

*This PUBLIC BILL originated in the LEGISLATIVE ASSEMBLY, and, having this day passed, is now ready for presentation to the LEGISLATIVE COUNCIL for its concurrence.*

H. ROBBINS,

*Clerk of the Legislative Assembly.*

*Legislative Assembly Chamber,*

*Sydney, 2 November, 1949, A.M.*

## New South Wales.



ANNO TERTIO DECIMO

# GEORGII VI REGIS.

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Act No. , 1949.

An Act to make further provision for the withdrawal of lands held under lease, the determination of rentals of Western Lands leases, and the conversion of Western Lands leases into conditional purchases; to impose certain restrictions on dealings with and transactions affecting leases; to impose certain conditions on leases in the interests of soil preservation; for these and other purposes to amend the Western Lands Act of 1901, as amended by subsequent Acts; to validate certain matters; and for purposes connected therewith.

*Western Lands (Amendment).*

**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 New South Wales in Parliament assembled, and by the authority of the same, as follows:—

**1.** (1) This Act may be cited as the "Western Lands (Amendment) Act, 1949."

Short title, construction and commencement.

(2) This Act shall be read and construed with the Western Lands Act of 1901, as amended by subsequent Acts, which Act, as so amended, is in this Act referred to as the Principal Act.

(3) This Act shall, except where otherwise expressly provided, commence upon a day to be appointed by the Governor and notified by proclamation published in the Gazette.

**2.** The Principal Act is amended by inserting next after section 17cc the following new section:—

Amendment of Act No. 70, 1901.

17ccc. (1) The Minister may, subject to the provisions of this section and upon the recommendation of the Commissioner, by notification published in the Gazette, which notification shall be in or to the effect of the form of Schedule I to this Act, withdraw from—

New sec. 17ccc. Withdrawals of areas from leases.

(a) any lease extended under section 17c of this Act, other than a lease extended to a lease in perpetuity, and

(b) any lease granted under the provisions of section 28A of this Act, and any lease to which paragraph (a) of this subsection applies, where such leases are held in the same interest,

all land in excess of an area which constitutes two home maintenance areas.

(2) Where the Minister, upon the recommendation of the Commissioner, is satisfied that any lease or part thereof is mainly used for the purpose of breeding sheep or cattle for sale as stud sheep or stud cattle, respectively, and has been so used continuously

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continuously for a period of at least seven years immediately prior to the commencement of the Western Lands (Amendment) Act, 1949—

- 5 (a) no withdrawal shall be made which would have the effect of reducing the total area held under Western Lands lease by the lessee below—
- 10 (i) an area which constitutes three home maintenance areas, where in the opinion of the Minister, after report by the Commissioner, the area which is best adapted and necessary for the depasturing of the average number of stud sheep or stud cattle owned by
- 15 the lessee or his predecessors in title and depastured annually on the lease during such period comprises an area equal to or less than one home maintenance area; or
- 20 (ii) an area which constitutes four home maintenance areas, where in the opinion of the Minister, after report by the Commissioner, the area which is best adapted and necessary for the
- 25 depasturing of the average number of stud sheep or stud cattle, owned by the lessee or his predecessors in title and depastured annually on the lease during such period comprises more
- 30 than one home maintenance area; and
- 35 (b) no withdrawal shall be made, except with the consent of the lessee, of any part of the lease, which in the opinion of the Minister, after report by the Commissioner, is best adapted and necessary for the depasturing of the average number of stud sheep or stud cattle owned by the lessee or his predecessors in title and depastured annually on
- 40 the lease during such period, and which, in any

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any case to which subparagraph (ii) of paragraph (a) of this subsection applies, does not exceed four home maintenance areas.

5 (3) Where two or more leases, whether adjoining or not, are held in the same interest, or were so held at any time between the eighth day of August, one thousand nine hundred and forty-nine, and the date of commencement of the Western Lands  
10 (Amendment) Act, 1949, the total area of such leases shall be regarded as the area from which withdrawal may be made under this section and such withdrawal may be made from any one or more of such leases:

15 Provided that where such leases are worked as separate holdings and the Minister, after a report has been furnished to him by the Commissioner, is satisfied that the withdrawal of any such leases under this section upon which there are any improvements  
20 being homestead buildings would involve the lessee in substantial loss by virtue of the value of such improvements the withdrawal under this section shall subject to the provisions of subsection two of this section be restricted to all land in excess of two home  
25 maintenance areas on one of such holdings and all land in excess of one home maintenance area on each other of such holdings on which there are improvements in respect of which the Minister is satisfied as aforesaid that the lessee would suffer substantial loss.

30 (4) The boundaries of the area proposed to be withdrawn from any lease and the carrying capacity of the residue of such lease shall be determined by the Minister, after report by the Commissioner, and notice of such determination in or to the  
35 effect of the prescribed form shall be sent to the lessee, by registered post.

40 It shall be sufficient for all purposes whatsoever if such boundaries are defined with reasonable certainty by means of any form of general description.

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5 (5) (a) If the lessee is dissatisfied with the carrying capacity of the residue of the lease as so determined he may, within twenty-eight days after notice as prescribed has been sent to him, lodge with the Commissioner a notice of appeal in the prescribed form.

(b) A notice of appeal shall be accompanied by a fee of one hundred pounds as security for the costs of the appeal.

10 (c) Such appeal shall be heard by a tribunal consisting of three members appointed by the Minister.

Of the members so appointed—

15 (i) one shall be the Commissioner or an Assistant Commissioner, who shall be the chairman;

20 (ii) one shall be selected from three persons experienced in Western Division grazing matters and nominated by The Returned Sailors, Soldiers and Airmen's Imperial League of Australia (New South Wales Branch);

25 (iii) one shall be selected from three persons experienced in Western Division grazing matters and nominated by The Graziers' Association of New South Wales.

(d) The members of the tribunal other than the chairman shall be paid such fees for each sitting as may be prescribed.

30 (e) The tribunal shall have power to determine the carrying capacity of the residue of the lease in average seasons and conditions and when reasonably improved.

35 (f) The tribunal shall sit in open court, and may and is hereby empowered to exercise all of the powers conferred upon local land boards constituted under the Crown Lands Acts in so far as such powers relate to the summoning, attendance and examination of witnesses, the amendment of notices, declarations and other documents, and the permitting of notices, declarations

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declarations and other documents to be supplied and to the conduct of proceedings generally before such boards.

5 The tribunal may make such order as to costs of, or incidental to, the proceedings before it (not exceeding one hundred pounds in any case) as it may think fit.

10 (g) The chairman and one member shall constitute a quorum, and the chairman shall preside at all meetings of the tribunal.

Matters arising before the tribunal shall be decided by a majority of votes. If there be an equality of votes, the chairman shall have a second or casting vote.

15 The determination of the carrying capacity of the residue of any lease by the tribunal shall be final, and if necessary, the boundaries of the area proposed to be withdrawn from such lease shall be redetermined by the Minister after report by the  
20 Commissioner in accordance with the tribunal's determination of carrying capacity.

(6) Upon withdrawal of land from any lease under this section—

25 (a) any instrument of lease relating to any lease extended under section 17c of this Act (other than a lease extended to a lease in perpetuity) and any lease granted under the provisions of section 28A of this Act held by  
30 the lessee shall be surrendered not later than two months after notice of publication of such withdrawal in the Gazette has been sent by the Commissioner to the lessee.

If any such instrument of lease is not  
35 surrendered as aforesaid the lease to which such instrument relates shall be liable to be forfeited;

(b) the residue of the lease or leases shall be subdivided into portions each embracing a home maintenance area. A separate lease shall

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- shall be issued for each home maintenance area to which a lessee is entitled. Where a lessee is entitled to two separate leases each such lease shall be a lease in perpetuity.
- 5 Where a lessee is entitled to more than two separate leases two of such leases selected by the lessee shall be leases in perpetuity and the remaining lease or leases shall be for a term expiring on the date on
- 10 which the surrendered or withdrawn lease having the longest unexpired term would but for the provisions of this section have expired;
- 15 (c) any person having an interest in the lease or leases immediately before any withdrawal under this section shall be deemed to have an equivalent interest, whether by way of mortgage or otherwise, in the new leases;
- 20 (d) the rentals of such new leases shall be determined by the local land board. The provisions of subsections two and three of section 19B of this Act shall apply, mutatis mutandis, to and in respect of any such rentals;
- 25 (e) every such new lease shall be subject to the general provisions of this Act and to such conditions as the Minister after report by the Commissioner, may consider necessary;
- 30 (f) the new leases shall commence on the day following the date of withdrawal under this section;
- (g) the lessee shall not be liable for the cost of any necessary survey of the new leases;
- 35 (h) the lessee may when surrendering the instrument of lease in accordance with paragraph (a) of this subsection furnish a sketch of the land comprised within the residue of the lease, or leases, showing a form of subdivision into two, three or four
- 40 home maintenance areas, as the case may require, which he considers desirable.

Where

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5 Where the land comprised in the leases issued in  
pursuance of paragraph (b) of this subsection has  
been mainly used for the purpose of breeding sheep  
or cattle for sale as stud sheep or stud cattle,  
respectively, for a continuous period of at least seven  
years immediately prior to the commencement of the  
Western Lands (Amendment) Act, 1949, and the  
lessee ceases to use such land for such purpose, the  
10 Minister may at any time, upon the recommendation  
of the Commissioner, withdraw the land comprised  
in such of those leases as have been so issued other-  
wise than in perpetuity.

(7) No compensation shall be paid in  
respect of any withdrawal under this section.

15 (8) Upon withdrawal under this section  
the lessee shall have tenant right in the improvements  
upon the land withdrawn effected or paid for by  
him or his predecessors in title.

20 (9) Any land withdrawn under this section  
shall, until otherwise disposed of, be held by the  
lessee under preferential occupation license at a fee  
equivalent to the rate at which rent was payable  
immediately before the date of withdrawal for the  
lease from which the land was withdrawn.

25 (10) Any lease granted under the pro-  
visions of subsection six of this section shall, until  
the termination of the preferential occupation  
license under which any land withdrawn under this  
section is held pursuant to subsection nine of  
30 this section, be liable to be forfeited and any such  
preferential occupation license may be terminated—

(a) if at any time after the commencement of  
such preferential occupation license stock  
are depastured on the area embraced  
35 thereby in numbers which, in the opinion of  
the local land board, substantially exceed  
the fair carrying capacity of such area; or

(b) if the improvements which exist on such  
area at the date of such commencement are  
40 not reasonably protected or are not kept in  
reasonable



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5 reasonable maintenance and repair: Provided that the lessee shall not be compelled to make good any damage caused by fire, flood, storm, or other inevitable accident which, in the opinion of the local land board, is not due to any act, default, or neglect of the lessee.

10 (11) Nothing contained in this Act, or any Act, or in any instrument of lease, and no transfer, conveyance, assignment, mortgage, devolution, subdivision, or any other dealing or disposition whatsoever made after the eighth day of August, one thousand nine hundred and forty-nine, shall defeat the right of the Minister to withdraw land under this section.

15 (12) The power conferred upon the Minister to withdraw land in accordance with the provisions of subsection one of this section shall cease and determine upon the thirty-first day of December, one thousand nine hundred and fifty-three.

20 (13) For the purpose of this section a home maintenance area shall be deemed to be an area which, when reasonably improved will, in the opinion of the Minister, after report by the Commissioner, carry in average seasons and conditions, not less than three thousand sheep and not more than five thousand sheep, according to the situation of the land.

25 For the purpose of this subsection one head of large stock shall be regarded as the equivalent of six sheep.

30 3. (1) The Principal Act is further amended—

35 (a) (i) by omitting from subsection eleven of section 18E the words "For the period commencing on the date when rent is next payable as aforesaid, the rent shall be redetermined by the local land board" and by inserting in lieu thereof the words "For the period of ten years commencing on the date when rent is next payable as aforesaid, and

Further amendment of Act No. 70, 1901. Sec. 18E. (Leases in perpetuity.)

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- and for each separate period of ten years thereafter the rent payable in respect of a lease extended as aforesaid shall be the rent as redetermined by the local land board”;
- 5 (ii) by inserting in the same subsection after the words “local land board” where secondly occurring the words “and the rent so determined shall be payable for a period
- 10 of ten years commencing from the date of extension of the lease. For each separate period of ten years thereafter the rent payable in respect of a lease extended to a lease in perpetuity after the thirtieth day of June, one thousand nine hundred and
- 15 forty-three, shall be the rent as redetermined by the local land board”;
- (iii) by inserting in the same subsection after the word “conditions” the words “Provided that the rate of rent of any lease of land held for grazing shall not in any case exceed the rate of one shilling and sixpence per sheep, nor shall it be less than sixpence per sheep on the fair average carrying capacity of the land when reasonably improved as estimated on a sheep basis by the local land board”;
- 20 (iv) by omitting from the same subsection the words “The provisions of section nineteen of this Act shall not apply to a redetermination of the rent under this section, nor shall such provisions apply to a lease extended to a lease in perpetuity after a redetermination has been made under this subsection.”
- 30
- 35 (b) by omitting section nineteen; Sec. 19.  
(Rents.)  
Sec. 19B.  
(Rents.)
- (c) (i) by omitting paragraph (a) of subsection two of section 19B and by inserting in lieu thereof the following paragraphs:—
- 40 (a) The rent of any lease in perpetuity applied for after the commencement of the Western Lands (Amendment)

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5 (Amendment) Act, 1934, prior to  
the thirtieth day of June, one  
thousand nine hundred and forty-  
three, in respect of land set apart  
for grazing shall for the period  
ending on the day immediately  
prior to the date when rent is next  
payable after the thirty-first day  
10 of December, one thousand nine  
hundred and fifty-three, be the rent  
as determined by the local land  
board.

15 For each separate period of ten  
years thereafter the rent payable  
in respect of a lease in perpetuity  
applied for as aforesaid shall be  
the rent as redetermined by the  
local land board.

20 This paragraph shall be deemed  
to have commenced upon the  
twenty-fourth day of August, one  
thousand nine hundred and thirty-  
four.

25 (a1) The rent of any lease in  
perpetuity applied for after the  
thirtieth day of June, one thousand  
nine hundred and forty-three, in  
respect of land set apart for  
30 grazing shall be as determined by  
the local land board and the rent  
so determined shall be payable for  
a period of ten years commencing  
from the date of granting of the  
lease.

35 For each separate period of ten  
years thereafter the rent payable  
in respect of a lease in perpetuity  
applied for after the thirtieth day  
of June, one thousand nine hundred  
and forty-three, shall be the rent  
40 as redetermined by the local land  
board. **This**

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This paragraph shall be deemed to have commenced upon the first day of July, one thousand nine hundred and forty-three.

- 5 (ii) by omitting subsection three of the same section and by inserting in lieu thereof the following subsection:—

10 (3) In determining or redetermining the rent of any lease of land held for grazing, the board shall have regard to the productive capacity of the land under fair average seasons, prices and conditions: Provided that the rate of rent shall not in  
15 any case exceed the rate of one shilling and sixpence per sheep, nor shall it be less than sixpence per sheep on the fair average carrying capacity of the land when reasonably improved as estimated on a sheep basis by the local land board.

- 20 (d) by inserting in subsection one of section 19c after the word "board" the words "for each separate period of ten years".

Sec. 19c.  
(Rent of leases of land set apart for agriculture, etc.).

25 (2) (a) The amendment made by subparagraph (i) of paragraph (a) of subsection one of this section shall be deemed to have commenced upon the first day of January, one thousand nine hundred and forty-nine.

(b) The amendment made by subparagraph (ii) of paragraph (a) of subsection one of this section shall be deemed to have commenced upon the first day of  
30 July, one thousand nine hundred and forty-three.

4. The Principal Act is further amended—

- (a) by omitting subsection ten of section 18E;

Further amendment of Act No. 70, 1901.  
Sec. 18E.  
(Leases in Perpetuity).

- 35 (b) (i) by omitting from subsection one of section 18G the words "of any portion thereof" and by inserting in lieu thereof the words and symbols

Sec. 18G.  
(Transfers.)

