



ANNO DECIMO

GEORGII V REGIS.

A.D. 1919.

No. 1388.

An Act to further amend the Discharged Soldiers Settlement Act, 1917, and to amend the Discharged Soldiers Settlement Act Amendment Act, 1918, and for other purposes.

[Assented to, November 20th, 1919.]

BE it Enacted by the Governor of the State of South Australia, with the advice and consent of the Parliament thereof, as follows:

1. (1) This Act may be cited alone as the "Discharged Soldiers Settlement Act Further Amendment Act, 1919." Short titles.

(2) The Discharged Soldiers Settlement Acts, 1917 and 1918, and this Act may be cited together as the "Discharged Soldiers Settlement Acts, 1917 to 1919."

(3) The Discharged Soldiers Settlement Act, 1917, is hereinafter referred to as "the principal Act." No. 1313 of 1917.

2. This Act is incorporated with the principal Act, and that Act and this Act shall be read as one Act. Incorporation with other Acts.

Large Estates may be Acquired Compulsorily.

3. In this Act—

"Crown lease" means and includes—

(a) any agreement containing a covenant to purchase under the Crown Lands Act, 1915, or any other

Interpretation.
Cf. 1199, 1915,
s. 156.

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Act formerly, or now, or hereafter in force under which power was or is given to grant or make any Crown lease or agreement; and

- (b) any lease or agreement for a lease, and any licence, permit, right to occupy or use, or similar right or interest, or agreement therefor, whether the same is in perpetuity or for a term of years or otherwise, and whether containing or not containing a right to purchase, and under whatever Act or other authority the same may have been granted or made,

before or after the passing of this Act granted or made by or on behalf of the Crown, or by or on behalf of any person or authority holding lands belonging to the Crown, or in whom or which lands belonging to the Crown were or are vested, but does not include a pastoral lease:

“Large estate” means the whole or any part or parts of the land, not being situated within the boundaries of any city, town, or township, owned in fee simple or held for any other estate of freehold or held under Crown lease by the same owner or owners in a case in which the unimproved value of the aggregate of all such lands so owned or held by such owner or owners exceeds Fifteen Thousand Pounds:

“Owner” means the owner of a freehold estate in possession, except when the land is comprised in a Crown lease, in which case it means the lessee thereof:

“Minister” means the Minister of Repatriation.

Act to apply notwithstanding Real Property Act.

4. The provisions of this Act shall apply notwithstanding anything contained in the Real Property Act, 1886.

Partial incorporation of the Lands Clauses Consolidation Act (No. 6 of 1847).

5. Sections 37, 69, 70, 73, 74, 95, 96, 98 to 109 (both inclusive), and 111, 112, and 113 of the Lands Clauses Consolidation Act, so far as applicable and not inconsistent with the provisions of this Act, are incorporated with and shall form part of this Act, and for the purposes of this Act the following expressions, when used in the said sections, or any of them, shall have the following meanings, namely:—“The promoters of the undertaking” shall mean the Minister of Repatriation; “the Special Act” shall mean this Act; and “the Bank” shall mean any bank carrying on business in the State in which trustees are by law permitted to deposit their trust funds.

Acquisition of large estates for settlement of discharged soldiers. Cf. *ibid.*, s. 161.

6. (1) Large estates may be acquired, in manner prescribed by this Act, by the Minister of Repatriation for the purpose of the settlement of discharged soldiers thereon.

(2) No

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(2) No large estate shall be acquired under this Act unless three members of the Land Board have certified in writing that the large estate proposed to be acquired is—

- (a) suitable for the settlement of discharged soldiers thereon ;
and
- (b) capable of being readily subdivided into blocks for that purpose.

(3) No large estate shall be acquired under this Act unless and until the Minister certifies to the Governor that all land voluntarily offered for sale to the Government up to the time of the passing of this Act for the settlement of discharged soldiers has been reported upon by a member of the Land Board.

7. (1) When the Minister considers it advisable to acquire any large estate under this Act he may direct an inspection thereof to be made ; and he shall, not less than four weeks prior to the date of the proposed inspection of the land, give a preliminary notice in writing to the owner thereof of his intention to inspect and of the date when an inspection of the land will be made.

