



THE WESTERN AUSTRALIAN
GOVERNMENT GAZETTE.

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*Colonial Secretary's Office, Perth,
August 26, 1851.*

HIS Excellency the Governor has been pleased to direct the following Order in Council to be published for general information.

By His Excellency's command,
T. N. YULE,
Acting Colonial Secretary.

*At the Court at Buckingham Palace, the
22nd day of March, 1850. Present—*

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| The Queen's Most Excellent Majesty | |
| His Royal Highness Prince Albert | |
| Lord President | Earl Grey |
| Lord Steward | Lord John Russell |
| Lord Chamberlain | Sir John Hobhouse, Bt. |
| Earl of Carlisle | Sir George Grey, Bart. |

WHEREAS by an Act passed in the 10th year of the reign of her present majesty, intituled "An Act to amend an Act to regulate the sale of waste lands belonging to the Crown in the Australian Colonies and to make further provision for the management thereof," after reciting that it might be expedient that various rules and regulations should be made respecting the more effectually making demises or licenses of the waste lands of the crown in the colonies of New South Wales South Australia, and Western Australia, for any term of years, not exceeding fourteen, and respecting the reservation on such demises or licenses of any such rents or other pecuniary services, and respecting the insertion therein of such conditions and clauses of forfeitures as therein are mentioned, and respecting the division of the said colonies into districts, within which alone such demises or licenses might be made to take effect, and respecting the renewal of any such demises or licenses, and respecting the conflicting claims of different persons to obtain any such demise or licence, and respecting any right of pre-emption, which it might be proper to give to the holders of any such demise or licence, and respecting the forfeiture of any such demises or licenses on the conviction of any holders thereof of certain offences

in any such colony, and respecting any other matters or things which might be requisite either for carrying into more complete effect, the occupation in manner therein mentioned, of such waste lands as aforesaid, or for preventing the abuses incident thereto, it was enacted that it should be lawful for Her Majesty, by any Order in Council, to make and establish all such rules and regulations as to Her Majesty may seem meet, for the purposes aforesaid, or for any of them, and that all such Orders in Council, should have the force and effect of law in the colonies aforesaid.

And whereas it is expedient that rules should be made for regulating the occupation of the waste lands of the crown in the colony of Western Australia, it is hereby ordered by the Queen's most excellent majesty, by and with the advice of the Privy Council, that from and after the proclamation of this Order in Council, in the said Colony of Western Australia, the rules and regulations comprised in the following chapters, shall in the said Colony of Western Australia, be observed and have the force and effect of law.

And it is further ordered, that for the purposes of the present Order, the term Governor shall signify the person who for the time being shall be lawfully administering the government of the said Colony, and the term "tillage lease" shall signify a lease giving the lessee the right of cultivating the land comprised therein, and the term "pastoral lease," shall signify a lease giving to the holder thereof, the right of occupying the land comprised therein for pastoral purposes exclusively, and the term "run" shall signify the tract of land comprised in any pastoral lease, and the term "lessee" shall include the executors, administrators, and assigns of such lessee, and unless there be something in the matter or context repugnant thereto, every word importing the singular number shall include several persons, matters, or things, as well as one person, matter, or thing, and every word import-

ing the plural number shall include one person or thing, as well as several persons or things, and every word importing the masculine gender only shall include female.

CHAPTER I.

Regulations as to the division of Lands.

I. For the purposes of the present Order in Council the lands in the colony of Western Australia, shall be considered as divided in two classes denominated respectively, class A and class B.

II. Class A shall comprehend—1st,—All lands which may be within the distance of three miles from the outer boundary of any occupied townsite or of one mile from any land granted in fee simple at the time when these Regulations shall come into force.

2ndly,—Land which may be within the distance of two miles of any part of the sea coast.

3rdly,—Land which may be within the distance of two miles from either of the two opposite banks of the following rivers or inlets—

The Swan from Fremantle to Toodyay townsite.

The Avon from Toodyay to Beverley townsite.

The Toodyay from Toodyay to Bijoording

The Canning from Melville Water to the Darling Range.

The Murray from Peel's Inlet to the Darling Range.

The Collier from Leschenault Inlet to the Darling Range.

The Fitzgerald from the sea to twenty-five miles inland in a straight line.

The Phillips' River and Culham Inlet, to 25 miles from the sea in a straight line.

III. Class B shall comprehend all other lands of the colony open for location.

CHAPTER II.

Regulations as to Tillage Leases.

I. It shall be competent to the Governor to grant tillage leases to such persons as he may think fit, for any term or terms of year not exceeding 8 years.

