

HUNTER VALLEY FLOOD MITIGATION ACT.

Act No. 10, 1956.

An Act to provide for the carrying out of works of flood prevention and mitigation within the Hunter Valley and to make provision otherwise for and in respect of such flood prevention and mitigation; to provide for payments to be made by the Hunter Valley Conservation Trust and by councils in respect of such works; for these and other purposes to amend the Public Works Act, 1912, the Hunter Valley Conservation Trust Act, 1950, and certain other Acts in certain respects; and for purposes connected therewith. [Assented to, 17th August, 1956.]

Elizabeth II,
No. 10, 1956.

BE

Hunter Valley Flood Mitigation Act.

No. 10, 1956.

BE it enacted by the Queen'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:—

PART I.**PRELIMINARY.**

Short title,
commence-
ment and
division
into Parts.

1. (1) This Act may be cited as the "Hunter Valley Flood Mitigation Act, 1956."

(2) This Act shall commence upon a day to be appointed by the Governor and notified by proclamation published in the Gazette.

(3) This Act is divided into Parts as follows:—

PART I.—PRELIMINARY.

PART II.—CONSTRUCTION OF WORKS.

PART III.—POWERS OF CONSTRUCTING AUTHORITY.

PART IV.—COMPENSATION.

DIVISION 1.—Assessment Board.

DIVISION 2.—Provisions relating to compensation.

PART V.—FINANCE.

PART VI.—MISCELLANEOUS AND GENERAL.

**Interpreta-
tion.**

2. (1) In this Act, unless the context or subject matter otherwise indicates or requires—

"Account" means the Hunter Valley Flood Mitigation Working Account referred to in subsection two of section forty-one of this Act.

"Assessment Board" means the Assessment Board constituted under the provisions of this Act.

"Commission" means The Water Conservation and Irrigation Commission constituted under the provisions of the Irrigation Act, 1912, as amended by subsequent Acts.

"Council"

“Council” means council as defined in the Local Government Act, 1919, as amended by subsequent Acts, and includes a county council constituted under that Act, as so amended. No. 10, 1956.

“Financial year” means the period commencing on the first day of July in any year and terminating on the thirtieth day of June in the next following year.

“Hunter Valley” means the catchment area of the River.

“Levee bank” means levee bank designed or intended for the purpose of or which could or might have the effect of excluding or partially excluding the waters of the River or waters overflowing from the River from any land.

“Local government area” has the meaning ascribed to that phrase in the Local Government Act, 1919, as amended by subsequent Acts.

“Lower river” means those parts of the River which flow through those portions of the Hunter Valley in respect of which the Minister for Public Works is the Constructing Authority.

“Occupier” means the person in actual occupation or for the time being entitled to the possession of any land and includes where the person so entitled does not reside on the land his resident manager or other person having the care, control or management of the land and where any land is vested in a council means that council.

“Owner”, in relation to land, includes every person who jointly or severally, whether at law or in equity—

(a) is entitled to the land for any estate of freehold in possession; or

(b)

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- (b) is a person to whom the Crown has lawfully contracted to grant the fee simple under the Crown Lands Acts or any other Act relating to the alienation of lands of the Crown; or
- (c) is entitled to receive or is in receipt of, or if the land were let to a tenant would be entitled to receive, the rents and profits thereof, whether as beneficial owner, trustee, mortgagee in possession, or otherwise; or
- (d) is the holder of a lease from the Crown or any statutory body representing the Crown.

“Prescribed” means prescribed by this Act or the regulations made thereunder.

“River” means the Hunter River and its tributaries and includes the estuary of the River and any arm or branch of such estuary and where any part of the River is influenced by tidal waters includes that part.

“Tree” includes sapling, shrub and scrub.

“Trust” means the Hunter Valley Conservation Trust constituted under the provisions of the Hunter Valley Conservation Trust Act, 1950, as amended by subsequent Acts.

“Work to which this Act extends” means any work designed or intended for the purpose of or which could or might have the effect of preventing or mitigating the flooding or inundation of any lands within the Hunter Valley by the waters of the River or by waters which may overflow or otherwise escape from the River or the effects of any such flooding or inundation and, without
limiting

limiting the generality of the foregoing, includes ^{No. 10, 1956.} works for or in connection with or incidental to—

- (a) river bank protection and river bank stabilisation;
- (b) river regulation;
- (c) river channel improvement;
- (d) river diversion;
- (e) dredging;
- (f) the construction or provision of flood escapes and the improvement of flood escapes and floodways;
- (g) the construction or provision of flood-gates and the improvement of flood-gates;
- (h) the construction of levee banks and the removal, relocation, re-alignment, alteration, reduction in height, demolition or reconstruction of levee banks.

(2) For the purposes of this Act the Constructing Authority shall—

- (a) in respect of those portions of the Hunter Valley which are prescribed as being the portions of the Hunter Valley in respect of which the Minister for Public Works is to be the Constructing Authority, be the Minister for Public Works,
- (b) in respect of those portions of the Hunter Valley not being those portions in respect of which the Minister for Public Works is the Constructing Authority, be the Commission.

(3) The provisions of this Act conferring powers, authorities, duties and functions on the Constructing Authority shall, where the Minister for Public Works is the Constructing Authority, be applicable to those portions of the Hunter Valley in respect of which he is the Constructing Authority and, where the Commission is the Constructing

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No. 10, 1956. Constructing Authority, be applicable to those portions of the Hunter Valley in respect of which it is the Constructing Authority.

Certain Acts not affected. **3.** Except as expressly in this Act provided, nothing in this Act shall affect any of the provisions of—
the Water Act, 1912;
the Local Government Act, 1919;
the Rivers and Foreshores Improvement Act, 1948;
the Hunter Valley Conservation Trust Act, 1950,
or any Act amending any of those Acts, or take away, derogate from or otherwise affect any powers vested in any person or body by any of the said Acts or by any by-laws, ordinances or regulations made thereunder.

PART II.

CONSTRUCTION OF WORKS.

Construction, etc., of works to which this Act extends.

- 4.** (1) The Constructing Authority may—
- (a) plan and undertake schemes for the prevention or mitigation of flooding, and
 - (b) in accordance with the provisions of this Act, undertake, construct, carry out, operate and maintain any work to which this Act extends.

(2) (a) Every work which the Constructing Authority is authorised to undertake, construct or carry out shall be undertaken, constructed or carried out under the Public Works Act, 1912, as amended by subsequent Acts.

(b) Any such work shall be deemed to be an authorised work within the meaning of the Public Works Act, 1912, as amended by subsequent Acts, and save as hereinafter expressly provided the provisions of the said Act as so amended, sections thirty-four, thirty-five, thirty-six and thirty-seven excepted, shall apply to and in respect of any such work.

(•)

(c) The Constructing Authority shall be the constructing authority for any such work within the meaning of the said Act as so amended, and shall enter into such contracts and take all such necessary steps for the proper execution thereof as such authority may think proper. No. 10, 1956.

(3) Without prejudice to the generality of subsections one and two of this section, the provisions of section thirty-eight of the Public Works Act, 1912, as amended by subsequent Acts, shall apply to and in respect of any of the contracts referred to in paragraph (c) of subsection two of this section.

5. For the purposes of this Act, but not otherwise, the following amendments shall be made in the Public Works Act, 1912, as amended by subsequent Acts, that is to say:— Amendment
of Act
No. 45,
1912.

(a) sections eighty-two, eighty-three, eighty-four, eighty-five, eighty-six, eighty-seven, eighty-eight, eighty-nine, ninety, ninety-one, ninety-two, ninety-three, ninety-four, ninety-five and ninety-six are repealed; Secs. 82-96.

(b) section ninety-eight is amended— Sec. 98.

(i) by inserting in subsection three before the words “public works” the words “authorised works or”;

(ii) by omitting from the same subsection the words “not exceeding fifty years”;

(c) section one hundred and twenty-six is amended by inserting at the end of subsection two the following proviso:— Sec. 126.

“Provided that such interest shall not be paid for any period during which delay in fixing the amount of compensation or in completing title has been caused without reasonable excuse by the act or default of the person to whom such compensation is payable.”

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Constructing Authority not to be bound by town and country planning schemes.

6. Notwithstanding anything contained in Part XIIA of the Local Government Act, 1919, as amended by subsequent Acts, no restriction imposed by or under that Part and no provision or restriction contained in any town or country planning scheme prescribed by ordinance pursuant to the provisions of the said Part or imposed under the authority of any such scheme shall apply to or in respect of any work or measure undertaken, constructed or carried out or proposed to be undertaken, constructed or carried out by the Constructing Authority under the authority of this Act or operate in such manner as to derogate from or interfere in any way with the full and free exercise by the Constructing Authority of any of the powers, authorities, duties and functions conferred or imposed on the Constructing Authority by or under this Act.

PART III.**POWERS OF CONSTRUCTING AUTHORITY.**

Certain provisions of Act No. 44, 1912, not to apply to lower river.

7. In respect of the lower river—

- (a) the provisions of Part II of the Water Act, 1912, as amended by subsequent Acts, section 26b excepted, shall, as from the commencement of this Act, cease to apply; and
- (b) all licenses, permits and authorities for joint water supply schemes issued under the provisions of the said Part II in respect of works to which that Part extends and in force immediately before such commencement shall upon such commencement be revoked and cease to be of any force or effect.