Preliminary notice of intention to inspect.
Cf. *ibid.*, s. 163.

(2) Such notice shall specify the acreage, description, and boundaries of such land so far as the same are known to the Minister.

8. After notice under section 7 has been given as to any large estate, the Minister or any person authorised by him may enter at any time or times upon such large estate and inspect the same and the improvements thereon, and may remain thereon for any reasonable time to acquire all necessary information for the purpose of making an inspection of such land and improvements.

Land may be entered upon for inspection.
Cf. *ibid.*, s. 164.

9. When the Minister intends to acquire any large estate, as to which a preliminary notice has been given under section 7, he shall send to the owner a further notice, stating that at the expiration of six months from the date of such last-mentioned notice it is the Minister's intention to acquire the land, and what price he is prepared to give for it.

Notice of intention to acquire.
Cf. *ibid.*, s. 165.

10. After notice under section 9 as to any land has been given, the Minister may send a copy of such notice to the Registrar-General, at the Lands Titles Registration Office, and the Registrar-General shall thereupon note the same in the Register-Book if the land is under the Real Property Act, and if the land is not under the Real Property Act the Registrar-General shall register a memorial of the said notice in the General Registry Office for Deeds.

Registrar-General to note in Register-Book.
Cf. *ibid.*, s. 166.

11. As regards land under the Real Property Act, when a notice under section 9 has been noted as provided by section 10, and as regards land not under that Act, when a memorial of a notice given under

Notice to bind all persons interested.
Cf. *ibid.*, s. 167.

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under section 9 has been registered as provided by section 10, such notice shall be deemed to have been duly given to all persons—

- (a) at the time of such noting or registration, as the case may be, or
- (b) after the said time and within a period of six months after the giving of the notice under section 9,

having any right, estate, or interest in the land; and the Minister may, at any time within six months after the expiration of the said period of six months, acquire the land under this Act, notwithstanding any disposition of such land or any part thereof, or of any right, estate, or interest in or over such land or any part thereof, or any other dealing with or in any way affecting such land or any part thereof, and notwithstanding the noting in the Register-Book or registration in the General Registry Office for Deeds of any such disposition or dealing.

Appeal against compulsory acquisition.
Cf. Viet. Closer Settlement Act, 1917-18, No. 2987, s. 11.

12. (1) Notwithstanding anything herein contained, within one month after the receipt of notice under section 9 the owner may give notice in writing to the Minister of intention to appeal forthwith to a Special Appeal Board, constituted as hereinafter provided, against the compulsory acquisition of the land mentioned in his notice, upon the ground that the use to which the said land is then being put by the owner is of such importance that the compulsory acquisition thereof for the purposes of this Act would not be to the advantage of the State.

(2) Within fourteen days of the receipt of such notice from the owner, or as soon thereafter as practicable, the Governor shall, by order published in the *Government Gazette*, appoint a Special Appeal Board, consisting of three persons, namely—

- (a) one person nominated by the owner;
- (b) one person nominated by the Minister; and
- (c) a Judge of the Supreme Court.

Cf. 1199 of 1915, s. 172.

(3) If either the Minister or the owner fails to nominate a person as provided in subsection (2), the Special Appeal Board shall be constituted by the Judge and the person already appointed.

(4) The Special Appeal Board—

- i. may allow or disallow the appeal;
- ii. may sit at such times and places and adopt such procedure as it thinks fit;
- iii. may compel the attendance of witnesses and the production of documents;
- iv. may act notwithstanding the absence of the owner or any person who has been summoned to appear; and
- v. may make such order as to costs as it thinks fit, and such costs may be recovered in any Court of competent jurisdiction.

(5) If

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(5) If the Special Appeal Board allows the appeal no further steps shall be taken under this Act or the Crown Lands Act, 1915, for the compulsory acquisition of the said land for a period of at least two years after the date of the determination; but if the said Board disallows the appeal the Minister may proceed forthwith to acquire the land by compulsory process in accordance with this Act.

(6) Every determination of a Special Appeal Board shall be final and conclusive, and shall not be challenged, appealed against, reviewed, or called in question in any Court on any account whatsoever.

(7) Where an owner has given a notice of intention to appeal to a Special Appeal Board, no further steps shall be taken by the Minister under the notice given pursuant to section 9 unless and until the appeal is disallowed.

