

## Act No. 15, 1898.

COMMONS  
REGULATION.An Act to consolidate the Acts relating to  
Commons Regulation. [27th July, 1898.]

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.

1. This Act may be cited as the "Commons Regulation Act, 1898," and is divided into Parts, as follows:—

PART I.—*Preliminary*—ss. 1-3.

PART II.—*Trustees of Commons*—ss. 4-19.

PART III.—*Commoners and use of commons*—ss. 20-27.

PART IV.—*Supplemental*—ss. 28-31.

Repeal.  
Schedule.

2. (1) The Acts mentioned in the Schedule to this Act are to the extent therein expressed, hereby repealed.

Officers under Acts  
hereby repealed.

(2) All persons appointed or elected under the Acts hereby repealed, and holding office at the time of the passing of this Act, shall be deemed to have been appointed or elected hereunder.

Rules, regulations,  
by-laws, and  
commoners' rolls  
under Acts hereby  
repealed.

(3) All rules, regulations, and by-laws, and all commoners' rolls, made under the authority of any Act hereby repealed, and being in force at the time of the passing of this Act, shall be deemed to have been made under the authority of this Act.

3. In this Act, unless the context or subject-matter otherwise indicates or requires,—

36 Vic. No. 23.

Preamble.

50 Vic. No. 15, s. 1.

"Common" includes any portion of land which, at the time of the passing of the Commons Regulation Act of 1873, had been by any instrument under the hand of the Governor, whether with or without the advice of the Executive Council, allotted as a common for the use of the inhabitants of the towns, or the cultivators and small farmers in the district or locality in which such common is situated, and any common, whether permanent, temporary, or for pasturage, heretofore or hereafter granted, notified, reserved, or dedicated by the Governor.

*Ibid.*

"Commoner" means any person whose name is contained in the commoners' roll in force for the time being as hereinafter provided; and

"Commoners'

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“Commoners’ boundaries” means the boundaries of the area notified in the Gazette within or in respect of which the persons entitled to the use of the commons mentioned in the notification reside or hold the prescribed qualification. 50 Vic. No. 15, s. 1.

“Commoners’ roll” means the roll kept or made under the provisions of section five of this Act.

“Set apart” includes allotted, granted, notified, reserved, and dedicated.

PART II.

*Trustees of commons.*

4. The persons appointed by the Governor, or duly elected as hereinafter provided, to be trustees of any common shall be a body corporate under the name of the trustees of such common, and under that name shall have perpetual succession and a common seal, and may sue and be sued in their corporate name in relation to such common, and shall be capable of holding such common in perpetuity upon the trusts and for the uses declared in the grant, notification, reservation, or dedication thereof. Trustees of commons to be a body corporate. 36 Vic. No. 23, s. 2. 50 Vic. No. 15, s. 1.

5. (1) The trustees of every existing common shall keep a roll of the persons entitled to the use of the common in accordance with the grant, notification, reservation, or dedication of the common, or in accordance with any proclamation or other declaration relating to such common. And the trustees of every common set apart after the passing of this Act shall make out such commoners’ roll within six months after the setting apart of such common, or within such extended time as the Minister may in any case allow. Commoners’ roll. Ibid. s. 2.

(2) All such commoners’ rolls shall be made out, kept revised, published, and otherwise dealt with in accordance with regulations made under this Act. Regulations. Ibid.

(3) Where any land is in the occupation of any person other than the owner thereof, such owner shall not in respect of such land be entitled to the use of the common. Ibid. s. 3.

6. (1) The Governor may appoint the first trustees of any common set apart after the passing of this Act. First trustees. Ibid. s. 6.

(2) The election of new trustees for every common shall take place at a general meeting of commoners held in January at the expiration of three years after the appointment or election of the retiring trustees. Election of trustees. 36 Vic. No. 23, ss. 3, 4, 5.

Every such meeting shall be convened by the trustees of such common, or one of them, by a notification in the Gazette, and by a written or printed notice, to be affixed in the office of the nearest court of petty sessions, and also in two or more conspicuous places on the said common.