II. The annual rent reserved in any such lease shall not be less than £10 in all, nor less than 2s. per acre, on the land comprised in any such lease, which shall in no case exceed 320 acres.

III. It shall be competent for the Governor to sell to any person who shall be in actual occupation of lands under any tillage lease, any part of such lands for their fair value, in an unimproved state. Provided nevertheless, that the size of the lot shall not be less than 10 acres, nor the price less than the general minimum price for the time being. If the Governor shall think that a higher price ought to be demanded, the value shall be determined by valuation.

IV. It shall be competent for the Governor to insert in any tillage leases, a clause, entitling the lessee, subject to such conditions as the said Governor shall seem fit to claim at the expiration of such lease, a renewal of the same for a further period not exceeding eight years.

V. On the determination of any tillage lease, the lands comprised therein and all improvements thereon, shall in the absence of any right of renewal, or in case the lessee shall not avail himself thereof, revert unconditionally to the crown.

VI. Tillage leases of lands not also comprised within any pastoral lease, shall be disposed of by Public Auction.

CHAPTER III.

Regulations as to lands within the limits of Class A.

Within the limits of Class A it shall be competent for the Governor to grant pastoral leases to such persons as he may think fit, for terms not exceeding one year.

CHAPTER IV.

Regulations as to lands within the limits of Class B.

I. Within the limits of Class B it shall be competent for the Governor to grant pastoral leases for terms not exceeding 8 years, and to insert therein such clauses of renewal as herein before provided for with regard to tillage leases.

II. It shall be competent to the Governor to sell to any person who shall be in actual occupation of a run under any pastoral lease, any part of such run at its fair value in an unimproved state. Provided, nevertheless, that the price of the land sold shall not be less than the general minimum price for the time being. If the Governor shall think that a higher price ought to be demanded, the price shall be fixed by valuation.

III. It shall be competent for the Governor at the end of each successive year from the date of each pastoral lease, to offer for sale all or any part of the land occupied therein (and being also comprised in any tillage lease), subject nevertheless to the following conditions:—

First, the Governor shall give 60 days notice of any intended sale, either by advertisement in the *Government Gazette* or by some other sufficient method.

Secondly, the lessee shall have the option of purchasing the land offered for sale on the terms prescribed in the last preceding section.

Thirdly, if the lessee declines to purchase, the value of any improvements effected on the land (which however shall in no case be estimated at more than the actual outlay made by the lessee), shall be ascertained by valuation.

Fourthly, the upset price of the land shall then consist of the joint value of the land and of the improvements. If the land be sold the value of the improvements shall be paid over to the lessee, and only the balance be retained by the Government.

IV. The rent to be paid for each run shall never be less than the following, viz:—£5 per annum with an addition of 10s. per annum for every 1000 acres comprised in the lease. But in computing the acreage of any run, the Governor may exclude from the computation any tract of land which is reported to him by the proper officer to be unavailable for pastoral purposes.

V. All persons who shall be in licensed occupation of Crown land when these Regulations shall come into force, and shall within three calendar months thereafter, apply to the Governor for pastoral leases of the lands respectively held by them, shall be entitled to a preference in obtaining such leases.

VI. Any person desiring to obtain a pastoral lease of land, which has never

been occupied before, shall send in an application for the same at such time and place, and in such form as may be appointed by the Governor in respect to such applications, and shall set forth in his application a clear description of the boundaries of the run, for which he applies, and it shall be competent for the Governor to grant to the person so applying, a pastoral lease of such run on the terms hereinbefore prescribed.

VII. If the boundary of any run applied for under either of the two last preceding sections shall not be in conformity with any colonial regulations then in force, or if any part of such run shall be within class A., or shall be applied for by any other person, the Governor or other officer authorised by him may declare what shall be the boundaries of such run.

VIII. Pastoral leases of land which have been vacant by forfeiture or other determination of a previous pastoral lease shall be disposed of by public auction.

IX. It shall be competent for the Governor with the advice of his Executive Council, at any time within 3 months after the determination of any pastoral lease, and notwithstanding such right of renewal as aforesaid, to declare by proclamation in the Government Gazette, that all or any of the lands comprised in such lease which may be within one mile of any lands which have been granted in fee by the Crown shall thereafter be deemed to be within class A.

CHAPTER V.

Miscellaneous Regulations.

The rents reserved under the provisions of the Order in Council, are to be reserved and paid without abatement on account of the existing or any future assessment of taxes or rates on sheep and cattle, and are in no way to interfere with the right of the colonial legislature to impose from time to time such assessments as may be deemed advisable.

