

Act No. 51, 1902.

An Act to consolidate the enactments relating to Water Rights. [26th August, 1902.]

WATER RIGHTS.

BE it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

PART I.

Repeal and interpretation.

1. This Act may be cited as the "Water Rights Act, 1902," and is divided into Parts, as follows:—

Short title and division.

PART I.—*Repeal and interpretation*—ss. 1-3.

PART II.—*Rights of the Crown and of riparian proprietors*—ss. 4-7.

PART III.—*Works for dams, locks, &c.*—ss. 8, 9.

PART IV.—*Licenses*—ss. 10-19.

PART V.—*Powers of Minister and Governor*—ss. 20, 21.

PART VI.—*General penalties and procedure*—ss. 22-24.

PART VII.—*Miscellaneous provisions*—ss. 25, 26.

2. (1) The Act sixtieth Victoria number twenty is hereby repealed.

Repeal.

(2) All proclamations and regulations duly made, and licenses duly granted, and any matter or thing duly done under the authority of the Act hereby repealed and being in force at the time of the passing of this Act shall be deemed to be and to have been made or granted or done under the corresponding provisions of this Act, and as if this Act had been in force when the same were made, granted, or done respectively.

Saving clause.

3. In this Act and in any regulations made thereunder, unless the context or subject-matter otherwise indicates or requires,—

Interpretation.

60 Vic. No. 62, s. 22.

"Crown lands" has the meaning given to that expression in the Crown Lands Act of 1884;

"drainage" includes the draining of flood or other waters of rivers or lakes by means of any work; and "drainage work" includes a work constructed or used for the above purpose;

"lake" includes a lagoon, swamp, or other collection of still water, whether permanent or temporary, not being water contained in an artificial work;

"land

Water Rights.

- “land district” means land district proclaimed under the Crown Lands Acts of 1884 or any Act amending the same ;
- “local land board” means the land board for the district in which a work is situated, or if the work be situated in more than one land board district, such land board as the Minister may name ;
- “licensed work” means a work in respect of which a license is held under this Act ;
- “occupier” means person in actual occupation ;
- “prescribed” means prescribed by this Act, or by any regulations under this Act ;
- “river” includes any stream of water, whether perennial or intermittent, flowing in a natural channel, and any affluent, confluent, branch, or other stream into or from which the river flows ;
- “water supply” includes a supply for the carrying on of any industrial operation ;
- “work” includes any dam, lock, reservoir, weir, flume, race, channel (whether an artificial channel or a natural channel artificially improved), any cutting, tunnel, pipe, sewer, and any machinery and appliances ;
- “work to which this Act extends” means work connected with any river or lake flowing through or past or situate within the land of two or more occupiers, or with any water flowing in, to, or from, or being in any river or lake flowing or situate as aforesaid, whether such work be for water conservation, irrigation, water supply, or drainage.

PART II.

Rights of the Crown and of riparian proprietors.

Rights to certain
waters vested in the
Crown.
60 Vic. No. 20, s. 1.

4. (1) The right to the use and flow and to the control of the water in all rivers and lakes which flow through or past or are situate within the land of two or more occupiers, and of the water contained in or conserved by any works to which this Act extends, shall, subject only to the restrictions hereinafter mentioned, vest in the Crown. And in the exercise of that right, the Crown, by its officers and servants, may enter any land and take such measures as may be thought fit or as may be prescribed for the conservation and supply of such water as aforesaid and its more equal distribution and beneficial use and its protection from pollution, and for preventing the unauthorised obstruction of rivers.

For the purposes of this subsection “occupier” includes the Crown. (2)

Water Rights.

(2) The said right shall be subject to the following restrictions :— Restriction of Crown's rights.

- (a) it shall not be exercised in contravention of any right conferred on and lawfully exercisable by any person or board by or under the authority of any Act dealing with mining, or of any public or private statute or of any license granted by the Crown;
- (b) it shall be subject to the rights hereinafter mentioned of the occupiers of land on the banks of rivers or lakes;
- (c) it shall be subject to the rights of the holders of licenses under this Act.

5. The occupier of land on the bank of a river or lake shall have the right to use the water then being in the river or lake for domestic purposes and for watering cattle or other stock, or for gardens not exceeding five acres in extent used in connection with a dwelling-house, and it shall not be necessary for the occupier to apply for or obtain a license for any work used solely in respect of that right. Rights of riparian proprietors. 60 Vic. No. 20, s. 2.