13. (1) If the owner of any large estate as to which the Minister has given a notice under section 9 of his intention to acquire such estate under this Act proves to the satisfaction of a Special Appeal Board, constituted as provided in section 12, that such owner has been on active service, such owner shall be entitled to reserve out of such large estate, in addition to any land reserved by him under section 14, land to the unimproved value of Ten Thousand Pounds.

Certain estates not to be acquired compulsorily.

(2) The owner of any such large estate who proves to the satisfaction of such Appeal Board that any son of such owner has been on active service shall be entitled to reserve, in addition to any land reserved by him under section 14, land of an unimproved value equal to Ten Thousand Pounds for each son of such owner who has been on active service.

14. (1) At any time before the expiration of the notice given under section 9 as to any large estate, the owner thereof, unless he has in the meantime agreed in writing with the Minister for the sale thereof, shall have the right, by notice in writing given to the Minister, to select and retain out of such large estate, for the purpose of his residence or business, or both, land in one block where possible, and if land of the prescribed value cannot be retained in one block, then it may be retained in such blocks as may be agreed between the Minister and the owner, or, failing agreement, as shall be determined by the arbitrator at the time of fixing the compensation: Provided that in no case shall the unimproved value of the land selected and retained exceed in the aggregate Fifteen Thousand Pounds.

Owner may reserve land not exceeding prescribed value.

Cf. *ibid.*, s. 168 ; 1231, 1915, s. 6.

(2) Any block which is selected and retained by the owner under this section shall be, as nearly as practicable, in the form of a square, unless it has a frontage to a road, river, lake or sea, when the width and depth shall be so regulated as not to exceed the proportion of one to two.

(3) The situation of every such block shall be such as is agreed between the Minister and the owner, or, failing agreement, such as is determined by the arbitrator at the time of fixing the compensation.

(4) If

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(4) If there is a homestead on such large estate, the owner shall, if so required by the Minister, include it in any land which is selected and retained by him under this section, and if there is more than one homestead the owner may elect which one is to be so included.

(5) When a notice in accordance with subsection (1) of this section has been given, the land properly comprised in such notice shall cease to be affected by the notice given under section 9.

Owner may require whole estate to be taken.

Cf. 1199, 1915, s. 169.

15. (1) At any time before the expiration of the notice given under section 9 as to any large estate the owner thereof, unless he has in the meantime agreed in writing with the Minister for the sale thereof, may, by notice in writing given to the Minister, require him to take all lands specified in the last-mentioned notice of which he is the owner, and which adjoin or are occupied together with the land comprised in the said notice under section 9.

(2) After a notice in accordance with subsection (1) of this section has been given, the land comprised in the said notice under section 9 shall not, without the consent in writing of the owner thereof, be acquired under this Act, unless the land properly comprised in the said notice under subsection (1) of this section is also acquired, nor shall the last-mentioned land be so acquired without such consent, unless the land comprised in the said notice under section 9 is also so acquired.

(3) When a notice under subsection (1) of this section has been given as to any land the Minister shall, except for the purposes of section 14, be deemed to have duly given a notice under section 9 of his intention to acquire such land. The Minister may send to the Registrar-General of Deeds a notice in writing of his intention to acquire such land, and such notice shall be noted in the Register-Book if the land is under the Real Property Act, 1886. Upon such noting, if the land is under the said Act, or upon the giving of the notice by the owner to the Minister, if the land is not under the said Act, the provisions of section 11 shall apply to such land.

Mode of acquiring the land.

Cf. *ibid.*, s. 170.

16. (1) Subject to sections 14 and 15, at any time within six months after the expiration of the period of six months from the giving of the notice under section 9, if—

- (a) the amount of the purchase-money to be paid therefor has been agreed between the Commissioner and the owner or has been ascertained by arbitration as mentioned in section 18, and
- (b) the amount of such purchase-money has been paid or tendered, and
- (c) the owner of such large estate has refused or failed to sign a conveyance or transfer thereof to His Majesty the King, it

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it shall be lawful for the Governor, by proclamation, to declare that the provisions of this Act shall apply to the land comprised in such notice, and that the same is thereby compulsorily taken and acquired.

