

## LAND.

3° and 4° GEO. VI., No. XXXVI.

No. 36 of 1939.

**AN ACT to amend the Land Act, 1933-1938.**

[Assented to 16th December, 1939.]

**B**E 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 *Land Act Amendment Act, 1939*, and shall be read as one with the *Land Act, 1933-1938* (No. 37 of 1933 as amended), hereinafter referred to as the principal Act. Short title.  
cf. No. 20 of  
1933, s. 4.

2. Section twenty-six of the principal Act is amended by adding thereto a subsection as follows:— Amendment  
of s. 26.

(2) The Minister may—

- (a) require any applicant for, or the transferee of, land (other than land available for disposal or disposed of under Part IV.) subject to the provisions of this Act to prove that he is not under sixteen years of age; and
- (b) require any such applicant or transferee, when he is a minor, to prove his actual age; and

(c) in any case, either under paragraph (a) or paragraph (b) hereof, require the applicant or the transferee to verify his proof as to age by a statutory declaration.

Amendment  
of s. 46.

3. Section forty-six of the principal Act is amended by deleting therefrom the whole of the first proviso to the said section.

Amendment  
of s. 47.

4. Section forty-seven of the principal Act is amended by adding at the end of the proviso to paragraph (b) of subsection (4) a further paragraph as follows:—

(iv) Notwithstanding anything to the contrary contained elsewhere in this proviso, if the annual rent as payable after the first five years, when calculated in accordance with this subsection, amounts to a sum less than one pound, the amount of annual rent calculated as aforesaid shall be disregarded, and after the first five years aforesaid the annual rent payable in respect of the lease shall be one pound until the price of the land shall, by means of the payment of such annual rent, have been paid in full.

Repeal of  
s. 48.

5. Section forty-eight of the principal Act is hereby repealed.

Amendment  
of s. 51.

6. Section fifty-one of the principal Act is amended by adding to subsection (2) thereof a proviso, as follows:—

Provided that, if the lessee shall request the issue of a separate Crown grant for any particular holding, being one of a group of contiguous holdings of which only the external boundaries have been surveyed, or if the lessee shall transfer to any other person any particular holding of the kind hereinbefore mentioned, the Minister may, before such Crown grant is issued or such transfer is approved, as the case may be, require the lessee to pay such amount as the Minister may determine for or on account of the cost of any surveys necessary to define the boundaries of the several holdings which comprise the group of contiguous holdings aforesaid.

7. Section fifty-three of the principal Act is repealed and a new section is inserted in lieu thereof, as follows:—

Amendment  
of s. 53.  
Repeal and  
new section

53. (1) The Governor may, in the exercise of the power conferred by section forty-six of this Act, declare any Crown land to be open for selection exclusively under the conditions for accelerated payment as provided in this section, and may in like manner withdraw such land or any portion thereof from the availability for selection as aforesaid.

Accelerated  
completion of  
conditional  
purchase.

Provided that any land which otherwise would be open for selection under section forty-seven of this Act may be applied for under and subject to the provisions of this section, unless the notice in the *Government Gazette* declaring such land to be open for selection expressly states that such land shall not be open for selection under and subject to the provisions of this section.

(2) In relation to land selected under and subject to the provisions of this section—

(a) the provisions of subsection (1) of section forty-seven of this Act shall apply;

(b) the land shall not be subject to any condition of residence;

(c) notwithstanding anything to the contrary contained elsewhere in this Act, the price to be paid for the land shall be fixed by the Governor;

(d) every application for land shall be made in writing, in accordance with the form prescribed by the regulations and shall be accompanied by a deposit on account of the price of the land applied for equal to ten pounds per centum of such price;

(e) when an application for land is approved by the Minister, a license in accordance with the form prescribed by the regulations shall be issued to the applicant, and shall operate and have effect for seven years computed from and including the first quarter day next preceding the date of the approval of the application by the Minister;