Construction and use of levee banks, etc., in respect of lower river.

8. (1) This section shall apply to and in respect of those portions of the Hunter Valley in respect of which the Minister for Public Works is the Constructing Authority.

(2)

(2) No owner or occupier of any land or other person whomsoever shall, except with the permission of the Constructing Authority—

- (a) construct or erect any levee bank; or
- (b) construct or erect any pump or other machinery or appliance, pipe, flume, race, channel, cutting, excavation, sewer or other work of a like nature connected in any way with the waters of the lower river.

(3) (a) The Constructing Authority may by notice in writing direct the owner or occupier of any land on which there is any levee bank, or any pump or other machinery or appliance, pipe, flume, race, channel, cutting, excavation, sewer or other work of a like nature connected in any way with the waters of the lower river, constructed or erected before the commencement of this Act, to make such modification of such work and within such time as may be specified in the notice.

Such owner or occupier shall comply with such notice accordingly.

(b) If such owner or occupier fails to comply with the terms of any such notice the Constructing Authority may cause the modification directed in such notice to be made and may recover any cost incurred in so doing from such owner or occupier in any court of competent jurisdiction as a debt due and owing to the Constructing Authority.

9. (1) For the purposes of this Act the Constructing Authority or any person authorised by the Constructing Authority may enter any land and carry out any investigation or inspection and take levels and make surveys and marks and fix pegs and stakes.

(2) For the purposes of this Act the Constructing Authority may undertake, construct, carry out, operate and maintain any work on any land, street, road or reserve.

(3)

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(3) For the purpose of undertaking, constructing or carrying out any work to which this Act extends (other than a work of river diversion) which is proposed to be undertaken, constructed or carried out under the authority of this Act or for the purpose of the operation or maintenance of any such work so undertaken, constructed or carried out, the Constructing Authority or any person authorised by the Constructing Authority shall have power at any time—

- (a) to enter land and use such land for the purpose of undertaking, constructing, carrying out, operating or maintaining such work;
- (b) to enter land and take and use any gravel, spoil, stone or other material from such land;
- (c) to take and use any gravel, spoil, stone or other material from the bed of the River;
- (d) to enter any land lying within two chains of the bank of the River and lop and cut down any tree which may be on such land, and take and use any such tree and any cuttings of any tree on such land;

whether or not the work for which such gravel, spoil, stone or other material or tree or cutting is taken or used is contiguous to such land or bed of the River, as the case may be, and notwithstanding an easement or right so to enter and use such land or to take and use such gravel, spoil, stone or other material or tree or cutting has not been acquired or granted.

(4) Any person obstructing or hindering the Constructing Authority or any person authorised by the Constructing Authority in the exercise of any power conferred by this section shall be guilty of an offence against this Act.

(5) Any person who removes injures or interferes with any marks made or pegs or stakes fixed pursuant to the provisions of this section shall be guilty of an offence against this Act.

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10. If in the opinion of the Constructing Authority No. 10, 1956.
any tree on the bank of the River or on land adjoining Lopping,
any such bank constitutes a threat to any scheme for etc., of
flood prevention or mitigation which the Constructing trees.
Authority has carried out or has planned or is planning
to carry out or to any part of any such scheme or inter-
feres with or impedes or tends to interfere with or impede
the free flow of the River or otherwise detrimentally
affects or is likely to detrimentally affect such flow or the
stability of the banks of the River the Constructing
Authority may, notwithstanding anything contained in
the Hunter Valley Conservation Trust Act, 1950, or any
Act amending that Act, authorise any person to enter
the land on which such tree is and to lop, cut down or
remove such tree.

11. (1) For the purpose of flood prevention or miti- Pumps, etc.,
gation, the Constructing Authority may, where the may be
Constructing Authority considers such a course necessary relocated.
or desirable, authorise any person to enter any land on
which there is any pump or other machinery or appliance,
pipe, flume, race, channel, cutting, excavation, sewer or
other work of a like nature and to remove and relocate
any such work.

(2) The powers conferred by subsection one of
this section may be exercised whether or not the work is
licensed, permitted or authorised under any of the pro-
visions of the Water Act, 1912, as amended by subsequent
Acts.

(3) Where pursuant to the provisions of sub-
section one of this section any pump or other machinery
or appliance, pipe, flume, race, channel, cutting, excava-
tion, sewer or other work of a like nature is removed
and relocated, such removal and relocation shall be
carried out in a proper and workmanlike manner and
shall be so carried out that such pump or other machinery
or appliance, pipe, flume, race, channel, cutting, excava-
tion, sewer or other work may be operated in the same
manner and to the same extent as before removal and
relocation or as near thereto as circumstances will allow.

(4)

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(4) The removal and relocation of any work in accordance with the provisions of this section shall for all purposes be deemed to be a work to which this Act extends and the provisions of section nine of this Act shall apply to and in respect thereof accordingly.

(5) Any license, permit or authority for a joint water supply scheme issued under the provisions of Part II of the Water Act, 1912, as amended by subsequent Acts, in respect of any of the works referred to in subsection one of this section and in force at the time of removal and relocation of such work shall be deemed to apply to and in respect of such work in its new location to the same extent as the same applied to such work in its former location and for that purpose such license, permit or authority shall be deemed to be amended accordingly but shall otherwise remain in full force and effect.

Fences and structures not to be made on or over levee banks.

12. No owner or occupier of land or other person whomsoever shall, except with the permission of the Constructing Authority, construct or erect any fence, structure or other erection whatsoever on, or in proximity to any levee bank.

Provisions relating to permission of Constructing Authority to doing of acts.

13. (1) Where pursuant to the provisions of subsection two of section eight or of section twelve of this Act the permission of the Constructing Authority is necessary to the doing of any act, application for a permit shall be made in writing to the Constructing Authority and shall specify the land in respect of which the permit is desired and supply full particulars of the work proposed to be undertaken.

(2) The Constructing Authority may, after such investigation as the Constructing Authority may deem necessary, refuse any permit applied for under this section or may grant the same unconditionally or subject to such limitations and conditions (including a condition limiting the time the permit shall remain in force) as the Constructing Authority may think fit.

(3)

(3) The Constructing Authority may at any time No. 10, 1956.
revoke or vary any permit issued under the provisions
of this section.

(4) The Constructing Authority may authorise
any person to enter the land on which—

(a) any work referred to in subsection two of section
eight or any fence, structure or other erection
referred to in section twelve of this Act has been
constructed or erected contrary to the provisions
of the said subsection two or of the said section
twelve, as the case may be; or

(b) any such work or fence, structure or other
erection has been constructed or erected other-
wise than in compliance with the limitations or
conditions for the time being attached to the
permit in respect thereof granted under the
provisions of this section,

and to demolish such work or fence, structure or other
erection or to carry out such alterations or modifications
thereof as may be necessary to cause such work or fence,
structure or other erection to be in compliance with
the said limitations or conditions, as the case may require,
and may recover any cost incurred in so doing from
the owner or occupier of the land or other the person
constructing or erecting such work or fence, structure or
other erection in any court of competent jurisdiction as a
debt due and owing to the Constructing Authority.

14. The Constructing Authority may, by notice in Taking
over of
levee
banks.
writing to the owner of the land on which is situated
any privately owned levee bank, take over the mainten-
ance and control of such levee bank as from a date to be
specified in such notice and upon such notice having
been so given the maintenance and control of such levee
bank shall as from the specified date be deemed to be
wholly transferred to and vested in the Constructing
Authority as a work to which this Act extends and under-
taken by the Constructing Authority under the provisions
of this Act.

15.

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Restriction
on use of
lands
adjacent to
levee banks.

15. (1) Where a levee bank has been constructed adjacent to the River, the Constructing Authority may, by notice in writing to the owner and occupier of the land on which such levee bank has been constructed or of any land immediately adjacent thereto or of the whole or any part of the land lying between such levee bank and the River, impose such conditions and restrictions on the use of such levee bank or land as the Constructing Authority may deem necessary or desirable to ensure the stability of such levee bank and in the interests of flood prevention or mitigation within the Hunter Valley generally.

(2) The notice referred to in subsection one of this section shall specify the land to which the notice relates and the conditions or restrictions imposed thereby with sufficient particularity to enable any person affected thereby to be acquainted with the obligations imposed upon him by virtue of such notice.

(3) The Constructing Authority may in the like manner revoke or vary any notice given in pursuance of this section.

(4) If any owner or occupier of land in respect of which a notice has been given pursuant to the provisions of this section contravenes or fails to comply with any condition or restriction imposed by such notice the Constructing Authority may authorise any person to enter the land to which such notice relates and to take such remedial measures on that land as the Constructing Authority may deem necessary and may recover any cost incurred in so doing from such owner or occupier in any court of competent jurisdiction as a debt due and owing to the Constructing Authority.

Proclama-
tion of
lands as
within the
flood plain
of the River.

16. (1) The Governor may by proclamation in the Gazette declare any specified area or areas of lands within the Hunter Valley to be within the flood plain of the River and may by the like proclamation revoke or vary any such proclamation.

(2)

(2) While any such proclamation remains in force no structure or work within any area to which the proclamation relates which is designed or intended for or which could or might have the effect of—

- (a) controlling or mitigating floodwaters; or
- (b) discharging stormwaters; or
- (c) excluding tidal waters,

or which may in the opinion of the Constructing Authority in any way result in the concentration or diversion of floodwaters or of stormwaters shall be constructed, erected or altered, unless particulars of the site, nature, dimensions and design of the proposed structure or work or the proposed alterations have been approved by the Constructing Authority.

