

No. , 1937.

A BILL

To make better provision for the drainage of land and the mitigation of the effect of floods and the control of flood waters within certain areas; to facilitate the administration of drainage unions and of drainage trusts; to repeal the Water (Costs Declaratory and Flood Prevention) Act, 1924; to amend the Water Act, 1912-1936, and certain other Acts; and for purposes connected therewith.

[Mr. SPOONER;—17 December, 1937.]

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:—

5

PART I.

PRELIMINARY.

Short title. 1. (1) This Act may be cited as the "Drainage Act, 1937," and is divided into Parts and Divisions as follows:—

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PART I.—PRELIMINARY—*ss.* 1-5.

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DIVISION 1.—*Unions*—*ss.* 56-62. 25

DIVISION 2.—*Unions and trusts*—*ss.* 63-69.

**Commence-
ment.**

(2) This Act shall commence on a date to be appointed by the Governor and notified by proclamation published in the Gazette.

**Amendment of
Act No. 44,
1912.**

Sec. 28.

**(Interpreta-
tion.)**

2. (1) The Water Act, 1912-1936, is amended— 30

(a) (i) by omitting from section twenty-eight the definition of the term "Minister";

(ii) by omitting from the definition of "State work" in the same section the words "or of drainage";

35

(iii)

- (iii) by inserting in the same definition after the word " flood-waters " the words " within the Murray Basin " ;
- (b) by omitting subsection one of section thirty ; Sec. 30.
(Constitution of boards.)
- 5 (c) (i) by omitting from section thirty-one the words " or drainage " ; Sec. 31.
(Proposals for works.)
(ii) by inserting in the same section after the word " flood-waters " the words " within the Murray Basin " ;
- 10 (d) by omitting from section thirty-five the words " appropriations from the Public Works Fund " and by inserting in lieu thereof the words " moneys provided by Parliament " ; Sec. 35.
(Construction of works.)
- 15 (e) (i) by omitting from paragraph (a) of subsection one of section forty-six the words " drainage work or " ; Sec. 46.
(Plural voting.)
(ii) by inserting in the same paragraph after the word " flood-waters " the words " within the Murray Basin " ;
- 20 (f) (i) by omitting from section fifty-two the words " irrigation and drainage " and by inserting in lieu thereof the words " and irrigation " ; Sec. 52.
(Duties of trustees.)
(ii) by inserting in the same section after the word " flood-waters " the words " within the Murray Basin " ;
- 25 (g) (i) by omitting from paragraph (c) of subsection one of section fifty-five the words " drainage, or " ; Sec. 55.
(Rates.)
(ii) by omitting from the same paragraph the words " drains, or " ;
- 30 (h) by omitting from section sixty-six the words " such Loan Votes as are now or may hereafter be applicable to the purpose " and by inserting in lieu thereof the words " moneys provided by Parliament " ; Sec. 66.
(State works.)
- 35 (i) by omitting from subsection one of section sixty-seven the words " such Loan Votes as are now or may hereafter be applicable to the purpose " and by inserting in lieu thereof the words " moneys provided by Parliament " ; Sec. 67.
(Works of water conservation under £5,000.)
- 40 (j) £5,000.