(f) when an application for land has been approved by the Minister as aforesaid the deposit which accompanied the application shall be credited

to the applicant in part payment of the price payable for the land, and the balance of such price then remaining unpaid shall be paid by the applicant within twelve months after the date upon which the license issued to the applicant as provided in paragraph (e) hereof commences to operate by means of four equal quarterly instalments on the first days of January, April, July, and October, the first of such instalments being payable on the first day of the quarter next following the date when the said license commences to operate as aforesaid: Provided that the applicant shall be at liberty on any quarter day aforesaid to pay the whole of the said balance of purchase price, instead of only one instalment thereof, but shall, notwithstanding such payment, not be entitled to the issue to him of a Crown grant in respect of the land until the Minister is satisfied that the applicant has complied with and fulfilled all the prescribed conditions relating to the land;

(g) the applicant, as the licensee aforesaid, or the transferee of the license issued to the applicant, shall, within three years from the date when the license commenced to operate, fence in the whole of the land, and, within seven years from the said date, in addition to the said fencing expend upon improvements of or on the said land an amount equal to the purchase money, but not exceeding one pound per acre *pro rata* during each year;

(h) in addition to the improvements required by paragraph (g) hereof the applicant, as licensee, or the transferee of the license shall, if so required by the Minister, provide upon the land an adequate water supply within two years from the date when the said license commences to operate;

(i) if the land to which the license relates adjoins other lands which are held under this Act or under any Act repealed by this Act, with a right to acquire the freehold thereof by the person who for the time being is the holder of such license, the land to which the license relates and the other lands aforesaid shall, for the purpose and in respect of the improvements required under paragraphs (g) and (h) hereof be deemed to be one holding;

(j) when and as soon as—

- (i) the full purchase price for the land and the fee for Crown grant has been paid; and
- (ii) the conditions as to fencing and other improvements, and water supply (if required) have been duly complied with in accordance with this subsection; and
- (iii) the provisions of sections fifty-one and fifty-two, in so far as they are applicable, have been duly complied with,

and provided the said fencing and other improvements, and the said water supply (if required) have been duly and properly maintained, a Crown grant in respect of the land shall be issued to the person then being the beneficial owner of the license issued under this subsection in relation to such land, notwithstanding that the said license may not then have expired:

Provided that, if the said land is a balance of a surveyed location, a portion of which has been granted as a homestead farm or conditional purchase lease to the person who for the time being is the beneficial holder of the license issued under this section in relation to such first-mentioned land, the Crown grant for such first-mentioned land shall not be issued to such person until all the conditions appertaining to the said homestead farm or conditional purchase lease have been fulfilled.

8. Section fifty-four of the principal Act is amended as follows:— Amendment  
of s. 54.

- (a) by deleting from paragraph (c) of subsection (2) the words “ten per cent.” in line two of the said paragraph and inserting in lieu thereof the words “one-sixth part”;
- (b) by adding at the end of paragraph (d) of subsection (2) the words “and the amount of the deposit paid with the application shall be credited to the licensee in payment of the first half-yearly instalment of the purchase price payable for the said land”;
- (c) by inserting at the beginning of paragraph (e) of subsection (2) the words “Subject to paragraph (d) hereof.”

Amendment  
of s. 60.

9. Section sixty of the principal Act is amended by deleting subsection (2) and inserting in lieu thereof a subsection as follows:—

(2) Upon the subdivision of land comprised in any lease, the original lease shall be surrendered and new leases shall be issued in lieu thereof in the name of the original lessee or of any person claiming under the original lessee, as the case may require, for the unexpired term of the original lease at the time of the surrender thereof as aforesaid.

Amendment  
of s. 63A.

10. Section sixty-three A of the principal Act (inserted by the Act No. 47 of 1934) is amended as follows:—

(a) by deleting from paragraph (b) the word “five” in line two of the said paragraph and inserting in lieu thereof the word “ten”;

(b) by deleting from paragraph (b) the whole of subparagraph (ii) and inserting in lieu thereof a subparagraph as follows:—

(ii) direct that the term of the lease shall be extended for a like period to that for which the payment of rent is deferred.

Amendment  
of s. 63B.

11. Section sixty-three B of the principal Act (inserted by the Act No. 47 of 1934) is amended by deleting from subsection (2) the word “five” in line two of the said subsection and inserting in lieu thereof the word “ten.”

