

DRAINAGE ACT 1939—REGULATION

(Drainage (General) Regulation 1995)

NEW SOUTH WALES



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HIS Excellency the Governor, with the advice of the Executive Council, and in pursuance of the Drainage Act 1939, has been pleased to make the Regulation set forth hereunder.

KIM YEADON, MP.,
Minister for Land and Water Conservation.

PART 1—PRELIMINARY

Citation

1. This Regulation may be cited as the Drainage (General) Regulation 1995.

Commencement

2. This Regulation commences on 1 September 1995.

Definitions

3. (1) In this Regulation:

“the” Act means the Drainage Act 1939.

(2) In this Regulation, a reference to a form is a reference to a Form set out in Schedule 1.

PART 2—VALUATIONS AND RATING

Valuation book (cl. 6 (2), Sch. to the Act)

4. (1) A Board’s valuation book must be kept in a form approved by the Ministerial Corporation.

(2) The Schedule to the Act provides for the making of alterations to the valuation book in certain circumstances.

(3) Other minor errors in the valuation book not affecting the amount of a valuation may be altered by or at the direction of the Chairperson of the Board (see clause 7 (4) of the Schedule to the Act).

Valuation notices (cl. 8 (2) (a), Sch. to the Act)

5. A notice of valuation must be in Form 1.

Objections to valuations (cl. 9 (2) (a), Sch. to the Act)

6. An objection to a valuation must be in Form 2.

Notice of hearing of objections to valuations

7. (1) The chairperson of a local land board to which objections to valuations have been sent under clause 9 of the Schedule to the Act must give not less than 14 days' notice to the relevant Board and to each objector of the date, time and place fixed for hearing the objections.

(2) On receipt of the notice, the Board must advertise the date, time and place of the hearing in a newspaper circulating in the district.

Rate book (sec. 45 of the Act)

8. (1) A rate book must contain the particulars listed in Schedule 2.

(2) For the purposes of section 45 (2) of the Act (alterations or amendments in rate book), any particular relating to a rate may be altered.

(3) For the purposes of section 45 (4) of the Act, an alteration or amendment in a rate book is to be made, signed and dated by the Board's Secretary and countersigned by the Chairperson.

Rate notices (sec. 43 (2) (b) of the Act)

9. Rate notices must be in a form approved by the Ministerial Corporation.

PART 3—ADMINISTRATION AND ACCOUNTS

Duties of Secretary (sec. 31 (2) of the Act)

10. (1) A Board's Secretary (subject to any direction given by the Board or Chairperson) is to exercise general control over all other Board employees.

- (2) A Board's Secretary, under the direction of the Chairperson:
- (a) must see that the Board's accounts are kept and presented for audit in accordance with the Act and this Regulation; and
 - (b) must keep accurate and permanent records of all assets purchased or sold by, or in possession of, the Board; and
 - (c) must take minutes of the Board's meetings, and of general meetings of ratepayers, and record them in a minute book; and
 - (d) has charge of the Board's records and is responsible for their recording, filing and safekeeping; and
 - (e) has custody of the Board's seal.

Keeping of books and accounts (sec. 32 (1) (g) of the Act)

11. The books and accounts to be kept by a Board are proper books and accounts which show full, true and regular accountings of all money received and paid by the Board and the purposes for which money has been received or paid.

Qualifications of auditor

12. The auditor of a Board's accounts must be a registered company auditor within the meaning of the Corporations Law.

Duties of auditor (sec. 31 (2) of the Act)

13. A Board's auditor must:
- (a) audit the Board's accounts at the end of each financial year; and
 - (b) furnish a report to the Board as to the correctness or otherwise of the accounts; and
 - (c) complete a certificate verifying the accuracy of the annual financial statements.

Auditor's certificate as to amount which may be borrowed (sec. 57 (5) of the Act)

14. An auditor's certificate as to the amount which a Board may borrow by way of limited overdraft (within the limits imposed by section 57 of the Act) must be in Form 3.