(3) (a) Application for approval of the Constructing Authority in accordance with the provisions of this section shall be made in writing to the Constructing Authority and shall be accompanied by full particulars of the site, nature, dimensions and design of the proposed structure or work or the proposed alterations, as the case may be, together with such other particulars in relation thereto as the Constructing Authority may require.

(b) The Constructing Authority may, after such investigation as the Constructing Authority may deem necessary, refuse any such application or may grant the same unconditionally or subject to such amendments relating to the site, nature, dimensions or design of such proposed structure or work or such proposed alterations, as the case may be, or to such limitations and conditions as the Constructing Authority may think fit.

(4) The Constructing Authority may authorise any person to enter the land on which a structure or work has been constructed, erected or altered in contravention of the provisions of this section or the limitations or conditions on which any approval

is

No. 10, 1953. is given thereunder, and to demolish such structure or work or to carry out such alterations or modifications thereof as the Constructing Authority may deem necessary or desirable, and may recover any cost incurred in so doing from the owner or occupier of such land in any court of competent jurisdiction as a debt due and owing to the Constructing Authority.

PART IV.

COMPENSATION.

DIVISION 1.—*Assessment Board.*

Assessment Board. **17.** (1) For the purposes of this Act there shall be constituted a Board to be called the Assessment Board.

(2) The Assessment Board shall consist of four members who shall be appointed by the Governor.

Of the members so appointed—

- (a) one shall be appointed on the nomination of the Minister for Public Works;
- (b) one shall be appointed on the nomination of the Commission;
- (c) one shall be appointed on the nomination of the Minister of Agriculture; and
- (d) one shall be appointed on the nomination of the Trust.

(3) (a) The member of the Assessment Board referred to in paragraph (a) of subsection two of this section shall act as such member only in relation to matters before the Assessment Board connected with those

those portions of the Hunter Valley in respect of which the Minister for Public Works is the Constructing Authority and when so acting shall be chairman of the Assessment Board. No. 10, 1956.

(b) The member of the Assessment Board referred to in paragraph (b) of subsection two of this section shall act as such member only in relation to matters before the Assessment Board connected with those portions of the Hunter Valley in respect of which the Commission is the Constructing Authority and when so acting shall be chairman of the Assessment Board.

(4) The Governor may from time to time revoke the appointment of any member of the Assessment Board and may appoint another member to the Assessment Board upon the like nomination as that of the member whose appointment has been revoked.

(5) The provisions of the Public Service Act, 1902, or of any Act amending that Act, shall not apply to or in respect of the appointment of a member of the Assessment Board and such member shall not in his capacity as a member be subject to the provisions of any such Act.

(6) Each member of the Assessment Board shall be entitled to receive—

- (a) such remuneration for his services as may from time to time be fixed by the Governor; and
- (b) travelling expenses at such rate as the Governor may from time to time determine.

(7) A member of the Assessment Board who is an officer of the Public Service or of any statutory body representing the Crown shall, notwithstanding the provisions of any Act or of any rule or regulation made under any Act, be entitled to receive remuneration under the provisions of subsection six of this section in addition to any remuneration to which he is entitled as an officer of the Public Service or of any statutory body representing the Crown, as the case may be.

(8)

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(8) The office of a member of the Assessment Board shall not for the purpose of the Constitution Act, 1902, or any Act amending that Act, be deemed to be an office or place of profit under the Crown.

Powers of
Assessment
Board.

18. (1) The Assessment Board shall have and may exercise and discharge the powers, authorities, duties and functions conferred or imposed upon it by or under this Act.

(2) For the purpose of the exercise and discharge of its powers, authorities, duties and functions the Assessment Board may at all reasonable times enter and inspect any lands.

Proceedings
before
Assessment
Board.

19. (1) The chairman shall preside at all meetings of the Assessment Board and at any such meeting the chairman and one other member shall form a quorum.

(2) In the event of an equality of votes at any meeting of the Assessment Board the chairman shall have a second or casting vote.

(3) Meetings of the Assessment Board for any purpose under this Act shall be held at such times and places as may be determined by the Assessment Board.

(4) Where any matter arising under this Act is to be determined by the Assessment Board the Assessment Board shall notify the person by whom such matter was referred and the Constructing Authority of the time and place at which the Assessment Board will inquire into and determine such matter.

(5) (a) The Assessment Board shall have power to hear and determine any such matter.

(b) The Assessment Board may, for the purpose of hearing and determining any such matter,

(i) summon witnesses;

(ii) receive evidence on oath or affirmation; and

(iii) require the production of documents.

(c)

(c) A person who has been lawfully summoned to appear before the Assessment Board shall not fail to appear and a person who appears, whether summoned or not, shall not—

- (i) refuse to be sworn as a witness or to make an affirmation;
- (ii) fail to answer any question he is lawfully required to answer; or
- (iii) fail to produce any document he is lawfully required to produce.

Any person who neglects or fails to comply with any of the provisions of this paragraph shall be guilty of an offence against this Act.

(6) (a) Every person who, when required by the Assessment Board, attends as a witness or produces documents as aforesaid, shall be allowed such expenses as would be allowed a witness attending on subpoena on the trial of an action in the District Court.

(b) Such expenses if so directed by the Assessment Board shall be paid by the person at whose instance the witness or person producing the documents attends.

DIVISION 2.—*Provisions relating to compensation.*

20. Except as expressly in this Act otherwise provided no person shall be entitled to claim or be paid any compensation whatsoever arising out of or by reason of the exercise by the Constructing Authority of any of the powers, authorities, duties and functions conferred or imposed on the Constructing Authority by or under the provisions of this Act.

No compensation payable unless expressly provided.

21. Where for the purposes of this Act land or an easement or right is acquired under the provisions of the Public Works Act, 1912, as amended by subsequent Acts, compensation shall be payable for or in respect of such acquisition and such compensation shall be determined in the manner provided in the Public Works Act, 1912, as so amended.

Determination of amount of compensation for resumption of land or of an easement.

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Determina-
tion of
amount of
compensa-
tion in other
cases.

22. (1) In every other case where compensation is payable under or by virtue of the provisions of this Act the amount of the compensation so payable shall be determined by mutual agreement between the Constructing Authority and the person entitled to claim compensation.

(2) If the parties fail to agree on the amount of the compensation to be paid such amount shall be determined by the Assessment Board subject to a right of appeal to the Land and Valuation Court as hereinafter provided.

No compen-
sation to be
payable for
revocation
of licenses,
etc.

23. No person shall be entitled to claim or be paid any compensation whatsoever for or arising out of or by reason of the revocation of any license, permit or authority for a joint water supply scheme pursuant to the provisions of section seven of this Act.

Entry on
land for
investigation
or inspec-
tion.

24. No person shall be entitled to claim or be paid any compensation whatsoever for or arising out of or by reason of the exercise by the Constructing Authority of the powers conferred by subsection one of section nine of this Act:

Provided that where any damage or injury to the land or to any building, structure, stock, crop, property or other thing thereon is caused by or arises out of negligence on the part of the Constructing Authority or the agents of the Constructing Authority the Constructing Authority shall, as the Constructing Authority may determine, make good such damage or injury or make reparation in cash for such damage or injury and in the case of any dispute as to the sufficiency of such making good or such reparation, as the case may be, the parties to the dispute or either of them may within twenty-eight days after such dispute arising refer the matter to the Assessment Board for determination.

Such reference shall be made in writing and signed by the parties or party making the reference.

Upon any such reference being made the Assessment Board shall inquire into and determine the matter and make such order as it may deem necessary in the circumstances.

25.

25. Where the Constructing Authority enters any land and uses such land in the exercise of the powers conferred by paragraph (a) of subsection three of section nine of this Act without acquisition of the land or without acquisition or the granting of an easement or right in respect thereof, the following provisions shall have effect:—

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Entry on
and use of
land for
works.

- (a) except as in this section provided no person shall be entitled to claim or be paid any compensation whatsoever arising out of the entry on and use of such land;
- (b) if arising out of the entry on and use of such land damage or injury is caused to adjoining land or to any building, structure, stock, crop, property or other thing on such land or such adjoining land any person injuriously affected shall be entitled to claim and be paid compensation in respect of such damage or injury;
- (c) where any work has been carried out on any lands which before the carrying out of such work were owned and worked as one property and the lands available for use after the carrying out of such work are insufficient to enable the purpose for which the lands were used immediately before the carrying out of such work to be effectively continued the owner or occupier shall be entitled to claim and be paid compensation in respect of any loss sustained by reason of the inability to use the lands for such purpose.

26. Where in the exercise of the powers conferred by paragraphs (b) (c) and (d) of subsection three of section nine of this Act—

Taking of
timber,
gravel,
spoil, etc.

- (a) any gravel (other than river gravel), spoil, stone, or other material is taken from any land lying between a levee bank and the River, no person shall be entitled to claim or be paid any compensation but the Constructing Authority shall, if so required by the owner of the land, leave such land properly graded without undue inequality

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inequality or irregularity in grading and, if the same was previously grassed, sown or planted with like grasses;

- (b) any gravel (other than river gravel), spoil, stone, or other material is taken from any land not being land lying between a levee bank and the River, the owner of such land shall be entitled to claim and be paid compensation in respect of the gravel (other than river gravel), spoil, stone, or other material so taken and of any permanent damage or injury to such land by such taking;
- (c) any timber is taken from any land, no person shall be entitled to claim or be paid any compensation unless such timber is of commercial value and then only to the extent of the commercial value of such timber.

