of interest or purchase money and interest payable under leases held by lessees who are or have been on active service with His Majesty's naval or military forces, or the naval or military forces of the Commonwealth:

Deferment of rent payable by discharged soldiers.

Provided that such deferment shall not affect the obligation of the lessee to pay the full purchase money with interest added within the term of the lease, and the half-yearly payments shall be proportionately increased during the remainder of the term after the expiration of the period for which the payment was deferred.

Power to acquire land compulsorily for the settlement of discharged soldiers.

12. (1.) The Governor may, subject as hereinafter provided, compulsorily acquire private land for the settlement of discharged soldiers or their dependants, under the provisions of the Discharged Soldiers Settlement Act, 1918:

See Q. 6, Edw VII., No. 32, s. 11.

Provided that the compulsory provisions of this Act shall only apply where the private land proposed to be acquired exceeds five thousand pounds in value, exclusive of improvements, unless in the opinion of the Minister it is necessary for the better and more economical subdivision of any Crown land, including land acquired under the principal Act, to acquire adjoining private land.

Ibid., s. 2.

(2.) In this and the following sections of this Act, the term "private land" means land alienated by the Crown for an estate in fee simple, other than land granted to trustees by way of endowment, or as a reserve for any public purpose; and the term "owner" means any person owning private land in fee simple, and includes any person who, as trustee, executor, administrator, life tenant, mortgagee, or otherwise howsoever, possesses the legal power of sale of private land in fee simple, whether with or without the consent of the Supreme Court, or of any person having any estate or interest in the land.

Inquiry by Board and report.

13. (1.) The Board shall, at the request of the Minister, inquire into and report upon the suitability of private land for the purpose aforesaid, and the members of the Board, with such assistance as may be reasonably required, may enter upon the land and remain there for such time as may be necessary.

(2.) If the Board is of opinion that the land is suitable for the purpose aforesaid, it shall, after taking evidence, if it thinks fit, of competent valuers, determine what in the opinion of the Board is the value of the land, and report in writing to the Minister.

Land may be taken compulsorily.
Q. 6, Edw. VII., No. 32, s. 12.

14. The Minister may, with the approval of the Governor, offer to purchase the land, and if, after an offer to purchase has been made, it appears to the Minister that no agreement for sale can be come to, the Minister may, with the approval of the Governor, acquire the land compulsorily under this Act:

Provided that the owner of the land acquired shall not be required, without his consent, to give up possession of the land until the expiration of six months from the publication

in the *Gazette* of the notice of acquisition, and such time may be extended by the Board for a period not exceeding twelve months; but the compensation money shall not be payable until possession is given.

15. (1.) When the Governor has ordered any land to be compulsorily acquired under this Act, such land shall be deemed to be required for a public work within the meaning of the Public Works Act, 1902, and the Governor may, by notice published in the *Gazette*, declare that the land has been set apart or resumed under the Public Works Act, 1902, for the purpose of this Act, and that a plan and more particular description of the land may be inspected at a convenient place to be stated in such notice.

Procedure for taking land.

(2.) On the publication of such notice, the relative provisions of the Public Works Act, 1902, shall, subject to this Act, apply to and in respect of the land, and of all persons interested therein, but such provisions shall be construed as if the Minister referred to therein were the Minister charged with the administration of this Act.

16. (1.) The owner of an estate in possession the whole of which is proposed to be taken compulsorily shall have the right to retain in one block out of the estate, for the purpose of residence or business, land the value of which (without taking into account any improvements thereon) does not exceed three thousand pounds, or seven thousand five hundred pounds in the case of an estate the unimproved value of which exceeds twenty-five thousand pounds, or ten thousand pounds in the case of an estate the unimproved value whereof exceeds fifty thousand pounds.

Right of owner to retain part.

See Q. 6, Edw. VII., No. 32, s. 15.

(2.) If there is a homestead upon the land, the Minister may require the owner, in exercising his right to retain, to so exercise it as to include the homestead in the block retained, together with the outbuildings belonging or adjacent thereto.

(3.) Such right shall be deemed to be waived unless the owner asserts his right in his claim for compensation, and also specifies therein with reasonable particularity the area, situation, and boundaries and value of the land (without taking into account any improvements thereon), which he proposes to retain.

Claim to retain part.

(4.) The right to retain shall be so exercised as not to prejudicially affect the land proposed to be acquired, save to

Exercise of right.

the extent necessary in order to enable the owner to retain up to the prescribed maximum value.

Restriction on disposition of estate.

(5.) In order to prevent any evasion or avoidance of this section, the area of the whole estate shall be computed as at the date of publication in the *Gazette* of the notice of acquisition, and no subsequent disposition of the estate, or any part thereof, shall operate to defeat the power of the Minister to acquire the land.