(2) On and after the date of the publication of such proclamation in the *Government Gazette* the land therein specified shall, without further or other authority than this Act, become and be absolutely vested in His Majesty the King, free and discharged from all leases, licences, contracts, trusts, obligations, estates, interests, charges, rates, and easements whatsoever.

(3) For the purposes of this section, the tender of an order on the Treasurer of the State, signed by the Secretary for Lands, the Assistant Secretary for Lands, or the Surveyor-General, for the amount of the purchase-money to be paid for a large estate shall be deemed to be a tender of the amount of such purchase-money.

Method of tendering purchase-money.
Cf. 1231, 1915, s. 7;
1311, 1917, s. 6.

17. When a proclamation has been made under section 16 as to any land the Minister shall furnish the Registrar-General of Deeds with a copy of such proclamation.

Copy of proclamation to be furnished to Registrar-General.
1199, 1915, s. 171.

18. Where any land is acquired under this Act, the price to be paid for the same and the improvements thereon shall, failing agreement between the Minister and the owner within one month after notice in writing given by one party to the other of the price which he is willing to pay or accept in settlement, be determined by the arbitration of a single arbitrator, who shall be a Judge of the Supreme Court.

Price to be determined by arbitration failing agreement.
Cf. *ibid.*, s. 172.

19. Where money has, prior to the passing of this Act, been *bona fide* lent on the sole security by way of mortgage or other encumbrance of land acquired under this Act, no less sum shall, without the consent of the mortgagee or encumbrancee, be paid as the price of such land than the amount of the money so lent and unpaid at the time of so acquiring the land, together with any interest thereon due and unpaid at the time of such acquisition.

Price not to be less than encumbrance.
Ibid., s. 173 (2).

20. All notices required to be given under this Act to any owner shall be deemed to be duly given when posted to or left at his usual or last known place of abode or business.

Service of notices.
Ibid., s. 175.

21. (1) Either party to the arbitration shall have the right to appeal to the Supreme Court, but only on a question of law, and the said Court may, on such appeal, make such order as it deems proper, and the arbitrator shall give effect to such order; but, otherwise, the decision of the arbitrator shall be final and not subject to any appeal.

Award of arbitrator.
Cf. *ibid.*, s. 174.

(2) Where an award has been improperly procured, the said Court or a Judge thereof may set such award aside.

(3) The

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(3) The award may be made an order of the Supreme Court on the application of the Minister or the owner, and may thereafter be enforced accordingly.

(4) The arbitrator or, on appeal, the Supreme Court may make such award and directions as to the costs of any parties concerned in such arbitration as he or they deem just.

Duration of Act.

22. No large estate shall be acquired under this Act after the expiration of six years from the date of the passing thereof.

Miscellaneous Amendments.

Amendment of section 11 of principal Act—

Advances may be made for purpose of discharging mortgage.

23. Section 11 of the principal Act is amended—

(a) by striking out the words “under either of the Acts incorporated herewith” in the second and third lines of subsection (1) thereof, and

(b) by inserting after subsection (2) thereof the following subsection:—

(2A) Advances may also be made under this Act to any discharged soldier—

(a) who is the holder on lease or agreement of any land belonging to the Crown, or

(b) who is the owner of any estate or freehold in land, or

(c) who is the lessee of land under a lease (not being a lease from the Crown) having a term of not less than three years to run

for the purpose of discharging any mortgage or encumbrance over such land or his interest therein, or for the purpose of paying off any debt incurred by such discharged soldier prior to his enlistment or incurred on his behalf during his absence from the State on active service. Every advance so made shall be secured by a first mortgage over such land, or the interest of such soldier therein, and (or), if the Minister thinks fit, by a bill of sale or other security approved by the Minister over any goods and chattels of such soldier, and shall, in cases when the advance is to be secured by a first mortgage only, be limited to the amount recommended by—

(a) the Land Board, concurred in by an Inspector of Lands and at least two other members of the Board, or

(b) at least two members of the Land Board and the Land Valuer for the District in which the land is situated.

Amendment of Act No. 1346 of 1918, s. 11—

No land to be set apart or acquired except on certain recommendation.