Construction of levee banks for protection of towns and villages.

27. Where a levee bank is constructed or erected by the Constructing Authority for the protection from floodwaters of a town or village on land which—

- (a) derives no protection from floodwaters from the construction or erection of such levee bank; and
- (b) is detrimentally affected or is likely to be detrimentally affected by more intensive or prolonged flooding or inundation by reason of such construction or erection than would otherwise have been the case,

the owner of such land shall be entitled to claim and be paid, in addition to any compensation to which he may be entitled by reason of the acquisition of any land for the construction or erection of such levee bank, compensation for any loss or injury sustained by him in respect of his land being detrimentally affected or being likely to be detrimentally affected by the construction or erection of such levee bank.

Removal, relocation, etc., of levee banks.

28. (1) Where any privately owned levee bank is demolished, relocated, re-aligned, reduced in height or otherwise altered by the Constructing Authority no person shall except as in this section provided be entitled to

to claim or be paid any compensation in respect of any such demolition, relocation, re-alignment, reduction in height, or other alteration. No. 10, 1956.

(2) Where, by reason of the demolition, relocation or re-alignment of a levee bank as referred to in subsection one of this section, any building which was formerly protected against flooding or inundation by such levee bank ceases to be so protected, the owner of such building shall be entitled to claim and be paid compensation:

Provided that where the Constructing Authority has removed such building and re-erected it in a location protected against flooding or inundation or has constructed or erected a ring levee bank for the protection of such building against flooding or inundation, such owner shall not be entitled to claim and be paid any compensation.

(3) The compensation referred to in subsection two of this section shall in no case exceed the depreciated value of any such building or, if the same is capable of being removed to and re-erected in a location protected against flooding or inundation, the cost of such removal and re-erection, whichever is the less.

29. Where pursuant to the provisions of section fifteen of this Act conditions or restrictions upon the use of any levee bank or land are imposed by the Constructing Authority the owner and occupier of such levee bank or land shall be entitled to claim and be paid compensation for or in respect of any loss sustained by reason of such conditions or restrictions. Restrictions on land use.

30. (1) Where a work of river diversion proposed to be carried out under this Act will result in the severance of any land owned and worked as one property and— Works of river diversion causing severance of lands.

(a) any severed part of the land will have no direct means of access:

(b)

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- (b) any severed part of the land will constitute less than one home maintenance area, and will have no convenient means of access to the other severed part; or
- (c) the severed parts of the land will in the aggregate be less than one home maintenance area;

the owner of the land may within three months after the commencement of the work of river diversion by notice in writing require the Constructing Authority to acquire the severed part referred to in paragraph (a) or (b) or the severed parts referred to in paragraph (c) of this subsection, as the case may require.

(2) (a) If the owner of the land referred to in subsection one of this section requires the Constructing Authority to acquire the severed part referred to in paragraph (b) of subsection one of this section or the severed parts referred to in paragraph (c) of the said subsection the Constructing Authority shall forthwith refer the matter to the Assessment Board to determine whether, in its opinion, such severed part or parts constitutes or constitute less than one home maintenance area and the Assessment Board shall inquire into and determine the matter accordingly and shall report its determination to the Constructing Authority.

(b) The provisions of subsections four and five of section nineteen of this Act shall not apply to or in respect of any inquiry by the Assessment Board pursuant to the provisions of this subsection.

(c) Upon receipt of the report of the Assessment Board the Constructing Authority shall notify the owner of the land referred to in subsection one of this section of the determination of the Assessment Board.

(d) Any such owner who is dissatisfied with the determination of the Assessment Board may in manner hereinafter provided appeal to the Land and Valuation Court against such determination.

(3)

(3) If the owner of the land referred to in subsection one of this section in accordance with the provisions of that subsection requires the Constructing Authority to acquire any severed part and in the case of any severed part or parts referred to in paragraph (b) or (c) of the said subsection the Assessment Board has determined that the severed part or parts constitutes or constitute less than one home maintenance area, or, in the case of an appeal against that determination, the Land and Valuation Court confirms that determination the Constructing Authority shall forthwith take steps to acquire the severed part or parts, as the case may be, in accordance with the provisions of this section. No. 10, 1956.

(4) Any land which by virtue of the provisions of subsection three of this section the Constructing Authority is required to acquire may be purchased or resumed under the Public Works Act, 1912, as amended by subsequent Acts, and such purchase or resumption shall be deemed to be for an authorised work within the meaning of that Act, as so amended.

Compensation shall be payable for or in respect of such resumption and such compensation shall be determined in the manner provided in the Public Works Act, 1912, as so amended.

(5) Any land purchased or resumed pursuant to the provisions of this section may be sold or otherwise dealt with in accordance with the provisions of section ninety-eight of the Public Works Act, 1912, as amended by subsequent Acts, and for that purpose the Constructing Authority shall be the constructing authority within the meaning of that Act, as so amended:

Provided that for the purpose of this subsection but not otherwise subsection one of section ninety-eight of the said Act, as so amended, shall be read and construed as if the words "and apply the purchase money arising

No. 10, 1956. arising from such sales in such manner as the Governor shall direct" were omitted and the following paragraph was inserted in lieu thereof:—

“Any purchase money arising from such sales shall be paid to the credit of the Hunter Valley Flood Mitigation Working Account referred to in subsection two of section forty-one of the Hunter Valley Flood Mitigation Act, 1956”.

(6) Where pursuant to the provisions of subsection five of this section any purchase money as referred to in that subsection is paid to the credit of the Account the Trust shall be credited in the Account with a part of the amount of such purchase money proportionate to the contribution which the Trust has made or is liable to make in respect of the original purchase or resumption of the land sold and the amount so credited to the Trust shall be regarded as a payment made by the Trust in accordance with the provisions of subsection one of section forty-one of this Act for the financial year in which such purchase money is so paid to the credit of the Account.

(7) If the owner of the land referred to in subsection one of this section does not require the Constructing Authority to acquire any severed part of such land in accordance with the provisions of that subsection compensation in respect of any land resumed for the purpose of the said work of river diversion shall be determined having regard not only to the value of the land so resumed but also to the damage (if any) caused by the severing of the property by the said work of river diversion.

(8) Notwithstanding anything contained in this section the Constructing Authority shall not be required to acquire any land pursuant to the provisions of subsection three of this section if such land or any land which has been or is proposed to be severed from such land by the work of river diversion is land which the
owner

owner has prior to the commencement of the work of river diversion agreed to sell or to lease with an option of purchase. No. 10, 1956.

(9) For the purposes of this section "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.

31. (1) Where by reason of a work of river diversion carried out by the Constructing Authority under this Act land which had a frontage to the former course of the River no longer has a frontage to the River—

Works of river diversion causing deprivation of riparian rights.

- (a) the owner of such land (in this section called the "riparian owner") shall not be entitled to claim and be paid compensation except as provided by paragraph (c) of subsection two and by subsections three and four of this section; and
- (b) the provisions of subsections two and three of this section shall have effect.

(2) If the riparian owner was making use of a pumping plant for the purpose of taking and using water from the River whether for domestic water supply, stock water supply, irrigation or industrial purposes, the Constructing Authority shall, if the Constructing Authority considers it practicable so to do, provide alternative works to enable water from the River to be taken and used for the purpose for which such water was used prior to the diversion of the River, in which event the following provisions shall have effect:—

- (a) the Constructing Authority may remove such pumping plant and re-erect the same, or instal a new pumping plant, in a proper and workmanlike manner in some suitable location on the new course of the River, supplying such additional fittings or appliances as may be necessary to enable the pumping plant to operate efficiently;

(b)

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- (b) (i) if the Constructing Authority removes and re-erects or installs a pumping plant as hereinbefore provided the Constructing Authority shall provide, construct and install a pipeline with all necessary piping and fittings to enable water to be conveyed from such pumping plant to the land of the riparian owner;
- (ii) such pipeline shall be connected to any reticulation system installed on the land of the riparian owner;
- (iii) in the construction and installation of such pipeline the Constructing Authority may make use of any existing piping and fittings which may be recoverable and available for the purpose;
- (iv) the removal and re-erection or installation of any pumping plant as hereinbefore provided and the construction and installation of any such pipeline shall for all purposes be deemed to be a work to which this Act extends and the provisions of section nine of this Act shall apply to and in respect thereof accordingly;
- (c) any license, permit or authority for a joint water supply scheme issued under the provisions of Part II of the Water Act, 1912, as amended by subsequent Acts, in respect of a pumping plant for which alternative works have been provided as aforesaid and in force at the time of removal and re-erection of the pumping plant or the installation of the new pumping plant shall be deemed to apply to and in respect of the re-erected or new pumping plant and for that purpose such license, permit or authority shall be deemed to be amended accordingly but shall otherwise remain in full force and effect;
- (d)

- (d) (i) the riparian owner and his servants, work- No. 10, 1956.
men and agents shall be entitled to enter at
all reasonable times and to occupy and use
the lands on which the pumping plant and
pipeline are located for the purpose of
operating, using and maintaining the said
pumping plant and pipeline;
- (ii) the owner of such lands shall not be entitled
to claim or be paid any compensation what-
soever in respect of such entry, occupation
and use:

Provided that the provisions of this sub-
paragraph shall not operate to relieve the
riparian owner from any liability to which
he may otherwise be subject arising out of
any nuisance created by the use of such
pumping plant and pipeline;

- (c) the provisions of section twenty-five of this Act
shall mutatis mutandis apply to and in respect
of the entry on and use of land by the Construct-
ing Authority for the purposes of this sub-
section.

