**PASTORAL ACT AMENDMENT BILL 1960**

**House of Assembly, 8 November 1960, pages 1698-1732**

Second reading

**The Hon. Sir CECIL HINCKS (Minister of Lands)** introduced a Bill for an Act to amend the Pastoral Act, 1936-1959. Read a first time.

The Hon. D. N. Brookman for the Hon. Sir CECIL HINCKS—I move—

*That this Bill be now read a second time.* The provisions of the Pastoral Act to which the main clauses of this Bill relate were based on the report of a Royal Commission on the pastoral industry issued in 1927. Those provisions were originally enacted in 1929 when the pastoral areas were in the throes of a disastrous drought and the price of wool had declined to a little over 10d. a pound for the 1929-1930 clip. The Acts relating to pastoral lands were subsequently consolidated in the Pastoral Act, 1936, and that Act, as amended, is the principal Act referred to in this Bill. The 1929 legislation was designed to assist the pastoral industry through difficult times and except in minor respects no change has since been made affecting the terms and conditions under which pastoral leases are granted under the principal Act. The liberal provisions of the Act and the broad and sympathetic policy of the Pastoral Board are contributing factors in establishing the industry in the sound position in which we find it today and vastly improved conditions are now prevailing in the industry. An appreciation of the magnitude of the board’s responsibility under the Act could be made from the fact that 75 per cent of the State’s occupied areas is held under the Pastoral Act.

While the Government has been alive to the necessity for maintaining the progressive development of the arid inland areas of the State, it has been also concerned about the unduly low revenue received from rentals. This is appreciated by many lessees who agree their holdings could stand a substantial increase in the present rentals charged under the Act. With these matters in mind the

industry on a stage has now been reached where the legislation affecting pastoral occupation of lands in the State is in urgent need of revision.

The recommendations of the board, which the Government seeks to implement in this Bill, do not affect the rights of lessees under existing legislation. They reflect the board’s recognition of the fact that certain areas of the State are subject to extreme conditions of drought and hardship and, although the board does not consider it wise to permit some extremely large holdings to be re-granted in their entirety to existing lessees on the expira­tion of their present leases, it is firmly of the opinion that in considering the question of subdividing any existing holding the primary consideration should be the maximum production that could safely be achieved from the land and that such production is not neces­sarily achieved by cutting up existing holdings that are efficiently managed. It is also of the opinion that the subdivision of an existing holding will not necessarily result in increased revenue for the State by way of rent.

In order to enable members to appreciate fully the implications of the Bill, I shall, as I deal with each clause, briefly outline the effect of the existing provisions of the Principal Act which the Government feels are in need of revision, the recommendations of the board in regard thereto, and the effect that clause when the Bill becomes law. Under the principal Act, a pastoral lease is, with a few minor exceptions, granted for a term of 42 years, and the rent payable under the lease is fixed for the first 21 years of the term and revised during the twenty-first year then the rent for the last 21 years of the term is determined upon a revaluation of the lessee’s run. The board recommends that revaluations of leases granted after the Bill becomes law should be made for each seven year period of the term of the lease.

Cause 3 inserts in the principal Act a new section 40a, the effect of which is that where the term of the lease granted after the Bill becomes law exceeds seven years, that term be divided into periods so that each period will be of the duration of seven years, or if that is not possible, each period other than the last, will be of that duration.  *Sub*section (2) of that section also provides that the rent of such a lease shall be revalued for the second and each succeeding period of the term in accordance with Part V of the Act. Part V deals with rent, valuations and revaluation of all leases.

Subsection 41 (1) of the principal Act provides that every lease granted after December 12, 1929, except a lease of land south or east of the River Murray, shall be for 42 years and subsection (2) provides that the rent of every such lease shall be revalued for the last 21 years of its term in accordance with Part V. As the new section 40a, inserted by clause 3, requires a revaluation of the rent of a lease granted after the Bill becomes law for each seven year period of its term and it is necessary to protect the rights of existing lessees who come under section 41, clause 4 amends subsection (2) of that section by qualifying it with the words “subject to section 40a of this Act”. This means that revaluations of existing leases will continue to be made under the old provisions while those of future leases will be made subject to the new section 40a. Section 42 (1) of the principal Act deals similarly with leases granted after December 12, 1929, of land south or east of the River Murray and clause 5 amends subsection (2) of that section in the same way. The amendments proposed in clauses 4 and 5 are in effect consequential upon the provisions of new clause 40a.