II. Every such rent shall be paid yearly in advance, at such time and place as shall be specified in the lease. If the rent be not paid on the prescribed rent day, the lease shall be absolutely and indefeasibly forfeited unless within 60 days of such rent day the lessee shall duly pay the full amount of the annual rent, together with an additional sum equal to one fourth part of the same.

III. All leases made under authority of this Order in Council, shall be transferable under such conditions and in such manner as shall be prescribed by the Governor.

IV. It shall be competent to the Governor to insert in any such lease such conditions and clauses of forfeiture as may seem to him to be required by the public interest.

V. Nothing in this Order in Council shall prevent the Governor from excepting out of any sale or lease, all such lands as it may appear to him expedient to reserve for any of the public uses for which it is enacted by the third clause of an act, passed in the 6th year of Her present Majesty, intituled, "An Act for regulating the sale of Waste Lands belonging to the Crown in the Australian colonies," that lands required for public uses may be ex-

cepted from sales authorised by that Act or which in his opinion would, if sold, give the purchaser an undue command over water required for the beneficial occupation or cultivation of other lands.

VI. Nothing in this Order in Council or in any pastoral lease to be granted under the provisions thereof, shall prevent the said Governor from making grants or sales of any lands comprised in such lease for public purposes, nor from entering upon and disposing of in such other manner as for the public interest may seem best, such lands as may be required for the sites of churches, schools, or parsonages, or for the construction of high roads or railways and railway stations, or other internal communications, whether by land or water, or for the use or benefit of the aboriginal inhabitants of the country, or for public buildings, or as places for the interment of the dead, or places for the recreation and amusement of the inhabitants of any town or village, or as the sites of public quays, or landing places on the sea coast or shores of navigable streams, or for the purpose of sinking shafts and digging for coal, iron, copper, lead or other minerals, or for any other purpose of public defence, safety, utility, convenience, or enjoyment, or for otherwise facilitating the improvement and settlement of the colony, but so that the quantity of land which may be granted or sold to any railway company shall not exceed in all the rate of 100 acres for every mile thereof in length.

VII. Nothing contained in any pastoral lease shall prevent the aboriginal natives of this colony from entering upon the lands comprised therein, and seeking their subsistence therefrom in their accustomed manner, or shall prevent any inhabitants of the colony from passing over the said lands, or from examining the said minerals and other capabilities of the same, or from doing all things necessary for the purpose of such examination, paying nevertheless to the lessee full compensation for any damage accruing to him therefrom.

VIII. A lease shall be liable to forfeiture in 3 modes:—

1st. It shall be forfeited for non-payment of rent as hereinafter provided.

2nd. It shall be forfeited absolutely, immediately upon any conviction for felony against the lessee, and,

3d. In the event of his conviction by a Justice of the Peace for any offence against the law, the case may within 3 months after such conviction, be enquired into by two or more Justices, who, if they think fit, may adjudge the lease to be forfeited, with or without compensation for the value of the improvement, according to the nature of the offence.

Provided always that no such adjudication of forfeiture pronounced by the Justices shall take effect until confirmed by the Governor.

For the purpose of making any valuation required under the provision of this Order in Council, one competent valuer shall be appointed by the Governor and another by the lessee. Any difference of opinion between such valuers shall be determined by an umpire to be appointed by themselves, or in case they shall not agree

in such appointment, by the Governor.

And the Right Honorable Earl Grey, one of Her Majesty's Principal Secretaries of State, is to give the necessary directions herein accordingly.

W. L. BATHURST.

Occupation of Crown Lands in Western Australia.

Colonial Secretary's Office, Perth,

August 26, 1851.

IN pursuance of Her Majesty's Order in Council, dated 22nd March, 1852, His Excellency the Governor with the advice of the Executive Council, has been pleased to establish (subject to the approval of the Right Honorable Her Majesty's Secretary of State for the Colonies) the following Regulations for the Occupation of Crown Lands within the Territory of Western Australia, as they are now or may be hereafter defined, in addition to the Regulations contained in the Order in Council above referred to, and in lieu of any others on the same subject previously existing.

I.

General Regulations applicable to all Leases and Licenses, whether Pastoral or Tillage.

1. Applications for a Lease or for an Annual License, must be made to the Surveyor General in a printed form, procurable at the Survey Office, or from any Resident Magistrate.

2. A deposit of £5 on a Lease in Class B, or the upset price for an Annual License, or the receipt of any Collector of Revenue for either of those amounts, must accompany an application. Such deposit will be forfeited if the application is not followed up, or will be returned to the applicant if not forfeited by his default.