(3) (a) If the Constructing Authority considers
it impracticable to provide alternative works in accord-
ance with the provisions of subsection two of this section
or if the riparian owner was not making use of a pumping
plant for the purpose of taking and using water from
the River, the Constructing Authority may sink and
construct on the land of the riparian owner such bores
or wells as the Constructing Authority may think
necessary.

(b) The provisions of Division 3 of Part V
of the Water Act, 1912, as amended by subsequent Acts,
shall not apply to or in respect of the sinking of any bore
or well pursuant to the provisions of this subsection but
if the Minister for Public Works is the Constructing
Authority

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No. 10, 1956. Authority he shall as soon as practicable after completing the construction of each such bore or well furnish to the Commission in such form as the Commission may require such information relating to—

- (i) the nature and thickness of the various strata met with during the construction of the bore or well;
- (ii) the location, quantities and quality of all supplies of water met with during such construction;
- (iii) the height each such supply of water stands relative to the natural surface of the ground at the site of the bore or well; and
- (iv) the depth, diameter and other particulars of the bore or well and of any casing inserted in the bore or well,

as the Commission may require.

(c) (i) If the riparian owner is dissatisfied with the adequacy, in respect of number, location or capacity, of any bores or wells constructed on his land pursuant to the provisions of this subsection or with the quality of the water obtained from any such bores or wells he may within twenty-eight days after the completion of the last of such bores or wells refer the matter to the Assessment Board for determination.

Such reference shall be made in writing and signed by the claimant and shall specify an address for service of notices.

Upon any such reference being made the Assessment Board shall inquire into and determine the matter and make such order as it may deem necessary in the circumstances.

(ii) The riparian owner may in manner hereinafter provided appeal to the Land and Valuation Court against any such determination and order.

(d)

(d) The decision of the Assessment Board or, No. 10, 1956.
if the riparian owner appeals to the Land and Valuation Court, the decision of that court upon such appeal shall be carried into effect by the Constructing Authority.

(e) The sinking and construction of any bores or wells in accordance with the provisions of this subsection shall for all purposes be deemed to be a work to which this Act extends and the provisions of sections nine and twenty-five of this Act shall apply to and in respect thereof accordingly.

(4) If—

- (a) alternative works are not provided by the Constructing Authority in accordance with the provisions of subsection two of this section; or
- (b) bores or wells are not sunk by the Constructing Authority in accordance with the provisions of subsection three of this section; or
- (c) the quality of the water obtained from any such bores or wells is according to the decision of the Assessment Board, or of the Land and Valuation Court on appeal, inadequate,

the riparian owner shall be entitled to claim and be paid compensation in respect of the deprivation of riparian rights caused by or arising out of the carrying out of the work of river diversion.

32. (1) Every person claiming compensation under the provisions of this Act, other than compensation as provided in section twenty-one or subsection four of section thirty of this Act, shall within ninety days after the doing of the act in respect of which the claim for compensation arises serve on the Constructing Authority a notice in writing setting forth—

Settlement of compensation; reference to Assessment Board.

- (a) the nature of the estate or interest of the claimant in the land in respect of which the claim for compensation arises;
- (b) if he claims in respect of damage, the nature of the damage which he has sustained or will sustain by reason of the doing of the act out of which the claim for compensation arises; and
- (c) the amount of compensation which he claims.

The

No. 10, 1956.

The Constructing Authority may in any particular case if the Constructing Authority considers the circumstances so warrant extend the period of ninety days hereinbefore referred to either before or after the expiration of the said period.

(2) (a) The Constructing Authority shall as soon as practicable after receipt of a notice of claim notify the claimant in writing whether the Constructing Authority agrees to the amount claimed as compensation or not.

(b) If the Constructing Authority does not agree to the amount claimed as compensation the Constructing Authority shall in so notifying the claimant specify in such notice the amount of compensation which the Constructing Authority is prepared to pay.

(3) If within ninety days after service of the notice referred to in subsection one of this section the claimant and the Constructing Authority do not agree as to the amount of compensation the claimant may refer the matter to the Assessment Board to determine such amount.

Such reference shall be made in writing and signed by the claimant and shall specify an address for service of notices.

Upon any such reference being made the Assessment Board shall inquire into and determine the matter.

Appeal to
Land and
Valuation
Court.

33. (1) Any person who is dissatisfied with—

- (a) any determination of the Assessment Board pursuant to the provisions of subsection two of section thirty of this Act; or
- (b) any determination of the Assessment Board pursuant to the provisions of section twenty-four or subsection three of section thirty-one or subsection three of section thirty-two of this Act,

may within twenty-eight days after receipt of the notice referred to in paragraph (c) of subsection two of section thirty

thirty of this Act or the announcement of the determination of the Assessment Board, as the case may be, appeal to the Land and Valuation Court against such determination. No. 10, 1956.

(2) The appeal shall be made as prescribed by rules of court of the Land and Valuation Court and be accompanied by a fee of five pounds as security for the costs of the appeal.

(3) The Land and Valuation Court shall have jurisdiction to hear and determine the appeal and the decision of the said court shall be final.

34. In determining the amount of any compensation payable in accordance with the provisions of this Act the following principles shall apply:— Principles to be taken into account in determining compensation.

- (a) there shall be taken into consideration and given effect to by way of set-off or abatement any enhancement in value of the land in respect of which the claim for compensation arises directly or indirectly caused by any work to which this Act extends undertaken, constructed or carried out by the Constructing Authority whether on or adjoining such land or not but in no case shall this provision operate so as to require any payment to be made by the claimant to the Constructing Authority in consideration of such enhancement in value;
- (b) the measure of the amount of compensation shall in all cases be the direct pecuniary injury to the claimant by the loss of something of substantial benefit accrued or accruing and shall not include remote, indirect or speculative damages.

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When pay-
ment of
compensation
to be made.

35. Any compensation payable in accordance with the provisions of this Act shall be paid by the Constructing Authority to the claimant or to his agent duly authorised in that behalf and such payment shall be made—

- (a) where the Constructing Authority and the claimant agree on the amount of such compensation—within thirty days after such agreement;
- (b) where the amount has been determined by the Assessment Board and no appeal has been lodged against the decision of the Assessment Board—within thirty days after the expiration of the period within which such appeal could have been lodged;
- (c) in every other case—within thirty days after the decision of the Land and Valuation Court.

Recovery
of com-
pensation.

36. Any amount payable to a claimant as compensation in accordance with the provisions of this Act may be recovered from the Constructing Authority as a debt in any court of competent jurisdiction.

PART V.
FINANCE.Cost of
works.

37. The Trust shall be liable to contribute one-quarter of the cost of the construction, carrying out, operation and maintenance of any work to which this Act extends undertaken constructed or carried out by the Constructing Authority and of the amount of any compensation payable by the Constructing Authority in accordance with the provisions of this Act.

The provisions of this section shall not apply in any case where the Trust is liable to make contribution under section thirty-eight or thirty-nine of this Act.

38.

38. Where a work to which this Act extends is undertaken constructed or carried out by the Constructing Authority for the purpose of protecting or partially protecting a town or village from flooding or inundation and such work has been so undertaken constructed or carried out at the request or with the concurrence of the council of the local government area within which such town or village is situated—

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Cost of works to protect towns and villages.

- (a) such council shall be liable to contribute such percentage not exceeding twelve per centum of the cost of the construction, carrying out and maintenance of such work and of the amount of any compensation payable by the Constructing Authority in accordance with the provisions of this Act for or in respect of or arising out of the construction, carrying out and maintenance of such work, as the Constructing Authority having regard to the circumstances may determine; and
- (b) the Trust shall be liable to contribute one-quarter of the balance of the cost of the construction, carrying out and maintenance of such work and of the amount of any compensation payable by the Constructing Authority as aforesaid.

39. (1) In this section “protective work” means a work which operates to protect or partially protect any works vested in or otherwise under the control of any Department of the Government, statutory body or council against flooding or inundation by the waters of the River or waters overflowing from the River or against the effects of any such flooding or inundation or against becoming or being liable to become endangered by the effects of river bank erosion or potential river bank erosion.

Contribution towards cost of works to protect public and local government works, etc.

(2) (a) Where the Constructing Authority is of the opinion that any work which the Constructing Authority proposes under the authority of this Act to undertake, construct or carry out will be a protective work the Constructing Authority may call upon the appropriate Department of the Government, statutory body

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No. 10, 1956. body or council to contribute towards the cost of the protective work such amount as may be mutually agreed upon and such Department, statutory body or council shall as soon as practicable after agreement has been so reached pay to the Constructing Authority the amount of such contribution.

(b) Any amount paid to the Constructing Authority pursuant to the provisions of this subsection shall be paid by the Constructing Authority into the Treasury and carried to the Account.