Section 43 (2) of the Act provides that any term or covenant of a lease may bind the lessee to supply water for stock travelling through the leased land, but the lessee has the right to determine from which water supply the stock is to take water. The water supply need not necessarily be that nearest to the most direct route through that land. The board reported that in its present form the section would empower an unreasonable or difficult lessee to determine that stock must take water from a water supply that is practically inaccessible and recommended that the section be clarified. Clause 6 accordingly amends section 43 (2) so as to provide that the water supply need not be that nearest to the most direct route through the leased land if the water supply is reasonably accessible to such stock.

Fifty-four per cent of the current leases are due to expire between the years 1971 and 1975 and while it is intended that existing lessees retain the right to hold their present holdings under the present law until their leases expire, it is felt that advantages could accrue both to the State and to lessees if existing lessees were provided with an opportunity of electing within a specified period to terminate their present leases in consideration of being granted new leases for 42 year terms of the whole or part of their present holdings at revised rentals. In such cases the advantage to the pastoralist would be an assured tenure for another term of 42 years while the State would derive increased revenue from the increased rentals that would in most eases be charged in view of the fact that the existing rentals are purely nominal.

Clause 7 accordingly inserts in the principal Act a new section 46a, subsection (1) of which enables the lessee of one or more leases, within 12 months after the Bill becomes law, to request the Minister to notify him whether, upon surrender of the lease or leases, the Minister is willing to offer him another lease of the whole or any part of his holdings, and if so at what rent and on what terms and conditions. Subsection (2) requires the Minister, on the board’s recommendation, to determine the matters mentioned in subsection (1) and to serve on the lessee a notification of his determination. The subsection also requires the Minister, if he offers the lessee another lease of a part only of the lands comprised in the surrendered lease or leases, to state in the notification the value of the improvements, as assessed by the board, which the lessee is entitled to be paid under subsection (7) of the section. Subsection (3) provides that if the Minister notifies the applicant that he is willing to offer him a new lease, that notification is to be deemed to be an offer of a lease for a 42 year term of the land in question which the applicant may accept within 6 months after the Minister’s notification is served on him.

Subsection (4) requires the applicant, on accepting the offer, to surrender his existing lease or leases and requires the Governor to accept the surrender and grant the new lease in terms of the offer. Subsection (5) is in effect an exemption in the case of leases granted under this section from the provisions of sections 23 and 29 of the Act which require the publication of a notice declaring lands to be open for leasing and which require all applications for such lands to be considered as simultaneous applications. Subsection (6) requires a new lease granted under subsection (4) to comprise, where practicable, a continuous area of land that could be economically worked and to include the homestead. The subsection also provides that, if the surrendered lease or leases comprised land of an area of 100 square miles or more, the new lease must be a minimum of 100 square miles in area, and if the surrendered lease or leases. comprised land of an area less than 100 square miles, the new lease must comprise the whole- of that land. Subsection (7) provides for compensation being payable to a lessee for improvements made on any part of the lands comprised in a surrendered lease if that part is not included in a new lease granted in lieu of the surrendered lease under subsection (4). And if any part of the lands comprised in a surrendered lease is not so included and is not to be allotted within six months after the surrender to another lessee, subsection (8) enables the Minister to grant to the person who surrendered the lease a licence to use and occupy that part on such terms and conditions as the Minister thinks proper.

Section 49 of the principal Act deals with the surrender of land held under Crown leases and agreements for sale and purchase made with the Crown in exchange for leases under the Act. Subsection (6) of that section in its present form envisages that the new lease would be granted for a term of 42 years and that the rent payable thereunder would he determined at the commencement of the term for the first 21 years of that term and again on revaluation in the twenty-first year. In view of the new section 40a inserted by clause 3 providing for revaluations every seven years, clause 8 amends subsection (6) of section 49 by qualifying it with the words “subject to section 40a of this Act”. The effect of this clause is that the rent payable under existing leases granted under this section would continue to be governed by the present law while the rent payable under any future lease granted under the section will be subject to revaluation for each seven-year period of its term.

Section 53 of the principal Aet provides for a special revaluation of a run the value of which in the Minister’s opinion is enhanced by Government works of a public nature executed on or in the vicinity of that run. Section 54 provides that no such revaluation shall be retrospective or be made within five years after the commencement of the lease or within ten years after any previous revaluation. The Board is of the opinion that, as future leases provide for revaluations every seven years and that under section 57 the lessee has a right of appeal against a revaluation made under section 53 or 56, the words *“*nor within ten years after any previous revaluation” confer an undue advantage on a lessee, who, in any event, has a right of appeal against a revaluation with which he is dissatisfied. Clause 9 accordingly strikes out those words from the section

Section 55 of the principal Act provides for the revaluation of existing 42-year leases to be made during the first six months of the twenty-first year of the term. In view of the provisions of new section 40a inserted by clause 3, special provision is needed for the revaluation of future leases and clause 10 amends section application of the existing provisions to leases granted prior to the passing of the Bill and by adding a new subsection providing for the revaluation of future leases at the end of every period of seven years for the purpose of determining the rent payable by the lessee for the next succeeding period of the term of the lease.