6. Where the Crown is by its officers, servants, or agents in occupation of a work to which this Act extends, constructed by the Crown at any time, the Crown shall, subject to the provisions of this Act, have the quiet enjoyment and sole and exclusive use of the said work as against all persons whomsoever, and shall be entitled to make such charges for the supply or use of the water conserved thereby as may be prescribed. Rights of Crown in respect of works. Ibid. s. 3.

7. The right of the occupier of any work to which this Act extends— Rights of occupiers of works to which this Act extends. Ibid. ss. 5, 6.

- (a) to use the work for the purpose of water conservation, irrigation, or water supply, or drainage; or
 - (b) to take, use, or dispose of the water contained therein, conserved, or obtained thereby,
- shall be subject to the provisions of this Act.

PART III.

Works for dams, locks, &c.

8. (1) The Governor may notify, by proclamation in the Gazette, proposals for dams, locks, weirs, channels, or drainage works to be constructed by the Crown, together with an estimate of the cost of the same. Proposals for dams, locks, weirs, channels or drainage works. Ibid. s. 4.

(2) After such notification, the Minister may refer any such proposal to the land board for the land district within which the proposed works would be, or to a land board for a land district adjacent to the site of the proposed work; and such land board shall thereupon forward a report to the Minister describing the land which, in the opinion of the board, should be included in any water or drainage district to be constituted in respect of the said work. Reference to land board. (3)

Water Rights.

Procedure on receipt
of report from land
board.

(3) Upon receipt of such report the Minister may, by notification in the Gazette, declare the land so described to be a district within which water or drainage charges may be levied. If, after such last-mentioned notification, a petition in favour of the proposal of the Minister is presented to the land board signed by persons—

- (a) who constitute a two-thirds majority of the total number of those occupying land within the district; and
- (b) who occupy an area exceeding two-thirds of the total area within the district,

the board may report to the Minister recommending that the proposal be carried out. Thirty days after the receipt of such report to that effect the Minister may carry out the work out of funds legally available for the purpose unless an appeal to the Land Court affecting the same is pending, in which case all further proceedings shall be stayed until the appeal is decided :

Provided that any such work shall be subject to the provisions of the Public Works Act, 1900.

Charges to be
assessed and levied.
60 Vic. No. 20, s. 4.

9. (1) Upon the work being completed the Minister may direct the land board to assess in each and every case the water and drainage charges to be paid, which charges shall not exceed the yearly value to each occupier of the direct benefit accruing to his land from the work :

Provided that the total of such charges shall not exceed six pounds per centum of the cost to the Crown of the construction of such work.

Payment of
contribution.

(2) Every contribution so assessed shall be payable, at the times and in the manner prescribed, into the Consolidated Revenue Fund.

New assessment.

(3) On the petition of persons liable in the aggregate to pay one-quarter of the total amount of the charges, or at the request of the Minister, the land board shall make a fresh assessment of the charges to be paid.

PART IV.

Licenses.

Licenses.
Ibid. s. 7.

10. Any occupier of land, whereon any work to which this Act extends is constructed or used, or is proposed to be constructed or used, for the purpose of water conservation, irrigation, water supply, or drainage, may apply to the person and in the form prescribed, for a license to construct and use the said work, and to take, use, and dispose of the water contained therein, conserved, or obtained thereby.

Applications for
licenses.
Ibid. s. 8.

11. On application being made for a license under the last section, the Minister shall cause to be advertised, once in the Gazette and once in a public newspaper circulating in the neighbourhood where

the

Water Rights.

the land is situate, a notice of the receipt of the application, stating that on a day therein named, and at a place therein named within the land district in which the land is situate, a public inquiry will be held as to the desirability of granting the application.

12. (1) The inquiry shall be held by the local land board by the direction of the Minister, or by some person authorised by the Minister in that behalf, and the local land board or the person so authorised shall report in writing to the Minister.

(2) All persons whose interests appear to be affected by the granting of the application shall be permitted to attend at the inquiry, and be heard in support of, or in opposition to, the granting of the application.

(3) Where any inquiry is held under this section by a person authorised by the Minister as aforesaid, the applicant or any person so interested as aforesaid shall have a right of appeal from the report of such person to the local land board.

13. (1) The report of the person holding the inquiry by the authority of the Minister or of the local land board or Land Court on appeal shall be published in the Gazette within the prescribed time after presentation thereof to the Minister, and the Minister shall, after the expiration of thirty days from such publication, where the report recommends the issue of a license, issue a license to the applicant in the prescribed form subject to such terms, limitations, and conditions, if any, as may be recommended in such report.

