

Water and Drainage.

Act No. 93, 1902.

An Act to provide for the annual expenditure of £200,000 for a period of five years on works of water supply, water conservation, or irrigation and of drainage; for the constitution of trusts to administer the same in certain cases; and to authorise the raising of the said sums by loans. [5th December, 1902]

WATER AND
DRAINAGE.

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:—

Preliminary.

1. This Act may be cited as the "Water and Drainage Act, 1902." Short title.

2. In this Act—

Interpretation.

"Board" means Board consisting of the Under Secretary of the Public Works Department, Engineer-in-Chief for Railway Construction, Government Architect, Commissioner for Roads and Principal Engineer for Roads and Bridges, Principal Engineer for Harbours and Rivers, the Principal Engineer for Water Supply and Sewerage, and such other officer of the Public Works Department as may be appointed by the Governor; and including where any work affects the Western Division, the Western Land Board, as constituted under the Western Lands Act of 1901.

"Minister" means Secretary for Public Works.

"Owner" means owner of any estate of freehold in land, and includes a mortgagee in possession.

"Occupier" means person in actual possession.

"Prescribed" means prescribed by this Act or the regulations or by-laws.

"Ratepayer" means person paying rates in respect of land within a trust district.

"State work" means any work of water supply, water conservation, or irrigation, or of drainage proclaimed as such by the Governor.

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“The regulations” and “the by-laws” mean respectively the regulations and by-laws made under this Act.

“Trust” means trust constituted under this Act.

“Trustee” means member of a trust.

“Trust district” means area over which a trust has jurisdiction under this Act.

“Western Division” has the same meaning as in the Crown Lands Act of 1884.

“Works” includes any natural or artificial conduit, well, appliance, machinery, or structure pertaining to or used in connection with a trust.

Loans for works.

Power to raise £200,000 a year for five years for purposes of water supply.

3. (1) The Governor may raise in the year one thousand nine hundred and two, and in each of the next four succeeding years, by the issue of debentures or the issue of inscribed stock, secured upon the Consolidated Fund of this State, and bearing interest at a rate not exceeding four per centum per annum, a sum not exceeding two hundred thousand pounds, for the purpose of carrying out works of water supply, water conservation or irrigation, or of drainage.

Stock may be sold in London or Sydney.

(2) The loans so authorised may be negotiated wholly or in part in the form of debentures or inscribed stock in the State or in London at such times and for such amounts as may be directed by the Governor.

Creation of stock.

(3) Any stock issued within the State under this Act shall be styled “New South Wales Funded Stock,” and shall, if sold otherwise than by tender, be purchasable at the Treasury upon any lawful day.

Application hereto of certain provisions of Funded Stock Act of 1892 to stock sold in the State.

(4) The provisions of the Funded Stock Act of 1892, relating to the method of inscription and transfer of stock, and the regulations under such Act, and the forms prescribed in the said regulations, are hereby declared to be applicable to, and shall be followed and used mutatis mutandis in connection with stock issued within the State under the provisions of this Act.

Regulations to be made in respect of stock sold in London.

(5) In respect of any stock issued in London under the provisions of this Act, the Governor may make regulations, not being inconsistent with the provisions of the Inscribed Stock Act of 1883, for carrying this Act into effect; and such regulations shall be published in the Gazette and laid before Parliament within fourteen days of the publication thereof, if Parliament be then sitting, and if Parliament be not sitting, then within fourteen days of the commencement of the next session thereof.

Sums borrowed how to be accounted for and appropriated.

(6) All moneys borrowed under this Act shall be paid to the Treasurer, and shall be by him carried to and form part of the General Loan Account, and be appropriated and applied, as required, to the works and services hereinbefore specified, or to any other duly authorised Loan Services, in terms of the Audit Act, 1902.

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(7) Debentures or stock sold or issued under this Act are hereby declared to be for all purposes Government Securities; and all corporations and other persons whatsoever shall have power to invest in the purchase of such debentures and stock any property held by them, whether as trustees or otherwise, which they are not expressly forbidden to invest in Government stock or securities, without on that account being liable as for a breach of trust or incurring any liability whatsoever, provided that such investment is in other respects reasonable and proper.

Power to trustees and others to invest in debentures or stock.

State works.

4. The Minister may, subject to the provisions of the Public Works Act, 1900, carry out a "State work" under the said Act out of the funds raised under this Act, and may maintain and administer and, subject as aforesaid, extend the same as he thinks fit.

Construction of "State works."