Section 56 of the principal Act requires the revaluation referred to in section 55 to be completed not less than six months before the expiration of the twenty-first year of the term of the lease and requires the Minister to serve notice on the lessee advising him of the rent to be paid during the last 21 years of the term. The section goes on to provide that the annual rent to be paid on revaluation shall not be more than 50 per cent above or below the rent payable during the twenty-first year of the term. As the section needs redrafting to cover the seven year revaluations of future leases, clause 11 repeals and re-enacts the section with the amendments necessary to achieve that effect.

As I have said before, section 57 of the Act gives a lessee the right of appeal against a revaluation made under section 53 or 56. If the lessee is dissatisfied with the rent fixed on appeal, subsection (2) of section 57 gives him the right to require the rent to be fixed by arbitrators. Section 59 provides that if the lessee does not appeal against the revaluation the rent fixed on that revaluation shall be payable as from the date such rent is due, but the section is unaccountably silent as to the lessee’s liability to pay the rent so fixed in the event of an unsuccessful appeal. Clause 12 repeals and re-enacts that section to take care of this omission, taking into account revaluations of leases granted both before and after the Bill becomes law.

Section 60 of the principal Act confers on the Minister power to reduce the rent payable under a lease where the board is satisfied that the rent is too high having regard to the productive capacity of the land and other relevant Matters. Subsection (5) of that section provides that, except as provided therein, the reduction of the rent shall not affect the board’s power or duty to revalue any run in accordance with the Act. The subsection adds that, if any reduction is operative during the twenty-first year of the term of any lease, the rent which would have been payable during that year, if no reduction had been granted, shall, for the purpose only of fixing the rent on revaluation, be taken to be the rent payable during that year by the lessee. Sub­section (2) of section 56 as re-enacted by clause 11 provides that the annual rent payable upon revaluation shall, in the case of existing leases, be not more than 50 per cent above or below the rent payable during the twenty-first year of the term of the lease and in the ease of future leases not more than 50 per cent above or below the rent payable during the last year of the seven-year period in which the revaluation is made. Subsection 3 of section 60 accordingly requires to be brought into line with those new provisions, and clause 13 repeals that subsection and re-enacts its provisions with the necessary amendments in the new subsections (5) and (6).

Subsection (1) of section 61a of the principal Act prescribes the covenants required to be included in existing leases. Pursuant to those covenants a lessee is bound to expend on improvements on the land by the end of the fifth, thirteenth, and twenty-first years respectively of the term of the lease such sums of money as are specified in the *Gazette* notice declaring the land open for leasing, but he is not obliged to maintain those improvements. The board has recommended that in future leases there should be an additional covenant binding the lessee to maintain in good order and condition during the term of the lease all such improvements. Clause 14 accordingly amends subsection (1) of section 61 by limiting the application of that subsection to existing leases and adds a new subsection (1a) which prescribes the covenants to be contained in future leases in accordance with the board’s recommendation. As future leases could fall into two classes, namely, those granted pursuant to new section 46a inserted by clause 7 and leases other than those leases, and, as section 46a does not require the publication of a notice declaring lands comprising a lease under that section to be open for leasing, new subsection (la) inserted by clause 14 would not be applicable to leases under section 46a. The board has accordingly recommended that the covenants provided for in new subsection (1b) inserted by clause 14 should apply to such leases.

Subsection (2) of section 61a deals with the *Gazette* notice by which lands subject to existing leases have been declared open for leasing and sets out the limits of the amounts required to be spent on improvements by the lessees. The board considers that these limits are far too low and recommends that for future leases the amounts to be spent by the end of the fifth year be increased from £10 to £25 a square mile, the amounts to be spent by the end of the thirteenth year be increased from £15 to £40 a square mile and the amounts to be spent by the end of the twenty-first year be increased from £20 to £60 a square mile. As the subsection has served its purpose so far as existing leases are concerned, clause 14 repeals it and enacts a new subsection dealing with notices *by* which lands are declared open for leasing after the Bill becomes law. The new subsection gives effect to the board’s recom­mendation.

