Act No. 59, 1906.

WATER AND DRAINAGE AND ARTESIAN WELLS (AMENDING).

An Act to make better provision for water conservation, water supply, irrigation, drainage, the prevention of floods, and the control of flood waters; to amend the Water and Drainage Act, 1902, the Water Rights Act, 1902, the Artesian Wells Act, 1897, and other Acts; and for other purposes consequent thereon or incidental thereto. [29*th December*, 1906.]

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.

PRELIMINARY AND GENERAL.

Short title.

1. (1) This Act may be cited as the "Water and Drainage and Artesian Wells (Amending) Act, 1906," and is divided into Parts, as follows :—

PART I.—PRELIMINARY AND GENERAL—*ss.* 1–3.

PART II.—WATER AND DRAINAGE—*ss.* 4–21.

PART III.—ARTESIAN WELLS—*ss.* 22–32.

Incorporation with Parts II and III.

(2) Part II shall be construed with the Water and Drainage Act, 1902, and Part III shall be construed with the Artesian Wells Act, 1897.

Constitution of board.

2. (1) There shall be a board consisting of the Under Secretary of the Department of Public Works, the Chief Engineer for Rivers, Water Supply, and Drainage, the Executive Engineer appointed by the Governor to administer this Act, and such officer or officers of the Department of Public Works as the Governor may appoint, and including, where any work is situate in the Western Division, the Western Land Board constituted under the Western Lands Act of 1901.

Its powers and duties.

(2) Such board shall have the powers and duties of the board constituted by the Water and Drainage Act, 1902, and the powers and duties of the board under this Act.

(3)

(3) The definition of "the board" in the Water and Drainage Act, 1902, is repealed. For the purpose of the said Act and this Act, "the board" means the board constituted by this Act. Definition of "board."

3. (1) For the purposes of this Act and the Water and Drainage Act, 1902, the Minister, or any person authorised by him, may enter any land and take levels and make surveys and marks, and fix pegs and stakes, and inspect any artesian wells and works in connection therewith, and measure and take the pressure of such wells. And any person hindering him in the exercise of such power shall, on conviction, be liable to a penalty not exceeding twenty pounds. Power of entry.

(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. Penalty.

PART II.

WATER AND DRAINAGE.

4. In this Part, "Principal Act" means Water and Drainage Act, 1902. Definition.

5. The provisions of the Principal Act relating to works of drainage are extended, and shall apply to works for the prevention of floods and the control of flood-waters. Extension of Principal Act to flood prevention works.

For the purpose of carrying out this section, the Principal Act is amended as mentioned in the Schedule to this Act.

6. In subsection one of section three of the Principal Act, the words "one thousand nine hundred and seven" are substituted for the words "one thousand nine hundred and two." Amendment of section 3 of Principal Act.

7. Subsection three of section nine and section ten of the Principal Act are amended by inserting the words "or out of the revenue account or the loan account of the public works fund" after the words "out of the funds raised under this Act." Amendment of sections 9 (3) and 10 of Principal Act.

8. Section six of the Principal Act is amended by omitting the words "Where the estimated cost of any work of water conservation exceeds five thousand pounds," and inserting the words "In respect of any work of water conservation, the Minister may." Amendment of section 6 of Principal Act.

9. (1) The Minister may notify proposals for the constitution of trusts and for the completion of any works which at the commencement of this Act were in course of construction by him, and such trusts may be constituted and such works may be completed out of funds raised under this and the Principal Act, or out of the revenue account or the loan account of the public works fund. The provisions of the Principal Act and this Part shall apply to such works. Proposals in respect of works in course of construction.

(2)

Works completed.

(2) The Minister may notify proposals for the constitution of a trust in respect of any work constructed and completed by him before or at the commencement of this Act, and a trust may be constituted in respect of the same. Thereupon the trust shall take over the administration and management of the work, and the provisions of the Principal Act and this Part shall apply thereto, and the interest and charges payable by the trust shall commence to run:

Provided that no trust shall be constituted under this subsection for work in respect of which assessments have been made and charges are payable under the Artesian Wells Act, 1897, or the Water Rights Act, 1902, unless with the consent in writing of the persons—

(a) who constitute a two-thirds majority of the total number of persons liable for such charges, and

(b) who are liable for two-thirds in amount of such charges.