24. Section 11 of the Discharged Soldiers Settlement Act Amendment Act, 1918, is amended so as to read as follows:—

11. No land shall be set apart or acquired under the principal Act or this Act except on the recommendation—

(a) of the Land Board, concurred in by an Inspector of Lands and at least two other members of the Board,

(b) of

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(b) of at least two members of the Land Board and the Land Valuer for the District in which the land is situated.

25. Section 13 of the Discharged Soldiers Settlement Act Amendment Act, 1918, is amended so as to read as follows :—

Amendment of
ibid., s. 13—

13. (1) The Governor may appoint Inspectors of Lands under this Act, who shall, for the purposes of the principal Act and of this Act, be additional members of the Land Board, and, for those purposes, shall have all the powers and duties of members of the said Board.

Constitution of Land Board for purposes of principal Act and this Act.

(2) The Inspector of Lands in the Department of the Minister of Agriculture shall be deemed to have been appointed under this section.

26. Section 15 of the Discharged Soldiers Settlement Act Amendment Act, 1918, is amended so as to read as follows :—

Amendment of
ibid., s. 15—

15. (1) The Minister may, out of moneys provided by Parliament for the purpose, upon application, purchase land of any tenure, including land held under a Crown lease or agreement, with a view to the settlement thereon of a particular discharged soldier.

Minister may purchase land for individual soldier.

(2) Any land so purchased may be vested directly in such discharged soldier and a mortgage be taken by the Minister over the land to secure payment to the Minister of all sums of money paid by him for the purchase thereof, and other advances (if any) made to such discharged soldier and remaining unpaid, and the provisions of subsection (3) of section 10 of the principal Act shall apply, *mutatis mutandis*, to a mortgage taken by the Minister under this section.

(3) If the land so purchased is not dealt with under subsection (2) hereof—

(a) if it is acquired in fee simple, it shall be vested in His Majesty, or

(b) if it is land held under a Crown lease or agreement, such lease or agreement shall be surrendered,

and in either case the Minister may grant to the discharged soldier for whom such land was purchased, or any other discharged soldier, an agreement over such land in the same form and containing the same covenants and conditions as if such discharged soldier had made application for such land under section 9 of the principal Act and his application had been granted by the Minister.

(4) The provisions of subsections (4) and (5) of section 9 of the principal Act shall apply, *mutatis mutandis*, to and in respect of all applications for land made under this section.

(5) Any

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(5) Any person whose application for any such land has been granted may apply to the Minister for an advance for any of the purposes mentioned in section 10 of the principal Act, and the provisions of subsections (2) and (3) of that section shall apply to and in respect of such advances.

(6) An agreement shall not be granted to any applicant for any such land until he has occupied the land on permit for a period of at least twelve months. The provisions of subsection (2) of section 18 of the Discharged Soldiers Settlement Act Amendment Act, 1918, shall apply, *mutatis mutandis*, to and in respect of every such permit.

Additional Provisions.

Constitution of Valuation Districts, and appointment of Valuers for Districts so constituted.

27. (1) The Minister may, from time to time, by notice published in the *Government Gazette*, declare that any part of the State defined in such notice shall constitute a Land Valuation District for the purposes of the principal Act, and may, by the same or another such notice, appoint a Land Valuer or Land Valuers for the purposes of that Act for any such District.

(2) Every Valuer so appointed shall have such duties with respect to the valuation of land within the District for which he is appointed as the Minister determines or as may be prescribed, and, for the purposes of any such valuation, may enter upon and inspect any land, building, or place, and inspect any goods and other things, the entry upon or inspection of which appears to him to be requisite.

Acquired land to become Crown lands.

28. (1) Any land acquired under section 7 of the principal Act, whether so acquired before or after the passing of this Act and whether vested in the Minister or not, and any land acquired under this Act, shall upon such acquisition be deemed to have become, or to become, Crown lands, and shall be dealt with and regarded in all respects as Crown lands set apart under section 6 of the principal Act.

(2) Upon the transfer or conveyance of any land so acquired, or of any land acquired under section 15 of the Discharged Soldiers Settlement Act Amendment Act, 1918, for the purpose of being vested in His Majesty, being lodged with the Registrar-General of Deeds, the Registrar-General shall make any entry in the Register-Book or other book at the Lands Titles or General Registry Office necessary or proper to evidence the vesting of the land in His Majesty.