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- 5 symbols "any portion thereof, and no transfer, conveyance, assignment of or other dealing (not being a mortgage) with a lease extended to a lease in perpetuity (whether before or after the commencement of the Western Lands (Amendment) Act, 1949), or any portion thereof, or a lease issued under the provisions of section 17ccc of this Act, or any portion thereof";
- 10 (ii) by inserting in paragraph (a) of subsection (1A) of the same section after the words "section twenty-three" the words "or thirty-nine, or issued pursuant to section 17ccc of this Act, or a lease extended to a
- 15 lease in perpetuity pursuant to section 18e of this Act";
- (iii) by omitting from subsection three of the same section the words "the lease" where
- 20 firstly occurring and by inserting in lieu thereof the words "a lease applied for after the commencement of the Western Lands (Amendment) Act, 1934";
- (iv) by inserting next after subsection four of the same section the following new sub-
- 25 section:—
- (4A) Any lease applied for after the commencement of the Western Lands (Amendment) Act, 1934, or extended to a
- 30 lease in perpetuity, whether before or after the commencement of the Western Lands (Amendment) Act, 1949, or issued in pursuance of section 17ccc of this Act shall be liable to forfeiture if the holder sublets
- 35 the lease or any part thereof, or grants any grazing rights over the lease or any part thereof, or agists stock on the lease or any part thereof, or grazes stock on the lease or any part thereof under any stock partnership without having first obtained the
- 40 written consent of the Minister, and if any stock

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stock not owned by the holder are found depasturing on the lease or any part thereof without the said consent, it shall be prima facie evidence of a breach of the provisions of this subsection.

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## 5. The Principal Act is further amended—

Further amendment of Act No. 70, 1901.

(a) by inserting at the end of subsection one of section 28B the words "No holder of a lease as aforesaid shall after the commencement of the Western Lands (Amendment) Act, 1949, be entitled to make application for the conversion of such lease in accordance with the provisions of this section."

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Sec. 28B. (Conversion of lease.)

(b) by inserting next after section 28B the following new section:—

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New sec. 28BB.

28BB. (1) The holder of a lease for the purpose of agriculture or mixed farming or residence or for a similar purpose or purposes which is not liable to forfeiture may apply to convert such lease (as to the whole or any part of the land comprised therein) into a conditional purchase.

20

Application for conversion of leases after commencement of Western Lands (Amendment) Act, 1949.

(2) (a) A conversion shall not be allowed of land within any proclaimed goldfield or mineral field or within any reserve for mining or mining purposes within the meaning of section one hundred and six of the Mining Act, 1906-1946, except with the approval of the Secretary for Mines.

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(b) Where in the opinion of the local land board the land comprised in such lease, together with all other lands held by the applicant for conversion (other than lands held under annual lease, preferential occupation license, occupation license, permissive occupancy or Western Lands lease then having not more than five years to run) would—when reasonably improved

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5 improved and used for the purpose for which  
they are reasonably fitted—substantially exceed  
a home maintenance area, conversion may be  
approved as to so much of the land comprised in  
the lease as would, in the opinion of the local  
land board, together with all such other lands  
held as aforesaid, not substantially exceed, when  
improved and used as aforesaid, a home  
10 maintenance area. Lands held by the spouse of  
an applicant under this section shall for the  
purposes of this section be deemed to be lands  
held by such applicant.

15 (c) A conversion shall not be  
allowed of land reserved from sale unless and  
until such reservation has been revoked.

(3) The application shall be made as  
prescribed and shall be accompanied by a  
provisional deposit as prescribed to be applied  
towards the cost of dealing therewith and shall  
20 be referred to the local land board for inquiry  
and report.

25 (4) (a) The local land board shall  
report to the Minister as to whether there is  
any objection in the public interest or otherwise  
to the granting of the application and generally  
as to the merits thereof. If the local land board  
deems it expedient to recommend the granting  
of the application as to the whole or part of the  
land applied for it shall also report as to what  
30 special conditions (if any) should be attached  
to the holding after conversion and shall proceed  
to determine the capital value of the land  
comprised in such holding. The capital value  
as so determined shall be the capital value of  
35 the land at the date of the application for  
conversion.

40 (b) After receipt of such report the  
Minister may grant the application as to the  
whole or part of the land if the local land board  
so recommends, or he may at his discretion  
refuse

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5 refuse it. Any areas required for roadways or other public purposes may be excluded or the boundaries may be otherwise modified at the Minister's discretion. Where the Minister has granted the application, the conversion shall be deemed to have taken effect as from the date of application for conversion.

10 (5) (a) On the granting of an application for conversion as to the whole of the land comprised in the lease, such lease shall be deemed to be surrendered to the Crown.

15 (b) On the granting of an application for conversion as to part only of the land comprised in the lease, such part, together with such other part as may be required for roadways or other public purposes, shall be deemed to be surrendered to the Crown. Where part of the land within the lease is so  
20 surrendered the rent for the remainder of the lease shall, as from the date of the application for conversion be that amount which bears the same proportion to the rent for the whole lease as the relative value of the remainder of the lease bears to the relative value of the whole  
25 lease as at such date.

30 (c) The cost of any necessary survey or subdivision and any balance of the prescribed deposit shall be paid by the applicant within one month after he has been called upon to do so; and upon default the application may be declared to have lapsed, and any moneys paid therewith shall thereupon become forfeited.

(6) The conditional purchase shall be subject to—

35 (a) any special conditions which the Minister on the recommendation of the local land board may impose;

(b)



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5 (b) a condition of residence for a term of five years, which shall commence within three months after the date of the Minister's approval of the conversion and shall be reduced by the period during which continuous residence has been performed by the applicant or his predecessors in title, upon the lease:

10 Provided always that—

15 (i) where the conditional purchase has been transferred bona fide by way of mortgage, the condition of residence may be performed by the owner subject to such mortgage;

20 (ii) where the beneficial owner of a conditional purchase dies or becomes of unsound mind, the performance of the condition of residence shall be waived until the conditional purchase has been transferred or conveyed and no longer; and

25 (iii) where the owner also holds other land under any tenure to which a condition of residence attaches, he may with the consent of the Commissioner and subject to such conditions as the Commissioner may impose, perform the condition of residence on one of such  
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35 holdings.

(7) The purchase money of any conditional purchase shall be paid by annual instalments of five per centum thereof, one of

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5 such instalments being paid in each and every  
year on the recurring date of the application  
for conversion or within three months thereafter  
until the balance of purchase money, together  
with interest thereon at the rate of two and one-  
half per centum per annum shall have been paid:  
10 Provided that the holder of the conditional  
purchase may pay off the whole or any number  
of such instalments at any time after the issue  
of the certificate of conformity.

15 (8) Sections eighteen, forty-eight, fifty-  
three, fifty-four, fifty-five, fifty-six, one hundred  
and seventy-five, 175A, 176A, one hundred and  
seventy-eight, one hundred and eighty-two, 194B,  
one hundred and ninety-five, one hundred and  
ninety-eight, one hundred and ninety-nine, two  
hundred and one, two hundred and five, two  
hundred and eight, two hundred and nine, two  
20 hundred and thirty-one, two hundred and thirty-  
four, two hundred and thirty-five, 235A, two  
hundred and forty, two hundred and fifty-seven,  
two hundred and fifty-eight, two hundred and  
sixty-one, two hundred and seventy, two hundred  
and seventy-two and two hundred and seventy-  
25 eight, together with subsection two of section  
two hundred and fifty-nine of the Crown Lands  
Consolidation Act, 1913, as amended by subse-  
quent Acts, shall mutatis mutandis apply  
to conditional purchases into which leases have  
30 been converted under this section.

35 (9) A reference in any of the provisions  
of the Crown Lands Consolidation Act, 1913, as  
so amended, enumerated in subsection eight of  
this section to the Under Secretary for Lands,  
the Department of Lands or the Lands Depart-  
ment, shall be read and construed as a reference  
to the Commissioner appointed under this Act  
and the Western Lands Office respectively.

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**6.** The Principal Act is further amended by inserting at the end of section 18D the following new paragraphs:—

Further amendment of Act No. 70, 1901.

5 (iv) A lessee shall, if the Minister so directs, prevent the use by stock of any part of the land for such periods as the Minister considers necessary to permit of natural reseedling and regeneration of vegetation; and, for this purpose, the lessee shall erect within the time appointed by the Minister such fencing as the Minister may consider necessary.

Sec. 18D.  
(Provisions governing leases.)

15 (v) A lessee shall not overstock or permit or allow to be overstocked the said land, and the decision of the Commissioner as to what constitutes overstocking shall be final, and the lessee shall comply with any directions of the Commissioner to prevent or discontinue overstocking.

20 (vi) A lessee shall use iron or steel posts (with wooden strainers) for the erection or repair of all fencing on the land, except that, in special cases, the Commissioner may permit the use of other posts.

**7.** The Principal Act is further amended—

Further amendment of Act No. 70, 1901.

25 (a) by inserting in section three next after the definition of "Crown Lands" the following new definition:—

Sec. 3.  
(Interpretation.)

30 "Home maintenance area" means an area which when used for the purpose for which it is reasonably fitted, would be sufficient for the maintenance in average seasons and circumstances of an average family.

35 (b) (i) by omitting from paragraph (b) of subsection three of section nine the words "except as provided in paragraph (c) of this subsection";

Sec. 9.  
(Local Land Boards.)

(ii) by omitting paragraph (c) of the same subsection;

(c)

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- (c) by omitting subsections seven, eight and nine of section 18E; Sec. 18E.  
(Subsisting leases extension.)
- 5 (d) (i) by omitting from paragraphs (a), (c), (d) and (e) of subsection (1A) of section 18G the words "fair market value of the land" wherever occurring and by inserting in lieu thereof the words "fair market value of the lease"; Sec. 18G.  
(Transfers.)
- 10 (ii) by omitting paragraph (f) of the same subsection;
- (e) by inserting at the end of subsection two of section 18H the words— Sec. 18H.  
(Mortgages and devolutions.)  
"The provisions of this subsection shall extend to any lease as aforesaid transferred by way of discharge of mortgage to the legal personal representative of a deceased person";
- 15 (f) by inserting in section 18J after the word "condition" the word "purpose"; Sec. 18J.  
(Conditions attaching to leases: alteration by consent.)
- 20 (g) by inserting next after section 18J the following new section:— New section 18JJ.
- 25 18JJ. (1) Any person who being a male is of the age of sixteen years or upwards or being a female is of the age of eighteen years or upwards shall, if otherwise not disqualified under this Act, be competent to apply for or otherwise acquire from the Crown or to acquire from a private person or to hold any lease or conditional purchase under this Act, and any person who being a male is under the age of
- 30 sixteen years or being a female is under the age of eighteen years shall not be competent to apply for or otherwise acquire from the Crown or to acquire from a private person or to hold any such lease or conditional purchase: Provided always that nothing in this section shall
- 35 be

Com-  
petency  
of minors  
to acquire  
or hold.

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be taken to prevent the devolution or holding of a lease devolving under the will or intestacy of a deceased holder.

5 (2) Any person above the age of sixteen years being the holder of any holding under this Act may be sued for any moneys due to the Crown as if he were of the full age of twenty-one years.

10 (h) by inserting in paragraph (b) of subsection four of section twenty-three after the word "notification" the words "or after the date of commencement of the lease, whichever is the later"; Section 23. (Minister's power to grant leases.)

15 (i) by omitting from section 28A the words "but no lands held under occupation license or annual lease shall be leased under this section for grazing purposes only unless with the consent of the occupation licensee or annual lessee"; Section 28A. (Special Leases.)

20 (j) by omitting from subsection two of section 33A the words "shall where such land is within the external boundaries of, or adjoins any lease, be deemed to be included in the lease as from a date to be appointed by the Minister; and the rent for the unexpired portion of the period of the lease then current shall be increased in proportion to the area so included in the lease" and by inserting in lieu thereof the words "may, at the discretion of the Minister be— Section 33A. (Surrender.)

25 (a) included in the lease as from a date to be appointed by the Minister; and the rent for the unexpired portion of the period of the lease then current shall be increased in proportion to the area so included in the lease;

30 (b) reserved from sale or from sale and lease for any public purpose; or

35 (c) otherwise disposed of."

(k)

*Western Lands (Amendment).*

(k) by omitting from section 35B the words "approval of." Section 35B. (Termination of annual lease or license.)

(l) by inserting next after Schedule H the following new Schedule:— New Sch. I.

5

SCHEDULE I.

Sec. 170CC.

WITHDRAWAL OF LAND FROM LEASE.

By virtue of the provisions of section 170CC of the Western Lands Act of 1901, as amended by subsequent Acts, I,

10 Minister for Lands, do hereby withdraw the land described hereunder.

Minister for Lands.

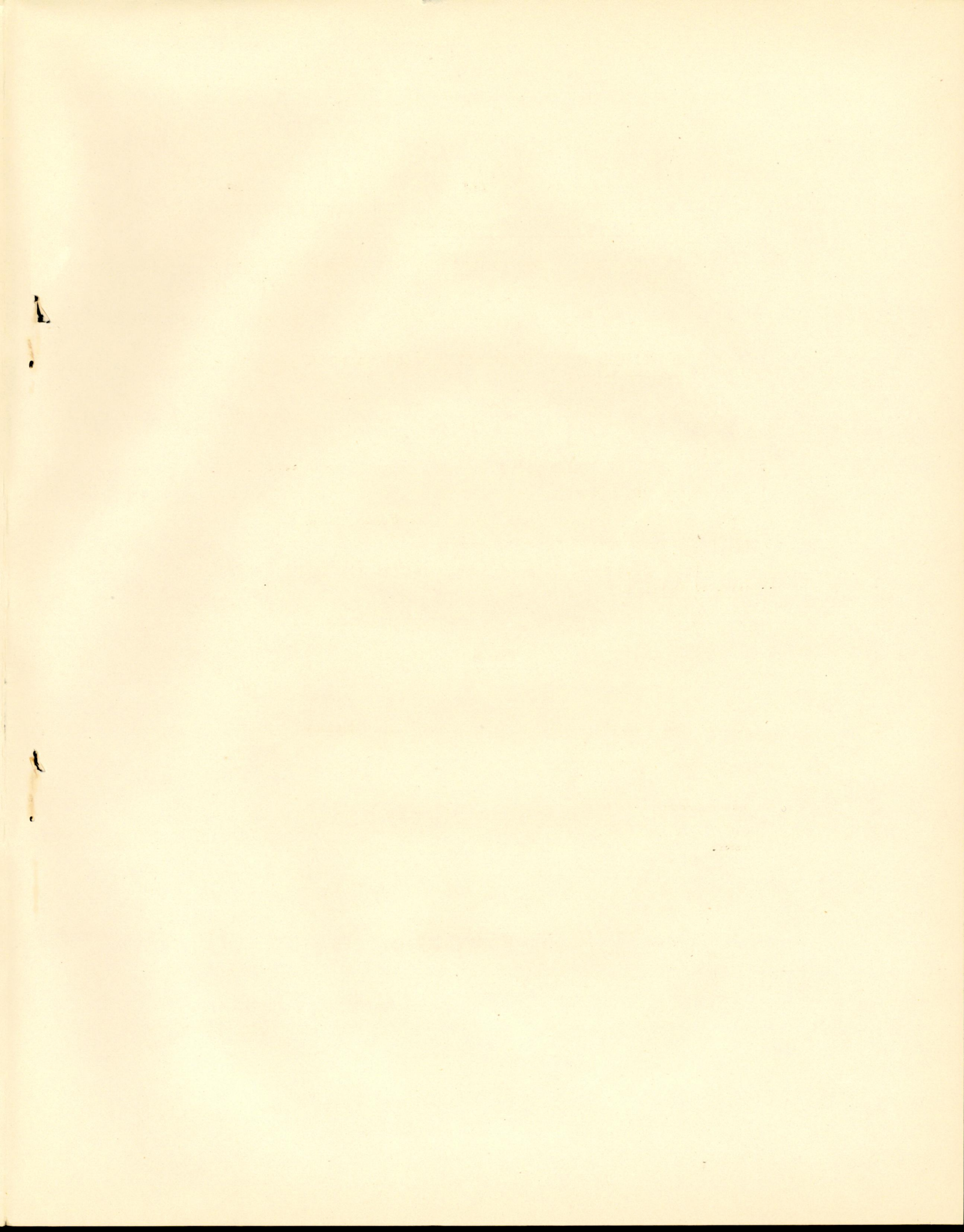
(Date) .....