Amendment  
of s. 101A.  
Repeal and  
new section

12. Section one hundred and one A of the principal Act (inserted by the Act No. 20 of 1938) is repealed and a section is inserted in lieu thereof as follows:—

101A. (1) Where the lessee proves that in any year ending the thirty-first day of December—

(a) he has suffered serious loss of stock on any pastoral lease through drought, cyclone or flood; or

(b) through drought he has been unable to stock any pastoral lease to the extent to which such lease might except for such drought have been stocked and thereby has suffered serious loss; or

Minister may  
grant relief  
from payment  
of rent in  
certain cases.

(c) his wool production in respect of stock on any pastoral lease has been adversely affected by drought, cyclone or flood

the Minister may grant the lessee relief from payment of rent payable under such pastoral lease in respect of that year: Provided that no such relief shall be granted, except on the recommendation of the Board of Appraisers appointed under section ninety-eight of this Act.

(2) The relief granted under this section may be total or partial and may take the form of extended terms for the payment of the rent payable under the pastoral lease.

13. Section one hundred and six of the principal Act (as amended by the Act No. 47 of 1934) is amended by deleting from paragraph (e) of subsection (1) the words "Section one hundred and eight" in the last two lines of the said paragraph, and inserting in lieu thereof the words "Sections one hundred and nine A and one hundred and nine B of this Act."

Amendment  
of s. 106.

14. Section one hundred and eight of the principal Act is hereby repealed.

Repeal of  
s. 108.

15. Sections are inserted in the principal Act after section one hundred and nine as follows:—

New sections.

109A. (1) Before any land in any Division held under pastoral lease is resumed and withdrawn from any such lease for the purpose of being declared open for selection under Part V. of this Act, the Minister shall give notice to the lessee and also to every encumbrancer (if any) of the lease of the intention so to do.

Notice to be  
given to pas-  
toral lessees  
before land  
is withdrawn  
from lease.

(2) Such notice shall include a description of the land intended to be resumed and withdrawn from the pastoral lease and also shall contain an intimation of the rights of the lessee under section fifty-five or section fifty-six, as the case may be, of this Act, unless such rights are expressly negated by the Governor when he decides upon the said resumption and withdrawal of the land from the pastoral lease in exercise of his power under section one hundred and nine of this Act.

(3) The lessee may, unless his rights under section fifty-five or section fifty-six of this Act have been expressly negatived as aforesaid, within a period of three months from the date of the notice given to him as provided in subsection (2) hereof, if the land is situate in the South-West Division, or within a period of twelve months from the said date, if the land is situate in any other Division, exercise the rights provided for him under the said section fifty-five or the said section fifty-six, as the case may be.

(4) Where it is proposed to resume and withdraw any land from a pastoral lease which is situate in any Division other than the South-West Division, a description of such land shall be laid before both Houses of the Parliament at least thirty days before such resumption and withdrawal is effected.

(5) After the expiration of the said period of three months or of twelve months, as the case may be, mentioned in subsection (3) hereof, the pastoral lessee and every encumbrancer (if any) of the pastoral lease shall cease to have any right in or claim to the land in respect of which notice of resumption and withdrawal has been given as aforesaid.

(6) If any land so resumed and withdrawn from a pastoral lease subsequently remains unselected under Part V. of this Act, the Minister may grant to the former pastoral lessee thereof, or to any other person, a license to depasture stock thereon, or on any specified portion thereof, for such term at such rent or charge and upon and subject to such conditions as the Minister may determine.

(7) Subject as hereinafter provided, where land resumed and withdrawn from a pastoral lease and thereafter applied for under conditions of conditional purchase or otherwise under Part V. of this Act subsequently becomes forfeited for non-payment of rent, or purchase money, or for any other reason, such land shall revert to the Crown and again become Crown land:

Provided that in such case—

- (i) if the land so reverting to the Crown is not required for any public purpose, the Minister may order or direct that such land or



any specified portion thereof shall, on payment by the former pastoral lessee thereof of the sum which would be due as rent under the former pastoral lease thereof for the then current half year, if the said pastoral lease had continued unaffected, be restored to and again become part of the said pastoral lease as if it had not been resumed or withdrawn therefrom; and