Works of water conservation costing five thousand pounds or less.

5. Where the estimated cost does not exceed five thousand pounds the Minister may, out of the funds raised under this Act, carry out any works of water conservation that he deems desirable, and maintain and administer the same, and no charge shall be made for water supplied to travelling stock from such works when situated on or near to any public highway: Provided that the Minister shall before carrying out any such works, where the estimated cost exceeds five hundred pounds, refer the proposal to the Board and obtain their report thereon.

Works of water conservation costing £5,000 or less.

Constitution of trusts.

6. Where the estimated cost of any work of water conservation exceeds five thousand pounds, and in respect of any works of water supply, irrigation, or drainage, the Minister shall notify in the Gazette and in some newspaper circulating in the district affected by such works proposals for the construction of such works, and the constitution of a trust for maintaining, administering, and extending such works.

Constitution of trusts.

7. Any such proposal shall contain—

- (a) a description of the purpose for which it is proposed to constitute the trust;
- (b) a plan and description of the works and of the land, whether covered with water or not, proposed to be taken or acquired for the purposes of such works and of their cost or estimated cost;
- (c) the rate of interest, which shall not exceed four per centum per annum, and shall be paid by the trust on the actual cost or on the estimated cost, plus ten per centum, whichever is the lesser sum;
- (d)

Contents of proposals.

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- (d) the charges to be paid by the trust for water to be supplied by the Crown and the conditions of such supply ;
- (e) the maximum rate which may be assessed by the trust ;
- (f) a description of the trust district ;
- (g) the number of trustees being either three or five ;
- (h) the number of years within which the cost of the work shall be extinguished by a sinking fund.

Minister on petition by one third of occupiers and owners to refer proposal to Board for inquiry.

8. If, within eight weeks after such notification, a petition is presented to the Minister signed by at least one-third in number of the occupiers of Crown land, including homestead selectors, conditional lessees, and settlement lessees, and owners of other land within the proposed trust district, objecting to the proposal, he shall refer the proposal to the Board for inquiry and report.

For the purpose of any such inquiry such Board shall have the power to subpoena witnesses and take evidence on oath.

Witnesses expenses.

Every person who when required by the Board attends as a witness shall be allowed such expenses as would be allowed to a witness attending on subpoena on the trial of an action in the District Court, and, in case of dispute as to the amount to be allowed, the same shall be referred to the Registrar of the nearest District Court who, on request under the hand of the Chairman of the Board, shall ascertain and certify the proper amount of such expenses.

If no petition or if Board reports in favour of proposal the Governor may constitute the trust.

9. (1) If within the said period no such petition is received, or if the Board reports in favour of the proposal, with or without modifications, the Governor may constitute the trust with such modifications of the proposal as the Board may recommend, or where no reference is made to the Board, with such modifications as the Minister may think fit.

(2) The constitution of the trust shall be notified by the Minister in the Gazette.

Upon notification of the trust, the Minister may carry out any works described in the proposal.

(3) Upon such notification the conditions of the proposal, with such modifications (if any) as aforesaid, shall be binding on the trust and on the Crown, and the Minister may, out of the funds raised under this Act, carry out the works described in the proposal.

Works under other Acts.

Works under Public Watering Places Act and Artesian Wells Act.

10. The Minister may, out of the funds raised under this Act, carry out any work which he is authorised to carry out under the Public Watering Places Act, 1900, or the Artesian Wells Act, 1897.

Completion of certain works already commenced.

Works of water supply, &c., already commenced may be completed.

11. (1) The Minister may, out of the said funds, complete any works of water supply, water conservation or irrigation, or of drainage under construction at the commencement of this Act.

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(2) The Minister may notify proposals for the completion of any such work and for the constitution of a trust in respect thereof, and may notify proposals for the constitution of a trust in respect of any such work constructed and under his immediate control at the commencement of this Act, and in any such case the provisions of sections seven, eight, and nine shall be applicable mutatis mutandis.

Trusts may be constituted in respect of such works and of any already constructed.

Construction of works.

12. Every work, other than a State work, which the Minister is authorised by this Act to carry out shall be carried out under the Public Works Act, 1900, and all the powers and provisions of the said Act relating to authorised works shall be applicable to such work, and for all purposes of the said Act such work shall be deemed to be an "authorised work," and the Minister shall be deemed a "Constructing Authority" within the meaning of the said Act:

Works to be carried out under Public Works Act, 1900, and to be "authorised works" and Minister a "Constructing Authority" within that Act.