..... **HOLDING**

County of .....

Administrative District of .....

Lessee .....







No. , 1949.

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## A BILL

To make further provision for the withdrawal of lands held under lease, the determination of rentals of Western Lands leases, and the conversion of Western Lands leases into conditional purchases; to impose certain restrictions on dealings with and transactions affecting leases; to impose certain conditions on leases in the interests of soil preservation; for these and other purposes to amend the Western Lands Act of 1901, as amended by subsequent Acts; to validate certain matters; and for purposes connected therewith.

[Mr. SHEAHAN;—21 *September*, 1949.]

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*Western Lands (Amendment).*

**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 New South Wales in Parliament assembled, and by the authority of the same, as follows:—

**1.** (1) This Act may be cited as the "Western Lands (Amendment) Act, 1949."

Short title,  
construction  
and com-  
mencement.

(2) This Act shall be read and construed with the Western Lands Act of 1901, as amended by subsequent Acts, which Act, as so amended, is in this Act referred to as the Principal Act.

(3) This Act shall, except where otherwise expressly provided, commence upon a day to be appointed by the Governor and notified by proclamation published in the Gazette.

**2.** The Principal Act is amended by inserting next after section 17cc the following new section:—

Amendment  
of Act No.  
70, 1901.

17ccc. (1) The Minister may, subject to the provisions of subsection two of this section and upon the recommendation of the Commissioner, by notification published in the Gazette, which notification shall be in or to the effect of the form of Schedule I to this Act, withdraw from—

New sec.  
17ccc.  
Withdrawals  
of areas  
from leases.

(a) any lease extended under section 17c of this Act, other than a lease extended to a lease in perpetuity, and

(b) any lease granted under the provisions of section 28A of this Act, and any lease to which paragraph (a) of this subsection applies, where such leases are held in the same interest,

all land in excess of an area which constitutes two home maintenance areas.

(2) Where the Minister, upon the recommendation of the Commissioner, is satisfied that any lease or part thereof is mainly used for the purpose of breeding sheep or cattle for sale as stud sheep or stud cattle, respectively, and has been so used continuously

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*Western Lands (Amendment).*

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continuously for a period of at least seven years immediately prior to the commencement of the Western Lands (Amendment) Act, 1949—

- 5 (a) no withdrawal shall be made which would have the effect of reducing the total area held under Western Lands lease by the lessee below—
- 10 (i) an area which constitutes three home maintenance areas, where in the opinion of the Minister, after report by the Commissioner, the area which is best adapted and necessary for the depasturing of the average number of stud sheep or stud cattle owned by the lessee or his predecessors in title and depastured annually on the lease during such period comprises an area equal to or less than one home maintenance area; or
- 15 (ii) an area which constitutes four home maintenance areas, where in the opinion of the Minister, after report by the Commissioner, the area which is best adapted and necessary for the depasturing of the average number of stud sheep or stud cattle, owned by the lessee or his predecessors in title and depastured annually on the lease during such period comprises more than one home maintenance area; and
- 20 (b) no withdrawal shall be made, except with the consent of the lessee, of any part of the lease, which in the opinion of the Minister, after report by the Commissioner, is best adapted and necessary for the depasturing of the average number of stud sheep or stud cattle owned by the lessee or his predecessors in title and depastured annually on the lease during such period, and which, in
- 25
- 30
- 35
- 40 any,

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*Western Lands (Amendment).*

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any case to which subparagraph (ii) of paragraph (a) of this subsection applies, does not exceed four home maintenance areas.

5 (3) Where two or more leases, whether adjoining or not, are held in the same interest, or were so held at any time between the eighth day of August, one thousand nine hundred and forty-nine, and the date of commencement of the Western Lands  
10 (Amendment) Act, 1949, the total area of such leases shall be regarded as the area from which withdrawal may be made under this section and such withdrawal may be made from any one or more of such leases.

15 (4) The boundaries of the area proposed to be withdrawn from any lease and the carrying capacity of the residue of such lease shall be determined by the Minister, after report by the Commissioner, and notice of such determination in or to the effect of the prescribed form shall be sent to the  
20 lessee, by registered post.

It shall be sufficient for all purposes whatsoever if such boundaries are defined with reasonable certainty by means of any form of general description.

25 (5) (a) If the lessee is dissatisfied with the carrying capacity of the residue of the lease as so determined he may, within twenty-eight days after notice as prescribed has been sent to him, lodge with the Commissioner a notice of appeal in the prescribed  
30 form.

(b) A notice of appeal shall be accompanied by a fee of one hundred pounds as security for the costs of the appeal.

35 (c) Such appeal shall be heard by a tribunal consisting of three members appointed by the Minister.

Of the members so appointed—

40 (i) one shall be the Commissioner or an Assistant Commissioner, who shall be the chairman;

(ii)

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*Western Lands (Amendment).*

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5 (ii) one shall be selected from three persons experienced in Western Division grazing matters and nominated by The Returned Sailors, Soldiers and Airmen's Imperial League of Australia (New South Wales Branch);

10 (iii) one shall be selected from three persons experienced in Western Division grazing matters and nominated by The Graziers' Association of New South Wales.

(d) The members of the tribunal other than the chairman shall be paid such fees for each sitting as may be prescribed.

15 (e) The tribunal shall have power to determine the carrying capacity of the residue of the lease in average seasons and conditions and when reasonably improved.

20 (f) The tribunal shall sit in open court, and may and is hereby empowered to exercise all of the powers conferred upon local land boards constituted under the Crown Lands Acts in so far as such powers relate to the summoning, attendance and examination of witnesses, the amendment of notices, declarations and other documents, and the permitting of notices, declarations and other documents to be supplied and  
25 to the conduct of proceedings generally before such boards.

30 The tribunal may make such order as to costs of, or incidental to, the proceedings before it (not exceeding one hundred pounds in any case) as it may think fit.

(g) The chairman and one member shall constitute a quorum, and the chairman shall preside at all meetings of the tribunal.

35 Matters arising before the tribunal shall be decided by a majority of votes. If there be an equality of votes, the chairman shall have a second or casting vote.

The

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*Western Lands (Amendment).*

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5 The determination of the carrying capacity of the residue of any lease by the tribunal shall be final, and if necessary, the boundaries of the area proposed to be withdrawn from such lease shall be redetermined by the Minister after report by the Commissioner in accordance with the tribunal's determination of carrying capacity.

(6) Upon withdrawal of land from any lease under this section—

10 (a) any instrument of lease relating to any lease extended under section 17c of this Act (other than a lease extended to a lease in perpetuity) and any lease granted under the provisions of section 28A of this Act held by the lessee shall be surrendered not later than two months after notice of publication of such withdrawal in the Gazette has been sent by the Commissioner to the lessee.

15 If any such instrument of lease is not surrendered as aforesaid the lease to which such instrument relates shall be liable to be forfeited;

20 (b) the residue of the lease or leases shall—

(i) except where the land has been mainly used for the purpose of breeding sheep or cattle for sale as stud sheep or stud cattle, respectively, be subdivided into two portions each embracing a home maintenance area, and separate leases in perpetuity shall be issued for each such portion;

25 (ii) where the land has been mainly used for the purpose of breeding sheep or cattle for sale as stud sheep or stud cattle, respectively, be subdivided into three or four portions, as the case may require, each embracing a home maintenance area, and separate leases shall be issued for each such portion. Two of such leases selected

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*Western Lands (Amendment).*

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- 5 by the lessee shall be leases in perpetuity and the remaining lease or leases shall be for a term expiring on the date on which the surrendered or withdrawn lease having the longest unexpired term would but for the provisions of this section have expired;
- 10 (c) any person having an interest in the lease or leases immediately before any withdrawal under this section shall be deemed to have an equivalent interest, whether by way of mortgage or otherwise, in the new leases;
- 15 (d) the rentals of such new leases shall be determined by the local land board. The provisions of subsections two and three of section 19B of this Act shall apply, mutatis mutandis, to and in respect of any such rentals;
- 20 (e) every such new lease shall be subject to the general provisions of this Act and to such conditions as the Minister after report by the Commissioner, may consider necessary;
- 25 (f) the new leases shall commence on the day following the date of withdrawal under this section;
- (g) the lessee shall not be liable for the cost of any necessary survey of the new leases;
- 30 (h) the lessee may when surrendering the instrument of lease in accordance with paragraph (a) of this subsection furnish a sketch of the land comprised within the residue of the lease, or leases, showing a form of subdivision into two, three or four home maintenance areas, as the case may
- 35 require, which he considers desirable.

40 Where the lessee has ceased to use for the purpose of breeding sheep or cattle for sale as stud sheep or stud cattle, respectively, the land comprised in the leases issued in pursuance of subparagraph (ii) of paragraph

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*Western Lands (Amendment).*

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5 paragraph (b) of this subsection, the Minister may at any time, upon the recommendation of the Commissioner, withdraw the land comprised in such of those leases as have been so issued otherwise than in perpetuity.

(7) No compensation shall be paid in respect of any withdrawal under this section.

10 (8) Upon withdrawal under this section the lessee shall have tenant right in the improvements upon the land withdrawn effected or paid for by him or his predecessors in title.

15 (9) Any land withdrawn under this section shall, until otherwise disposed of, be held by the lessee under preferential occupation license at a fee equivalent to the rate at which rent was payable immediately before the date of withdrawal for the lease from which the land was withdrawn.

20 (10) Any lease granted under the provisions of subsection six of this section shall, until the termination of the preferential occupation license under which any land withdrawn under this section is held pursuant to subsection nine of this section, be liable to be forfeited and any such preferential occupation license may be terminated—

25 (a) if at any time after the commencement of such preferential occupation license stock are depastured on the area embraced thereby in numbers which, in the opinion of the local land board, substantially exceed the fair carrying capacity of such area; or

30 (b) if the improvements which exist on such area at the date of such commencement are not reasonably protected or are not kept in reasonable maintenance and repair: Provided that the lessee shall not be compelled to make good any damage caused by fire, flood, storm, or other inevitable accident which, in the opinion of the local land board, is not due to any act, default, or neglect of the lessee.

35  
40 (11)



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*Western Lands (Amendment).*

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(11) Nothing contained in this Act, or any Act, or in any instrument of lease, and no transfer, conveyance, assignment, mortgage, devolution, subdivision, or any other dealing or disposition whatsoever made after the eighth day of August, one thousand nine hundred and forty-nine, shall defeat the right of the Minister to withdraw land under this section.

(12) The power conferred upon the Minister to withdraw land in accordance with the provisions of subsection one of this section shall cease and determine upon the thirty-first day of December, one thousand nine hundred and fifty-three.

(13) For the purpose of this section a home maintenance area shall be deemed to be an area which, when reasonably improved will, in the opinion of the Minister, after report by the Commissioner, carry in average seasons and conditions, not less than three thousand sheep and not more than five thousand sheep, according to the situation of the land.

For the purpose of this subsection one head of large stock shall be regarded as the equivalent of six sheep.

**3.** (1) The Principal Act is further amended—

(a) (i) by omitting from subsection eleven of section 18E the words "For the period commencing on the date when rent is next payable as aforesaid, the rent shall be redetermined by the local land board" and by inserting in lieu thereof the words "For the period of ten years commencing on the date when rent is next payable as aforesaid, and for each separate period of ten years thereafter the rent payable in respect of a lease extended as aforesaid shall be the rent as redetermined by the local land board";

(ii)

Further  
amendment  
of Act No.  
70, 1949.  
Sec. 18E.  
(Leases in  
perpetuity.)

*Western Lands (Amendment).*

- 5 (ii) by inserting in the same subsection after  
the words "local land board" where  
secondly occurring the words "and the rent  
so determined shall be payable for a period  
of ten years commencing from the date of  
extension of the lease. For each separate  
period of ten years thereafter the rent  
payable in respect of a lease extended to a  
lease in perpetuity after the thirtieth day  
10 of June, one thousand nine hundred and  
forty-three, shall be the rent as redetermined  
by the local land board";
- 15 (iii) by inserting in the same subsection after  
the word "conditions" the words "Provided  
that the rate of rent of any lease of land  
held for grazing shall not in any case  
exceed the rate of one shilling and sixpence  
per sheep, nor shall it be less than sixpence  
per sheep on the fair average carrying  
20 capacity of the land when reasonably  
improved as estimated on a sheep basis by  
the local land board";
- 25 (iv) by omitting from the same subsection the  
words "The provisions of section nineteen  
of this Act shall not apply to a redeter-  
mination of the rent under this section, nor  
shall such provisions apply to a lease  
extended to a lease in perpetuity after a  
redetermination has been made under this  
30 subsection."
- (b) by omitting section nineteen; Sec. 19.  
(Rents.)
- (c) (i) by omitting paragraph (a) of subsection Sec. 19B.  
(Rents.)  
two of section 19B and by inserting in lieu  
thereof the following paragraphs:—
- 35 (a) The rent of any lease in perpetuity  
applied for after the commence-  
ment of the Western Lands  
(Amendment) Act, 1934, prior to  
the thirtieth day of June, one  
thousand

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*Western Lands (Amendment).*

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thousand nine hundred and forty-three, in respect of land set apart for grazing shall for the period ending on the day immediately prior to the date when rent is next payable after the thirty-first day of December, one thousand nine hundred and fifty-three, be the rent as determined by the local land board.

10

For each separate period of ten years thereafter the rent payable in respect of a lease in perpetuity applied for as aforesaid shall be the rent as redetermined by the local land board.

15

This paragraph shall be deemed to have commenced upon the twenty-fourth day of August, one thousand nine hundred and thirty-four.

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(a1) The rent of any lease in perpetuity applied for after the thirtieth day of June, one thousand nine hundred and forty-three, in respect of land set apart for grazing shall be as determined by the local land board and the rent so determined shall be payable for a period of ten years commencing from the date of granting of the lease.

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For each separate period of ten years thereafter the rent payable in respect of a lease in perpetuity applied for after the thirtieth day of June, one thousand nine hundred and forty-three, shall be the rent as redetermined by the local land board.

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**This**

*Western Lands (Amendment).*

This paragraph shall be deemed to have commenced upon the first day of July, one thousand nine hundred and forty-three.

- 5 (ii) by omitting subsection three of the same section and by inserting in lieu thereof the following subsection:—

10 (3) In determining or redetermining the rent of any lease of land held for grazing, the board shall have regard to the productive capacity of the land under fair average seasons, prices and conditions: Provided that the rate of rent shall not in  
15 any case exceed the rate of one shilling and sixpence per sheep, nor shall it be less than sixpence per sheep on the fair average carrying capacity of the land when reasonably improved as estimated on a sheep basis by the local land board.

- 20 (d) by inserting in subsection one of section 19c after the word "board" the words "for each separate period of ten years".

Sec. 19c.  
(Rent of leases of land set apart for agriculture, etc.).

- 25 (2) (a) The amendment made by subparagraph (i) of paragraph (a) of subsection one of this section shall be deemed to have commenced upon the first day of January, one thousand nine hundred and forty-nine.

- (b) The amendment made by subparagraph (ii) of paragraph (a) of subsection one of this section shall be deemed to have commenced upon the first day of  
30 July, one thousand nine hundred and forty-three.

4. The Principal Act is further amended—

- (a) by omitting subsection ten of section 18E;

Further amendment of Act No. 70, 1901.  
Sec. 18E.  
(Leases in Perpetuity).

- 35 (b) (i) by omitting from subsection one of section 18G the words "of any portion thereof" and by inserting in lieu thereof the words and symbols

Sec. 18G.  
(Transfers.)