Right of owner to require whole estate to be taken when part only acquired.
See Q. 6, Edw. VII., No. 325, 14 (3).

17. (1.) If the land compulsorily acquired comprises portion of a property occupied or used as one estate, then the owner may, by notice in writing served on the Minister, within a month after the publication of the notice of acquisition under the Public Works Act, 1902, require the Crown to take the whole estate.

(2.) If the Minister, within ten days after the service of the requisition, assents thereto in writing, the said notice of acquisition shall have effect as if it had referred to the whole estate, but if the Minister does not assent, then the owner may apply in Chambers to a judge for an order directing that the whole of the said estate shall be resumed, and the judge, after hearing the owner and the Minister, may make the order asked for (unless the Governor elects to revoke the notification of the taking of the land), or may dismiss the application, and in either case may make such order as to costs as shall be just. The judge's decision shall be final, and if he directs the acquisition of the whole estate, then the said notice of acquisition shall be deemed to have referred to and comprised the whole of the estate.

Certain provisions of Public Works Act, 1902, not to apply.

18. (1.) The following sections of the Public Works Act, 1902, shall not apply in respect of proceedings concerning lands compulsorily acquired for the purposes of this Act, that is to say—Sections 39, 48 to 62 (both inclusive), 67, 68, 70, 71, and 72.

(2.) The words "Supreme Court" shall be deemed to be substituted for "Compensation Court" throughout the Public Works Act, 1902, for the purposes of this Act, and the Governor may by regulation vary the forms in the schedules to that Act in such manner as may be necessary to adapt them to the purposes of this Act.

(3.) The reference to Section 39 of the Public Works Act, 1902, in Section 36 thereof, shall for the purposes of this Act be deemed a reference to Section 23 of this Act.

19. Notwithstanding anything in the Public Works Act, 1902, if any claimant rejects any offer of compensation made to him pursuant to the Public Works Act, 1902, in respect of land acquired for the purposes of this Act, or if no such offer is made to him within the time limited by the Public Works Act, 1902, for the purpose, then the claimant may bring an action in the Supreme Court for the compensation against the Minister in his official name as representing the Crown.

Action for compensation.

See Com. No. 13 of 1906, s. 36.

20. Every action for compensation shall be instituted, carried on, heard and determined in the same manner as an ordinary action, and shall be subject to the ordinary incidents of litigation between party and party: Provided, however, that—

Procedure in action.

See Com. No. 13 of 1906, s. 37.

- (a) The action shall be tried without a jury:
- (b) The court shall have no power to direct a reference to arbitration except by consent of the parties:
- (c) The costs shall be in the discretion of the court: provided that if the compensation awarded does not exceed the amount of the offer, if any, or does not exceed one-half of the amount claimed, the claimant shall, unless the court for good cause otherwise directs, pay the costs of the action.

21. If any action is brought under this Act for compensation for any qualified or partial interest in land, or for severance or injurious affection of lands in which the plaintiff has only a qualified or partial interest, the court may order the joinder, as plaintiff in the action, of any person who has claimed compensation for or in respect of any estate or interest in the land, and may assess and award compensation for or in respect of such estates or interests in the land as are represented in the action.

Joinder of parties.

22. Subject as hereinafter provided, no action shall be brought for compensation unless a claim for such compensation has been made within the time limited by the Public Works Act, 1902, nor shall any such action be brought more than one year after the making of the claim.

Limitation.

23. (1.) When a claim is not made or action brought within the time aforesaid, and any person who has the right to prefer the claim or bring the action is believed to be absent from the State, or an infant, or of unsound mind, the Minis-

Exceptions in case of persons under disability.

ter may apply to a judge of the Supreme Court for an order directing the amount of the compensation payable to be assessed and awarded in the Supreme Court.

(2.) The Supreme Court shall, after such notice to such persons as it directs, determine and award the amount of compensation payable, and shall have jurisdiction in the matter as if an action had been duly instituted therein claiming the compensation.

Payment of compensation or purchase money into Supreme Court in certain cases.

24. If any doubt, difficulty, or dispute shall arise as to the right or title of any person to receive any compensation awarded under this Act, or any purchase money or compensation agreed to be paid by the Minister, or if any person entitled to any such compensation or purchase money is under any legal disability, then the Minister shall be deemed to be a trustee of the amount of the compensation within the meaning of section forty-six of the Trustees Act, 1900, and may pay the same into the Supreme Court under that section, and the moneys shall be disposed of as moneys paid into court under that section are disposed of.

Disposal of land not selected within two years after the present war.

25. If any land compulsorily acquired under this Act is not disposed of to discharged soldiers within two years after the termination of the present war, such land may be thrown open for selection under the provisions of the principal Act without restriction as to the class of selectors.