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- The senior trustee shall preside at such meeting, or if there is no trustee present a commoner shall be elected as chairman by the commoners present, and new trustees, not in any case exceeding five in number, shall then be elected by the majority of commoners over the age of twenty-one years and present at such meeting, to hold office for three years.
- 50 Vic. No. 15,  
ss. 2, 3.
- Term of office.  
36 Vic. No. 23, s. 4. (3) Every trustee so elected, and any trustee appointed by the Governor, shall, after notification thereof in the Gazette, hold office as such trustee until the next general election of trustees, and shall be eligible for re-election at such next general election.
- Qualification.  
50 Vic. No. 15,  
ss. 2, 5. (4) No person shall be capable of being elected a trustee of any common unless he has been for six months immediately preceding the date of election entitled to the use of such common.
- Vacancies how filled.  
36 Vic. No. 23, s. 5. 7. When any trustee of any common dies or is absent from New South Wales for more than twelve months, or resigns or becomes incapable of acting as trustee, a special meeting of the commoners shall be convened in the same manner as a general meeting, and such vacancy shall be filled up by election as at a general meeting.
- Election to be communicated.  
*Ibid.* ss. 3, 5. 8. Every election of trustees shall forthwith be communicated to the Colonial Secretary by the chairman of the general or special meeting at which such election takes place.
- Governor may validate election  
50 Vic. No. 15, s. 8. 9. The Governor may, by notice in the Gazette, declare valid any election of trustees, the validity of which may be questionable by reason of any technical defect or irregularity in the mode of conducting the election or of convening the meeting to elect trustees.
- Governor may appoint trustees.  
36 Vic. No. 23,  
ss. 3, 5.  
50 Vic. No. 15, s. 4. 10. If it happens that no election of trustees of any common has been held in terms of this Act, or that an insufficient number of trustees has been elected, or if from any cause there are no trustees or an insufficient number of trustees, or if any vacancy under section seven of this Act is not filled by an election within twelve months after such vacancy occurs, the Governor may appoint as many trustees as are required.
- Municipal councils may be appointed trustees.  
*Ibid.* s. 6. 11. The Governor may appoint the council of any municipality to be, by their corporate name, the trustees of any common situate within the boundaries of or adjacent to such municipality, and upon the publication of such appointment in the Gazette, such council and its successors shall be the trustees of such common for all purposes of this Act. Where any such common is situated in more than one municipality, the Governor may declare which municipal council shall be the trustees of such common, or may appoint other trustees therefor.
- Quorum of trustees.  
50 Vic. No. 15, s. 13. 12. At any meeting of trustees three trustees shall form a quorum, and if at any such meeting the votes are equal the chairman shall, in addition to his vote as trustee, have also a casting vote.

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13. (1) The trustees for the time being of any common, or the majority of them, shall have power to declare from time to time, by writing under their hands and seals, the number and description of cattle and other stock which the commoners shall be entitled to depasture upon the said common or upon the respective portions into which the said common is divided in accordance with the provisions of this Act, and the fees to be charged on such stock, and shall forthwith deposit such writing in the office of the nearest court of petty sessions.

Trustees to determine rights of commoners.  
36 Vic. No. 23, s. 6.  
59 Vic. No. 12, s. 2.

(2) Any person who is aggrieved by any decision of the trustees appearing in such writing may, at any time within two months from the time of the depositing of such writing, appeal to the said court, and the said court shall have full power to hear and determine the said appeal in a summary manner, and to confirm or alter the decision of the said trustees in relation to the party so appealing, and to award costs against either party.

Subject to appeal to nearest court of petty sessions.  
36 Vic. No. 23, s. 6.  
59 Vic. No. 12, s. 2.

14. The trustees of every common shall expend in and about the improving of the said common or otherwise in relation thereto, all sums of money received by them for trespasses or otherwise under this Act, and shall produce and exhibit at a general meeting of the commoners, convened by the trustees as hereinbefore prescribed on the second Tuesday in January in each year, a true account of all moneys received and expended on account of such common, and shall publish such account in the Gazette at some time during the said month of January, and in some local newspaper if any is published in the district wherein such common is situate.