(3) In the case of land under the provisions of the Real Property Act, 1886, upon the lodging of the transfer with him or, in the case of land acquired by the Minister and vested in His Majesty or the Minister before the passing of this Act, upon the certificate, grant, or other muniment or muniments of title to such land being lodged with him by the Minister, the Registrar-General shall make

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make an entry on the folium relating to such land in the Register-Book, as follows:—"Cancelled, the within land having become vested in the Crown," and shall cancel any certificate, grant, or muniment or muniments of title to such land lodged with any such transfer or lodged as aforesaid by indorsing such entry thereon, and shall sign such entry and indorsement. Thereafter such land shall, for the purposes of the Real Property Act, 1886, and until again alienated from the Crown, be dealt with and regarded in all respects as if it had never been alienated from the Crown.

29. (1) The Governor may from time to time set apart any area or areas of pastoral land for allotment pursuant to this section to discharged soldiers. Any such proclamation may at any time be revoked in so far as it relates to land which is not required, or which is not suitable, for the purpose for which it was set apart.

Areas of pastoral land may be set apart for allotment to discharged soldiers. Cf. principal Act, s. 6.

(2) All land set apart under this section shall, if in the opinion of the Pastoral Board the area thereof is too large to be allotted as a separate holding, be subdivided into such blocks as the Pastoral Board, with the approval of the Minister, determines.

(3) Such blocks may be offered in such manner as the Minister approves to discharged soldiers on leases for such terms of years as the Minister thinks convenient. Such leases shall be in such form and shall contain such covenants and conditions as are prescribed.

(4) The provisions of subsections (4) and (5) of section 9 of the principal Act shall apply, *mutatis mutandis*, to and in respect of all applications for blocks made under this section.

(5) Any person whose application for any such block has been granted may apply to the Minister for an advance for any of the purposes mentioned in section 10 of the principal Act, and the provisions of subsections (2) and (3) of that section shall apply to and in respect of such advances.

(6) A lease shall not be granted to any applicant for any such block until he has occupied the block on permit for a period of at least twelve months. The provisions of subsection (2) of section 18 of the Discharged Soldiers Settlement Act Amendment Act, 1918, shall apply, *mutatis mutandis*, to and in respect of every such permit.

30. The amount payable to the outgoing lessee for improvements on the block or blocks comprised in any pastoral lease granted to a discharged soldier, whether payable by the incoming lessee or by the Commissioner of Crown Lands, shall be paid by the Minister, and such amount shall be repaid to the Minister by the discharged soldier who is the incoming lessee by equal annual instalments spread over the term of the lease, together with interest thereon or on the balance for the time being remaining unpaid at such rate as is determined by the Minister, which instalments and interest shall be payable on the same days as rent is payable under the lease, and shall be recoverable in like manner: Provided that such discharged

Provision for payment for improvements on land under pastoral lease granted to a discharged soldier.

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discharged soldier may at any time pay the balance of the instalments and interest thereon to the date of payment, and thereupon he shall cease to be liable under this section.

Lessees may
surrender leases and
agreements for leases
and agreements
under principal Act.

31. (1) Any discharged soldier who is the holder of land on perpetual lease or agreement under the Crown Lands Act, 1915, may apply in writing to surrender his lease or agreement for the purpose of obtaining a perpetual lease or agreement under the principal Act, and the Minister may grant such application.

(2) Upon application being made under this section, the Land Board, subject to the approval of the Minister, shall fix the annual rent or purchase-money at which such perpetual lease or agreement may be obtained.

(3) The conditions of leases granted and agreements entered into under this section shall be as prescribed.

(4) The provisions of section 18 of the Discharged Soldiers Settlement Act Amendment Act, 1918, shall not apply in respect of the granting of any lease or agreement under this section.

Instruments to be
exempted from stamp
duty.

Cf. 1316, 1917, s. 19.

32. Notwithstanding anything contained in the Stamp Acts, 1886 to 1916, no stamp duty shall be chargeable upon any instrument executed by any returned soldier or other person for the purpose of giving effect to any transaction authorised by the principal Act or any amendment thereof.

In the name and on behalf of His Majesty, I hereby assent to
this Bill.

H. L. GALWAY, Governor.