

Approved for Reprint, 5th April, 1971.

WESTERN AUSTRALIA.

CLOSER SETTLEMENT.

18° Geo. V., No. XXI.

No. 21 of 1927.

(Affected by Acts No. 15 of 1945 and No. 113 of 1965.)

[As amended by Acts:

No. 12 of 1945, assented to 9th January, 1946;

No. 36 of 1953, assented to 18th December, 1953;

and reprinted pursuant to the Amendments Incorporation Act, 1938.]

AN ACT relating to the Acquisition and Disposal of Land for Closer Settlement.

[Assented to 22nd December, 1927.]

BE it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and the 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 *Closer Settlement Act, 1927-1953.*

Short title.
Amended by
No. 36 of
1953, s. 1.

2. (1) For the purpose of carrying out the provisions of this Act, there shall be a Board consisting of three members, to be appointed by the Governor, and to be known as The Land Acquisition (Closer Settlement) Board, hereinafter referred to as the Board.

The Board.

Closer Settlement.

(2) One member of the Board shall be an officer of the Department of Lands and Surveys, and one member shall be an officer of the Agricultural Bank.¹

The third member shall be a practical farmer having local knowledge of the matters under inquiry for the time being, and not in the public service otherwise than as a member of the Board.

(3) Each member of the Board shall hold office for such period as the Governor may direct, and may receive such fees as are prescribed.

(4) One of the members of the Board shall be appointed by the Governor as chairman.

Inquiries of Board.

3. (1) The Board may inquire into the suitability and requirement for closer settlement of any unutilised land.

(2) The members of the Board, with such assistants as may be reasonably necessary, may enter any such land, and remain thereon for such time as may be necessary to enable the Board to obtain sufficient information to report to the Minister, as hereinafter provided.

(3) Land shall be deemed unutilised within the meaning of this Act, if the land, having regard to its economic value, is not put to reasonable use and its retention by the owner is a hindrance to closer settlement, and cannot be justified.

Board to report to Minister:

4. (1) If the Board is unanimously of opinion that any land is unutilised within the meaning of this Act, and has so continued for upwards of two years, and should be made available for closer settlement, the Board shall report in writing to the Minister, and shall state in such report what, in the opinion of the Board is the reasonable use to which the land should be put:

¹ Now Rural and Industries Bank of Western Australia.

Provided that before making its report the Board shall give notice of its intention to all persons who, on search of the public registers at the Office of Titles, the Registry Office for Deeds, and the Department of Lands and Surveys, appear to have any interest in the land the subject of the inquiry, and any person affected by the proceedings of the Board may, at a time and place to be stated in such notice, appear before the Board and shall be heard.

(2) The Board may take evidence on oath, which any member of the Board may administer.

(3) The Board shall forthwith serve a copy of the report, as submitted to the Minister, on every person appearing from the said public registers to have an estate or interest in the land.

(4) Any such person may within thirty days after the service of a copy of such report appeal to a Judge of the Supreme Court, who may take evidence, and confirm, vary or annul the report, and the decision of the judge shall be final.

5. The Governor, after taking into consideration the report of the Board, and subject to any appeal therefrom may, by notice in the *Gazette*, declare the land reported upon to be subject to this Act.

Land may be declared subject to this Act.

6. (1) When any land is declared to be subject to this Act, the Board—

Notice to owner. Amended by No. 113 of 1965, s. 8.

(a) shall, by notice in writing duly served, inform the owner and all persons to whom notice is required to be given under section four, that the land, or some part of the land, is required for the purposes of this Act; and, in such case,

(b) shall send a copy of such notice to the Registrar of Titles, and the Registrar shall thereupon note the same in the register book if the land is under the Transfer of

Land Act, 1893, and if the land is not under that Act, shall register a memorial of the notice in the Registry Office for Deeds: Provided that if the land is held on conditional purchase lease or other contract not registered as a Crown lease under the Transfer of Land Act, 1893, such notice shall be sent to the Under Secretary for Lands, and shall be entered by him in the register-book kept in the Department of Lands and Surveys.

(2) Forthwith after the receipt of any such notice, the owner shall cause a copy thereof to be served upon any person having, to his knowledge, any unregistered interest in the land under the owner. Any owner who neglects to cause a copy of such notice to be served as aforesaid shall be liable to a penalty not exceeding one hundred dollars.

Owner may
notify
intention to
subdivide.

(3) Within four months after the service of such notice by the Board, the owner may notify the Board in writing of his intention—

- (a) to himself put the land described in the notice in the *Gazette* to that reasonable use to which, in the opinion of the Board, it should be put; or
- (b) to subdivide the said land, and offer the subdivisions for sale.