- (ii) if the former pastoral lease was totally extinguished by the resumption and withdrawal therefrom of the whole of the land comprised therein, and the former pastoral lessee thereof requires only a portion of the land resumed and withdrawn as aforesaid to be restored to him as provided for in paragraph (i) of this proviso, such portion shall be selected by such pastoral lessee as a new pastoral lease, but, subject thereto, shall be so selected and be held upon and subject to the conditions of the former pastoral lease and as though such new pastoral lease had commenced to operate on the same date as that upon which the former pastoral lease had commenced to operate.

(8) (a) Upon the expiration of the notice of resumption and withdrawal of land from a pastoral lease given to the pastoral lessee thereof, and upon the restoration to a pastoral lease of any land previously resumed and withdrawn therefrom, the Minister shall give notice of such resumption and withdrawal or of such restoration, as the case may be, to the Registrar of Titles when the said pastoral lease has been registered as a Crown lease under the provisions of the Transfer of Land Act, 1893, and in such notice shall inform the said Registrar of any consequential amendments of boundaries, and of area, and of rental affecting such Crown lease. The said notice shall also be accompanied by a plan certified by the Surveyor General showing the original and amended boundaries.

(b) Upon receipt of the notice and plan mentioned in paragraph (a) hereof, the Registrar of Titles shall amend the Crown lease to which such notice and plan relate in accordance therewith.

Provided that, if the pastoral lease shall have been totally extinguished by reason of the resumption and withdrawal therefrom of the whole of the land comprised therein, the said Registrar shall make an entry in the Register of Crown Leases kept by him accordingly.

Notice to be given to pastoral lessees where land declared open for selection before withdrawal from pastoral lease.

109B. (1) If any land within any pastoral lease in any Division is declared open for selection under Part V. of this Act without having been first resumed and withdrawn from such pastoral lease, the following provisions shall apply:—

- (a) Upon the receipt of an application under Part V. of this Act for the whole or any portion of such land, the Minister shall give notice of such application to the pastoral lessee and to every encumbrancer (if any) of the pastoral lease affected by such application.
- (b) Such notice shall include a description of the land applied for, and also shall contain an intimation of the rights of the pastoral lessee under section fifty-five or section fifty-six, as the case may be, of the Act; and the lessee may, within a period of three months from the date of such notice, if the land is situate within the South-West Division, or within a period of twelve months from the said date, if the land is situate within any other Division, exercise the rights provided for him under the said section fifty-five or the said section fifty-six, as the case may be.
- (c) If, upon the expiration of the period of three months or of the period of twelve months, as the case may be, mentioned in paragraph (b) hereof, the pastoral lessee has not exercised the rights provided for him under section fifty-five or section fifty-six of this Act, in respect of the land applied for as aforesaid, the Minister shall give to the pastoral lessee and to every encumbrancer (if any) of the pastoral lease affected, notice of intention to withdraw the said land from the pastoral lease, and

thereafter the provisions of section one hundred and eleven of this Act shall apply.

(d) Upon the happening of any one of the following events, that is to say:—

(i) the receipt by the Minister of a notification from the pastoral lessee that he does not claim compensation in respect of land selected from his pastoral lease as hereinbefore mentioned; or

(ii) the expiration of the period of sixty days mentioned in paragraph (1) of section one hundred and eleven of this Act and the non-receipt by the Minister of any claim for compensation from the pastoral lessee; or

(iii) the receipt by the Minister from the selector of the land under Part V. aforesaid for transmission to the pastoral lessee of the amount by way of compensation which the selector and the pastoral lessee have agreed upon in satisfaction of the claim for compensation made by the pastoral lessee; or

(iv) the receipt by the referee from the selector aforesaid of the amount of compensation determined by the referee as provided for in paragraph (4) of section one hundred and eleven of this Act, the Minister may proceed to approve of the application under Part V. of this Act made by the said selector.

(2) Upon approval by the Minister of the application under Part V. aforesaid, the land in respect whereof the application has been so approved, shall, by virtue of such approval, forthwith be withdrawn from the pastoral lease in which it is comprised, and the right or interest of the pastoral lessee, and also of every encumbrancer (if any) in such land, shall cease absolutely.