Mortgages (sec. 61 of the Act)

15. (1) Mortgages in connection with limited overdrafts must be in Form 4.

- (2) Mortgages in connection with loans must be in Form 5.

Register of loans

16. Full particulars of all loans raised by a Board must be recorded by the Board in a register kept for the purpose.

Banking

17. Money received by a Board must be paid into a bank, building society or credit union account in the name of the Board.

Writing off of debts (sec. 72 (2) of the Act)

18. (1) A rate or other debt due to a Board may be written off on a resolution of the Board.

(2) A rate or debt must not be written off unless the Board's auditor has certified that all practical means have failed to collect or recover it.

(3) The resolution must specify the reason for the writing off.

(4) A record of the resolution must be entered in the rate book.

PART 4—MISCELLANEOUS**Application for formation of a drainage union (sec. 9 (2) of the Act)**

19. (1) An application under Part 3 of the Act for the formation of a drainage union must be in Form 6.

(2) A fee of \$500 must accompany the application.

Quorum for a Board

20. For the purposes of section 22 (2) of the Act, the number of directors which constitute a quorum for a Board is:

(a) if the Board consists of 3 directors—2; or

(b) if the Board consists of 4 or 5 directors—3; or

(c) if the Board consists of 6 or 7 directors—4.

Repeal

21. (1) The Drainage Regulations 1939 are repealed.

(2) Any act, matter or thing that, immediately before that repeal, had effect under a provision of the repealed Regulations is taken to have effect under the corresponding provision of this Regulation or the Drainage (Elections) Regulation 1995.

SCHEDULE 1—FORMS

Form 1

(Cl. 5)

VALUATION NOTICE

(Clause 8 (2) (a), Schedule to the Drainage Act 1939)

Year, 19 . Assessment No. Drainage Union.

To of
or the owner of the undermentioned land.

Notice is given that the increased value accrued, accruing or to accrue to the undermentioned land by reason of works used or proposed to be used by the Drainage Union has been determined as shown.

Description of land			Area assessed	Increased value
Parish	County	Portion		

Secretary.
Drainage Union.

Date and method of service:

A written objection in Form 2 may be lodged with the Secretary of the Drainage Union within days* after service of this notice.

(*Not less than 30 days should be specified—see clause 8 (2) (e) of Schedule to Act.)

Form 2

(Cl. 6)

NOTICE OF OBJECTION TO VALUATION

(Clause 9 (2) (a), Schedule to the Drainage Act 1939)

To the Secretary,

..... Drainage Union.

1995—No. 469

I, of, being the person rated in respect of the land referred to in Valuation Notice No. described as give notice that I object to the valuation in the Valuation Notice for the following reasons:

Signature:.....

Postal Address:

Date:.....

(Note: Attention is directed to clause 9 (4) of the Schedule to the Drainage Act 1939 which sets out the grounds on which objections may be taken.)

Form 3

(Cl. 14)

AUDITOR'S CERTIFICATE AS TO AMOUNT WHICH MAY BE BORROWED BY WAY OF LIMITED OVERDRAFT

(Section 57, Drainage Act 1939)

I certify that the Drainage Union may borrow by way of limited overdraft any sum up to but not exceeding the limit of \$ (*figures and words*).

Signature:
Auditor of the Drainage Union

Signed in my presence this..... day of..... 19.....
at by..... (*name of auditor*)

who is personally known to me.

.....
Justice of the Peace.

Form 4

(Cl. 15 (1))

FORM OF MORTGAGE FOR LIMITED OVERDRAFT

(Section 61, Drainage Act 1939)

..... Drainage Union.

Limited overdraft under section 57 of the Drainage Act 1939.

The Board of Directors of the Drainage Union (“the Board”), in consideration of advances granted or which may be granted by way of limited overdraft to the Board by the (“the Bank”) within the limits prescribed by section 57 of the Drainage Act 1939, assigns to the Bank, its successors and assigns the income of the Board to the extent of the principal and interest outstanding on the overdraft.