3. An application for a Pastoral Lease must not include within its outer boundaries a greater area than 20,000 acres, and Tillage Leases are not to include more than 320 acres.

4. Land required either for pastoral or tillage purposes, must be selected in one block, in shape as nearly square as possible, or in length not exceeding three times the breadth, with opposite boundaries parallel to each other, and lying in the same direction as those of other lands granted or leased by the Crown in the same district.

5. Not more than one fourth of the external boundaries of any selection will be allowed on any river or open water whose course or direction is known; nor can such selection include both banks of the same.

6. The position of runs and arrangement of boundary lines will be subject to the Governor's approval, and any description furnished by an applicant must be full and particular, and must refer to some fixed point which can be recognised in the Survey Office. The Government will not be responsible for any error in descriptions so furnished; but any erroneous description, if found to interfere with other parties, will be notified where practicable, in such manner as not to disturb the occupant of any run or lease previously assigned.

7. Applicants for land, either by lease, purchase or licence, will be liable to a

charge for Survey, should such be required for adjusting or completing a claim. Such charge must be deposited before the application is disposed of.

8. If two or more parties apply for a lease of the same land, having an apparent equal right to it, the same will be put up to Auction, with or without amended boundaries, and such applicants only will be allowed to bid for it.

9. The days of sale for leases and licenses will be the same as those appointed for the sale of Crown Lands.

10. The full price bid at Auction for any lease or license must be paid down on the day of sale; failing which, it may be again put up for sale at the same or at any subsequent Auction, or the land will be open to fresh applicants, and any deposit forfeited.

11. Leases or Licenses put up to Auction and not bid for, may be obtained, on approved application, at the upset price.

12. The foregoing rule will also apply to such selections as may have been bid for at any Auction, but the price of which has not been paid on the day of sale.

13. Leases or Licenses bid for, but not paid for on the day of sale, may be obtained in like manner, on payment of the highest price bid at any such sale.

14. All other lots not fully paid for within two calendar months from the dates on which they are deliverable will be forfeited, together with the deposit, and the land will be considered open to fresh applicants.

15. The Government reserves to itself the right to refuse the bidding of any one, as well as to withdraw any lot from sale. But this right will never be exercised except for a sufficient and assignable cause.

16. Leases and Licenses, when approved by the Governor, will be prepared in the Office of the Surveyor General, and will be deliverable by the Collector of Revenue at Perth, or by the Sub-Collectors (who are also Government Residents) at Bunbury, the Vasse, and Albany, for all lands within their respective districts, on payment of the balance due upon each.

17. No abatement of rent will be made on account of any land purchased or resumed out of a Depasturing Lease, unless the land so purchased or resumed may amount to 1,000 acres at the least.

18. All subsequent rents chargeable after the first year, will be due on the first day of January in each year, and must be paid yearly in advance on or before the fifteenth of that month, to the Collector of Internal Revenue, or to any Sub-Collector nearest to the district in which the land may be situated.

19. All pastoral Leases and Licenses will carry with them the exclusive right of occupancy of the land *for pastoral purposes only*, during the period they shall remain in force; but a clause will be inserted permitting the lessee to cut such timber as may be required for domestic uses, for the construction of buildings, fences, stock-yards, or other improvements on the land, but not for sale or removal off the land.

20. In all Leases the year will be computed from the 1st day of January to the 31st day of December, and no abatement of rent will be made for any period less

than six months; only half-a-year's rent will be charged for the first year if a lease is issued after the 1st July; but any term of years for which such Lease is granted will be computed from the 1st January preceding.

21. The first Leases issued under these Regulations will date from the 1st January, 1852, and must be applied for on or before the 1st December next.

22. The Government reserves the right to lay out, declare, open, and make, public roads through any lands Leased or Licensed; to take away any indigenous produce, rock, or soil, required for public purposes; to cut and remove timber, sandalwood, or other woods, or to issue Licenses for cutting and removing the same; and to depasture any horses and cattle in its employ working upon the land; together with a right of way through it for persons desirous of passing from one part of the country to another, with or without stock or teams, on all necessary occasions.

23. A pastoral run will be liable to forfeiture if any land within it be cultivated which is not covered by a Tillage Lease.

24. In no case will a Lessee be entitled to any compensation for his improvements after the expiration, abandonment, or forfeiture of his run.

25. Unoccupied Townsites and other Public reserves will not be open to general occupation, but for the purposes of these Regulations unoccupied Townsites will be treated as lands in fee simple, and if let will be subject to special conditions.