(3) (a) The Minister shall give notice to the Registrar of Titles of any approval by him of any application under Part V. of the Act referred to in this section, and in such notice inform him of the consequential amendment of boundaries and of area

and of rental where the pastoral lease affected by such application is registered as a Crown lease under the Transfer of Land Act, 1893. Such notice shall be accompanied by a plan certified by the Surveyor General showing the original and amended boundaries.

(b) Upon receipt of the notice and plan mentioned in paragraph (a) hereof, the Registrar of Titles shall amend the Crown lease to which such notice and plan relate in accordance therewith: Provided that, if the pastoral lease shall have been totally extinguished by reason of the selection under Part V. of the Act of the whole of the land comprised therein, the said Registrar shall make an entry in the Register of Crown Leases kept by him accordingly.

(4) (a) If the applicant under Part V. aforesaid for land in a pastoral lease fails to pay to the pastoral lessee compensation in accordance with the provisions of section one hundred and eleven of this Act within the time limited by that section, the application made by such applicant shall lapse.

(b) Where an application under Part V. aforesaid has lapsed as provided for in paragraph (a) hereof, or if such an application is withdrawn by the applicant or is cancelled for any reason whatsoever, the land to which such application relates shall in any such case remain in the pastoral lease in which it is comprised, and the right or interest of the pastoral lessee, and also of every encumbrancer (if any) in such land shall continue and be unaffected by the notice which had been previously served upon him as required by this section.

(5) Where any land held under pastoral lease has been applied for under Part V. of the Act, and such application has been approved and thereafter such land is forfeited for non-payment of rent or purchase money, or by reason of any other default by the selector, the provisions of subsections (6) and (7) of section one hundred and nine A of this Act shall apply, and for such purpose the said subsections shall be deemed to be incorporated in and to form part of this section.

16. Section one hundred and twelve of the principal Act is hereby repealed. Repeal of s. 112.

17. Section one hundred and thirteen of the principal Act is amended as follows:— Amendment of s. 113.

(a) by inserting therein after subsection (2) a new subsection as follows:—

(2a) Notwithstanding anything to the contrary contained in subsection (1) or subsection (2) of this section, no person shall at the same time hold a lease of pastoral land as lessee or sublessee or transferee from the lessee, and also be beneficially interested (other than as lessee, or sublessee, or transferee from the lessee) in a lease of pastoral land in excess of a maximum aggregate area of one million acres.

(b) by deleting subsection (3) and inserting in lieu thereof a subsection as follows:—

(3) If any person acquires or becomes beneficially interested in a lease of pastoral land whereby the aggregate area of the pastoral land which he has acquired, or the aggregate area of the pastoral land in which he is beneficially interested, or the total of the aggregate area of the pastoral land which he has acquired and of the aggregate area of pastoral land in which he is beneficially interested when added together, as the case may be, exceeds one million acres, whether such person acquired the lease of, or became beneficially interested in the lease of any of such pastoral land before or after the commencement of this Act, and such person continues to hold or to be beneficially interested, either one or the other or both, in pastoral land in excess of such million acres, he shall forfeit and pay to the Crown a sum of five pounds for every day or part of a day during which he so continues to hold or be beneficially interested in such pastoral land.

(c) by deleting subsection (4) and inserting in lieu thereof a subsection as follows:—

(4) If any leaseholder is also beneficially interested in an area of pastoral land so that

the area of his leasehold and the area of the pastoral land in which he is beneficially interested as aforesaid taken together exceed one million acres contrary to subsection (2a) of this section, or if the leasehold of a leaseholder is worked in association with other holdings so that the area of the leasehold and the area of such other holdings taken together exceed one million acres, both the lease which he holds as leaseholder and the lease or leases in which he is beneficially interested shall be liable to forfeiture.