- Secs. 76-99 inclusive. (j) by omitting sections seventy-six to ninety-nine, both inclusive;
- Secs. 103 and 104. (k) by omitting sections one hundred and three and one hundred and four.
- Amendment of Act No. 25, 1919. (2) The Water (Amendment) Act, 1919, is 5 amended—
- Sec. 2. (Revision.) (a) by omitting section two;
- Sec. 3. (Revision.) (b) by omitting subsection one of section three.
- Repeal of Act No. 41, 1924. (Revision.) (3) The Water (Costs Declaratory and Flood Prevention) Act, 1924, is repealed. 10
- By-laws and regulations continued. **3.** (1) (a) All by-laws made in pursuance of Part III of the Water Act, 1912-1936, or any provisions which that Part replaced, by the trustees of any drainage trust shall continue in force until repealed by regulations made under this Act. 15
- (b) All regulations made by the Governor in pursuance of Part III of the Water Act, 1912-1936, or any provisions which that Part replaced and which relate to drainage trusts shall continue in force until repealed by regulations made under this Act. 20
- (c) All by-laws made in pursuance of Part IV of the Water Act, 1912-1936, or any provisions which that Part replaced shall continue in force until repealed by regulations made under this Act.
- Savings. (2) On and from the commencement of this Act the 25 following provisions shall have effect:—
- (a) all proclamations and notifications made or deemed to have been made under the Water Act, 1912-1936, relating to any union or trust to which this Act applies, and in particular any such 30 proclamation or notification relating to—
- (i) cost of works ;
- (ii) the number of years within which the cost of works shall be extinguished;
- (iii) rate of interest on amounts due to the 35 Colonial Treasurer; and
- (iv) instalments of such amounts;

and

and in force at the commencement of this Act shall continue in force as if this Act had not been enacted ;

- 5 (b) all rates, charges, fees, and sums of money which were immediately before the commencement of this Act due or payable to or leviable by or for any union or trust constituted or deemed to be constituted under the Water Act, 1912-1936, shall be paid to and may be received, levied, and recovered by the board of the union or trust constituted under this Act for the district comprising the tract of land or trust district of such first-mentioned union or trust ;
- 10
- 15 (c) all appraisements or assessments of the benefit received or estimated to be received by any lands within a district made for the purpose of rating such lands shall remain in force, and shall be used in connection with making and levying rates under this Act, until replaced in pursuance of this Act ;
- 20
- 25 (d) all suits, actions, and proceedings pending immediately before the commencement of this Act at the suit of a union or trust constituted or deemed to be constituted under the Water Act, 1912-1936, shall be suits, actions, and proceedings pending at the suit of the board of the union or trust constituted by or under this Act for the district comprising the tract of land or trust district of such first-mentioned union or trust ;
- 30
- 35 (e) all contracts, agreements, and undertakings entered into with and all securities lawfully given to or by a union or trust constituted or deemed to be constituted under the Water Act, 1912-1936, and in force immediately before the commencement of this Act shall be deemed to be contracts, agreements, and undertakings entered into with and securities given to or by the union or trust constituted by or under this Act for the district comprising the tract of land or trust district of such first-mentioned union or trust ;
- 40

(f)

- (f) the board of a union or trust constituted by or under this Act may pursue the same remedies for the recovery of any such rates, moneys, and claims, and for the prosecution of such suits, actions, and proceedings as the union or trust constituted or deemed to have been constituted under the Water Act, 1912-1936, might have done but for this Act ; 5
- (g) the board of a union or trust constituted by or under this Act may enforce and realise any security or charge existing immediately before the commencement of this Act in favour of the union or trust constituted or deemed to be constituted under the Water Act, 1912-1936, in respect of any such rates, moneys, and claims as if such security or charge were existing in favour of the union or trust constituted under this Act ; 10 15
- (h) all debts due and moneys payable by, and all claims liquidated and unliquidated recoverable against a union or trust constituted or deemed to have been constituted under the Water Act, 1912-1936, shall be debts due and moneys payable by and claims recoverable against the union or trust constituted by or under this Act for the district comprising the tract of land or trust district of such first-mentioned union or trust ; 20 25
- (i) where in any Act, ordinance, regulation, or by-law reference is made to any of the provisions of the Water Act, 1912-1936, repealed by this Act such reference shall be deemed to be to the corresponding provisions (if any) of this Act. 30

Interpreta-
tion.

4. In this Act and any regulations made thereunder, unless the context or subject matter otherwise indicates or requires,— 35

“ Board ” means board of directors of a union or trust.