The board has also reported that, while the runs situated within the dog fence are generally well developed and in the hands of capable lessees, those outside the dog fence, with few exceptions, are inadequately developed. It feels that future leases of land outside the dog fence should require lessees to effect specified improvements within specified periods and recommends that legislation be passed to make this possible. Clause 15 accordingly enacts a new section 61b in the principal Act whereby a future lease granted in respect of lands situated outside the dog fence may, if the Minister thinks fit, contain, in addition to the other covenants provided for in the Act, such covenants as would bind the lessee to effect such improvements on the leased lands within such time as may be specified in those covenants. Subsection (2) of the new section, however, has the effect, so far as land outside the dog fence is concerned, of limiting the obligation of a lessee under any covenant to effecting improvements the total value of which at the end of the fifth, thirteenth and twenty-first years of the term of the lease will not exceed the maximum amounts respectively required to be spent by any other lessee on lands leased under the Act after the Bill becomes law. For the purpose of this new section it has been necessary to refer to a plan depicting the part of the State that lies outside the dog fence and this plan is incorporated in the fourth schedule which is inserted by clause 21.

Section 88 provides that the Minister may by agreement with the lessee of any pastoral lands, acquire the lessee’s interest in the whole or any part of the lands comprised in the lease for the purpose of closer settlement or for allotment to lessees of other pastoral land.  The section requires the Minister to pay for the interest and improvements thereon an ascertained amount of money. The board feels that in certain cases it would be an advantage and would assist such negotiations if the Minister had power to acquire for those purposes a lessee’s interest in any part of the lands comprised in a lease in consideration for which the Minister grants an extension of the term of the lease for a further period not exceeding seven years with respect to all or any of the remaining land in the lessee’s run. Clause 16 accordingly gives effect to this recommendation by enacting a new section 88a conferring the necessary power on the Minister.

Section 92 of the principal Act provides that any lessee may surrender any portion of the land comprised in his lease in accordance with that section. Section 93 provides that when any lease is so surrendered it shall be lawful for the Governor to grant a lease or leases of the land comprised in the surrendered lease to the person or persons nominated by the lessee surrendering the same and that every such new lease shall be granted for the unexpired period of the term of, and for the same purposes, and subject to the same terms, conditions and regulations as, the lease so surrendered. As subsection (4) of new section 46a contemplates a surrender of a lease in exchange for a new lease in favour of the same lessee for a full term of 42 years and on a rental and subject to terms and conditions to be specifically determined, section 93 is not intended to apply to surrenders under section 46a. Clause 17 accordingly makes this clear.

Subsection (1) of section 111 of the principal Act provides that if the Minister is of opinion that the water from any artesian bore constructed after December 12, 1929, on any land included in a pastoral lease is being improperly used or is being wasted he may take certain action to prevent such improper use or waste or to ensure that the water will be used to the best advantage. The board has recommended strongly that it should be possible to apply these provisions to water from any artesian bore whether constructed before or after that date so as to ensure that full use is made of all such bores on the land, and the Government feels that the reference to the date should be struck out from the section. Clause 18 gives effect to this decision.

Section 112 similarly provides that, if any land held under a pastoral lease is insufficiently watered, but can conveniently be supplied from an artesian bore constructed after December j2 1929, and situated on other land held under a pastoral lease, the Minister may direct the lessee of the land on which the bore is situated to supply the other lessee with water from that bore. The board has recommended that the reference to the date in this section be struck out for the same reason, and clause 19 gives effect to that recommendation.

Clause 20 has been inserted on the board’s recommendation that a new section be inserted in the principal Act whereby it will be deemed to be a condition of the lease of every run which does not lie outside the dog fence and any part of which is or becomes bounded by a part of the dog fence, that such part of that fence shall be maintained by the lessee in dog-proof condition throughout the currency of the lease. Effect is given to this recommendation by the insertion by that clause of a new section 134a. Clause 21 adds a fourth schedule to the principal Act. This schedule is complementary to section 61b inserted by clause 15.

It will be seen that the Bill seeks to make certain radical changes of policy which I submit are justified. There can be no doubt that pastoral lease rentals in this State are inordinately low having regard to the economic changes that have taken place in the industry since 1929. The rentals for the first 21 year periods of most of the current leases were fixed at a time when the industry was straggling through the effects of drought and depression. In fixing those rentals the board had taken into consideration all the hardships that were being borne by pastoralists at the time. Hitherto only one opportunity has been provided during the term of a 42-year lease for an upward revaluation of the rental which could not exceed 50 per cent of the rental payable prior to revaluation. The difficult times through which the industry was passing have now passed and the pastoralists who will he mainly affected by the Bill today are enjoying under greatly improved conditions benefits that were designed to assist the industry through those difficult times. Having regard to those facts and the fact that rent is an allowable taxation deduction the board considers, and the Government agrees, that an increase in rents is justified and would in no way impose hardship on the lessees or materially affect their net incomes. The proposed amendments also make possible the orderly and progressive development of the pastoral lands of the State. I commend this Bill for favourable consideration by members.

Mr. RICHES secured the adjournment of the debate.