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*Western Lands (Amendment).*

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- 5 symbols "any portion thereof, and no transfer, conveyance, assignment of or other dealing (not being a mortgage) with a lease extended to a lease in perpetuity (whether before or after the commencement of the Western Lands (Amendment) Act, 1949, or any portion thereof, or a lease issued under the provisions of section 17ccc of this Act, or any portion thereof";
- 10 (ii) by inserting in paragraph (a) of subsection (1A) of the same section after the words "section twenty-three" the words "or thirty-nine, or issued pursuant to section 17ccc of this Act, or a lease extended to a
- 15 lease in perpetuity pursuant to section 18E of this Act";
- (iii) by omitting from subsection three of the same section the words "the lease" where
- 20 firstly occurring and by inserting in lieu thereof the words "a lease applied for after the commencement of the Western Lands (Amendment) Act, 1934";
- (iv) by inserting next after subsection four of the same section the following new sub-
- 25 section:—
- (4A) Any lease applied for after the commencement of the Western Lands (Amendment) Act, 1934, or extended to a
- 30 lease in perpetuity, whether before or after the commencement of the Western Lands (Amendment) Act, 1949, or issued in pursuance of section 17ccc of this Act shall be liable to forfeiture if the holder sublets the lease or any part thereof, or grants any
- 35 grazing rights over the lease or any part thereof, or agists stock on the lease or any part thereof, or grazes stock on the lease or any part thereof under any stock partnership without having first obtained the written consent of the Minister, and if any
- 40 stock

*Western Lands (Amendment).*

stock not owned by the holder are found depasturing on the lease or any part thereof without the said consent, it shall be prima facie evidence of a breach of the provisions of this subsection.

5 **5.** The Principal Act is further amended—

Further amendment of Act No. 70, 1901.

- (a) by inserting at the end of subsection one of section 28B the words “No holder of a lease as aforesaid shall after the commencement of the Western Lands (Amendment) Act, 1949, be entitled to make application for the conversion of such lease in accordance with the provisions of this section.”

Sec. 28B. (Conversion of lease.)

- 15 (b) by inserting next after section 28B the following new section:—

New sec. 28BB.

20 28BB. (1) The holder of a lease for the purpose of agriculture or mixed farming or residence or for a similar purpose or purposes which is not liable to forfeiture may apply to convert such lease (as to the whole or any part of the land comprised therein) into a conditional purchase.

Application for conversion of leases after commencement of Western Lands (Amendment) Act, 1949.

25 (2) (a) A conversion shall not be allowed of land within any proclaimed goldfield or mineral field or within any reserve for mining or mining purposes within the meaning of section one hundred and six of the Mining Act, 1906-1946, except with the approval of the Secretary for Mines.

30 (b) Where in the opinion of the local land board the land comprised in such lease, together with all other lands held by the applicant for conversion (other than lands held under annual lease, preferential occupation license, occupation license, permissive occupancy or Western Lands lease then having not more than five years to run) would—when reasonably improved

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*Western Lands (Amendment).*

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5 improved and used for the purpose for which  
they are reasonably fitted—substantially exceed  
a home maintenance area, conversion may be  
approved as to so much of the land comprised in  
the lease as would, in the opinion of the local  
land board, together with all such other lands  
held as aforesaid, not substantially exceed, when  
improved and used as aforesaid, a home  
10 maintenance area. Lands held by the spouse of  
an applicant under this section shall for the  
purposes of this section be deemed to be lands  
held by such applicant.

15 (c) A conversion shall not be  
allowed of land reserved from sale unless and  
until such reservation has been revoked.

20 (3) The application shall be made as  
prescribed and shall be accompanied by a  
provisional deposit as prescribed to be applied  
towards the cost of dealing therewith and shall  
be referred to the local land board for inquiry  
and report.

25 (4) (a) The local land board shall  
report to the Minister as to whether there is  
any objection in the public interest or otherwise  
to the granting of the application and generally  
as to the merits thereof. If the local land board  
deems it expedient to recommend the granting  
of the application as to the whole or part of the  
land applied for it shall also report as to what  
30 special conditions (if any) should be attached  
to the holding after conversion and shall proceed  
to determine the capital value of the land  
comprised in such holding. The capital value  
as so determined shall be the capital value of  
35 the land at the date of the application for  
conversion.

40 (b) After receipt of such report the  
Minister may grant the application as to the  
whole or part of the land if the local land board  
so recommends, or he may at his discretion  
refuse

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*Western Lands (Amendment).*

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5 refuse it. Any areas required for roadways or other public purposes may be excluded or the boundaries may be otherwise modified at the Minister's discretion. Where the Minister has granted the application, the conversion shall be deemed to have taken effect as from the date of application for conversion.

10 (5) (a) On the granting of an application for conversion as to the whole of the land comprised in the lease, such lease shall be deemed to be surrendered to the Crown.

15 (b) On the granting of an application for conversion as to part only of the land comprised in the lease, such part, together with such other part as may be required for roadways or other public purposes, shall be deemed to be surrendered to the Crown. Where part of the land within the lease is so  
20 surrendered the rent for the remainder of the lease shall, as from the date of the application for conversion be that amount which bears the same proportion to the rent for the whole lease as the relative value of the remainder of the  
25 lease bears to the relative value of the whole lease as at such date.

30 (c) The cost of any necessary survey or subdivision and any balance of the prescribed deposit shall be paid by the applicant within one month after he has been called upon to do so; and upon default the application may be declared to have lapsed, and any moneys paid therewith shall thereupon become forfeited.

(6) The conditional purchase shall be subject to—

35 (a) any special conditions which the Minister on the recommendation of the local land board may impose;

(b)



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*Western Lands (Amendment).*

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5 (b) a condition of residence for a term of five years, which shall commence within three months after the date of the Minister's approval of the conversion and shall be reduced by the period during which continuous residence has been performed by the applicant or his predecessors in title, upon the lease:

10 Provided always that—

15 (i) where the conditional purchase has been transferred bona fide by way of mortgage, the condition of residence may be performed by the owner subject to such mortgage;

20 (ii) where the beneficial owner of a conditional purchase dies or becomes of unsound mind, the performance of the condition of residence shall be waived until the conditional purchase has been transferred or conveyed and no longer; and

25 (iii) where the owner also holds other land under any tenure to which a condition of residence attaches, he may with the consent of the Commissioner and subject to such conditions as the Commissioner may impose, perform the condition of residence on one of such  
30  
35 holdings.

(7) The purchase money of any conditional purchase shall be paid by annual instalments of five per centum thereof, one of

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*Western Lands (Amendment).*

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5 such instalments being paid in each and every  
year on the recurring date of the application  
for conversion or within three months thereafter  
until the balance of purchase money, together  
with interest thereon at the rate of two and one-  
half per centum per annum shall have been paid:  
Provided that the holder of the conditional  
purchase may pay off the whole or any number  
10 of such instalments at any time after the issue  
of the certificate of conformity.

15 (8) Sections eighteen, forty-eight, fifty-  
three, fifty-four, fifty-five, fifty-six, one hundred  
and seventy-five, 175A, 176A, one hundred and  
seventy-eight, one hundred and eighty-two, 194B,  
one hundred and ninety-five, one hundred and  
ninety-eight, one hundred and ninety-nine, two  
hundred and one, two hundred and five, two  
hundred and eight, two hundred and nine, two  
20 hundred and thirty-one, two hundred and thirty-  
four, two hundred and thirty-five, 235A, two  
hundred and forty, two hundred and fifty-seven,  
two hundred and fifty-eight, two hundred and  
sixty-one, two hundred and seventy, two hundred  
and seventy-two and two hundred and seventy-  
25 eight, together with subsection two of section  
two hundred and fifty-nine of the Crown Lands  
Consolidation Act, 1913, as amended by subse-  
quent Acts, shall mutatis mutandis apply  
to conditional purchases into which leases have  
30 been converted under this section.

35 (9) A reference in any of the provisions  
of the Crown Lands Consolidation Act, 1913, as  
so amended, enumerated in subsection eight of  
this section to the Under Secretary for Lands,  
the Department of Lands or the Lands Depart-  
ment, shall be read and construed as a reference  
to the Commissioner appointed under this Act  
and the Western Lands Office respectively.

*Western Lands (Amendment).*

**6.** The Principal Act is further amended by inserting at the end of section 18D the following new paragraphs:—

Further amendment of Act No. 70, 1901.

5 (iv) A lessee shall, if the Minister so directs, prevent the use by stock of any part of the land for such periods as the Minister considers necessary to permit of natural reseedling and regeneration of vegetation; and, for this purpose, the lessee shall erect within the time appointed by the Minister such fencing as the Minister may consider necessary.

Sec. 18D. (Provisions governing leases.)

15 (v) A lessee shall not overstock or permit or allow to be overstocked the said land, and the decision of the Commissioner as to what constitutes overstocking shall be final, and the lessee shall comply with any directions of the Commissioner to prevent or discontinue overstocking.

20 (vi) A lessee shall use iron or steel posts (with wooden strainers) for the erection or repair of all fencing on the land, except that, in special cases, the Commissioner may permit the use of other posts.

**7.** The Principal Act is further amended—

Further amendment of Act No. 70, 1901.

25 (a) by inserting in section three next after the definition of "Crown Lands" the following new definition:—

Sec. 3. (Interpretation.)

30 "Home maintenance area" means an area which when used for the purpose for which it is reasonably fitted, would be sufficient for the maintenance in average seasons and circumstances of an average family.

35 (b) (i) by omitting from paragraph (b) of subsection three of section nine the words "except as provided in paragraph (c) of this subsection";

Sec. 9. (Local Land Boards.)

(ii) by omitting paragraph (c) of the same subsection;

(c)

*Western Lands (Amendment).*

- (c) by omitting subsections seven, eight and nine of section 18E; Sec. 18E.  
(Subsisting leases extension.)
- 5 (d) (i) by omitting from paragraphs (a), (c), (d) and (e) of subsection (1A) of section 18G the words "fair market value of the land" wherever occurring and by inserting in lieu thereof the words "fair market value of the lease"; Sec. 18G.  
(Transfers.)
- 10 (ii) by omitting paragraph (f) of the same subsection;
- (e) by inserting at the end of subsection two of section 18H the words— Sec. 18H.  
(Mortgages and devolutions.)
- 15 "The provisions of this subsection shall extend to any lease as aforesaid transferred by way of discharge of mortgage to the legal personal representative of a deceased person";
- (f) by inserting in section 18J after the word "condition" the word "purpose"; Sec. 18J.  
(Conditions attaching to leases: alteration by consent.)
- 20 (g) by inserting next after section 18J the following new section:— New section 18JJ.
- 25 18JJ. (1) Any person who being a male is of the age of sixteen years or upwards or being a female is of the age of eighteen years or upwards shall, if otherwise not disqualified under this Act, be competent to apply for or otherwise acquire from the Crown or to acquire from a private person or to hold any lease or conditional purchase under this Act, and any person who being a male is under the age of sixteen years or being a female is under the age of eighteen years shall not be competent to apply for or otherwise acquire from the Crown or to acquire from a private person or to hold any such lease or conditional purchase: Provided always that nothing in this section shall
- 30
- 35 Com-  
petency  
of minors  
to acquire  
or hold.  
be

*Western Lands (Amendment).*

be taken to prevent the devolution or holding of a lease devolving under the will or intestacy of a deceased holder.

(2) Any person above the age of sixteen years being the holder of any holding under this Act may be sued for any moneys due to the Crown as if he were of the full age of twenty-one years.

- 5
- 10 (h) by inserting in paragraph (b) of subsection four of section twenty-three after the word "notification" the words "or after the date of commencement of the lease, whichever is the later"; Section 23. (Minister's power to grant leases.)
- 15 (i) by omitting from section 28A the words "but no lands held under occupation license or annual lease shall be leased under this section for grazing purposes only unless with the consent of the occupation licensee or annual lessee"; Section 28A. (Special Leases.)
- 20 (j) by omitting from subsection two of section 33A the words "shall where such land is within the external boundaries of, or adjoins any lease, be deemed to be included in the lease as from a date to be appointed by the Minister; and the rent for the unexpired portion of the period of the lease then current shall be increased in proportion to the area so included in the lease" and by inserting in lieu thereof the words "may, at the discretion of the Minister be— Section 33A. (Surrender.)
- 25
- 30 (a) included in the lease as from a date to be appointed by the Minister; and the rent for the unexpired portion of the period of the lease then current shall be increased in proportion to the area so included in the lease;
- 35 (b) reserved from sale or from sale and lease for any public purpose; or
- (c) otherwise disposed of."
- (k)

*Western Lands (Amendment).*

- (k) by omitting from section 35B the words "approval of." Section 35B.  
(Termination of annual lease or license.)
- (l) by inserting next after Schedule H the following new Schedule:— New Sch. I.

5

**SCHEDULE I.**

Sec. 17ccc.

**WITHDRAWAL OF LAND FROM LEASE.**

By virtue of the provisions of section 17ccc of the Western Lands Act of 1901, as amended by subsequent Acts, I,

10 Minister for Lands, do hereby withdraw the land described hereunder.

Minister for Lands.