“ Crown lands ” has the meaning given to that expression in the Crown Lands Consolidation Act, 1913, as amended by subsequent Acts. 40

“ Director ”

- “ Director ” means director of a union or trust.
- “ District ” means the area of a union or trust for the time being.
- 5 “ Drain ” includes any ditch, channel, artificial outlet or watercourse for the purpose of draining land.
- “ Owner ” in relation to land includes every person who jointly or severally whether at law or in equity in respect of lands within a district—
- 10 (a) is entitled to the land for an estate of freehold in possession; or
- (b) is a person to whom the Crown has lawfully contracted to grant the fee simple under the Crown Lands Consolidation Act, 1913, or any other Act relating to the
- 15 alienation of lands of the Crown; or
- (c) is entitled to receive, or is in receipt of, or if the land were let to a tenant would be entitled to receive the rents and profits thereof, whether as beneficial owner, trustee, mortgagee in possession, or
- 20 otherwise, and includes every person who by virtue of this Act is deemed to be the owner:
- 25 Provided that the Crown shall be deemed to be the owner of—
- (a) all lands of the Crown; and
- (b) all lands vested in a statutory body representing the Crown.
- 30 “ Owned ” and similar expressions have a meaning corresponding with that of owner.
- “ Prescribed ” means prescribed by this Act or by any regulations under this Act.
- “ Secretary ” means secretary of a union or trust.
- 35 “ Statutory body representing the Crown ” means any body defined by or proclaimed under the Local Government Act, 1919, as amended by subsequent Acts, as a statutory body representing the Crown.

“ Works ”

Certain
Acts not
affected.

- “ Works ” includes drains, embankments, flood-gates, tide-gates, pipes, fencing, machinery, appliances or structures used or proposed to be used by a board, whether within or outside the boundaries of a district. **5**
- 5.** Unless otherwise expressly provided, nothing in this Act shall affect any of the provisions of—
- the Local Government Act, 1919;
 - the Metropolitan Water, Sewerage, and Drainage Acts, 1924-1935; **10**
 - the Hunter District Water and Sewerage Act, 1892-1928;
 - the Water Act, 1912-1936;
 - the Reclamation Act, 1930; or
 - any Acts amending any of the said Acts. **15**

PART II.

EXISTING UNIONS AND TRUSTS.

Existing
unions.

6. (1) Every tract of land owned by the persons constituted or deemed to be constituted a drainage union under Part IV of the Water Act, 1912-1936, shall, together with any Crown land within such tract, be deemed to be a district for the purposes of this Act. **20**

(2) Every such union shall be deemed to have been constituted under this Act.

(3) The directors of any such union holding office immediately before the commencement of this Act shall continue in office until the day appointed by this Act for the first election of directors. **25**

Existing
trusts.

7. (1) Every trust district over which, immediately before the commencement of this Act, a trust constituted or deemed to have been constituted under Part III of the Water Act, 1912-1936, for the purpose of any work of drainage, had jurisdiction under that Act, shall be deemed a district for the purposes of this Act. **30**

(2) The trust so constituted for any such trust district shall, for the purposes of this Act, be the trust for such district. **35**

(3)

(3) The trustees of any such trust holding office immediately before the commencement of this Act shall be directors of the trust until the day appointed by this Act for the first election of directors.

5 (4) A manager of the affairs of any such trust appointed pursuant to the provisions of the Water Act, 1912-1936, and holding office immediately before the commencement of this Act, shall be deemed to have been appointed under this Act.

10 (5) Any amount which, immediately before the commencement of this Act, was due by a trust constituted under Part III of the Water Act, 1912-1936, for the purpose of any work of drainage, to the Colonial Treasurer in respect of works transferred to such trust
15 in pursuance of the provisions of such Part, whether such amount is for capital cost, interest, or otherwise, shall be an amount due by the board of such trust incorporated by this Act.

(6) When all such amounts have been repaid the
20 trust shall cease to be a trust, and shall be deemed to be a union constituted under this Act.

PART III.