Certain Acts not to apply.

(3) On the constitution of a trust under this section for any work the provisions of any Acts other than the provisions of the Principal Act and this Part shall cease to apply thereto.

Repeal.

(4) Section eleven of the Principal Act is repealed.

Works not completed taken over by trust.

10. Where any work in respect of which a trust is constituted is, in the opinion of the Minister, so far constructed as to be of use to the trust, that fact may 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 and discharge all the duties conferred and imposed by the Principal Act and this Part in respect of works completed and taken over by a trust, except such powers as are conferred solely on the Minister.

Amendment of section 13 of Principal Act.

11. Section thirteen of the Principal Act is amended by omitting the words "and the cost of the same" and by adding the following proviso:—

Provided that the cost of such work may be determined by the Minister, and notified in the Gazette, at any time after the work has been completed and taken over as aforesaid; and this proviso shall apply whether the work was completed before or after the commencement of this Act.

Amendment of section 17 of Principal Act.

12. (1) Section seventeen of the Principal Act is amended by adding the following proviso at the end of the section:—

Provided that when any such person is not resident in the trust district, but the property in respect of which he would, in the opinion of the Minister, be liable to pay rates to the trust is administered under a power of attorney by a person so resident, the name of the last-mentioned person shall be placed on the roll in lieu of the name of the first-mentioned person.

(2)

(2) Section eighteen of the Principal Act is amended by adding the following proviso at the end of the section :—

Provided that where any such person is not resident in the trust district, but the property in respect of which he is liable to pay rates to the trust is administered under a power of attorney by a person so resident, the name of the last-mentioned person shall be placed on the roll in lieu of the name of the first-mentioned person.

Amendment of section 19.

(3) Section nineteen of the Principal Act is amended by adding the following paragraph at the end of the section :—

(c) For the purposes of this section a person on the roll as administering a property under a power of attorney shall be deemed the occupier of the area of land included in such property.

Sale of surplus water.

13. When a trust under the Principal Act has any surplus water which is not required for the purposes for which the trust was constituted, the trust may sell such water, by measure or otherwise, to any ratepayer for any other purpose.

Power of Minister to construct channels and embankments.

14. On notice, in the prescribed form and under the hand of the Minister, being served—

(a) personally or by post on the owner or occupier or person in apparent occupation of any land through which it is proposed to construct a channel or embankment under the authority of the Principal Act or this Part ; or

(b) if the land is unoccupied, on the owner ; or

(c) if the owner is out of the State or cannot be found, by posting a copy of the notice on some conspicuous part of the land,

the Minister, by his officers and servants, may commence and complete such channel or embankment through such land so as approximately to follow the direction as set out or described in the notice, with such variations as may be authorised under the said Act or Part.

Power to use land for purposes of construction, maintenance, and repair.

15. For the purpose of the construction or the maintenance and repair of any channel or embankment proposed to be constructed, or constructed under the authority of the Principal Act or this Part, or to which the said Act or Part applies, the Minister or a trust having the control of or carrying out such construction, maintenance, or repair shall be deemed to have had and shall have power at any time to enter any land within sixteen and a half feet on either side of the centre line of a distributing channel, or site for the same, or within lines distant sixty-six feet from the top of each bank of a water conservation or drainage channel, or site for the same, or any land being an embankment or site for the same, and use such land for the said purposes, notwithstanding that no easement or right to so enter or use such land may have been granted or acquired.