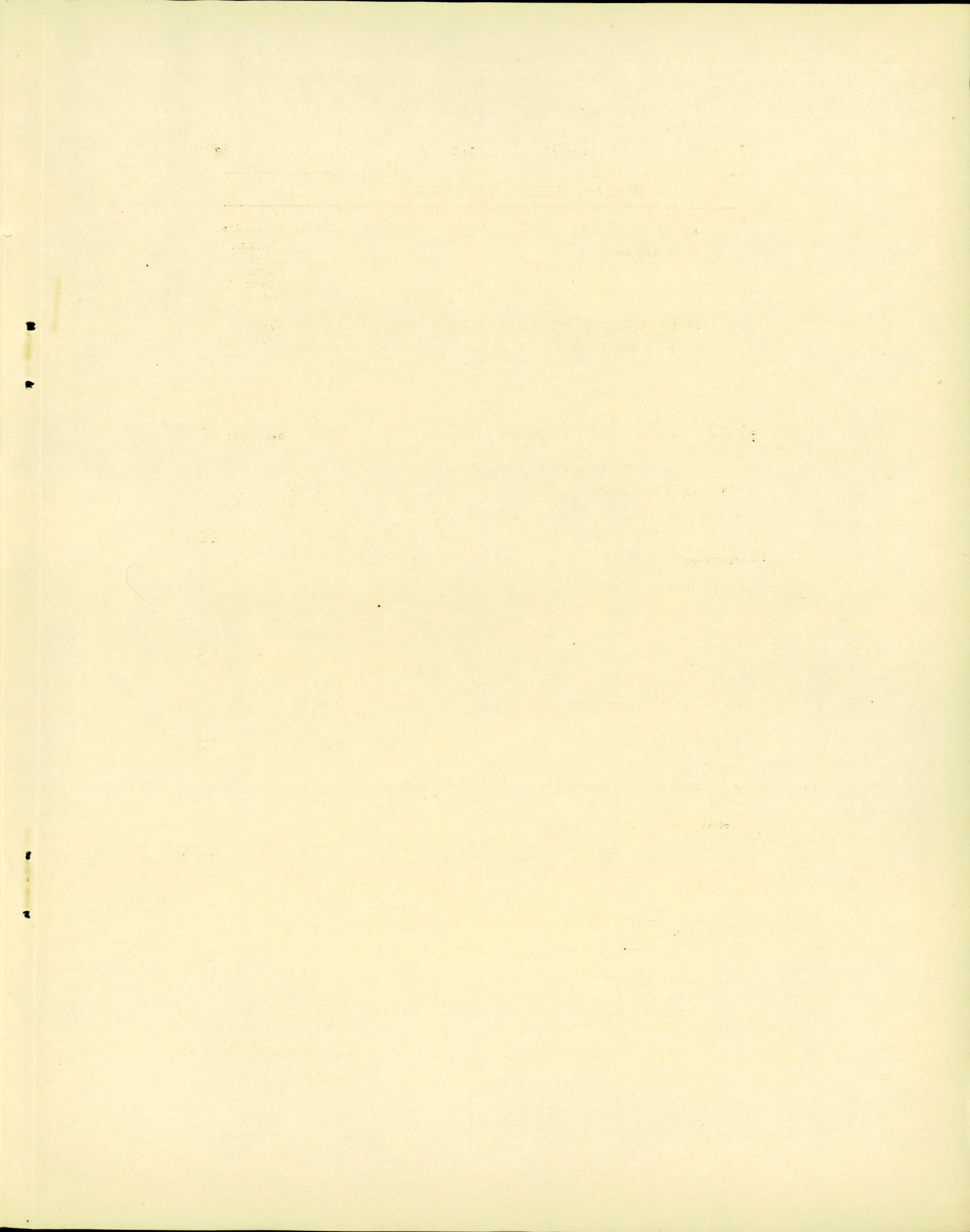
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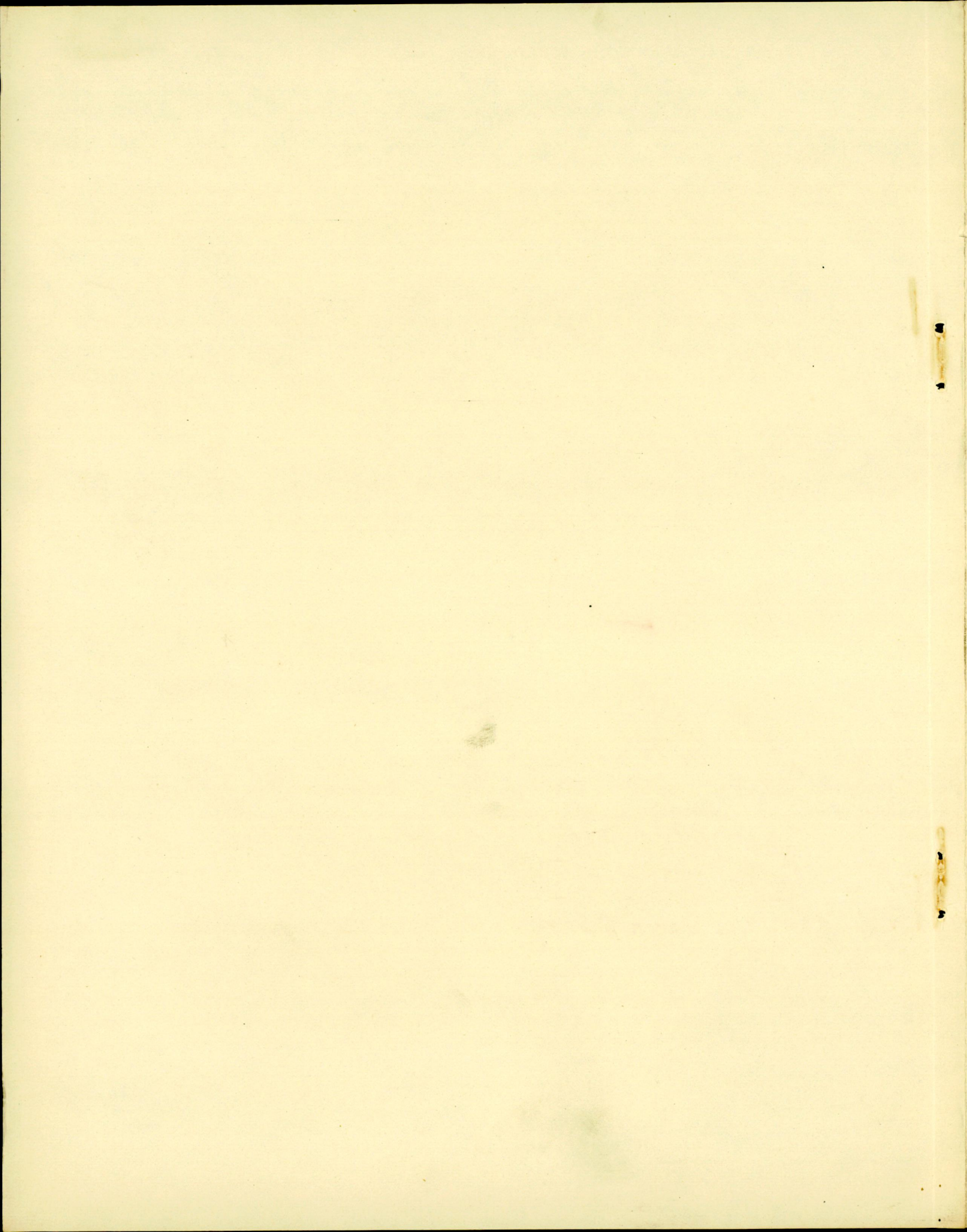
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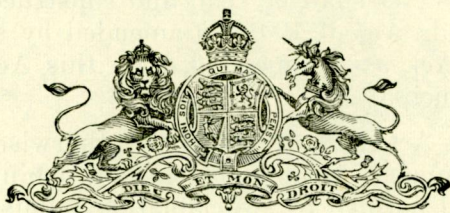
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New South Wales.



ANNO TERTIO DECIMO

GEORGI VI REGIS.

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Act No. 45, 1949.

An Act to make further provision for the withdrawal of lands held under lease, the determination of rentals of Western Lands leases, and the conversion of Western Lands leases into conditional purchases; to impose certain restrictions on dealings with and transactions affecting leases; to impose certain conditions on leases in the interests of soil preservation; for these and other purposes to amend the Western Lands Act of 1901, as amended by subsequent Acts; to validate certain matters; and for purposes connected therewith. [Assented to, 18th November, 1949.]

*Western Lands (Amendment).*

**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 New South Wales in Parliament assembled, and by the authority of the same, as follows :—

Short title,  
construction  
and com-  
mencement.

**1.** (1) This Act may be cited as the "Western Lands (Amendment) Act, 1949."

(2) This Act shall be read and construed with the Western Lands Act of 1901, as amended by subsequent Acts, which Act, as so amended, is in this Act referred to as the Principal Act.

(3) This Act shall, except where otherwise expressly provided, commence upon a day to be appointed by the Governor and notified by proclamation published in the Gazette.

Amendment  
of Act No.  
70, 1901.

**2.** The Principal Act is amended by inserting next after section 17cc the following new section:—

New sec.  
17ccc.

Withdrawals  
of areas  
from le. ses.

17ccc. (1) The Minister may, subject to the provisions of this section and upon the recommendation of the Commissioner, by notification published in the Gazette, which notification shall be in or to the effect of the form of Schedule I to this Act, withdraw from—

(a) any lease extended under section 17c of this Act, other than a lease extended to a lease in perpetuity, and

(b) any lease granted under the provisions of section 28A of this Act, and any lease to which paragraph (a) of this subsection applies, where such leases are held in the same interest,

all land in excess of an area which constitutes two home maintenance areas.

(2) Where the Minister, upon the recommendation of the Commissioner, is satisfied that any lease or part thereof is mainly used for the purpose of breeding sheep or cattle for sale as stud sheep or stud cattle, respectively, and has been so used continuously

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*Western Lands (Amendment).*

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continuously for a period of at least seven years immediately prior to the commencement of the Western Lands (Amendment) Act, 1949—

- (a) no withdrawal shall be made which would have the effect of reducing the total area held under Western Lands lease by the lessee below—
- (i) an area which constitutes three home maintenance areas, where in the opinion of the Minister, after report by the Commissioner, the area which is best adapted and necessary for the depasturing of the average number of stud sheep or stud cattle owned by the lessee or his predecessors in title and depastured annually on the lease during such period comprises an area equal to or less than one home maintenance area; or
  - (ii) an area which constitutes four home maintenance areas, where in the opinion of the Minister, after report by the Commissioner, the area which is best adapted and necessary for the depasturing of the average number of stud sheep or stud cattle, owned by the lessee or his predecessors in title and depastured annually on the lease during such period comprises more than one home maintenance area; and
- (b) no withdrawal shall be made, except with the consent of the lessee, of any part of the lease, which in the opinion of the Minister, after report by the Commissioner, is best adapted and necessary for the depasturing of the average number of stud sheep or stud cattle owned by the lessee or his predecessors in title and depastured annually on the lease during such period, and which, in  
**any**

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*Western Lands (Amendment).*

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any case to which subparagraph (ii) of paragraph (a) of this subsection applies, does not exceed four home maintenance areas.

(3) Where two or more leases, whether adjoining or not, are held in the same interest, or were so held at any time between the eighth day of August, one thousand nine hundred and forty-nine, and the date of commencement of the Western Lands (Amendment) Act, 1949, the total area of such leases shall be regarded as the area from which withdrawal may be made under this section and such withdrawal may be made from any one or more of such leases:

Provided that where such leases are worked as separate holdings and the Minister, after a report has been furnished to him by the Commissioner, is satisfied that the withdrawal of any such leases under this section upon which there are any improvements being homestead buildings would involve the lessee in substantial loss by virtue of the value of such improvements the withdrawal under this section shall subject to the provisions of subsection two of this section be restricted to all land in excess of two home maintenance areas on one of such holdings and all land in excess of one home maintenance area on each other of such holdings on which there are improvements in respect of which the Minister is satisfied as aforesaid that the lessee would suffer substantial loss.

(4) The boundaries of the area proposed to be withdrawn from any lease and the carrying capacity of the residue of such lease shall be determined by the Minister, after report by the Commissioner, and notice of such determination in or to the effect of the prescribed form shall be sent to the lessee, by registered post.

It shall be sufficient for all purposes whatsoever if such boundaries are defined with reasonable certainty by means of any form of general description.

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*Western Lands (Amendment).*

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(5) (a) If the lessee is dissatisfied with the carrying capacity of the residue of the lease as so determined he may, within twenty-eight days after notice as prescribed has been sent to him, lodge with the Commissioner a notice of appeal in the prescribed form.

(b) A notice of appeal shall be accompanied by a fee of one hundred pounds as security for the costs of the appeal.

(c) Such appeal shall be heard by a tribunal consisting of three members appointed by the Minister.

Of the members so appointed—

- (i) one shall be the Commissioner or an Assistant Commissioner, who shall be the chairman;
- (ii) one shall be selected from three persons experienced in Western Division grazing matters and nominated by The Returned Sailors, Soldiers and Airmen's Imperial League of Australia (New South Wales Branch);
- (iii) one shall be selected from three persons experienced in Western Division grazing matters and nominated by The Graziers' Association of New South Wales.

(d) The members of the tribunal other than the chairman shall be paid such fees for each sitting as may be prescribed.

(e) The tribunal shall have power to determine the carrying capacity of the residue of the lease in average seasons and conditions and when reasonably improved.

(f) The tribunal shall sit in open court, and may and is hereby empowered to exercise all of the powers conferred upon local land boards constituted under the Crown Lands Acts in so far as such powers relate to the summoning, attendance and examination of witnesses, the amendment of notices, declarations and other documents, and the permitting of notices, declarations

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*Western Lands (Amendment).*

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declarations and other documents to be supplied and to the conduct of proceedings generally before such boards.

The tribunal may make such order as to costs of, or incidental to, the proceedings before it (not exceeding one hundred pounds in any case) as it may think fit.

(g) The chairman and one member shall constitute a quorum, and the chairman shall preside at all meetings of the tribunal.

Matters arising before the tribunal shall be decided by a majority of votes. If there be an equality of votes, the chairman shall have a second or casting vote.

The determination of the carrying capacity of the residue of any lease by the tribunal shall be final, and if necessary, the boundaries of the area proposed to be withdrawn from such lease shall be redetermined by the Minister after report by the Commissioner in accordance with the tribunal's determination of carrying capacity.

(6) Upon withdrawal of land from any lease under this section—

(a) any instrument of lease relating to any lease extended under section 17c of this Act (other than a lease extended to a lease in perpetuity) and any lease granted under the provisions of section 28A of this Act held by the lessee shall be surrendered not later than two months after notice of publication of such withdrawal in the Gazette has been sent by the Commissioner to the lessee.

If any such instrument of lease is not surrendered as aforesaid the lease to which such instrument relates shall be liable to be forfeited;

(b) the residue of the lease or leases shall be subdivided into portions each embracing a home maintenance area. A separate lease shall

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*Western Lands (Amendment).*

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shall be issued for each home maintenance area to which a lessee is entitled. Where a lessee is entitled to two separate leases each such lease shall be a lease in perpetuity. Where a lessee is entitled to more than two separate leases two of such leases selected by the lessee shall be leases in perpetuity and the remaining lease or leases shall be for a term expiring on the date on which the surrendered or withdrawn lease having the longest unexpired term would but for the provisions of this section have expired;

- (c) any person having an interest in the lease or leases immediately before any withdrawal under this section shall be deemed to have an equivalent interest, whether by way of mortgage or otherwise, in the new leases;
- (d) the rentals of such new leases shall be determined by the local land board. The provisions of subsections two and three of section 19B of this Act shall apply, mutatis mutandis, to and in respect of any such rentals;
- (e) every such new lease shall be subject to the general provisions of this Act and to such conditions as the Minister after report by the Commissioner, may consider necessary;
- (f) the new leases shall commence on the day following the date of withdrawal under this section;
- (g) the lessee shall not be liable for the cost of any necessary survey of the new leases;
- (h) the lessee may when surrendering the instrument of lease in accordance with paragraph (a) of this subsection furnish a sketch of the land comprised within the residue of the lease, or leases, showing a form of subdivision into two, three or four home maintenance areas, as the case may require, which he considers desirable.

Where

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*Western Lands (Amendment).*

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Where the land comprised in the leases issued in pursuance of paragraph (b) of this subsection has been mainly used for the purpose of breeding sheep or cattle for sale as stud sheep or stud cattle, respectively, for a continuous period of at least seven years immediately prior to the commencement of the Western Lands (Amendment) Act, 1949, and the lessee ceases to use such land for such purpose, the Minister may at any time, upon the recommendation of the Commissioner, withdraw the land comprised in such of those leases as have been so issued otherwise than in perpetuity.

(7) No compensation shall be paid in respect of any withdrawal under this section.

(8) Upon withdrawal under this section the lessee shall have tenant right in the improvements upon the land withdrawn effected or paid for by him or his predecessors in title.

(9) Any land withdrawn under this section shall, until otherwise disposed of, be held by the lessee under preferential occupation license at a fee equivalent to the rate at which rent was payable immediately before the date of withdrawal for the lease from which the land was withdrawn.

(10) Any lease granted under the provisions of subsection six of this section shall, until the termination of the preferential occupation license under which any land withdrawn under this section is held pursuant to subsection nine of this section, be liable to be forfeited and any such preferential occupation license may be terminated—

- (a) if at any time after the commencement of such preferential occupation license stock are depastured on the area embraced thereby in numbers which, in the opinion of the local land board, substantially exceed the fair carrying capacity of such area; or
- (b) if the improvements which exist on such area at the date of such commencement are not reasonably protected or are not kept in reasonable



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*Western Lands (Amendment).*


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reasonable maintenance and repair: Provided that the lessee shall not be compelled to make good any damage caused by fire, flood, storm, or other inevitable accident which, in the opinion of the local land board, is not due to any act, default, or neglect of the lessee.

(11) Nothing contained in this Act, or any Act, or in any instrument of lease, and no transfer, conveyance, assignment, mortgage, devolution, subdivision, or any other dealing or disposition whatsoever made after the eighth day of August, one thousand nine hundred and forty-nine, shall defeat the right of the Minister to withdraw land under this section.

(12) The power conferred upon the Minister to withdraw land in accordance with the provisions of subsection one of this section shall cease and determine upon the thirty-first day of December, one thousand nine hundred and fifty-three.

(13) For the purpose of this section a home maintenance area shall be deemed to be an area which, when reasonably improved will, in the opinion of the Minister, after report by the Commissioner, carry in average seasons and conditions, not less than three thousand sheep and not more than five thousand sheep, according to the situation of the land.

For the purpose of this subsection one head of large stock shall be regarded as the equivalent of six sheep.

**3. (1) The Principal Act is further amended—**

- (a) (i) by omitting from subsection eleven of section 18E the words "For the period commencing on the date when rent is next payable as aforesaid, the rent shall be redetermined by the local land board" and by inserting in lieu thereof the words "For the period of ten years commencing on the date when rent is next payable as aforesaid, and

Further amendment of Act No. 70, 1901. Sec. 18E. (Leases in perpetuity.)

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*Western Lands (Amendment).*


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and for each separate period of ten years thereafter the rent payable in respect of a lease extended as aforesaid shall be the rent as redetermined by the local land board”;

- (ii) by inserting in the same subsection after the words “local land board” where secondly occurring the words “and the rent so determined shall be payable for a period of ten years commencing from the date of extension of the lease. For each separate period of ten years thereafter the rent payable in respect of a lease extended to a lease in perpetuity after the thirtieth day of June, one thousand nine hundred and forty-three, shall be the rent as redetermined by the local land board”;
- (iii) by inserting in the same subsection after the word “conditions” the words “Provided that the rate of rent of any lease of land held for grazing shall not in any case exceed the rate of one shilling and sixpence per sheep, nor shall it be less than sixpence per sheep on the fair average carrying capacity of the land when reasonably improved as estimated on a sheep basis by the local land board”;
- (iv) by omitting from the same subsection the words “The provisions of section nineteen of this Act shall not apply to a redetermination of the rent under this section, nor shall such provisions apply to a lease extended to a lease in perpetuity after a redetermination has been made under this subsection.”