(2) Provided that

- (a) no license shall be issued under this section pending any appeal or reference; and
- (b) a license shall be issued only upon payment of a fee calculated in the manner and according to the scale set forth in the Schedule to this Act; and
- (c) before granting a license the Minister may require such alterations to be made in or in connection with the work, or in the plans and specifications of the same, as may be recommended by the said report.

14. If two or more occupiers desire to construct any work to which this Act extends, they may apply for a license to construct and use the said work in the manner prescribed for a single occupier, and such application will be dealt with as the application of a single occupier.

15. The license, if granted, shall in every case except Class IV, be granted for a period not exceeding ten years, and shall (subject to the provisions of this Act with regard to the renewal of licenses, and subject to such limitations and conditions as the Minister may think fit to make) be renewed by the Minister from time to time on the application

Water Rights.

application of the person holding the license, on the payment of a fee calculated in the manner and according to the scale set forth in the Schedule to this Act :

Provided that no renewal shall be for a longer period than ten years.

Extent of license.
60 Vic. No. 20, s. 11.

16. Except in cases where a single license fee may be paid for combined works, as mentioned in the Schedule to this Act, a separate application for a license may be required in respect of each work ; and the determination as to what work may be included in each license shall rest with the Minister.

Benefit of license.
Ibid. s. 13.

17. A license shall be deemed to be held by and shall operate and enure for the benefit of the lawful occupier for the time being of the land whereon the work is constructed or is proposed to be constructed.

Rights of holder of license.
Ibid. s. 14.

18. Subject to the provisions of this Act, or the regulations hereunder, the person holding a license under this Act in respect of any work shall have absolutely, during his lawful occupation of the work, so far only as the said work is constructed or maintained on the land occupied by him, the quiet enjoyment and the sole and exclusive use of the work as against all other persons whomsoever, including the Crown, and shall be entitled to take, use, and dispose of any water contained therein or conserved thereby.

Alteration of work during currency of license.
Ibid. s. 18.

19. If, during the time that a license under this Act is in force in respect of a work, alterations have been made in or in connection with the work which materially and prejudicially affect the quantity or quality of water flowing in, to, or from, or being in any river or lake, the person who has made the alterations shall be liable to a penalty not exceeding one hundred pounds, and in addition to the imposition of the said penalty, the license may, by notice in the Gazette, be cancelled and annulled :

Provisoos.

Provided that the holder of any license may during the currency thereof apply for an amended license allowing alterations in the work as originally licensed, and any such application shall be dealt with as hereinafter provided in respect of applications for a license in the first instance :

Provided also that the operations herein referred to shall not apply to any repairs or alterations rendered necessary for maintenance or any sudden or unforeseen emergency.

Water Rights.

PART V.

Powers of Minister and Governor.

20. (1) For the purposes of this Act the Minister, or any person authorised by him, may enter on any land and take levels and make surveys and marks, and fix pegs and stakes, and inspect any works. Power of entry. 60 Vic. No. 2, s. 17 (1).

(2) Any person who removes, injures, or interferes with any marks made, or pegs or stakes fixed as aforesaid, shall be liable to a penalty not exceeding fifty pounds, or to imprisonment for a term not exceeding three months. Penalty. Ibid. s. 17 (11).

21. (1) The Governor may make regulations prescribing the forms of licenses and of renewals of the same, and for carrying out the provisions of this Act; and may, in such regulations, impose any penalty not exceeding fifty pounds for each breach of the same, or where the breach is a continuing one, not exceeding five pounds for every day during which the breach continues. Regulations. Ibid. s. 20.

(2) A copy of all such regulations shall be laid before the Legislative Council and Legislative Assembly without delay. To be laid before the Legislative Council and Assembly.

PART VI.

General penalties and procedure.

22. Any person who maliciously cuts, breaks or destroys, or damages with intent to destroy or render less useful any licensed work or any work to which this Act extends constructed by the Crown shall be liable on indictment to imprisonment, with or without hard labour, for a term not exceeding five years. Injuries to works. Ibid. s. 19.

23. Any person who obstructs or hinders any person while performing any duty which he is authorised by this Act, or by any regulation made thereunder, to perform, shall be liable to a penalty not exceeding fifty pounds, or to imprisonment for a term not exceeding three months. Obstructing persons in the performance of duties. Ibid. s. 17 (11).

24. Fees and charges payable under, and penalties imposed by this Act, or any regulations made thereunder, may be recovered before, and charges in respect of offences under this Act (not being offences made punishable on indictment) may be heard and determined by a police or stipendiary magistrate, or any two justices of the peace in petty sessions. Recovery of fees, charges, and penalties. Ibid. s. 21.