As to compensation

16. No compensation shall be payable or shall be deemed to have been payable for the exercise of any powers conferred by the two last preceding sections: Provided that where any such power is, after the commencement of this Act, exercised with respect to land which is cultivated or has buildings thereon, or which is within population boundaries, compensation shall be payable, the amount of which shall be determined by two arbitrators, appointed respectively by the Minister and by the person owning the land or buildings, and by an umpire appointed by such arbitrators, unless otherwise agreed by and between the Minister and the said person. The provisions of the Arbitration Act, 1902, shall apply to any such arbitration.

Effect of Water Rights Act.

17. Nothing in the Water Rights Act, 1902, shall affect the exercise of the powers conferred by the Principal Act or this Part in relation to a river or lake, as defined by the firstmentioned Act, or shall affect the right of a trust to fix and levy rates under section twenty-seven of the Principal Act and this Part.

Amendment of section 27 of Principal Act.

18. The following is added to subsection three of section twenty-seven of the Principal Act:—

"If in any such appeal the police magistrate reduces the amount at which the appellant is rated, he shall increase the other ratings of the trust in such amounts as he thinks just, where he considers such course necessary, in order to secure that the total amount to be received by the trust for rates shall not be diminished by such reduction."

Mungyer and Neargo.

19. The amount for which the trusts of the artesian wells at Mungyer and Neargo are liable under the Principal Act as the cost of the said wells may be reduced by the Minister to an amount not less than the amount which the said wells would have cost under a contract entered into at the time when the said wells were sunk.

Euraba and Boomi.

20. The charges which, under the Principal Act, the Euraba and the Boomi Bore Water Trusts are respectively liable to pay annually to the Crown for water supplied to such trusts from artesian wells may be reduced by the Minister to such amounts as he thinks fit, not being less than six per centum on the amounts which the said wells would respectively have cost under contracts entered into at the respective times when the proposals for the constitution of the trusts were notified in the Gazette.

Construction of works through other district.

21. Where the Minister thinks it desirable that any works in respect of which a trust is constituted or is proposed to be constituted should be constructed through the district of another trust, he may, on or after the constitution of the first-mentioned trust, and on giving notice to such last-mentioned trust, so construct such works and amend the boundaries of the respective districts so as to include the

the said works and such lands adjacent thereto as he may think desirable in the district of the trust for which the works have been or are proposed to be constructed.

Such amendment of boundaries shall be notified in the Gazette.

PART III.

ARTESIAN WELLS.

Artesian wells to be licensed.

22. (1) No artesian well shall be commenced or be enlarged, deepened, or be altered to increase the flow of water therefrom, unless—

(a) in pursuance of a license under this Act; or

(b) in pursuance of a written contract, signed before the commencement of this Act, and lodged with the Minister within fourteen days after such commencement;

(c) in compliance with conditions imposed in an improvement lease granted before such commencement, and if notice of such lease is given to the Minister within fourteen days after such commencement; or

(d) where the well is to be sunk, enlarged, deepened, or altered by the Crown.

Penalty.

(2) If any person contravenes the provisions of this section, the said person, and the owner of the well in respect of which the contravention has occurred, shall, on conviction, be liable to a penalty not exceeding one hundred pounds, and a further penalty of five pounds for each day during which the contravention continues after such conviction.

Wells commenced before commencement of Act.

23. (1) Where the work of sinking any artesian well was being carried on but was not completed at the commencement of this Act—

(a) the owner of or contractor for the work shall, within two months after such commencement, give notice to the Under-Secretary of the Department of Public Works, in the form prescribed, of the locality, size, and proposed depth of the well, and that the work was being carried on as aforesaid, and that he intends to continue and complete the work, and such other particulars as may be prescribed;

(b) the work shall be completed in accordance with the notice aforesaid within twelve months after the commencement of this Act, or within such further period, not exceeding twelve months, as the Minister, by writing under his hand, may in any case allow.

(2)

Penalty.

(2) If, after the expiration of two months from such commencement, the work of sinking any such well is continued without any such notice having been given, or otherwise than in accordance with such notice or in contravention of this section, or if any of the prescribed conditions are not carried out or are contravened, the owner of the well, and any person carrying on works at the well, shall, on conviction, be liable to a penalty not exceeding twenty pounds, and to a further penalty not exceeding two pounds for each day during which the contravention continues after such conviction.