**Sec. 19.**  
(Rents.)

- (b) by omitting section nineteen;

**Sec. 19B.**  
(Rents.)

- (c) (i) by omitting paragraph (a) of subsection two of section 19B and by inserting in lieu thereof the following paragraphs:—

- (a) The rent of any lease in perpetuity applied for after the commencement of the Western Lands (Amendment)

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*Western Lands (Amendment).*

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(Amendment) Act, 1934, prior to the thirtieth day of June, one thousand nine hundred and forty-three, in respect of land set apart for grazing shall for the period ending on the day immediately prior to the date when rent is next payable after the thirty-first day of December, one thousand nine hundred and fifty-three, be the rent as determined by the local land board.

For each separate period of ten years thereafter the rent payable in respect of a lease in perpetuity applied for as aforesaid shall be the rent as redetermined by the local land board.

This paragraph shall be deemed to have commenced upon the twenty-fourth day of August, one thousand nine hundred and thirty-four.

- (a1) The rent of any lease in perpetuity applied for after the thirtieth day of June, one thousand nine hundred and forty-three, in respect of land set apart for grazing shall be as determined by the local land board and the rent so determined shall be payable for a period of ten years commencing from the date of granting of the lease.

For each separate period of ten years thereafter the rent payable in respect of a lease in perpetuity applied for after the thirtieth day of June, one thousand nine hundred and forty-three, shall be the rent as redetermined by the local land board.

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**This**

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*Western Lands (Amendment).*

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This paragraph shall be deemed to have commenced upon the first day of July, one thousand nine hundred and forty-three.

- (ii) by omitting subsection three of the same section and by inserting in lieu thereof the following subsection:—

(3) In determining or redetermining the rent of any lease of land held for grazing, the board shall have regard to the productive capacity of the land under fair average seasons, prices and conditions: Provided that the rate of rent shall not in any case exceed the rate of one shilling and sixpence per sheep, nor shall it be less than sixpence per sheep on the fair average carrying capacity of the land when reasonably improved as estimated on a sheep basis by the local land board.

- (d) by inserting in subsection one of section 19c after the word "board" the words "for each separate period of ten years".

Sec. 19c.  
(Rent of leases of land set apart for agriculture, etc.).

(2) (a) The amendment made by subparagraph (i) of paragraph (a) of subsection one of this section shall be deemed to have commenced upon the first day of January, one thousand nine hundred and forty-nine.

(b) The amendment made by subparagraph (ii) of paragraph (a) of subsection one of this section shall be deemed to have commenced upon the first day of July, one thousand nine hundred and forty-three.

**4. The Principal Act is further amended—**

(a) by omitting subsection ten of section 18E;

(b) (i) by omitting from subsection one of section 18G the words "of any portion thereof" and by inserting in lieu thereof the words and symbols

Further amendment of Act No. 70, 1901.  
Sec. 18E.  
(Leases in perpetuity).  
Sec. 18G.  
(Transfers.)

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*Western Lands (Amendment).*

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symbols “any portion thereof, and no transfer, conveyance, assignment of or other dealing (not being a mortgage) with a lease extended to a lease in perpetuity (whether before or after the commencement of the Western Lands (Amendment) Act, 1949), or any portion thereof, or a lease issued under the provisions of section 17ccc of this Act, or any portion thereof”;

- (ii) by inserting in paragraph (a) of subsection (1A) of the same section after the words “section twenty-three” the words “or thirty-nine, or issued pursuant to section 17ccc of this Act, or a lease extended to a lease in perpetuity pursuant to section 18E of this Act”;
- (iii) by omitting from subsection three of the same section the words “the lease” where firstly occurring and by inserting in lieu thereof the words “a lease applied for after the commencement of the Western Lands (Amendment) Act, 1934”;
- (iv) by inserting next after subsection four of the same section the following new subsection:—

(4A) Any lease applied for after the commencement of the Western Lands (Amendment) Act, 1934, or extended to a lease in perpetuity, whether before or after the commencement of the Western Lands (Amendment) Act, 1949, or issued in pursuance of section 17ccc of this Act shall be liable to forfeiture if the holder sublets the lease or any part thereof, or grants any grazing rights over the lease or any part thereof, or agists stock on the lease or any part thereof, or grazes stock on the lease or any part thereof under any stock partnership without having first obtained the written consent of the Minister, and if any stock

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*Western Lands (Amendment).*

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stock not owned by the holder are found depasturing on the lease or any part thereof without the said consent, it shall be prima facie evidence of a breach of the provisions of this subsection.

5. The Principal Act is further amended—

Further amendment of Act No. 70, 1901.  
Sec. 28B.  
(Conversion of lease.)

(a) by inserting at the end of subsection one of section 28B the words “No holder of a lease as aforesaid shall after the commencement of the Western Lands (Amendment) Act, 1949, be entitled to make application for the conversion of such lease in accordance with the provisions of this section.”

New sec. 28BB.

(b) by inserting next after section 28B the following new section:—

Application for conversion of leases after commencement of Western Lands (Amendment) Act, 1949.

28BB. (1) The holder of a lease for the purpose of agriculture or mixed farming or residence or for a similar purpose or purposes which is not liable to forfeiture may apply to convert such lease (as to the whole or any part of the land comprised therein) into a conditional purchase.

(2) (a) A conversion shall not be allowed of land within any proclaimed goldfield or mineral field or within any reserve for mining or mining purposes within the meaning of section one hundred and six of the Mining Act, 1906-1946, except with the approval of the Secretary for Mines.

(b) Where in the opinion of the local land board the land comprised in such lease, together with all other lands held by the applicant for conversion (other than lands held under annual lease, preferential occupation license, occupation license, permissive occupancy or Western Lands lease then having not more than five years to run) would—when reasonably improved

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*Western Lands (Amendment).*

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improved and used for the purpose for which they are reasonably fitted—substantially exceed a home maintenance area, conversion may be approved as to so much of the land comprised in the lease as would, in the opinion of the local land board, together with all such other lands held as aforesaid, not substantially exceed, when improved and used as aforesaid, a home maintenance area. Lands held by the spouse of an applicant under this section shall for the purposes of this section be deemed to be lands held by such applicant.

(c) A conversion shall not be allowed of land reserved from sale unless and until such reservation has been revoked.

(3) The application shall be made as prescribed and shall be accompanied by a provisional deposit as prescribed to be applied towards the cost of dealing therewith and shall be referred to the local land board for inquiry and report.

(4) (a) The local land board shall report to the Minister as to whether there is any objection in the public interest or otherwise to the granting of the application and generally as to the merits thereof. If the local land board deems it expedient to recommend the granting of the application as to the whole or part of the land applied for it shall also report as to what special conditions (if any) should be attached to the holding after conversion and shall proceed to determine the capital value of the land comprised in such holding. The capital value as so determined shall be the capital value of the land at the date of the application for conversion.

(b) After receipt of such report the Minister may grant the application as to the whole or part of the land if the local land board so recommends, or he may at his discretion refuse

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*Western Lands (Amendment).*

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refuse it. Any areas required for roadways or other public purposes may be excluded or the boundaries may be otherwise modified at the Minister's discretion. Where the Minister has granted the application, the conversion shall be deemed to have taken effect as from the date of application for conversion.

(5) (a) On the granting of an application for conversion as to the whole of the land comprised in the lease, such lease shall be deemed to be surrendered to the Crown.

(b) On the granting of an application for conversion as to part only of the land comprised in the lease, such part, together with such other part as may be required for roadways or other public purposes, shall be deemed to be surrendered to the Crown. Where part of the land within the lease is so surrendered the rent for the remainder of the lease shall, as from the date of the application for conversion be that amount which bears the same proportion to the rent for the whole lease as the relative value of the remainder of the lease bears to the relative value of the whole lease as at such date.

(c) The cost of any necessary survey or subdivision and any balance of the prescribed deposit shall be paid by the applicant within one month after he has been called upon to do so; and upon default the application may be declared to have lapsed, and any moneys paid therewith shall thereupon become forfeited.

(6) The conditional purchase shall be subject to—

(a) any special conditions which the Minister on the recommendation of the local land board may impose;

(b)



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*Western Lands (Amendment).*

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- (b) a condition of residence for a term of five years, which shall commence within three months after the date of the Minister's approval of the conversion and shall be reduced by the period during which continuous residence has been performed by the applicant or his predecessors in title, upon the lease:

Provided always that—

- (i) where the conditional purchase has been transferred bona fide by way of mortgage, the condition of residence may be performed by the owner subject to such mortgage;
- (ii) where the beneficial owner of a conditional purchase dies or becomes of unsound mind, the performance of the condition of residence shall be waived until the conditional purchase has been transferred or conveyed and no longer; and
- (iii) where the owner also holds other land under any tenure to which a condition of residence attaches, he may with the consent of the Commissioner and subject to such conditions as the Commissioner may impose, perform the condition of residence on one of such holdings.

(7) The purchase money of any conditional purchase shall be paid by annual instalments of five per centum thereof, one of

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*Western Lands (Amendment).*

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such instalments being paid in each and every year on the recurring date of the application for conversion or within three months thereafter until the balance of purchase money, together with interest thereon at the rate of two and one-half per centum per annum shall have been paid: Provided that the holder of the conditional purchase may pay off the whole or any number of such instalments at any time after the issue of the certificate of conformity.

(8) Sections eighteen, forty-eight, fifty-three, fifty-four, fifty-five, fifty-six, one hundred and seventy-five, 175A, 176A, one hundred and seventy-eight, one hundred and eighty-two, 194B, one hundred and ninety-five, one hundred and ninety-eight, one hundred and ninety-nine, two hundred and one, two hundred and five, two hundred and eight, two hundred and nine, two hundred and thirty-one, two hundred and thirty-four, two hundred and thirty-five, 235A, two hundred and forty, two hundred and fifty-seven, two hundred and fifty-eight, two hundred and sixty-one, two hundred and seventy, two hundred and seventy-two and two hundred and seventy-eight, together with subsection two of section two hundred and fifty-nine of the Crown Lands Consolidation Act, 1913, as amended by subsequent Acts, shall mutatis mutandis apply to conditional purchases into which leases have been converted under this section.

(9) A reference in any of the provisions of the Crown Lands Consolidation Act, 1913, as so amended, enumerated in subsection eight of this section to the Under Secretary for Lands, the Department of Lands or the Lands Department, shall be read and construed as a reference to the Commissioner appointed under this Act and the Western Lands Office respectively.

*Western Lands (Amendment).*

6. The Principal Act is further amended by inserting at the end of section 18D the following new paragraphs:—

Further amendment of Act No. 70, 1901.

Sec. 18D.

(Provisions governing leases.)

(iv) A lessee shall, if the Minister so directs, prevent the use by stock of any part of the land for such periods as the Minister considers necessary to permit of natural reseedling and regeneration of vegetation; and, for this purpose, the lessee shall erect within the time appointed by the Minister such fencing as the Minister may consider necessary.

(v) A lessee shall not overstock or permit or allow to be overstocked the said land, and the decision of the Commissioner as to what constitutes overstocking shall be final, and the lessee shall comply with any directions of the Commissioner to prevent or discontinue overstocking.

(vi) A lessee shall use iron or steel posts (with wooden strainers) for the erection or repair of all fencing on the land, except that, in special cases, the Commissioner may permit the use of other posts.

7. The Principal Act is further amended—

Further amendment of Act No. 70, 1901.

Sec. 3.

(Interpretation.)

(a) by inserting in section three next after the definition of "Crown Lands" the following new definition:—

"Home maintenance area" means an area which when used for the purpose for which it is reasonably fitted, would be sufficient for the maintenance in average seasons and circumstances of an average family.

(b) (i) by omitting from paragraph (b) of subsection three of section nine the words "except as provided in paragraph (c) of this subsection";

Sec. 9.

(Local Land Boards.)

(ii) by omitting paragraph (c) of the same subsection;

(c)

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*Western Lands (Amendment).*


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- Sec. 18E.  
(Subsisting  
leases  
extension.)
- (c) by omitting subsections seven, eight and nine of section 18E;
- Sec. 18G.  
(Transfers.)
- (d) (i) by omitting from paragraphs (a), (c), (d) and (e) of subsection (1A) of section 18G the words "fair market value of the land" wherever occurring and by inserting in lieu thereof the words "fair market value of the lease";
- (ii) by omitting paragraph (f) of the same subsection;
- Sec. 18H.  
(Mortgages  
and  
devolutions.)
- (e) by inserting at the end of subsection two of section 18H the words—
- "The provisions of this subsection shall extend to any lease as aforesaid transferred by way of discharge of mortgage to the legal personal representative of a deceased person";
- Sec. 18J.  
(Conditions  
attaching  
to leases:  
alteration  
by consent.)
- (f) by inserting in section 18J after the word "condition" the word "purpose";
- New section 18JJ.
- (g) by inserting next after section 18J the following new section:—
- 18JJ. (1) Any person who being a male is of the age of sixteen years or upwards or being a female is of the age of eighteen years or upwards shall, if otherwise not disqualified under this Act, be competent to apply for or otherwise acquire from the Crown or to acquire from a private person or to hold any lease or conditional purchase under this Act, and any person who being a male is under the age of sixteen years or being a female is under the age of eighteen years shall not be competent to apply for or otherwise acquire from the Crown or to acquire from a private person or to hold any such lease or conditional purchase: Provided always that nothing in this section shall

Com-  
petency  
of minors  
to acquire  
or hold.

be

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*Western Lands (Amendment).*


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be taken to prevent the devolution or holding of a lease devolving under the will or intestacy of a deceased holder.

(2) Any person above the age of sixteen years being the holder of any holding under this Act may be sued for any moneys due to the Crown as if he were of the full age of twenty-one years.

- (h) by inserting in paragraph (b) of subsection four of section twenty-three after the word "notification" the words "or after the date of commencement of the lease, whichever is the later"; Section 23.  
(Minister's power to grant leases.)
- (i) by omitting from section 28A the words "but no lands held under occupation license or annual lease shall be leased under this section for grazing purposes only unless with the consent of the occupation licensee or annual lessee"; Section 28A.  
(Special Leases.)
- (j) by omitting from subsection two of section 33A the words "shall where such land is within the external boundaries of, or adjoins any lease, be deemed to be included in the lease as from a date to be appointed by the Minister; and the rent for the unexpired portion of the period of the lease then current shall be increased in proportion to the area so included in the lease" and by inserting in lieu thereof the words "may, at the discretion of the Minister be— Section 33A.  
(Surrender.)
- (a) included in the lease as from a date to be appointed by the Minister; and the rent for the unexpired portion of the period of the lease then current shall be increased in proportion to the area so included in the lease;
- (b) reserved from sale or from sale and lease for any public purpose; or
- (c) otherwise disposed of."

(k)

*Western Lands (Amendment).*

Section 35B  
(Termination of annual lease or license.)

(k) by omitting from section 35B the words "approval of."

New Sch. I.

(l) by inserting next after Schedule H the following new Schedule:—

Sec. 17ccc

SCHEDULE I.

WITHDRAWAL OF LAND FROM LEASE.

By virtue of the provisions of section 17ccc of the Western Lands Act of 1901, as amended by subsequent Acts, I,

Minister for Lands, do hereby withdraw the land described hereunder.

Minister for Lands.

(Date) .....

..... **HOLDING**

County of .....