(3a) If the owner notifies the Board of his intention to himself put the land to that reasonable use to which, in the opinion of the Board, it should be put, he shall, within one year from the date of such notice, make substantial progress therewith to the satisfaction of the Board, and thereafter continue to do so.

Effect of
such notice.

(4) If the owner notifies the Board of his intention to subdivide the land and offer the subdivisions for sale, he shall—

- (i) forthwith submit to the Board for its approval a scheme for the subdivision of the land; and

- (ii) make as and when required by the Board the surveys of the land, or such portions thereof as in the opinion of the Board are suitable for closer settlement, in accordance with the regulations under the Land Act, 1898,¹ and the Transfer of Land Act, 1893, so far as applicable; and
- (iii) cause the subdivisional lots, as required by the Board from time to time, to be offered for sale by auction or private contract at such reasonable upset prices, and upon such reasonable terms and conditions, as the Board may approve.

(5) A notification by an owner under subsection three, and the consequences thereof, shall be binding upon all persons having or thereafter acquiring any estate or interest in the land, legal or equitable, including mortgages and other encumbrances.

6A. Notwithstanding any other provisions of this Act the Minister may from time to time—

- (a) appoint a committee consisting of three members, one of whom shall be an officer of the Department of Lands and Surveys, one of whom shall be an officer of the Department of Agriculture who has a sound knowledge of land values in Western Australia, and the third shall be a person selected by the Minister for his local knowledge and experience of agricultural or pastoral matters or any particular branch thereof in that part of the State in which the land the subject of inquiry at the time is situated;
- (b) direct such committee to enter and inspect and report on any land (whether unutilised or otherwise) which in the opinion of the Minister may be suitable for the purposes of closer settlement; and

Minister may appoint Committee to inspect and report on land.
Added by No. 12 of 1945, s. 2.
Amended by No. 36 of 1953, s. 2.

¹ Now Land Act, 1933.

- (c) subject to subsection (3) of section six B of this Act recommend to the Governor in Council that any such land should be acquired for such purposes.

Authority to
committee
to enter and
inspect land.
Added by
No. 12 of
1945, s. 2.
Amended by
No. 113 of
1965, s. 8.

6B. (1) The committee appointed under section six A of this Act may, subject to the directions of the Minister, enter upon and inspect any land, and make of the owner or occupier thereof any inquiries and request any information which it may deem necessary for its report to the Minister and to enable the Minister to form an opinion as to the suitability of the land for closer settlement and such owner or occupier shall render to the committee all reasonable assistance in the carrying out of its inspection and the making of its investigations.

(2) If any such owner or occupier without reasonable cause fails or neglects to comply with his obligations under subsection (1) hereof or in any manner obstructs, hinders, prevents or interferes with the committee in the exercise of its powers under subsection (1) hereof he shall be guilty of an offence.

Penalty—Forty dollars.

(3) (a) Before making a report to the Minister, the Committee shall serve a copy thereof on the owner and the occupier of the land in respect of which the report is made, and such owner or such occupier may within thirty days after such service appeal in the prescribed manner to a Judge of the Supreme Court against such report.

(b) The Judge who hears the appeal may take evidence and if thereafter he is of the opinion that the land is not unutilised within the meaning of this Act and that the taking of the land under this Act for closer settlement would not result in any substantial increase in production together with a reasonable increase in the number of persons normally resident on the land, he shall make an order annulling the report appealed against, and such order shall be final and not subject to any further appeal.

(c) Subject to paragraph (b) of this subsection the Judge hearing the appeal may make an order confirming the report or amending the same in any particular as he may think fit.

7. (1) If, after service by the Board of notice under section six, an owner fails to notify the Board under paragraph (a) or (b) of subsection three of section six, within the prescribed time, of his intention to himself put the land to reasonable use, or to subdivide the land for sale or if the Minister recommends that any land should be acquired for the purpose of closer settlement, the Governor may, by notice in the *Gazette*, declare that the land, or a defined portion thereof, has been taken under this Act for the purpose of closer settlement.

Acquisition
of land.
Amended by
No. 12 of
1945, s. 3.

(2) Upon publication of such notice in the *Gazette*—

- (a) the land therein referred to shall by force of this Act become and be absolutely vested in Her Majesty as if the same had been surrendered to the Crown, free and discharged from all leases, contracts, trusts, mortgages, encumbrances, and charges thereon, and in all interests therein; and
- (b) the estate and interest of every person in such land, whether legal or equitable, shall be deemed to have been converted into a claim for compensation under this Act.