Applications for licenses.

24. (1) Application for a license for any new artesian well, or for enlarging, deepening, or altering any then existing well, shall be made to the Under Secretary for Public Works in the form prescribed, accompanied by the prescribed plans and descriptions, together with a statement of the purposes for which it is proposed to utilise the water.

Notification of application.

(2) On application being so made, the Minister shall cause to be advertised, once in the Gazette and once in a public newspaper circulating in the neighbourhood where the well or the site for the well 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 well or the site thereof is situate, a public inquiry will be held as to the desirability of granting the application.

Inquiry.

25. (1) The inquiry shall be held by the board, or by some person authorised by the board, and approved by the Minister. The board shall report in writing to the Minister upon the inquiry.

Persons interested may appear.

(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.

Issue of license.

26. If the board reports in favour of the issuing of a license, the same shall be notified by the Minister in the Gazette, and the Minister shall, after the expiration of thirty days from such notification, 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, and to such conditions as he thinks fit:

Proviso.

Provided that 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, or as he may think fit.

Period of license.

27. The license, if granted, shall be granted for a period not exceeding twenty-eight years, and shall (subject to the provisions of this Part 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 of the person holding the license:

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

28.

28. A license shall be deemed to be held by and shall operate for the benefit of the lawful occupier for the time being of the land whereon the well is sunk or is proposed to be sunk. License to be for benefit of occupier of land.

29. During the time that a license under this Part is in force with respect to a well no alterations other than repairs or alterations necessary for the maintenance of the well or on account of any sudden or unforeseen emergency shall be made in or in connection with the well, nor shall the water from the well be used for purposes other than those authorised by the license. Any person who contravenes the provisions of this section, or contravenes or fails to carry out any condition of the license, shall be liable to a penalty not exceeding fifty pounds, and a further penalty of five pounds for each day during which the contravention continues after such conviction; and in addition to the imposition of the said penalty, the license may, by notice in the Gazette, be cancelled: Penalty for alterations in licensed well or contravention of license.

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

30. If the Minister is of opinion that the water from any artesian well is being wastefully or improperly used, or is being wasted, he may direct the partial closing of such well, or direct such other precautions to be taken as he may deem necessary to prevent such improper use or waste. Waste of water of artesian wells.

Any person refusing or neglecting to carry out any direction given by the Minister under this section shall be liable, for every day during which such refusal or neglect continues after such direction has been given, to a penalty not exceeding twenty pounds, and in addition to the said penalty any license issued under this Part in respect of such well may, by notice in the Gazette, be cancelled.

31. On the receipt of a petition in writing by the occupiers, owners, or mortgagees of any lands situate in the neighbourhood of an artesian well constructed under the Artesian Wells Act, 1897, or any Act amending the same, in respect of which charges are payable under the said Acts, and on obtaining the consent in writing of the persons who— Extension of area of supply of artesian wells.

(a) constitute a two-thirds majority of the total number of those liable to pay charges as aforesaid; and

(b) who occupy an area exceeding two-thirds of the total area in respect of which those charges are payable,

the Minister may, by notice in the Gazette, extend the supply of water from the well to the lands of the firstmentioned occupiers, owners, and mortagees.

Charges shall be assessed and paid in respect of such lands under the said Acts.

Regulations.

32. The Governor may make regulations prescribing the forms of licenses and renewals of the same, and for carrying out the provisions of this Part; and may, in such regulations, impose any penalty not exceeding twenty 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.

SCHEDULE.

Amendments of Principal Act.

Section 3, subsection (1), section 6 and section 24. *After* "drainage" *insert* "or for the prevention of floods or the control of flood waters"

Section 19. *After* "irrigation works" *insert* "or works for the prevention of floods or the control of flood waters"

Paragraph (c) of subsection (1) of section 27. *After* "drainage" and *after* "drains" *insert* "or works for the prevention of floods or the control of flood waters"