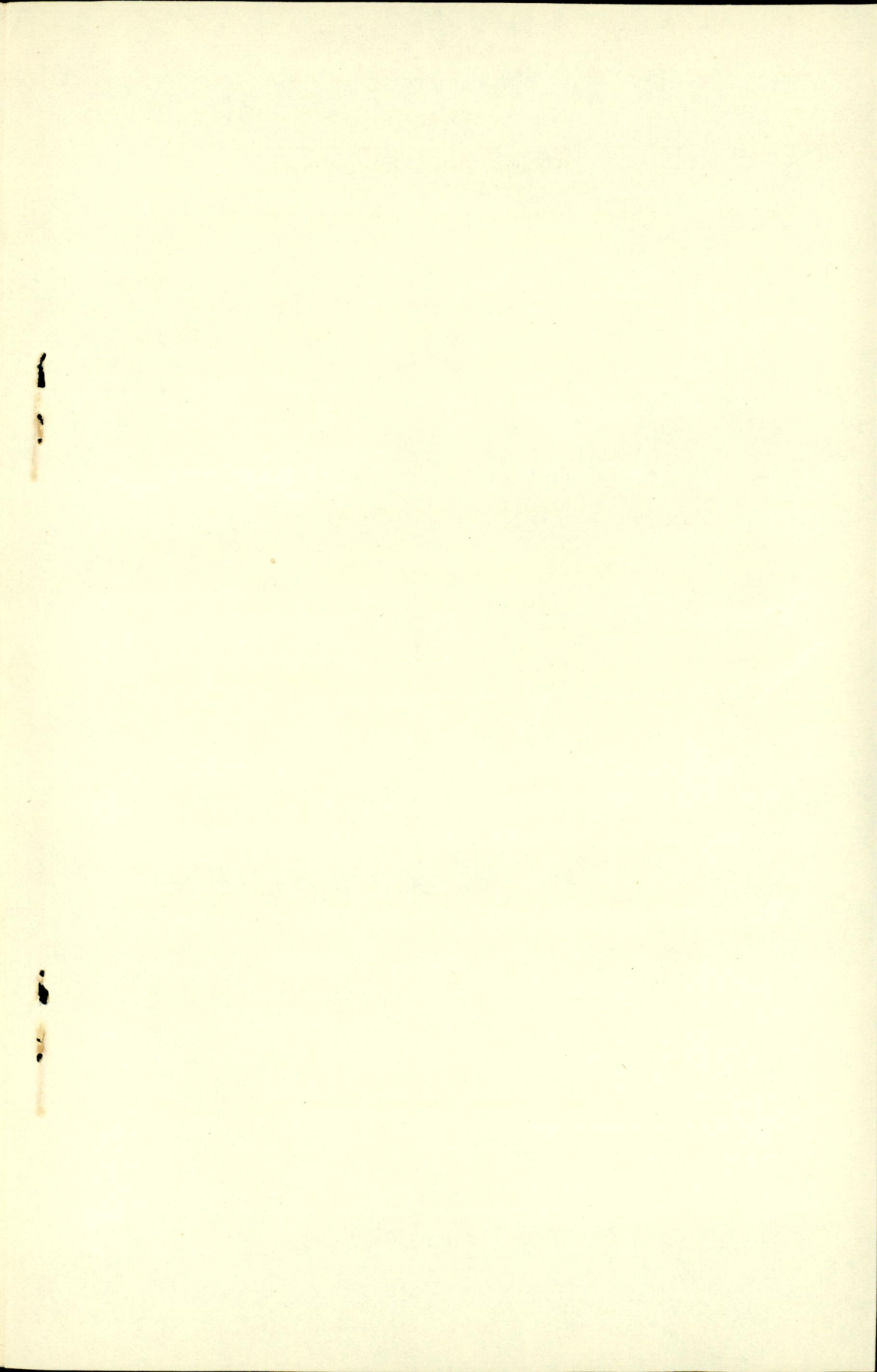
Administrative District of .....

Lessee .....

By Authority:

ALFRED HENRY PETTIFER, Government Printer, Sydney, 1950.

[9d.]



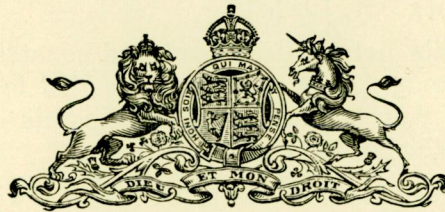




*I certify that this PUBLIC BILL, which originated in the LEGISLATIVE ASSEMBLY, has finally passed the LEGISLATIVE COUNCIL and the LEGISLATIVE ASSEMBLY of NEW SOUTH WALES.*

H. ROBBINS,  
*Clerk of the Legislative Assembly.*  
*Legislative Assembly Chamber,*  
*Sydney, 10 November, 1949.*

## New South Wales.



ANNO TERTIO DECIMO

GEORGII VI REGIS.

\*\*\*\*\*

Act No. 45, 1949.

An Act to make further provision for the withdrawal of lands held under lease, the determination of rentals of Western Lands leases, and the conversion of Western Lands leases into conditional purchases; to impose certain restrictions on dealings with and transactions affecting leases; to impose certain conditions on leases in the interests of soil preservation; for these and other purposes to amend the Western Lands Act of 1901, as amended by subsequent Acts; to validate certain matters; and for purposes connected therewith. [Assented to, 18th November, 1949.]

BE

*I have examined this Bill, and find it to correspond in all respects with the Bill as finally passed by both Houses.*

G. BOOTH,  
*Chairman of Committees of the Legislative Assembly.*

*Western Lands (Amendment).*

**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 New South Wales in Parliament assembled, and by the authority of the same, as follows:—

Short title,  
construction  
and com-  
mencement.

**1.** (1) This Act may be cited as the "Western Lands (Amendment) Act, 1949."

(2) This Act shall be read and construed with the Western Lands Act of 1901, as amended by subsequent Acts, which Act, as so amended, is in this Act referred to as the Principal Act.

(3) This Act shall, except where otherwise expressly provided, commence upon a day to be appointed by the Governor and notified by proclamation published in the Gazette.

Amendment  
of Act No.  
70, 1901.

**2.** The Principal Act is amended by inserting next after section 17cc the following new section:—

New sec.  
17ccc.  
Withdrawals  
of areas  
from le .ses.

17ccc. (1) The Minister may, subject to the provisions of this section and upon the recommendation of the Commissioner, by notification published in the Gazette, which notification shall be in or to the effect of the form of Schedule I to this Act, withdraw from—

(a) any lease extended under section 17c of this Act, other than a lease extended to a lease in perpetuity, and

(b) any lease granted under the provisions of section 28A of this Act, and any lease to which paragraph (a) of this subsection applies, where such leases are held in the same interest,

all land in excess of an area which constitutes two home maintenance areas.

(2) Where the Minister, upon the recommendation of the Commissioner, is satisfied that any lease or part thereof is mainly used for the purpose of breeding sheep or cattle for sale as stud sheep or stud cattle, respectively, and has been so used continuously

Act No. 45, 1949.

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*Western Lands (Amendment).*

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continuously for a period of at least seven years immediately prior to the commencement of the Western Lands (Amendment) Act, 1949—

- (a) no withdrawal shall be made which would have the effect of reducing the total area held under Western Lands lease by the lessee below—
  - (i) an area which constitutes three home maintenance areas, where in the opinion of the Minister, after report by the Commissioner, the area which is best adapted and necessary for the depasturing of the average number of stud sheep or stud cattle owned by the lessee or his predecessors in title and depastured annually on the lease during such period comprises an area equal to or less than one home maintenance area; or
  - (ii) an area which constitutes four home maintenance areas, where in the opinion of the Minister, after report by the Commissioner, the area which is best adapted and necessary for the depasturing of the average number of stud sheep or stud cattle, owned by the lessee or his predecessors in title and depastured annually on the lease during such period comprises more than one home maintenance area; and
- (b) no withdrawal shall be made, except with the consent of the lessee, of any part of the lease, which in the opinion of the Minister, after report by the Commissioner, is best adapted and necessary for the depasturing of the average number of stud sheep or stud cattle owned by the lessee or his predecessors in title and depastured annually on the lease during such period, and which, in  
any

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*Western Lands (Amendment).*

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any case to which subparagraph (ii) of paragraph (a) of this subsection applies, does not exceed four home maintenance areas.

(3) Where two or more leases, whether adjoining or not, are held in the same interest, or were so held at any time between the eighth day of August, one thousand nine hundred and forty-nine, and the date of commencement of the Western Lands (Amendment) Act, 1949, the total area of such leases shall be regarded as the area from which withdrawal may be made under this section and such withdrawal may be made from any one or more of such leases:

Provided that where such leases are worked as separate holdings and the Minister, after a report has been furnished to him by the Commissioner, is satisfied that the withdrawal of any such leases under this section upon which there are any improvements being homestead buildings would involve the lessee in substantial loss by virtue of the value of such improvements the withdrawal under this section shall subject to the provisions of subsection two of this section be restricted to all land in excess of two home maintenance areas on one of such holdings and all land in excess of one home maintenance area on each other of such holdings on which there are improvements in respect of which the Minister is satisfied as aforesaid that the lessee would suffer substantial loss.

(4) The boundaries of the area proposed to be withdrawn from any lease and the carrying capacity of the residue of such lease shall be determined by the Minister, after report by the Commissioner, and notice of such determination in or to the effect of the prescribed form shall be sent to the lessee, by registered post.

It shall be sufficient for all purposes whatsoever if such boundaries are defined with reasonable certainty by means of any form of general description.

(5)

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*Western Lands (Amendment).*

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(5) (a) If the lessee is dissatisfied with the carrying capacity of the residue of the lease as so determined he may, within twenty-eight days after notice as prescribed has been sent to him, lodge with the Commissioner a notice of appeal in the prescribed form.

(b) A notice of appeal shall be accompanied by a fee of one hundred pounds as security for the costs of the appeal.

(c) Such appeal shall be heard by a tribunal consisting of three members appointed by the Minister.

Of the members so appointed—

- (i) one shall be the Commissioner or an Assistant Commissioner, who shall be the chairman;
- (ii) one shall be selected from three persons experienced in Western Division grazing matters and nominated by The Returned Sailors, Soldiers and Airmen's Imperial League of Australia (New South Wales Branch);
- (iii) one shall be selected from three persons experienced in Western Division grazing matters and nominated by The Graziers' Association of New South Wales.

(d) The members of the tribunal other than the chairman shall be paid such fees for each sitting as may be prescribed.

(e) The tribunal shall have power to determine the carrying capacity of the residue of the lease in average seasons and conditions and when reasonably improved.

(f) The tribunal shall sit in open court, and may and is hereby empowered to exercise all of the powers conferred upon local land boards constituted under the Crown Lands Acts in so far as such powers relate to the summoning, attendance and examination of witnesses, the amendment of notices, declarations and other documents, and the permitting of notices, declarations

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*Western Lands (Amendment).*

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declarations and other documents to be supplied and to the conduct of proceedings generally before such boards.

The tribunal may make such order as to costs of, or incidental to, the proceedings before it (not exceeding one hundred pounds in any case) as it may think fit.

(g) The chairman and one member shall constitute a quorum, and the chairman shall preside at all meetings of the tribunal.

Matters arising before the tribunal shall be decided by a majority of votes. If there be an equality of votes, the chairman shall have a second or casting vote.

The determination of the carrying capacity of the residue of any lease by the tribunal shall be final, and if necessary, the boundaries of the area proposed to be withdrawn from such lease shall be redetermined by the Minister after report by the Commissioner in accordance with the tribunal's determination of carrying capacity.

(6) Upon withdrawal of land from any lease under this section—

- (a) any instrument of lease relating to any lease extended under section 17c of this Act (other than a lease extended to a lease in perpetuity) and any lease granted under the provisions of section 28A of this Act held by the lessee shall be surrendered not later than two months after notice of publication of such withdrawal in the Gazette has been sent by the Commissioner to the lessee.

If any such instrument of lease is not surrendered as aforesaid the lease to which such instrument relates shall be liable to be forfeited;

- (b) the residue of the lease or leases shall be subdivided into portions each embracing a home maintenance area. A separate lease shall

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*Western Lands (Amendment).*

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shall be issued for each home maintenance area to which a lessee is entitled. Where a lessee is entitled to two separate leases each such lease shall be a lease in perpetuity. Where a lessee is entitled to more than two separate leases two of such leases selected by the lessee shall be leases in perpetuity and the remaining lease or leases shall be for a term expiring on the date on which the surrendered or withdrawn lease having the longest unexpired term would but for the provisions of this section have expired;

- (c) any person having an interest in the lease or leases immediately before any withdrawal under this section shall be deemed to have an equivalent interest, whether by way of mortgage or otherwise, in the new leases;
- (d) the rentals of such new leases shall be determined by the local land board. The provisions of subsections two and three of section 19B of this Act shall apply, mutatis mutandis, to and in respect of any such rentals;
- (e) every such new lease shall be subject to the general provisions of this Act and to such conditions as the Minister after report by the Commissioner, may consider necessary;
- (f) the new leases shall commence on the day following the date of withdrawal under this section;
- (g) the lessee shall not be liable for the cost of any necessary survey of the new leases;
- (h) the lessee may when surrendering the instrument of lease in accordance with paragraph (a) of this subsection furnish a sketch of the land comprised within the residue of the lease, or leases, showing a form of subdivision into two, three or four home maintenance areas, as the case may require, which he considers desirable.

Where

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*Western Lands (Amendment).*

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Where the land comprised in the leases issued in pursuance of paragraph (b) of this subsection has been mainly used for the purpose of breeding sheep or cattle for sale as stud sheep or stud cattle, respectively, for a continuous period of at least seven years immediately prior to the commencement of the Western Lands (Amendment) Act, 1949, and the lessee ceases to use such land for such purpose, the Minister may at any time, upon the recommendation of the Commissioner, withdraw the land comprised in such of those leases as have been so issued otherwise than in perpetuity.

(7) No compensation shall be paid in respect of any withdrawal under this section.

(8) Upon withdrawal under this section the lessee shall have tenant right in the improvements upon the land withdrawn effected or paid for by him or his predecessors in title.

(9) Any land withdrawn under this section shall, until otherwise disposed of, be held by the lessee under preferential occupation license at a fee equivalent to the rate at which rent was payable immediately before the date of withdrawal for the lease from which the land was withdrawn.

(10) Any lease granted under the provisions of subsection six of this section shall, until the termination of the preferential occupation license under which any land withdrawn under this section is held pursuant to subsection nine of this section, be liable to be forfeited and any such preferential occupation license may be terminated—

- (a) if at any time after the commencement of such preferential occupation license stock are depastured on the area embraced thereby in numbers which, in the opinion of the local land board, substantially exceed the fair carrying capacity of such area; or
- (b) if the improvements which exist on such area at the date of such commencement are not reasonably protected or are not kept in reasonable



*Western Lands (Amendment).*

reasonable maintenance and repair: Provided that the lessee shall not be compelled to make good any damage caused by fire, flood, storm, or other inevitable accident which, in the opinion of the local land board, is not due to any act, default, or neglect of the lessee.

(11) Nothing contained in this Act, or any Act, or in any instrument of lease, and no transfer, conveyance, assignment, mortgage, devolution, subdivision, or any other dealing or disposition whatsoever made after the eighth day of August, one thousand nine hundred and forty-nine, shall defeat the right of the Minister to withdraw land under this section.

(12) The power conferred upon the Minister to withdraw land in accordance with the provisions of subsection one of this section shall cease and determine upon the thirty-first day of December, one thousand nine hundred and fifty-three.

(13) For the purpose of this section a home maintenance area shall be deemed to be an area which, when reasonably improved will, in the opinion of the Minister, after report by the Commissioner, carry in average seasons and conditions, not less than three thousand sheep and not more than five thousand sheep, according to the situation of the land.

For the purpose of this subsection one head of large stock shall be regarded as the equivalent of six sheep.

**3.** (1) The Principal Act is further amended—

- (a) (i) by omitting from subsection eleven of section 18E the words "For the period commencing on the date when rent is next payable as aforesaid, the rent shall be redetermined by the local land board" and by inserting in lieu thereof the words "For the period of ten years commencing on the date when rent is next payable as aforesaid, and

Further amendment of Act No. 70, 1901. Sec. 18E. (Leases in perpetuity.)