Provided that no such work which interferes with any rights under any license granted by the Crown under the Water Rights Act, 1902, or any other Act, shall be carried out until and unless the Minister has given to the holder of such license the following notice of his intention to carry out such work, that is to say—

- (a) where the unexpired term of the license does not exceed five years, six months' notice;
- (b) where the unexpired term of the license exceeds five years, twelve months' notice.

Transfer to trust.

13. The completion of any works in respect of which a trust is constituted under this Act, and the cost of the same shall be notified in the Gazette, and thereupon the trust shall take over the same, and the administration and management thereof upon the terms and conditions prescribed, and shall exercise all the powers contained in this Act except such as are conferred solely upon the Minister, and the interest and charges payable by the trust shall commence to run.

On notification of completion, trust to take over management.

Alteration of boundaries of trust districts.

14. If two-thirds in number of the occupiers of Crown lands including homestead selectors, conditional lessees, and settlement lessees and owners of other lands within any area sign and forward to the Minister a petition that such area be included in a trust district, the Minister shall refer the proposed alteration to the Board, who, after giving the trust an opportunity of expressing their opinion, shall report to the Minister whether in the opinion of the Board the petition ought to be refused or granted with or without modifications, whereupon the Minister may by notification in the Gazette alter the boundaries of such district accordingly, or may refuse the petition.

Minister on petition by two-thirds of occupiers or owners to refer proposed alteration to Board.

Appointment

*Water and Drainage.**Appointment and election of trustees.*

In certain cases
Minister to appoint
trustees, in other to
direct their election.

15. (1) After the constitution of the trust, but before the completion of the works (if any) proposed to be constructed, the Minister shall, by notice in the Gazette, appoint trustees and direct the first election of trustees in pursuance of this Act.

(2) Where the trust district consists wholly of land acquired under the Closer Settlement Act, 1901, or any Act amending the same, or unoccupied Crown lands, all the trustees shall be appointed by the Minister, and shall, subject to the provisions of this Act, hold office until half the land in the district is occupied by persons who are liable to pay rates to the trust.

Thereafter, and in other cases where the number of the trustees is three, one shall be appointed by the Minister and two shall be elected, but where the number of the trustees is five, two shall be appointed by the Minister and the rest shall be elected:

Provided that where the trust district is in the western division, the Western Lands Board shall be sole trustees in lieu of the trustee or trustees hereinbefore mentioned.

Trustees to be
elected for three
years.

Method of first
election of trustees.

16. Elected trustees shall be elected for three years and shall hold office until their successors are elected.

17. For the purpose of the first election of trustees the Minister shall prepare a roll of voters, placing on the roll the names of the persons who in his opinion will be liable to pay rates to the trust, and the persons whose names are on such roll and no others shall be qualified to vote at the first election.

Subsequent election
of trustees.

18. For the purpose of any subsequent election of trustees, a roll of voters containing the names of the persons who are liable to pay rates to the trust shall be prepared by the trustees, and revised in the prescribed manner by the police magistrate having jurisdiction in the district, before whom any person aggrieved by the omission or addition of the name of any person may appear and be heard, and the persons whose names are on such roll and no others shall be entitled to vote at any such election.

Cumulative voting.

19. Persons on the roll shall be entitled to vote in the manner following, that is to say:—

(a) In the case of a trust placed in charge of drainage work or irrigation works, the occupier of an area of land not exceeding fifty acres shall be entitled to one vote; of an area exceeding fifty acres but not exceeding three hundred acres, to two votes; and of an area exceeding three hundred acres, to three votes.

(b) In the case of a trust in charge of water supplies for domestic and stock purposes, the occupier of an area of land not exceeding two thousand acres shall have one vote; the occupier of more than two thousand acres but not more than ten thousand acres, two votes; and the occupier of more than ten thousand acres, three votes.

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20. Any person entitled to vote at the election of trustees may be elected as trustee. But no person who has been convicted of any criminal offence shall be capable of being appointed or elected or to act as a trustee, and where a trustee becomes incapable as aforesaid, his office shall become vacant. Qualification of persons entitled to be elected as trustees.

21. In the first election of trustees the Minister shall appoint a returning officer, and may for any succeeding election appoint a returning officer, or delegate this power to the trustees. Minister to appoint returning officer for first election, but for any succeeding election may delegate this power to trustees.

The Minister shall appoint the date of any election and the polling places, and shall notify the same in the Gazette and a local newspaper.