Moneys received and expended by trustees.  
36 Vic. No. 23, s. 9.

15. (1) The trustees of any common may make such rules and regulations as they think expedient for the better and more convenient and equal use of the said common, and of all commoners' rights therein by the commoners, and may impose fines for breach of such rules and regulations not exceeding in any one case the sum of ten pounds, and may also make rules and regulations for raising, assessing, levying, and appropriating such moneys as shall be required for the purpose of defraying any costs, charges, and expenses which the said trustees may at any time be put or exposed to, in or about the maintaining or improving of the said common or in the protection of the rights of the said common.

Trustees may make regulations and enforce the same by fines.  
*Ibid.* s. 7.

(2) A copy of such rules and regulations shall, within fourteen days from the making thereof, be transmitted to the office of the nearest court of petty sessions and also to the Colonial Secretary, and the Governor may, at any time within two months from the receipt of such copy, disallow the said rules and regulations or any of them, and shall signify such disallowance to the court of petty sessions nearest to the said common, and in the meantime no such rules or regulations shall be in force.

Disallowance of rules.  
*Ibid.* s. 7.

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Trustees not to grant leases.  
36 Vic. No. 23, s. 11.

**16.** The trustees of any common shall not grant leases of any portion of such common for any term, or for any purpose, or on any condition whatsoever.

Power of impounding by trustees.  
*Ibid.* s. 8.

**17.** Any one or more of the trustees of any common may distrain, or cause to be distrained and impounded, any cattle or other stock found depasturing upon the said common which belong to any person not a commoner, or to any commoner who shall at the time of such distress have surcharged thereon, and may demand and recover such damages in respect of such cattle or stock as might be claimed by the owner or occupant of any private lands in respect of animals found trespassing and doing damage thereon.

As to infected animals found on commons.  
50 Vic. No. 15, s. 14.

**18.** Any animal found on any common and infected with any contagious or infectious disease may be destroyed by order of the trustees of such common after a notice describing with reasonable accuracy the animal intended to be destroyed has been exhibited for twenty-four hours at the police station nearest to the common, and given to the owner of such animal, if known to the trustees, stating that it is their intention to destroy such animal; and no such destruction shall entail any liability at common law or otherwise upon any person giving or acting under any such order.

Trustees to hand over property, &c.  
*Ibid.* s. 9.

**19.** (1) Every trustee of a common whose term of office has expired shall hand over to his successor, or to such person as the Minister appoints, all property, including all deeds, books, documents, and money in his possession or control relating to such common, and if any such trustee refuses or neglects, when called upon by such successor or Minister, to hand over such property to such successor or person, such trustee shall be liable to a penalty not exceeding fifty pounds.

(2) No proceedings under this section shall be a bar to any proceedings to recover possession of any such property.

## PART III.

*Commoners and use of commons.*

Meetings of commoners.  
36 Vic. No. 23, s. 10.  
50 Vic. No. 15, s. 13

**20.** At any meeting of commoners five shall form a quorum, and if at any such meeting the votes are equal the chairman shall, in addition to his vote as commoner, have also a casting vote. Every general meeting of commoners may adjourn from time to time, and every adjourned meeting shall be held to be a duly convened and constituted general meeting, notwithstanding such adjournment.

Commoners' roll.  
*Ibid.* s. 2.

**21.** No person shall be entitled to exercise any commoners' rights under this Act, or regulations made thereunder, until his name has been entered upon the commoners' roll.

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**22.** The commoners' rights to which a commoner shall be entitled in respect of any common shall be the common of pasturage of stock, including the right of watering such stock upon the common, and with the permission of the trustees of any common, and, subject to the payment of such charges as they by their rules and regulations impose, the right to take fallen timber or underwood from the common. Commoners' rights. 50 Vic. No. 15, s. 10.