(c) The Trust shall be liable to contribute one-quarter of—

- (i) the balance of the cost of the protective work;
- (ii) the cost of maintenance of the protective work;
and
- (iii) the amount of any compensation payable by the Constructing Authority in accordance with the provisions of this Act for or in respect of or arising out of the construction, carrying out and maintenance of the protective work.

(3) If the Constructing Authority and a council are unable to agree upon the amount of the contribution to be made by such council pursuant to the provisions of subsection two of this section the difference shall be determined in the manner provided in section six hundred and fifty-four of the Local Government Act, 1919, as amended by subsequent Acts, and for the purpose of this subsection any such difference shall be deemed to be a difference which the parties have agreed to submit to the Minister for Local Government for determination in the manner provided in the said section six hundred and fifty-four.

(4) Where any works are undertaken, constructed or carried out or are proposed to be undertaken, constructed or carried out by a Department of the Government, statutory body or council for the protection or
partial

partial protection of any works vested in or otherwise under the control of such Department, statutory body or council, against flooding or inundation by the waters of the River or waters overflowing from the River or against the effects of any such flooding or inundation or against becoming or being liable to become endangered by the effects of river bank erosion or potential river bank erosion and the Constructing Authority is of the opinion that having regard to all the circumstances a contribution towards the cost of the works undertaken, constructed or carried out or proposed to be undertaken, constructed or carried out by such Department, statutory body or council is warranted, the Constructing Authority may contribute towards such cost such amount as it deems fit.

No. 10, 1956.

(5) The Trust shall be liable to bear and pay one-quarter of the amount of any contribution made pursuant to the provisions of subsection four of this section.

40. (1) Subject to the provisions of this section the Trust shall be liable to pay and shall pay to the Constructing Authority in each financial year as hereinafter provided, on account of its liability for contribution in accordance with the provisions of sections thirty-seven, thirty-eight and thirty-nine of this Act, such amount as represents the sum of—

Contribution by Trust to cost of works; programme of works to be submitted to Trust.

(a) one-quarter of—

- (i) the amount of the estimated cost of any works or portion thereof proposed to be undertaken, constructed or carried out and completed by the Constructing Authority during that financial year; and
- (ii) the estimated amount of any compensation likely to be payable during the financial year for or in respect of or arising out of the foregoing;

(b)

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- (b) one-quarter of the amount of the estimated cost of maintenance work in respect of works previously completed which the Constructing Authority considers should be undertaken during that financial year;
- (c) one-quarter of the estimated amount of any other compensation payable or to become payable by the Constructing Authority during that financial year;
- (d) one-quarter of the estimated amount of any contribution to be made or proposed or likely to be made by the Constructing Authority during that financial year pursuant to the provisions of subsection four of section thirty-nine of this Act:

Provided that in calculating the Trust's liability under this subsection—

- (i) if any of the works referred to in paragraph (a) or (b) of this subsection is a work in respect of which a council is required to contribute in accordance with the provisions of section thirty-eight of this Act or if any compensation referred to in paragraph (c) of this subsection is compensation payable in respect of any such last-mentioned work, there shall first be deducted from the amount of the estimated cost as referred to in paragraph (a) or (b) of this subsection or the estimated amount of compensation as referred to in paragraph (c) of this subsection the amount which the council has been or will be required to pay to the Constructing Authority in respect thereof during the financial year in accordance with the provisions of sections forty-two and forty-three of this Act; or

(ii)

- (ii) if any of the works referred to in paragraph ^{No. 10, 1956.}
(a) of this subsection is a work in respect of which a contribution has been or will be received from a Department of the Government, statutory body or council in accordance with the provisions of subsection two of section thirty-nine of this Act, there shall first be deducted from the estimated cost as referred to in paragraph (a) of this subsection the amount of the contribution which has been or will be so received during the financial year; and
- (iii) there shall be deducted any amount which the Trust has paid to the Constructing Authority pursuant to the provisions of this subsection during the previous financial year which remained unexpended at the close of the said previous financial year.

(2) The estimates referred to in this section shall be made by the Constructing Authority whose decision in regard thereto shall be final.

(3) The Constructing Authority shall before the beginning of each financial year or as soon as practicable after such beginning submit to the Trust for its concurrence a programme of the works which the Constructing Authority proposes to undertake, construct or carry out during that financial year.

(4) Such programme of works shall be accompanied by a statement setting forth:—

- (a) the total amount which the Trust will be liable to pay in the financial year in accordance with the provisions of subsection one of this section; and
- (b) such other particulars as may be prescribed.

(5) The Trust shall with all due despatch give consideration to the programme of works so submitted and shall inform the Constructing Authority whether or not it concurs in such programme.

(6)

No. 10, 1956.

(6) (a) If any difference arises between the Constructing Authority and the Trust as to the programme of works proposed to be undertaken, constructed or carried out by the Constructing Authority the Constructing Authority shall forthwith submit such difference to the Minister for Conservation who may refer the matter for inquiry to some person appointed by him in that behalf, or may himself make such inquiry.

(b) The Minister for Conservation may thereupon make such determination as in the circumstances of the case may seem to him proper.

(c) Any such determination shall be final and shall be given effect to by the Trust and the Constructing Authority.

(d) In making any such determination there shall be taken into consideration the ability of the Trust to meet from its resources its commitment pursuant to the provisions of subsection one of this section as shown in the statement referred to in subsection four of this section and any other commitments into which the Trust may have entered or may propose to enter in respect of the exercise of its powers, authorities, duties and functions under the Hunter Valley Conservation Trust Act, 1950, as amended by subsequent Acts.

Payment of
contribution
by Trust.

41. (1) Upon the Trust having informed the Constructing Authority of its concurrence in the programme of works proposed to be undertaken by the Constructing Authority during a financial year, or, in case of any difference having arisen between the Trust and the Constructing Authority in respect thereof, upon the Minister for Conservation having made a determination in respect of such difference in accordance with the provisions of subsection six of section forty of this Act, the Trust shall pay to the Constructing Authority at such times and in such instalments as the Constructing Authority may determine the amount which pursuant to the provisions of subsection one of section forty of this Act the Trust is liable to pay during that financial year as shown in the statement referred to in subsection four
of

of section forty of this Act or, where that amount has been varied by reason of any determination made by the Minister for Conservation in accordance with the provisions of subsection six of section forty of this Act, the amount as so varied. No. 10, 1956.

(2) The amount paid to the Constructing Authority by the Trust pursuant to the provisions of subsection one of this section shall be paid by the Constructing Authority into the Treasury and carried to an account to be opened in the Special Deposits Account of the Treasury entitled the Hunter Valley Flood Mitigation Working Account from which Account so opened may be made in such manner as the Colonial Treasurer determines any payments which the Constructing Authority is required to make under or for the purposes of this Act.

42. (1) (a) Where, in accordance with the provisions of section thirty-eight of this Act, a council is liable to contribute to the cost of the undertaking, construction or carrying out of any work and the amount of any compensation payable for or in respect of or arising out of such undertaking, construction or carrying out, the council shall be liable to pay and shall pay to the Constructing Authority as hereinafter provided, on account of its liability for contribution in accordance with the provisions of the said section, the same percentage of the estimated cost of the undertaking, construction or carrying out of such work and of the estimated amount of any compensation likely to be payable for or in respect of or arising out of the foregoing as the council is liable, in accordance with the provisions of the said section, to contribute to the cost of the undertaking, construction or carrying out of such work and the amount of any compensation payable for or in respect of or arising out of such undertaking, construction or carrying out. Payment of contribution towards cost of works by a council.

(b) The estimates referred to in this section shall be made by the Constructing Authority whose decision in regard thereto shall be final.

(2)

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No. 10, 1956.

(2) Where a council requests the Constructing Authority to undertake, construct or carry out a work to which this Act extends in respect of which the council is, in accordance with the provisions of section thirty-eight of this Act, liable to contribute to the cost, or where the Constructing Authority requests the concurrence of the council in the undertaking, construction or carrying out by the Constructing Authority of any such work, the Constructing Authority shall furnish the council with a statement setting forth:—

- (a) the estimated cost of such work and of any compensation likely to be payable by the Constructing Authority for or in respect of or arising out of the undertaking, construction or carrying out of such work;
- (b) the estimated annual cost of maintenance of the work and of any compensation likely to be payable by the Constructing Authority for or in respect of or arising out of such maintenance;
- (c) the percentage which, in accordance with the provisions of section thirty-eight of this Act, the Constructing Authority has determined that the council should contribute to the cost of the undertaking, construction or carrying out and maintenance of such work and the amount of any compensation payable by the Constructing Authority for or in respect of or arising out of the undertaking, construction or carrying out and maintenance of such work; and
- (d) the amount which the council will be liable, in accordance with the provisions of subsection one of this section, to pay.

(3) The council shall give consideration to the statement so furnished and shall inform the Constructing Authority whether or not it concurs in the work being undertaken, constructed or carried out.

(4)

(4) If the council informs the Constructing Authority that it concurs in the work being undertaken, constructed or carried out the council shall within one month thereafter or within such further period as the Constructing Authority may allow pay to the Constructing Authority the amount which, pursuant to the provisions of subsection one of this section, the council is liable to so pay as shown in the statement referred to in subsection two of this section. No. 10, 1958.