22. The mode of election of trustees shall be as prescribed by the regulations. Mode of election to be as prescribed.

23. Any vacancy caused by the death, resignation, or incapacity of a trustee shall be filled by appointment or election, as the case may be. Vacancy how filled.

Powers and duties of trustees.

24. The trustees shall be charged with the duty of maintaining and administering the works of water supply, water conservation, irrigation, and drainage mentioned in the notification constituting the trust or thereafter constructed within the trust district. Duties of trustees.

25. Trustees shall have the following duties and powers:— Powers and duties of trustees.

- (a) They shall maintain in a state of efficiency the works under their charge.
- (b) They shall fix and levy rates to provide for the maintenance and management of such works and for interest, charges, and sinking fund.
- (c) They shall keep proper accounts of all moneys received and paid.
- (d) They shall pay to the Treasury at such times as may be fixed by the Minister the interest and charges payable by them and make due provision for a sinking fund, and all sums received on account of any such sinking fund shall be carried by the Colonial Treasurer to a special account to be entitled "The Water and Drainage Loan Redemption Fund," and all other sums to the Consolidated Revenue Fund.
- (e) They may appoint, with the sanction of the Minister, such officers or servants as may be required.

26. In the exercise and discharge of their powers and duties, the trustees by themselves or their officers may enter any land within the trust district and make any inspection or survey they may deem necessary, and effect repairs or alterations to any works, but in so doing shall avoid as far as practicable causing any loss, injury, or damage. They shall not be responsible for any loss, injury, or damage caused by them, unless claim in writing be made within three months thereafter. Power of trustees or their officers to enter and inspect.

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Trustees may fix and
levy rates.

27. (1) For the purpose of providing money for exercising their powers and performing their duties under this Act the trustees may fix and levy rates upon the whole of the lands within the trust district as follows:—

- (a) In connection with the supply of water for stock purposes, a rate per acre of the land benefited by the works shall be fixed and the rate may vary in proportion to the benefit received as aforesaid. When water is supplied down a natural channel, a rate per mile of the lands benefited as aforesaid, measured according to the frontage to the channel, may be fixed, and the rate may vary in proportion to the benefit received.
- (b) In connection with the supply of water for domestic purposes, a rate for each separate tenement in the trust district shall be fixed, and the rate may vary in proportion to the benefit received.
- (c) In the case of drainage, a rate per acre of the land benefited by the works shall be fixed; and this rate may vary according to the distance of the land from drains and in proportion to the benefit received as aforesaid.
- (d) In the case of irrigation, a rate per acre on the whole of the irrigable land within the trust district shall be levied, whereupon the ratepayer shall be entitled to a proportion of the water to be fixed by the trustees either by measure or according to the area irrigated, or which in the opinion of the trustees should be irrigated.
- (e) In all cases, not otherwise in this section provided for, a rate per acre of the land benefited directly or indirectly by the works. This rate shall be fixed yearly, and shall as far as practicable be in proportion to the benefit received as aforesaid.
- (f) In the case of a supply for more than one purpose, separate rates may be fixed calculated on the basis set out for each such purpose.

(2) All such rates shall be payable by the occupiers of the lands.

(3) Any occupier aggrieved by the amount at which he is rated may appeal therefrom to the police magistrate having jurisdiction in the district, who shall hear and determine the matter, and may confirm or vary such amount.

Trustees may sell
additional water to
ratepayers.

28. The trustees shall have power to sell water by measure to any ratepayer in addition to the quantity to which he is entitled by payment of rates.

Powers

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Powers of Minister where trust constituted.

29. If the trustees by request in writing desire the Minister to improve or extend any works under their charge or increase the quantity of water supplied, the Minister may prepare an estimate of the cost of the proposed work and the interest thereon payable by the trust and a statement of the additional charge to be paid by the trust in respect of the increase of the quantity of water supplied. Such estimate and statement shall be supplied to the trustees.

The Minister, on request by trustees to improve or extend any works under their charge, may prepare an estimate of the cost of the proposed work, and upon the receipt of an intimation from the trustees that such estimate has been approved by a special general meeting of voters, may proceed with the construction of proposed works.

Upon the receipt from the trustees of an intimation that the estimate and statement have been approved by a special general meeting of the voters in the trust, of which not less than fourteen days' notice shall be given in the prescribed manner, the Minister may proceed with the construction of the proposed work or may increase the quantity of water supplied.

On the completion of the work or upon the increase of the quantity of water a notification shall be sent to the trustees, and shall be published in the Gazette, directing that, with the Governor's approval, the interest on the cost of such work and the charges for the increase of water supplied shall be paid by the trust.