**23.** The Minister may, subject to the payment of such charges as he may impose, grant a license to any person to take and remove from a common, soil, stone, or minerals, or to cut and remove therefrom any timber. License to take soil. Ibid.

**24.** Any bona fide carrier, teamster, traveller, or drover shall have the right of pasturage upon any common for the animals actually in use by him for carriage, riding, or droving during three days consecutively without charge, and for such longer period as may be rendered necessary by rain or floods; but after such period in either case, such animals, if still depasturing on the common, may be impounded by the trustees thereof: Carriers', teamsters', travellers', and drovers' privileges on commons. Ibid. s. 11.

Provided, however, that the trustees of a common may, in the case of any such animals, and also in that of any travelling stock, upon the payment to the trustees of the fees prescribed by regulations under this Act, allow such animals or stock to be depastured upon such common for any time not exceeding one week within any period of six months.

**25.** (1) The Minister may, on application by the trustees of any common, specify by notification in the Gazette, a portion of the common therein described, and may, on a like application and in like manner, vary the boundaries of any portion so specified. Right of carriers to depasture animals may be limited. 59 Vic. No. 12, s. 1.

(2) On such notification being made, and on the portion of the common specified being enclosed by a sufficient fence, the right of pasturage of bona fide carriers, teamsters, travellers, and drovers shall, as to such portion, cease and determine.

**26.** Every drover of travelling stock taking such stock through or over or along any common shall give the trustees or herdsman thereof the like notice as he is by law required to give to any owner or occupier of land through or along which he intends to drive any stock. Drovers to give trustees or herdsman notice. 50 Vic. No. 15, s. 12.

**27.** The Governor may fix the commoners' boundaries of any common, and may also alter or extend such boundaries, but no such alteration shall affect any person's commoner's right then vested. Fixing and alteration of commoners' boundaries. Ibid. s. 3.

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## PART IV.

*Supplemental.*

Removal of trustees.  
59 Vic. No. 15, s. 7.

**28.** Upon proof to the satisfaction of the Governor that any trustees neglect or refuse to exercise the powers vested in them for the protection of the common or the commoners' rights, or that they have permitted any person to occupy or enclose any portion of the common, or to divert the common from the purpose for which it was granted, the Governor may, by notice in the Gazette, declare that such trustees have been removed from their office, and every person or corporation named in such notice shall thereupon cease to be a trustee of such common.

Regulations.  
*Ibid.* s. 15.

**29.** The Governor may, in regard to any common or class of commons, make regulations with respect to—

- (1) The payment of fees by carriers, teamsters, travellers, and drovers of travelling stock for extended pasturage, and the payment of license fees for removing soil, stone, or minerals, and for cutting and removing timber, and for the appropriation of such fees, and for enforcing payment thereof; and
- (2) all other matters of detail necessary for carrying this Act into effect.

All such regulations on being published in the Gazette shall have the full force of law.

General penalty.  
*Ibid.* s. 16.

**30.** Any person who commits a breach of any of the provisions of this Act for which a penalty is not specially provided shall on conviction for every such offence incur a penalty not exceeding twenty pounds.

Recovery and appropriation of fines and penalties.  
36 Vic. No. 23, s. 12.

**31.** All fines and penalties imposed under the provisions of this Act, or under any rules or regulations made in pursuance thereof, shall be recoverable in a summary way before any two justices of the peace, in the manner directed by the Acts for the time being in force for the regulation of summary proceedings before justices, and shall be appropriated as directed by the same Act:

Provided that no such penalty shall be proceeded for after three months next after the commission of the offence for which it has been incurred.

## SCHEDULE.

Reference to Act.	Title or short title.	Extent of Repeal.
36 Vic. No. 23 ...	Commons Regulation Act of 1873 ...	The whole Act.
50 Vic. No. 15 ...	Commons Regulation Act Amendment Act of 1886	The whole Act.
59 Vic. No. 12 ...	Commons Act Amendment Act, 1895 ...	The whole Act.