The interest is to be at the rate agreed on (if any) and, if not, at the rate from time to time charged by the Bank on like accounts. The interest is to be calculated and will accrue daily on the outstanding principal and is to be added to and become part of the principal and bear interest accordingly.

All money outstanding on the overdraft, together with all proper costs, charges and expenses of the Bank must be repaid to the Bank on demand. The demand is to be made in writing, signed by or on behalf of the Bank, its successors or assigns, and either left at the office of the Board or posted in a prepaid envelope addressed to the Secretary to the Board.

The Common Seal of the Board was affixed on the..... day of..... 19 , in accordance with a resolution of the Board.

.....
.....
Secretary. Directors.

Form 5

(Cl. 15 (2))

FORM OF MORTGAGE FOR LOAN

(Section 61, Drainage Act 1939)

..... Drainage Union.

Loan of for the purpose of

1995—No. 469

Date of Governor’s approval of loan:

The Board of Directors of the Drainage Union (“the Board”) in consideration of the sum of advanced to it by of (“the mortgagee”) assigns to the mortgagee and the mortgagee’s executors, administrators, successors or assigns all the income of the Board until the sum secured is repaid together with interest calculated at the rate of

(Insert in accordance with the approval of the Governor:

- (a) provisions agreed on in regard to payment of principal and interest, the place for payment and the commencement date for the calculation of interest;*
- (b) appropriate covenant by the Board for repayment of the principal (with interest if agreed on);*
- (c) provision (if agreed on) in case of default in the payment of principal or interest.)*

The Common Seal of the Board was affixed on the..... day of 19....., in accordance with a resolution of the Board.

.....
Secretary.

.....
Directors.

Form 6

(Cl. 19)

APPLICATION FOR FORMATION OF DRAINAGE UNION

(Part 3, Drainage Act 1939)

To the Water Administration Ministerial Corporation.

The undersigned owners of the land described in the Schedule apply for the formation of a drainage union for compulsory drainage and mitigation of the effect of floods or tides in accordance with the Drainage Act 1939.

A sketch showing the locality and boundaries of the land is attached.

We suggest that the name of the union should be the “ Drainage Union” and that the number of directors to be elected should be

1995—No. 469

The nature and cause of the accumulation of water or flooding are as follows:

.....

Further particulars of the proposal are set out below.

.....

.....

(Signatures of owners)

(This application is to be signed by at least one-fourth of the number of owners.)

SCHEDULE

(Give the names and addresses of the landowners and the portions and area of land held by each landowner.)

Name of landowner	Address	Parish, County, Portion No.	Area

Description of works proposed to be constructed or used:

.....

.....

SCHEDULE 2—PARTICULARS TO BE INSERTED IN RATE BOOK

(Cl. 8)

Assessment number	Additional charges for current year
Name of ratepayer	Payment received
Increased value	Receipt number
Rate on the increased value	Date of payment
Current rates	Arrears of rates carried forward
Arrears	Total
Total due	

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SCHEDULE 1—FORMS

SCHEDULE 2—PARTICULARS TO BE INSERTED IN RATE BOOK

EXPLANATORY NOTE

The object of this Regulation is to repeal the Drainage Regulations 1939 and to remake, without any major changes in substance, the provisions of those Regulations (other than the provisions dealing with elections of directors of drainage unions formed under the Drainage Act 1939). The provisions dealing with elections of directors of drainage unions are being remade as the Drainage (Elections) Regulation 1995.

This Regulation deals with the following matters:

- (a) procedural matters in relation to valuations and rating by the boards of drainage unions (Part 2);
- (b) the duties of a board's secretary and auditor and other administration and accounts matters (Part 3);
- (c) prescribing a form of application for the formation of a drainage union and the fee to accompany an application (clause 19);
- (d) other minor, consequential or ancillary matters (part 1 and clauses 20 and 21).

This Regulation is made under the Drainage Act 1939, including section 78 (the general regulation making power).

This Regulation comprises or relates to matters of a machinery nature.

This Regulation is made in connection with the staged repeal of subordinate legislation under the Subordinate Legislation Act 1989.