- (d) by deleting subsection (5) and inserting in lieu thereof a subsection as follows:—

(5) If any area of pastoral land is worked in association with another area of pastoral land in all respects as one separate and distinct station, and the total of such areas so worked in association exceeds one million acres, every person who is the holder of or has any beneficial interest in either of the areas of pastoral land aforesaid shall forfeit and pay to the Crown a sum of five pounds for every day or part of a day during which such working of the said areas continues.

- (e) by deleting subsection (7) and inserting in lieu thereof a subsection as follows:—

(7) No person shall be registered in the Office of Titles or in the Department of Lands and Surveys as transferee or sublessee of any pastoral land if the area thereof when added to the area of any other pastoral land which such person already holds and to the area of any other pastoral land in which he is already beneficially interested would cause the total of all such areas to exceed one million acres.

- (f) by adding at the end of the section a new subsection as follows:—

(11) (a) Notwithstanding anything to the contrary contained in this section, any person who at the commencement of this subsection has consistently with the provisions of this Act as in force prior to the commencement of this sub-

section, already acquired, or become beneficially interested in (either one or the other or both) an aggregate area of pastoral land in excess of one million acres, may continue to hold or be beneficially interested in such area of pastoral land, but shall not be entitled to acquire or become beneficially interested in any other pastoral land until his holdings of and beneficial interest in pastoral land as at the commencement of this subsection have been so reduced as to entitle him in accordance with subsection (2a) of this section to acquire or become beneficially interested in other pastoral land.

(b) Where any person referred to in paragraph (a) hereof acquires or becomes beneficially interested in pastoral land contrary to the provisions of the said paragraph (a), such person shall forfeit and pay to the Crown a sum of five pounds for every day or part of a day during which he continues so to contravene the provisions of paragraph (a) hereof.

18. Section one hundred and fourteen of the principal Act is amended as follows:—

Amendment  
of s. 114.

- (a) by deleting from subsection (1) the words “within one year from the commencement of this Act” in lines four and five of the said subsection;
- (b) by adding to subsection (1) a further proviso as follows:—

Provided further that, notwithstanding anything to the contrary contained in this Act, a new lease granted under this section in lieu of a previous lease surrendered after the commencement of this proviso shall not entitle the lessee of such new lease to or confer on him any rights, privileges, or concessions greater than, or in excess of, or different from those to which he would have been entitled or which would have been conferred upon him, if such new lease had been applied for by him within one year from the commencement of this Act, and such new lease had been granted to him under and in accordance with the provisions of this Act as in force one year from the commencement of this Act.

Amendment  
of s. 130.  
Repeal and  
new section.

19. Section one hundred and thirty of the principal Act is repealed and a new section is inserted in lieu thereof as follows:—

Application  
of s. 127 (4)  
and (5) to  
existing  
leases.

130. (1) The Minister may—

- (a) extend the term of any conditional purchase lease granted under the Agricultural Land Purchase Act, 1909, to not exceeding forty years, and, in the event of any such extension under this paragraph, all necessary adjustments may be made to apply the provisions of subsections (4) and (5) of section one hundred and twenty-seven of this Act to the lease, the term whereof is extended as aforesaid; or
- (b) extend the term of any such lease aforesaid for any period, inclusive of the then unexpired portion of the term, not exceeding forty years, and in the event of any such extension under this paragraph, all necessary adjustments may be made to apply the provisions of subsection (5) of section one hundred and twenty-seven of this Act to the lease the term whereof is extended as aforesaid:

Provided that, in relation to extensions granted under paragraph (b) of this subsection, the following condition shall apply, that is to say:—

Irrespective of the aggregate term created under the lease as extended, the lessee shall not be required to pay in total as rent a sum greater than the selling price of the land with prescribed interest over a period of forty years.

(2) No adjustment or extension of term under paragraph (b) of subsection (1) of this section shall be granted except on the recommendation of a Board to be appointed by the Governor under and for the purposes of this section.

(3) When the term of any lease has been extended under this section the Registrar of Titles shall, on receiving from the Minister a notification to that



effect, and without fee, indorse on the relative Crown lease registered in the Office of Titles a memorandum of the facts so notified to him.

20. The principal Act as amended by all Acts prior to this Act amending the same, and as amended by this Act, may be cited as the Land Act, 1933-1939. Citation of principal Act as amended.

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