(3) Subject as hereinafter provided the sections of Part III. of the Public Works Act, 1902, relating to the right to, the recovery of, and the application of compensation or purchase money for land acquired under that Act, shall apply when land is taken under the provisions of this section, and are incorporated herewith:

Provided that if the compensation is not agreed upon between the owner and any mortgagee or other person having any interest in the land and the Board, the amount thereof shall be determined by arbitration under the Arbitration Act, 1895:

Provided also that where a claimant is a tenant under the owner of the land, the compensation for such interest shall be assessed at the probable and reasonable price at which the claimant's interest in the land and improvements might have been expected to sell at the time when the land was taken under this Act:

Provided also that where the land of an owner is encumbered by a lease, the arbitrators in determining the amount of compensation to be paid to the owner shall take into consideration the depreciation (if any) in the value to the owner of the land and improvements by reason of the existence of the lease.

Default by
owner after
notification
to subdivide
for sale.

8. If an owner—

- (a) after having notified the Board of his intention to put the land to reasonable use, shall not, in the opinion of the Board, duly comply with subsection (3a) of section six; or
- (b) after having notified the Board of his intention to subdivide his land for sale, shall not, in the opinion of the Board, duly comply with subsection (4) of section six.

the Board may serve upon the owner a notice of his default in the prescribed form; and thereupon the owner shall be deemed to have failed to notify the Board under either paragraph (a) or (b) of subsection (3) of section six and section seven shall apply.

Provided that an owner may, at any time within two months from the service of such notice of default as aforesaid, appeal to a judge of the Supreme Court, who may either confirm the action

of the Board, or direct the withdrawal of the notice of default, or make such other order as he may think fit, and the decision of the judge shall be final.

9. Upon publication in the *Gazette* of notice that land has been taken under this Act, the Board shall cause a copy of such notice to be served upon all persons who, on search of the public registers at the Office of Titles, the Registry Office for Deeds, or the Department of Lands and Surveys, appear to have any interest in the land.

Notice that land is taken.

10. (1) If any land taken under this Act comprises less than the whole of the owner's holding or adjoining holdings within the meaning of those words in the Land Act, 1898,¹ the owner shall have the right to require the whole of such holding or adjoining holdings to be taken.

Owner may require the whole to be taken.

(2) If the owner of land taken under this Act is the owner of other land which, although not an "adjoining holding," is so used by him in conjunction with the land taken that without the land taken such other land cannot be put to profitable use, the owner of the land taken may, subject as hereinafter provided, require such other land also to be taken:

Provided that the Minister may require the question whether such other land is so used as aforesaid and therefore should be taken, to be determined by arbitration, as compensation is determined under subsection (3) of section seven.

(3) The right conferred by this section on an owner shall extend to any legal or equitable mortgagee or other person having any lien upon the land if the claim of such person is not satisfied by the compensation payable for the part of the holding taken.

¹ Now Land Act, 1933.

Owner may retain portion of land intended to be acquired. Amended by No. 12 of 1945, s. 4.

11. Notwithstanding anything in this Act to the contrary, any owner who, before a declaration is published under section seven that land has been taken under this Act, may notify the Board or the Minister of his desire to retain a portion of the land intended to be taken sufficient for the sustenance of himself and his family, and in such case he shall have the right to retain such portion of the land as may be agreed upon between such owner and the Board or the Minister.

Registration in Titles Office.

12. Where any land under the operation of the Transfer of Land Act, 1893, is acquired under section seven of this Act, the Registrar of Titles shall, upon publication in the *Gazette* of the notice referred to in that section, register such land in the name of Her Majesty by a memorandum on the certificate of title relating to such land.

Application of Agricultural Lands Purchase Act.

13. (1) Land acquired under this Act may be disposed of under and subject to the provisions of the Agricultural Lands Purchase Act, 1909;¹ and the Board may for the purposes of this Act exercise any of the powers conferred on the Land Purchase Board.

Sources of funds.

(2) The Treasurer may, with the approval of the Governor, expend for the purposes of this Act such funds as under the provisions of the Agricultural Lands Purchase Act are available, or as may be appropriated by Parliament for the purposes of this Act.

Discharge of land from operation of Act.

14. If at any time it is proved to the satisfaction of the Board that any land declared to be subject to this Act has been so utilised that it should no longer be subject to this Act, the Governor shall, on the recommendation of the Board, by notice in the *Gazette*, discharge the land from the operation of this Act.

Regulations.

15. The Governor may make such regulations as may be necessary for carrying out the provisions of and effecting the objects of this Act.

¹ Repealed by Land Act, 1933.

16. The Board shall keep a record of its proceedings and of the evidence taken at all inquiries; and shall prepare for the Minister, as soon as practicable after the commencement of each financial year, an annual report of its proceedings, and such report shall be laid before both Houses of Parliament.

Records and annual report to Parliament.

17. In this Act the words "land" or "holding" include land held on freehold or leasehold tenure (except pastoral leases under Part X. of the Land Act, 1898¹), or under any conditional purchase lease; and, subject to the context, the word "owner" includes a lessee.

Interpretation.

¹ Repealed by Land Act, 1933.