26. To facilitate selections of land, maps of the country and of all appropriated lands, will be open to inspection of the public at all reasonable hours, in the Survey Office at Perth, or at the respective Government Residents.

27. All persons found in unauthorised occupation of Crown Lands will be proceeded against under the provisions of the Act of Parliament 9 & 10 Vict., c. 104.

28. All transfers will be subject to the Governor's written approval, and must be made in a certain form printed on the back of the Lease or License. Such form when only filled up by the Lessee, and witnessed by at least one credible person, must be exhibited to the Surveyor General, for the Governor's approval, and for record in the Survey Office, upon which a fee of 10s. must be paid at the time of making the application for the transfer.

II.

Additional Regulations as to Tillage Leases.

1. The rent chargeable for Tillage Leases will be 2s an acre, but not less than £10 should the quantity of land required be less than 100 acres.

2. On the Governor's approval of an application for a Tillage Lease (of land not comprised in a pastoral Lease in Class B), such Lease will be put up to Public Auction, on a day to be notified in the Government Gazette, at a premium of one pound, and will be sold to the highest bidder on such premium which is to be paid at the time of purchase, in addition to the first year's rent.

3. Should a lessee purchase any part of his holding during the currency of his lease, a proportionate abatement of rent will be made in succeeding years, provided

that in no case the annual rent for a Tillage Lease be thereby reduced below the sum of £10.

4. Any such lessee who shall have purchased not less than one fourth of his holding during the term of his Lease, will be entitled to a single renewal of the same for a further period not exceeding eight years.

5. Tillage Leases of land comprised within a pastoral lease in Class B, will be given to the lessee of such pastoral lease without competition at Auction, at the rent above fixed, and at the minimum premium. Such leases are to expire with the pastoral lease, whether determined by forfeiture or otherwise, and will be renewable with the same.

III.

Regulations as to Lands in Class A.

1. Lands in Class A will be let, for pastoral purposes only, on Annual License, and at a yearly rent of not less than £1, or than 2s. per 100 acres for sections of 1000 acres and upwards.

2. Annual Licenses in Class A will be disposed of by Public Auction, after being advertised in four Government Gazettes. The first Licenses will be issued as soon as possible after the 1st day of January, 1852, and must be applied for at least one month previously.

3. No renewal of an Annual License in Class A can be claimed, but Licenses for the succeeding year will be put up to Auction early in the previous December, with or without amended boundaries, to meet the views of applicants.

4. Should a modification of boundaries to any such runs be desired, application for the same must be made as early as possible, but in no case later than the first of November.

5. The lands included in any Annual License in Class A will be liable to resumption of any part of the same for public purposes, or will lie open to application for sale or Tillage Lease; and the parts so resumed, sold or taken under such Lease, may be entered upon immediately, without compensation; but should such resumption, sale or Tillage Lease, comprise the whole of the run held under license, land to an equal extent will, on approved application, be assigned in lieu thereof.

6. No compensation will be allowed for any improvements which may be effected on lands held under Annual License in Class A.

IV.

Additional Regulations as to Lands in Class B.

1. Any Lessee of Pastoral Lands in Class B will be entitled to claim a single renewal of his Lease, who shall have purchased any quantity of land comprised in his lease to an extent amounting to one acre in every hundred acres thereof, or who shall have effected permanent improvements (on land not comprised in a tillage lease) to an extent of one pound for every hundred acres in his lease, either in substantial buildings, or in obtaining or securing a permanent supply of water available for the use of stock.

2. In computing the acreage of a run, no tract will be excluded as unavailable which is less than one tenth, nor more

than one fourth, of the whole run; nor will any allowance be made for unavailable land out of any run which may not exceed 4,000 acres.

3. Half the expense connected with any Survey which may be required to ascertain the extent of land so to be excluded, must be borne by the lessee, and the land so excluded will be open to any other applicant, who is to have free access to the same.

4. Persons claiming to have any tract of unavailable land so excluded from computation, must in their application describe the situation, nature, and extent of the same as fully as possible; and any land to be so excluded must be in one block, with boundaries as nearly as possible in accordance with the established rules.

5. Unavailable land may be excluded from computation under the last preceding clause without any expense for Survey; but should any wilful misrepresentation or description be subsequently discovered to have been made in any description, upon the faith of which a lease may have been issued, the whole expense of any Survey that may be found necessary for correcting such wilful misdescription, will be charged to the lessee, together with all arrears of rent for land wrongly excluded from computation. On the failure of payment of these charges on or before the next rent day, the lease will be considered forfeited.

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