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*Western Lands (Amendment).*


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and for each separate period of ten years thereafter the rent payable in respect of a lease extended as aforesaid shall be the rent as redetermined by the local land board”;

- (ii) by inserting in the same subsection after the words “local land board” where secondly occurring the words “and the rent so determined shall be payable for a period of ten years commencing from the date of extension of the lease. For each separate period of ten years thereafter the rent payable in respect of a lease extended to a lease in perpetuity after the thirtieth day of June, one thousand nine hundred and forty-three, shall be the rent as redetermined by the local land board”;
- (iii) by inserting in the same subsection after the word “conditions” the words “Provided that the rate of rent of any lease of land held for grazing shall not in any case exceed the rate of one shilling and sixpence per sheep, nor shall it be less than sixpence per sheep on the fair average carrying capacity of the land when reasonably improved as estimated on a sheep basis by the local land board”;
- (iv) by omitting from the same subsection the words “The provisions of section nineteen of this Act shall not apply to a redetermination of the rent under this section, nor shall such provisions apply to a lease extended to a lease in perpetuity after a redetermination has been made under this subsection.”

Sec. 19.  
(Rents.)

- (b) by omitting section nineteen;

Sec. 19B.  
(Rents.)

- (c) (i) by omitting paragraph (a) of subsection two of section 19B and by inserting in lieu thereof the following paragraphs:—

- (a) The rent of any lease in perpetuity applied for after the commencement of the Western Lands (Amendment)

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*Western Lands (Amendment).*

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(Amendment) Act, 1934, prior to the thirtieth day of June, one thousand nine hundred and forty-three, in respect of land set apart for grazing shall for the period ending on the day immediately prior to the date when rent is next payable after the thirty-first day of December, one thousand nine hundred and fifty-three, be the rent as determined by the local land board.

For each separate period of ten years thereafter the rent payable in respect of a lease in perpetuity applied for as aforesaid shall be the rent as redetermined by the local land board.

This paragraph shall be deemed to have commenced upon the twenty-fourth day of August, one thousand nine hundred and thirty-four.

- (a1) The rent of any lease in perpetuity applied for after the thirtieth day of June, one thousand nine hundred and forty-three, in respect of land set apart for grazing shall be as determined by the local land board and the rent so determined shall be payable for a period of ten years commencing from the date of granting of the lease.

For each separate period of ten years thereafter the rent payable in respect of a lease in perpetuity applied for after the thirtieth day of June, one thousand nine hundred and forty-three, shall be the rent as redetermined by the local land board.

**This**

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*Western Lands (Amendment).*


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This paragraph shall be deemed to have commenced upon the first day of July, one thousand nine hundred and forty-three.

- (ii) by omitting subsection three of the same section and by inserting in lieu thereof the following subsection:—

(3) In determining or redetermining the rent of any lease of land held for grazing, the board shall have regard to the productive capacity of the land under fair average seasons, prices and conditions: Provided that the rate of rent shall not in any case exceed the rate of one shilling and sixpence per sheep, nor shall it be less than sixpence per sheep on the fair average carrying capacity of the land when reasonably improved as estimated on a sheep basis by the local land board.

Sec. 19c.  
(Rent of leases of land set apart for agriculture, etc.).

- (d) by inserting in subsection one of section 19c after the word "board" the words "for each separate period of ten years".

(2) (a) The amendment made by subparagraph (i) of paragraph (a) of subsection one of this section shall be deemed to have commenced upon the first day of January, one thousand nine hundred and forty-nine.

(b) The amendment made by subparagraph (ii) of paragraph (a) of subsection one of this section shall be deemed to have commenced upon the first day of July, one thousand nine hundred and forty-three.

Further amendment of Act No. 70, 1901.  
Sec. 18E.  
(Leases in perpetuity).  
Sec. 18G.  
(Transfers.)

**4.** The Principal Act is further amended—

- (a) by omitting subsection ten of section 18E;
- (b) (i) by omitting from subsection one of section 18G the words "of any portion thereof" and by inserting in lieu thereof the words and symbols

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*Western Lands (Amendment).*

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symbols “any portion thereof, and no transfer, conveyance, assignment of or other dealing (not being a mortgage) with a lease extended to a lease in perpetuity (whether before or after the commencement of the Western Lands (Amendment) Act, 1949), or any portion thereof, or a lease issued under the provisions of section 17ccc of this Act, or any portion thereof”;

- (ii) by inserting in paragraph (a) of subsection (1A) of the same section after the words “section twenty-three” the words “or thirty-nine, or issued pursuant to section 17ccc of this Act, or a lease extended to a lease in perpetuity pursuant to section 18E of this Act”;
- (iii) by omitting from subsection three of the same section the words “the lease” where firstly occurring and by inserting in lieu thereof the words “a lease applied for after the commencement of the Western Lands (Amendment) Act, 1934”;
- (iv) by inserting next after subsection four of the same section the following new subsection:—

(4A) Any lease applied for after the commencement of the Western Lands (Amendment) Act, 1934, or extended to a lease in perpetuity, whether before or after the commencement of the Western Lands (Amendment) Act, 1949, or issued in pursuance of section 17ccc of this Act shall be liable to forfeiture if the holder sublets the lease or any part thereof, or grants any grazing rights over the lease or any part thereof, or agists stock on the lease or any part thereof, or grazes stock on the lease or any part thereof under any stock partnership without having first obtained the written consent of the Minister, and if any  
stock

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*Western Lands (Amendment).*

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stock not owned by the holder are found depasturing on the lease or any part thereof without the said consent, it shall be prima facie evidence of a breach of the provisions of this subsection.

**5.** The Principal Act is further amended—

Further amendment of Act No. 70, 1901.

Sec. 28B.  
(Conversion of lease.)

- (a) by inserting at the end of subsection one of section 28B the words “No holder of a lease as aforesaid shall after the commencement of the Western Lands (Amendment) Act, 1949, be entitled to make application for the conversion of such lease in accordance with the provisions of this section.”

New sec. 28BB.

Application for conversion of leases after commencement of Western Lands (Amendment) Act, 1949.

- (b) by inserting next after section 28B the following new section:—

28BB. (1) The holder of a lease for the purpose of agriculture or mixed farming or residence or for a similar purpose or purposes which is not liable to forfeiture may apply to convert such lease (as to the whole or any part of the land comprised therein) into a conditional purchase.

(2) (a) A conversion shall not be allowed of land within any proclaimed goldfield or mineral field or within any reserve for mining or mining purposes within the meaning of section one hundred and six of the Mining Act, 1906-1946, except with the approval of the Secretary for Mines.

(b) Where in the opinion of the local land board the land comprised in such lease, together with all other lands held by the applicant for conversion (other than lands held under annual lease, preferential occupation license, occupation license, permissive occupancy or Western Lands lease then having not more than five years to run) would—when reasonably improved

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*Western Lands (Amendment).*

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improved and used for the purpose for which they are reasonably fitted—substantially exceed a home maintenance area, conversion may be approved as to so much of the land comprised in the lease as would, in the opinion of the local land board, together with all such other lands held as aforesaid, not substantially exceed, when improved and used as aforesaid, a home maintenance area. Lands held by the spouse of an applicant under this section shall for the purposes of this section be deemed to be lands held by such applicant.

(c) A conversion shall not be allowed of land reserved from sale unless and until such reservation has been revoked.

(3) The application shall be made as prescribed and shall be accompanied by a provisional deposit as prescribed to be applied towards the cost of dealing therewith and shall be referred to the local land board for inquiry and report.

(4) (a) The local land board shall report to the Minister as to whether there is any objection in the public interest or otherwise to the granting of the application and generally as to the merits thereof. If the local land board deems it expedient to recommend the granting of the application as to the whole or part of the land applied for it shall also report as to what special conditions (if any) should be attached to the holding after conversion and shall proceed to determine the capital value of the land comprised in such holding. The capital value as so determined shall be the capital value of the land at the date of the application for conversion.

(b) After receipt of such report the Minister may grant the application as to the whole or part of the land if the local land board so recommends, or he may at his discretion  
refuse

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*Western Lands (Amendment).*

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refuse it. Any areas required for roadways or other public purposes may be excluded or the boundaries may be otherwise modified at the Minister's discretion. Where the Minister has granted the application, the conversion shall be deemed to have taken effect as from the date of application for conversion.

(5) (a) On the granting of an application for conversion as to the whole of the land comprised in the lease, such lease shall be deemed to be surrendered to the Crown.

(b) On the granting of an application for conversion as to part only of the land comprised in the lease, such part, together with such other part as may be required for roadways or other public purposes, shall be deemed to be surrendered to the Crown. Where part of the land within the lease is so surrendered the rent for the remainder of the lease shall, as from the date of the application for conversion be that amount which bears the same proportion to the rent for the whole lease as the relative value of the remainder of the lease bears to the relative value of the whole lease as at such date.

(c) The cost of any necessary survey or subdivision and any balance of the prescribed deposit shall be paid by the applicant within one month after he has been called upon to do so; and upon default the application may be declared to have lapsed, and any moneys paid therewith shall thereupon become forfeited.

(6) The conditional purchase shall be subject to—

(a) any special conditions which the Minister on the recommendation of the local land board may impose;

(b)



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*Western Lands (Amendment).*

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- (b) a condition of residence for a term of five years, which shall commence within three months after the date of the Minister's approval of the conversion and shall be reduced by the period during which continuous residence has been performed by the applicant or his predecessors in title, upon the lease:

Provided always that—

- (i) where the conditional purchase has been transferred bona fide by way of mortgage, the condition of residence may be performed by the owner subject to such mortgage;
- (ii) where the beneficial owner of a conditional purchase dies or becomes of unsound mind, the performance of the condition of residence shall be waived until the conditional purchase has been transferred or conveyed and no longer; and
- (iii) where the owner also holds other land under any tenure to which a condition of residence attaches, he may with the consent of the Commissioner and subject to such conditions as the Commissioner may impose, perform the condition of residence on one of such holdings.

(7) The purchase money of any conditional purchase shall be paid by annual instalments of five per centum thereof, one of

such

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*Western Lands (Amendment).*

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such instalments being paid in each and every year on the recurring date of the application for conversion or within three months thereafter until the balance of purchase money, together with interest thereon at the rate of two and one-half per centum per annum shall have been paid: Provided that the holder of the conditional purchase may pay off the whole or any number of such instalments at any time after the issue of the certificate of conformity.

(8) Sections eighteen, forty-eight, fifty-three, fifty-four, fifty-five, fifty-six, one hundred and seventy-five, 175A, 176A, one hundred and seventy-eight, one hundred and eighty-two, 194B, one hundred and ninety-five, one hundred and ninety-eight, one hundred and ninety-nine, two hundred and one, two hundred and five, two hundred and eight, two hundred and nine, two hundred and thirty-one, two hundred and thirty-four, two hundred and thirty-five, 235A, two hundred and forty, two hundred and fifty-seven, two hundred and fifty-eight, two hundred and sixty-one, two hundred and seventy, two hundred and seventy-two and two hundred and seventy-eight, together with subsection two of section two hundred and fifty-nine of the Crown Lands Consolidation Act, 1913, as amended by subsequent Acts, shall mutatis mutandis apply to conditional purchases into which leases have been converted under this section.

(9) A reference in any of the provisions of the Crown Lands Consolidation Act, 1913, as so amended, enumerated in subsection eight of this section to the Under Secretary for Lands, the Department of Lands or the Lands Department, shall be read and construed as a reference to the Commissioner appointed under this Act and the Western Lands Office respectively.

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*Western Lands (Amendment).*

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**6.** The Principal Act is further amended by inserting at the end of section 18D the following new paragraphs:—

Further amendment of Act No. 70, 1901.

- (iv) A lessee shall, if the Minister so directs, prevent the use by stock of any part of the land for such periods as the Minister considers necessary to permit of natural reseeded and regeneration of vegetation; and, for this purpose, the lessee shall erect within the time appointed by the Minister such fencing as the Minister may consider necessary.
- (v) A lessee shall not overstock or permit or allow to be overstocked the said land, and the decision of the Commissioner as to what constitutes overstocking shall be final, and the lessee shall comply with any directions of the Commissioner to prevent or discontinue overstocking.
- (vi) A lessee shall use iron or steel posts (with wooden strainers) for the erection or repair of all fencing on the land, except that, in special cases, the Commissioner may permit the use of other posts.

Sec. 18D.  
(Provisions governing leases.)

**7.** The Principal Act is further amended—

Further amendment of Act No. 70, 1901.

- (a) by inserting in section three next after the definition of "Crown Lands" the following new definition:—

Sec. 3.  
(Interpretation.)

"Home maintenance area" means an area which when used for the purpose for which it is reasonably fitted, would be sufficient for the maintenance in average seasons and circumstances of an average family.

- (b) (i) by omitting from paragraph (b) of subsection three of section nine the words "except as provided in paragraph (c) of this subsection";
- (ii) by omitting paragraph (c) of the same subsection;

Sec. 9.  
(Local Land Boards.)

**(c)**

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*Western Lands (Amendment).*


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- Sec. 18E.  
(Subsisting  
leases  
extension.)
- (c) by omitting subsections seven, eight and nine of section 18E;
- Sec. 18G.  
(Transfers.)
- (d) (i) by omitting from paragraphs (a), (c), (d) and (e) of subsection (1A) of section 18G the words "fair market value of the land" wherever occurring and by inserting in lieu thereof the words "fair market value of the lease";
- (ii) by omitting paragraph (f) of the same subsection;
- Sec. 18H.  
(Mortgages  
and  
devolutions.)
- (e) by inserting at the end of subsection two of section 18H the words—
- "The provisions of this subsection shall extend to any lease as aforesaid transferred by way of discharge of mortgage to the legal personal representative of a deceased person";
- Sec. 18J.  
(Conditions  
attaching  
to leases:  
alteration  
by consent.)
- (f) by inserting in section 18J after the word "condition" the word "purpose";
- New section 18JJ.
- (g) by inserting next after section 18J the following new section:—
- 18JJ. (1) Any person who being a male is of the age of sixteen years or upwards or being a female is of the age of eighteen years or upwards shall, if otherwise not disqualified under this Act, be competent to apply for or otherwise acquire from the Crown or to acquire from a private person or to hold any lease or conditional purchase under this Act, and any person who being a male is under the age of sixteen years or being a female is under the age of eighteen years shall not be competent to apply for or otherwise acquire from the Crown or to acquire from a private person or to hold any such lease or conditional purchase: Provided always that nothing in this section shall
- be

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*Western Lands (Amendment).*


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be taken to prevent the devolution or holding of a lease devolving under the will or intestacy of a deceased holder.

(2) Any person above the age of sixteen years being the holder of any holding under this Act may be sued for any moneys due to the Crown as if he were of the full age of twenty-one years.

- (h) by inserting in paragraph (b) of subsection four of section twenty-three after the word "notification" the words "or after the date of commencement of the lease, whichever is the later"; Section 23.  
(Minister's power to grant leases.)
- (i) by omitting from section 28A the words "but no lands held under occupation license or annual lease shall be leased under this section for grazing purposes only unless with the consent of the occupation licensee or annual lessee"; Section 28A.  
(Special Leases.)
- (j) by omitting from subsection two of section 33A the words "shall where such land is within the external boundaries of, or adjoins any lease, be deemed to be included in the lease as from a date to be appointed by the Minister; and the rent for the unexpired portion of the period of the lease then current shall be increased in proportion to the area so included in the lease" and by inserting in lieu thereof the words "may, at the discretion of the Minister be— Section 33A.  
(Surrender.)
- (a) included in the lease as from a date to be appointed by the Minister; and the rent for the unexpired portion of the period of the lease then current shall be increased in proportion to the area so included in the lease;
- (b) reserved from sale or from sale and lease for any public purpose; or
- (c) otherwise disposed of."
- (k)

*Western Lands (Amendment).*

Section 35B.  
(Termination of annual lease or license.)

(k) by omitting from section 35B the words "approval of."

New Sch. I.

(l) by inserting next after Schedule H the following new Schedule:—

Sec. 17ccc

SCHEDULE I.

WITHDRAWAL OF LAND FROM LEASE.

By virtue of the provisions of section 17ccc of the Western Lands Act of 1901, as amended by subsequent Acts, I,

Minister for Lands, do hereby withdraw the land described hereunder.

Minister for Lands.

(Date) .....

..... **HOLDING**  
County of .....  
Administrative District of .....  
Lessee .....

*In the name and on behalf of His Majesty I assent to this Act.*

J. NORTHCOTT,  
Governor.

*Government House,  
Sydney, 18th November, 1949.*