Such interest and charges shall commence to run from the date of such notification, and such interest shall be calculated on a sum not exceeding the estimated cost plus ten per centum.

30. (1) The Minister, by himself or his officers, may at any time enter any part of a trust district and make an inspection or survey of the works in charge of the trust, and may inspect the records and accounts of the trustees.

Power of Minister to enter and inspect.

If upon such inspection the Minister is of opinion that any of such works are not kept in repair and efficient working order he may cause such repairs, as he may think necessary, to be made at the cost of the trust, and for the purpose of effecting such repairs he shall have the powers of the trustees.

Minister may cause repairs to be made at cost of the trust.

(2) In the event of any delay in the election of trustees, or in the event of any default by trustees in the discharge of their duties under this Act or the regulations, the Minister may assume all or any of the powers by this Act conferred on trustees, and the Governor may, if in his opinion sufficient cause exists, dissolve a trust, remove from office trustees, and appoint and direct the election of other trustees, or appoint a manager of the affairs of a trust.

Governor may dissolve trust, or appoint a manager.

General and supplemental.

31. The trustees shall submit to the Minister once every year, and at such other times as the Minister may direct, an audited statement of the accounts of the trust. The Minister may, if in his opinion such audited statement is defective or unsatisfactory, appoint an auditor to prepare a proper statement of accounts, at the cost of the trust.

Trustees to submit to Minister an audited statement of the account of the trust.

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Power of Minister or trustees to construct conduit.

32. (1) The Minister or trustees for the purposes of this Act may construct and maintain and repair any conduit through any land, street, or road.

Any ratepayer of a trust may, with the approval of the trustees, for the purpose of draining his land, cut and make, and maintain and repair drains through any adjacent or neighbouring land :

(2) Provided that the trustees or ratepayer shall make full compensation for any damage occasioned by cutting and making such drains ; and such compensation, estimated at one-fifth part above the value of the property affected, shall be assessed by the Board, and when so assessed shall be recoverable in any Court of competent jurisdiction.

Penalties.

33. Any person who—

- (a) obstructs the trustees or their officers or servants acting under this Act or the regulations or by-laws ; or
- (b) interferes with works in charge of the trustees ; or
- (c) destroys, injures, or obliterates any mark or level fixed by the trustees or their officers ; or
- (d) uses water from the works of the trust otherwise than in the manner and at the times prescribed ; or
- (e) obstructs the flow of or pollutes any water under the control of a trust ; or

(f) commits any breach of the provisions of this Act, shall be liable to a penalty not exceeding twenty pounds, and in the case of a continuing offence to a penalty not exceeding five pounds per day whilst the offence continues, and shall also be liable to be sued by the trustees or by any person for compensation on account of loss or damage caused by his offence.

Governor may make regulations.

34. The Governor may make regulations for carrying out the provisions of this Act, and in particular for—

- the election of trustees and the making and revision of the rolls of voters, and the mode of voting ;
- the election by the trustees of a chairman ;
- the intervals within which meetings of trustees must be held ;
- the procedure at such meetings ;
- the appointment, payment, and dismissal of officers and servants ;
- the fixing and notifying of rates ;
- the hearing of appeals ;
- the collection and recovery of rates and charging the same on lands in respect of which they are payable ;
- the keeping of the accounts of trustees ;
- regulating the payment to the Crown of interest and charges by the trust ;
- regulating the proceedings of the Board ;
- regulating special meetings of voters of a trust in pursuance of this Act ;

imposing

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imposing any penalty not exceeding twenty pounds for any breach of the regulations.

Such regulations shall be published in the Gazette.

35. (1) The trustees may, subject to the approval of the Governor, make by-laws— Trustees may make by-laws.

prescribing the duties of their officers and servants ;
for regulating the supply of water from and the use of the works of the trust ;

prescribing the duties of persons as to the maintenance, clearing, cleansing, and repair of the works of the trust ;

imposing any penalty not exceeding ten pounds for any breach of the by-laws.

(2) Such by-laws shall have effect when approved by the Governor and published in the Gazette.

All such regulations and by-laws shall be laid before both Houses of Parliament within fourteen days after the making thereof, if Parliament is then in session, and if not, then within fourteen days after the commencement of the next ensuing session.

36. All rates and all charges imposed by or under this Act or the regulations or by-laws may be recovered in any Court of competent jurisdiction. How rates are to be recoverable.