(5) When any work in respect of which a council is required to contribute in accordance with the provisions of section thirty-eight of this Act has been completed and all claims for compensation in respect of or arising out of such work have been settled the Constructing Authority shall determine the total amount paid in respect of such work and such compensation and the percentage of the total amount so determined which the council is required to contribute in accordance with the provisions of the said section and shall notify the council accordingly.

(6) If the amount paid by the council in accordance with the provisions of subsection four of this section exceeds the percentage referred to in subsection five of this section, the Constructing Authority shall forthwith repay to the council the amount of such excess.

(7) If the amount paid by the council in accordance with the provisions of subsection four of this section is less than the percentage referred to in subsection five of this section the council shall not later than one month after the first day of January next following the notification to the council of such percentage or within such further period as the Constructing Authority may allow pay to the Constructing Authority the amount of such deficiency.

(8) Any amount paid to the Constructing Authority by a council pursuant to the provisions of subsections four and seven of this section shall be paid by the Constructing Authority into the Treasury and carried to the Account.

No. 10, 1956.

Payment of
contribution
towards
maintenance
by a
council.

43. (1) (a) Where, in accordance with the provisions of section thirty-eight of this Act, a council is liable to contribute to the cost of maintenance of any work and the amount of any compensation payable for or in respect of or arising out of such maintenance, the council shall be liable to pay and shall pay to the Constructing Authority in each financial year as hereinafter provided, on account of its liability for such contribution the same percentage of the estimated cost of any maintenance of such work which the Constructing Authority considers should be undertaken during the financial year and of the estimated amount of any compensation likely to be payable during the financial year for or in respect of or arising out of such maintenance or any maintenance of such work undertaken during a previous financial year as the council is liable, in accordance with the provisions of the said section, to contribute to the cost of maintenance of such work and the amount of any compensation payable for or in respect of or arising out of such maintenance:

Provided that in calculating the council's liability under this subsection in respect of any financial year there shall be deducted any amount which the council has paid to the Constructing Authority in respect of such work pursuant to the provisions of this subsection during any previous financial year and which remained unexpended at the close of the immediately preceding financial year.

(b) The estimates referred to in this section shall be made by the Constructing Authority whose decision in regard thereto shall be final.

(2) The Constructing Authority shall before the beginning of each financial year furnish the council, in respect of each work referred to in subsection one of this section, with a statement setting forth:—

(a) the amount which the council will be liable to pay in accordance with the provisions of subsection one of this section for that financial year; and

(b) such other particulars as may be prescribed.

(3)

(3) The council shall within one month after receipt of the statement referred to in subsection two of this section or within such further period as the Constructing Authority may allow pay to the Constructing Authority the amount which pursuant to the provisions of subsection one of this section the council is liable to so pay as shown in the said statement. ^{No. 10, 1956.}

(4) Any amount paid to the Constructing Authority by a council in accordance with the provisions of subsection three of this section shall be paid by the Constructing Authority into the Treasury and carried to the Account.

44. (1) If in the opinion of the Constructing Authority the necessity arises in any financial year to undertake as a matter of urgency maintenance in respect of any work undertaken, constructed or carried out under the authority of this Act, the Constructing Authority may, notwithstanding that such maintenance has not been included in the programme of works referred to in subsection three of section forty of this Act or has not been included in any statement furnished to a council in accordance with the provisions of subsection two of section forty-three of this Act, as the case may be, undertake and carry out such maintenance. ^{Urgent maintenance works.}

(2) When such maintenance has been completed and all claims for compensation for or in respect of or arising out of such maintenance have been settled, the Constructing Authority shall determine the total amount paid in respect of such maintenance and of such compensation and—

(a) if the maintenance was undertaken in respect of a work to which section thirty-eight of this Act applies—notify the council and the Trust of the respective amounts which the council and the Trust are required to contribute in accordance with the provisions of that section;

(b)

No. 10, 1956.

(b) in every other case—notify the Trust of the amount which the Trust is required to contribute in accordance with the provisions of section thirty-seven of this Act.

(3) The Trust shall within one month after receipt of any notification forwarded to the Trust pursuant to the provisions of subsection two of this section pay to the Constructing Authority the amount set out in such notification.

(4) If any notification is forwarded to a council pursuant to the provisions of subsection two of this section such council shall within one month after the first day of January next following the receipt of such notification or within such further period as the Constructing Authority may allow pay to the Constructing Authority the amount set out in such notification.

(5) Any moneys paid to the Constructing Authority by the Trust or a council in accordance with the provisions of subsection three or four of this section shall be paid by the Constructing Authority into the Treasury and carried to the Account.

PART VI.

MISCELLANEOUS AND GENERAL.

45. (1) In this section:—

Works to protect public and local government works, etc., to be approved by Constructing Authority.

“Protective works” means works for the protection or partial protection of any works vested in or otherwise under the control of a Department of the Government, statutory body or council, against flooding or inundation by the waters of the River or waters overflowing from the River or against the effects of any such flooding or inundation or against becoming or being liable to become endangered by the effects of river bank erosion or potential river bank erosion.

(2)

(2) Where any Department of the Government, statutory body or council proposes to undertake, construct or carry out any protective works such Department, statutory body or council shall not undertake, construct or carry out such protective works unless the Constructing Authority has approved of the site, nature, dimensions and design of such protective works. No. 10, 1956.

(3) In giving its approval the Constructing Authority may require such amendment of the site, nature, dimensions or design of such protective works as the Constructing Authority may deem necessary and such Department, statutory body or council shall comply with such requirement accordingly.

(4) The Constructing Authority may by notice in writing require the Department, statutory body or council by which any protective works have been undertaken, constructed or carried out, whether such protective works have been so undertaken, constructed or carried out before or after the commencement of this Act and whether or not any contribution was made by the Constructing Authority towards the cost of such protective works under the provisions of subsection four of section thirty-nine of this Act, to take such measures for the proper upkeep, preservation and maintenance of such protective works, and in such manner and within such time as may be specified in such notice, as the Constructing Authority may deem necessary and such Department, statutory body or council shall comply with the terms of any such notice accordingly.

(5) If any statutory body or council fails to comply with the terms of any notice given pursuant to the provisions of subsection four of this section, the Constructing Authority may authorise any person to enter upon the land on which the protective works in respect of which such notice has been given are located and there to carry out the measures specified in such notice and may recover any cost incurred in so doing from such statutory body or council in any court of competent jurisdiction as a debt due and owing to the Constructing Authority.

Hunter Valley Flood Mitigation Act.

No. 10, 1956.

Levee banks
not to be
interfered
with.

46. Any person who destroys, damages or interferes in any way with or does any act which may tend to destroy, damage or interfere with:—

- (a) any levee bank vested in or made, constructed or provided by, or under the maintenance and control of the Constructing Authority; or
- (b) any privately owned levee bank, other than a levee bank the maintenance and control of which has been taken over by the Constructing Authority under section fourteen of this Act,

shall, unless in the case of a levee bank to which paragraph (a) of this section applies he is acting under the authority of the Constructing Authority or in any other case he is the owner thereof, be guilty of an offence and shall on summary conviction be liable to a penalty not exceeding one hundred pounds or to imprisonment not exceeding three months and in addition shall be liable to pay the value of any loss or damage caused by the offence.

Damage to
or inter-
ference
with works.

47. Any person who, except under the authority of the Constructing Authority, destroys, damages or interferes in any way with or does any act which may tend to destroy, damage or interfere in any way with any work, structure, or other thing which pursuant to the provisions of this Act is being or has been carried out, constructed, erected, placed, planted or undertaken by the Constructing Authority on any lands or the bank of the River or on or in the River shall be guilty of an offence and shall on summary conviction be liable for a first offence to a penalty not exceeding fifty pounds and for any subsequent offence to a penalty not exceeding one hundred pounds and in addition shall be liable to pay the value of any loss or damage caused by the offence.

Debris, etc.,
not to
be
returned to
river.

48. Any person who, except under the authority of the Constructing Authority, returns or causes to be returned to the River or to any part of the bed or banks of the River any soil, sand, shingle, gravel, trees, branches

branches or debris of any kind deposited on land by flood waters from the River flowing on to or over that land shall be guilty of an offence against this Act. No. 10, 1956.

49. (1) The owner of any lands within the Hunter Valley on which is constructed or erected a levee bank, whether such levee bank was so constructed or erected by the Constructing Authority or not, shall repair and make good any damage occasioned to that levee bank by stock or rabbits. Damage to levee banks by stock or rabbits.

(2) If default is made by any owner in complying with the provisions of subsection one of this section the Constructing Authority may by notice in writing direct such owner to repair and make good such damage within such time as may be specified in such notice.

(3) If any owner fails to comply with the terms of any notice given him pursuant to the provisions of subsection two of this section the Constructing Authority may authorise any person to enter the lands to which the notice relates and repair and make good such damage and may recover any cost incurred in so doing from such owner in any court of competent jurisdiction as a debt due and owing by him to the Constructing Authority.

50. (1) If in the opinion of the Constructing Authority any floodgate constructed or installed within the Hunter Valley operates for the protection of lands within a local government area other than lands owned by one landholder or a small localised group of landholders, the Constructing Authority may by notice in writing to the council of the local government area within which such floodgate is located declare such floodgate to be a major floodgate. Major floodgates to be maintained and operated by councils.