Water Rights.

PART VII.

Miscellaneous provisions.

Appeal to Land
Appeal Court.
60 Vic. No. 20, s. 15.

25. Any report, recommendation, or decision, of a land board under this Act shall be subject to an appeal or reference to the Land Appeal Court in the manner prescribed by the Crown Lands Act of 1884, or any Act amending the same, or any regulations made thereunder. The decision of the said Court shall be final.

Fees and charges
Ibid. s. 16.

26. All fees and charges payable under this Act shall be paid into the Consolidated Revenue Fund.

SCHEDULE.

FOR the purpose of fixing scales of fees, works shall be divided by the Minister into the following classes:—

Class I consists of the following works in or connected with rivers, which, in the opinion of the Minister, flow in the neighbourhood of the works six months or longer in the year, on an average being taken of the ten years immediately preceding the making of the application:—

- (a) Dams and weirs for supplying water by gravitation, through natural or artificial channels, for irrigation or other purposes.
- (b) Artificial channels or natural channels artificially improved through which, without the aid of a dam or weir, water is or may be supplied by gravitation, for irrigation or other purposes.

Class II consists of the following works in or connected with rivers, which, in the opinion of the Minister, flow in the neighbourhood of the works less than six months in the year, on an average being taken of the ten years immediately preceding the making of the application:—

- (a) Dams and weirs for supplying water by gravitation through natural or artificial channels for irrigation or other purposes.
- (b) Artificial channels or natural channels artificially improved through which, without the aid of a dam or weir, water is or may be supplied by gravitation for irrigation or other purposes.

Class III.—Pumping machinery and other water-lifting appliances exclusive of those where the motive power employed does not exceed one-horse power.

Class IV.—Dams and weirs for storing water and not included in Class I or Class II.

Class V.—Flood-gates for drainage purposes on the banks of rivers or lakes, and artificial channels or natural channels artificially improved emptying or draining into a river or lake.

Fees for granting or renewing licenses.

The following license fees payable on the granting or renewing of licenses will in each case cover the period for which the license is granted or renewed.

Class I.—The license fee to be paid in respect of a work included in this class shall be calculated as follows:—The Minister, or some person authorised by him in that behalf shall determine the amount of water per minute which can be supplied to the licensee by the work, and the fee payable is hereby fixed at the rate of two pounds for every seven hundred and fifty gallons, or portion of seven hundred and fifty gallons of water per minute so determined as aforesaid up to and including thirty-seven thousand five hundred gallons per minute, and for water which can be supplied as aforesaid above that amount, at the rate of four pounds for every three thousand seven hundred and fifty gallons or portion thereof per minute.

Class

Prince Alfred Hospital.

Class II.—The license fee to be paid in respect of a work included in this class shall be calculated as follows :—The amount of water per minute which can be supplied by the work shall be determined in the same way as in the case of works included in Class I, and the fee payable is hereby fixed at the rate of two pounds for every one thousand five hundred gallons or portion of one thousand five hundred gallons of water per minute so determined as aforesaid up to and including thirty-seven thousand five hundred gallons per minute, and for water which can be supplied above that amount as aforesaid, at the rate of two pounds for every three thousand seven hundred and fifty gallons or portion thereof per minute.

Class III.—The license fee to be paid in respect of a work included in this class shall be as follows :—

- (a) Where the motive power employed or to be employed does not exceed one-horse power no charge for a license shall be made.
- (b) Where the pumping machinery or other water-lifting appliance can, in the opinion of the Minister, be used to obtain water from a river or lake for irrigation or other purposes for a period of at least six months annually, without the aid of a dam or weir, the license fee shall be the same as in Class I.
- (c) Where the pumping machinery or other water-lifting appliance can, in the opinion of the Minister, be used to obtain water from a river or lake for irrigation or other purposes for a period of less than six months annually, without the aid of a dam or weir, the license fee shall be half that payable under the last preceding paragraph.
- (d) Where, with the aid of a dam or weir, the pumping machinery or other water-lifting appliance will, in the opinion of the Minister, deliver water for irrigation or other purposes during at least six months annually, the license fee for the combined works shall be a mean between the fee payable under Class I and that payable under Class II.
- (e) Where, with the aid of a dam or weir, the pumping machinery or other water-lifting appliance will, in the opinion of the Minister, deliver water for irrigation or other purposes for a period of less than six months annually, the license fee for the combined works shall be half that payable under the last preceding paragraph.

Class IV.—The license fee for a work included in this class shall be one pound.

Class V.—The license fee for a work included in this class shall be one pound.