(2) Where any declaration is made pursuant to the provisions of subsection one of this section it shall be the duty of the council of the local government area within which the major floodgate referred to in such declaration

No. 10, 1956. declaration is located thereafter to keep such floodgate at all times in a good and proper state of repair and working order and to maintain and operate the same in accordance with any directions which may from time to time be given by the Constructing Authority.

(3) If default is made by a council in observing and performing the duty imposed on that council under and by virtue of the provisions of subsection two of this section the Constructing Authority may at any time during which such default continues authorise any person to enter the land on which is located the floodgate in respect of which default has been made and to carry out such reparative measures in connection with such floodgate or to operate such floodgate, as the case may be, in such manner and to such extent as the Constructing Authority may deem necessary and may recover any cost incurred in so doing from such council in any court of competent jurisdiction as a debt due and owing to the Constructing Authority.

**Maintenance
of minor
floodgates.**

51. (1) Where any floodgate has been constructed or installed within the Hunter Valley, and such floodgate has not been declared to be a major floodgate under section fifty of this Act the landholder or group of landholders for the protection of whose land such floodgate operates, shall cause such floodgate to be properly maintained and at all times kept in a good and proper state of repair and working order.

(2) If default is made by any landholder or group of landholders in complying with the provisions of subsection one of this section, the Constructing Authority may by notice in writing direct such landholder or such persons as in the opinion of the Constructing Authority are within the group of landholders for the protection of whose land such floodgate operates to cause to be carried out such reparative measures and within such time as may be specified in such notice.

(3)

(3) If any landholder or person fails to comply with the terms of any notice given him pursuant to the provisions of subsection two of this section the Constructing Authority may authorise any person to enter the land on which is located the floodgate in respect of which such notice has been given and to carry out the reparative measures specified in the said notice and may recover any cost incurred in so doing—

- (a) if such floodgate operates for the protection of the land of one landholder—from such landholder; or
- (b) if such floodgate operates for the protection of the land of persons referred to in the said subsection two—from any one or more of such persons,

in any court of competent jurisdiction as a debt due and owing to the Constructing Authority.

(4) (a) The liability imposed on persons within a group of landholders under the provisions of subsection three of this section shall be joint and several but as between themselves each shall only be liable for that share of such liability as bears the same proportion to such liability as the area of his land for the protection of which the floodgate operates bears to the total area of land for the protection of which the floodgate operates.

(b) If any such person pays to the Constructing Authority more than his share of such liability he may recover the excess by way of contribution from the others.

52. (1) If, by reason of any work undertaken, constructed or carried out by the Constructing Authority under the authority of this Act, any road vested in a council is severed or is otherwise interfered with so as to render the same impassable for, or dangerous, or extraordinarily inconvenient to passengers, carriages or vehicles or to the persons entitled to the use thereof or is otherwise rendered incapable of use by such passengers, carriages or vehicles or persons, then unless there

No. 10, 1956.

Roads rendered incapable of use by Constructing Authority to be replaced; maintenance of roads on levee banks.

Hunter Valley Flood Mitigation Act.

No. 10, 1956. there be, in the opinion of the Constructing Authority, a suitable alternative road available for use, the Constructing Authority shall—

- (a) if such road is capable of being restored to as good a condition as it was in at the time it was so interfered with or as near thereto as may be—so restore the road; or
- (b) provide a new or substitute road and cause such road to be put into a substantial condition, equally convenient as the former road or as near thereto as circumstances will allow,

as the Constructing Authority may determine.

(2) The restoration of any road or the provision of a new or substitute road in accordance with the provisions of subsection one of this section shall for all purposes be deemed to be a work to which this Act extends but the provisions of subsection three of section nine of this Act shall not apply to or in respect thereof.

(3) The Constructing Authority may cause any new or substitute road provided in accordance with the provisions of subsection one of this section to be declared to be a public road and to be dedicated accordingly pursuant to the provisions of section eighteen of the Public Roads Act, 1902, as amended by subsequent Acts.

(4) Notwithstanding anything contained in the Local Government Act, 1919, as amended by subsequent Acts, where any new or substitute road provided in accordance with the provisions of subsection one of this section is constructed on any levee bank vested in, or made, constructed or provided by, or under the maintenance and control of the Constructing Authority, the declaration of such new or substitute road in accordance with the provisions of subsection three of this section shall not operate to derogate from or to interfere in any way with the full control of such levee bank by the Constructing Authority or the exercise by the Constructing Authority

Authority in respect of such levee bank of any powers, authorities, duties and functions conferred or imposed on the Constructing Authority by or under this Act but save as aforesaid the council in which such road is vested shall be responsible for the maintenance and upkeep of the pavement of such road to the same extent as it would otherwise have been and may exercise and perform any or all its powers, authorities, duties and functions under the Local Government Act, 1919, as amended by subsequent Acts, in respect thereof. No. 10, 1956.

53. (1) Any person who contravenes or fails to comply with any of the provisions of this Act or with the terms, conditions, limitations and restrictions contained in or imposed by any permit, notice or approval granted or given under any of the provisions of this Act shall be guilty of an offence against this Act. Penalties.

(2) Any person who is guilty of an offence against this Act for which no other penalty is expressly provided shall on summary conviction be liable for a first offence to a penalty not exceeding fifty pounds and for any subsequent offence to a penalty not exceeding one hundred pounds, and in the case of a continuing offence to a penalty not exceeding five pounds for every day for which such offence continues.

(3) Nothing in this section shall derogate from or in any way affect any other remedy or any other power which the Constructing Authority has or may exercise in respect of any such offence.

54. Whenever by any provision of this Act any person is liable to a penalty, such penalty may be recovered before any stipendiary magistrate or any two or more justices of the peace in petty sessions in accordance with the Acts in force for the time being regulating summary proceedings before justices. Recovery of penalties.

55. Where pursuant to any provision of this Act the Constructing Authority is empowered to recover any cost incurred in carrying out any work or measure, a certificate by the Constructing Authority of the amount of such cost shall be prima facie evidence of such cost. Evidence of cost of works.

56.

Hunter Valley Flood Mitigation Act.

No. 10, 1956.
Notices.

56. (1) Any notice, direction or certificate required to be given pursuant to this Act shall be sufficiently given—

- (a) in any case where the Constructing Authority is the Minister for Public Works—if signed by the Director of Public Works or the person for the time being acting as such or by any officer of the Department of Public Works duly authorised in that behalf by the Director of Public Works or the person for the time being acting as such, as the case may be;
- (b) in any case where the Constructing Authority is the Water Conservation and Irrigation Commission—if signed by the secretary to the Commission or the person for the time being acting as such or by any officer of the Commission duly authorised in that behalf by the secretary to the Commission or the person for the time being acting as such, as the case may be.

(2) Any notice or direction required to be given pursuant to the provisions of this Act may be served personally or by post and if served by post and not returned through the post office undelivered shall be deemed to have been served at the time when the same would have been delivered in the ordinary course of post.

(3) Any notice or direction served by post shall be deemed to be sufficiently served if posted to the address last known to the Constructing Authority of the person upon whom the notice or direction is to be served:

Provided that where no such address is known to the Constructing Authority or any address so known to the Constructing Authority is outside the Commonwealth of Australia any such notice or direction shall be deemed to be sufficiently served if served upon any person apparently having the care, control or management of the lands to which such notice or direction relates.

(4) In this section the expression "Director of Public Works" means the Director of Public Works or other the permanent head for the time being of the Department of Public Works.

57. Except as expressly in this Act provided and notwithstanding any statute or rule or principle of law or equity to the contrary, no person shall have against the Crown or any Minister thereof or the Constructing Authority or any officer, servant or other employee or agent of the Crown or of any Minister thereof or of the Constructing Authority:—

No. 10, 1956.
Exclusion
of claims
for
damage, etc.,
except
where
express
provision
made.

- (a) any right or claim to damages or to an injunction or to any other redress or any other right or claim whatsoever or any remedy whatsoever in any suit, action or other legal proceeding or in any other proceeding whatsoever in respect of any nuisance connected with or in any way arising out of the construction, execution, carrying out or undertaking of any work to which this Act extends or the alteration, maintenance or operation of any such work or the disrepair, non-repair or non-maintenance thereof or by reason of any such work being wholly or partly destroyed or otherwise damaged or affected by flood, storm or tempest or otherwise howsoever or connected with or in any way arising out of the exercise by the Constructing Authority of any of the powers, authorities, duties and functions conferred or imposed on the Constructing Authority by or under this Act, or
- (b) any right or claim to abate or remedy any such nuisance.

58. (1) The Governor may make regulations not inconsistent with this Act prescribing all matters which by this Act are required or permitted to be prescribed or which are necessary or convenient to be prescribed for carrying out or giving effect to this Act.

Regulations.

Without prejudice to the generality of the foregoing, regulations may be made for and with respect to the prescribing of the portions of the Hunter Valley in respect of which the Minister for Public Works is to be the Constructing Authority.

No. 10, 1956.

(2) The regulations shall—

- (a) be published in the Gazette;
- (b) take effect from the date of publication or from a later date to be specified in the regulations;
- (c) be laid before both Houses of Parliament within fourteen sitting days after publication if Parliament is then in session, and if not, then within fourteen sitting days after the commencement of the next session.

(3) If either House of Parliament passes a resolution of which notice has been given within fifteen sitting days after such regulations have been laid before such House disallowing any regulation or part thereof, such regulation or part shall thereupon cease to have effect.