DRAINAGE UNIONS—CONSTITUTION.

25 8. Wherever any tract of land is so circumstanced that from any permanent or occasional cause, considerable quantities of water accumulate thereon or flow thereover and by reason of the absence of sufficient natural or artificial drainage or of flood prevention works so accumulate thereon or flow thereover to the
30 injury of such land, application may be made to the Minister for the formation of a drainage union for compulsory drainage and mitigation of the effect of floods or tides.

Application for constitution of union.

cf. Act No. 44, 1912, s. 77.

Particulars
of applica-
tion.

9. (1) The application shall be signed by at least one-half the number of owners of land included in such tract, and shall set out—

- (a) the locality and boundaries of the tract proposed to be drained, or protected against floods or tides; 5
- (b) the nature and cause of the accumulation of water or flooding;
- (c) the name and description of every owner of lands within the tract, and the respective portions and area held by each; 10
- (d) the name suggested and the number of directors proposed for the union;
- (e) a description of the works proposed to be constructed or used. 15

(2) The application shall be in the prescribed form and shall be accompanied by the prescribed fee.

(3) The Minister may require additional information in respect of any application.

Publication
of notices.

10. (1) The Minister shall cause notice of the application to be published in the Gazette and in a newspaper circulating in the locality. 20

(2) The notice in the Gazette shall—

- (a) indicate the boundaries of the tract of land proposed to be drained, or protected against floods or tides; 25
- (b) give a short description of the works proposed to be constructed or used;
- (c) appoint a time (not being earlier than eight weeks after the date of publication of the notice in the Gazette) and place at which objections may be lodged. 30

Inquiry.

11. The Minister shall, where objection to the application is lodged within the appointed time by or on behalf of not less than one-fourth in number of the owners of land included in the tract, and may for any reason he considers sufficient, cause an inquiry to be held by some person appointed by him to examine the statements contained in the application and in any objection. 40

12.

12. (1) Where no such inquiry is held, or where the person holding such an inquiry reports in favour of the constitution of a union in conformity with the application with or without modification the Governor may constitute a drainage union in conformity with the application, or with such modifications, if any, as the Minister may recommend.

Constitution of union. cf. Act No. 44, 1912, s. 34.

(2) The constitution and name of the union and a plan and description of the boundaries of its district shall be notified by the Minister in the Gazette.

PART IV.

ADMINISTRATION.

DIVISION 1.—Unions and trusts.

13. (1) The powers, authorities, duties, and functions of each union and trust shall be vested in and may be exercised and performed by a board of directors.

Board of directors.

(2) The board of a union shall consist of not less than three nor more than seven directors.

(3) The board of a trust shall consist of three directors.

14. (1) Each board shall be a body corporate with perpetual succession and a common seal, and may sue and be sued in its corporate name and shall for the purposes and subject to the provisions of this Act be capable of purchasing, holding, granting, demising, disposing of and alienating real and personal property, and of doing and suffering all such other acts and things as bodies corporate may by law do and suffer:

Incorporation of board. cf. Act No. 41, 1919, s. 22 (2).

Provided that in the case of real property the powers of the board of a trust shall not be exercised unless the consent of the Minister is first obtained.

(2)

(2) The corporate name of a board shall be “ the Board of Directors of the Drainage Union (or Trust).”

(3) No proceedings of the board shall be invalid or illegal in consequence only of the fact that there was at the time a vacancy in the board. 5

Appointment and election of directors.

15. (1) The Minister shall appoint one director of each trust.

A trustee appointed by the Minister under the Water Act, 1912-1936, and holding office as such immediately before the commencement of this Act, shall be deemed to have been appointed under this Act as a director of the trust. 10

cf. Act No. 44, 1912, s. 81 (1).

(2) Where any Crown lands are included in the district of any union, the Minister may appoint one director of such union. 15

(3) Any directors appointed under subsection one or subsection two of this section are in this Act referred to as “ appointed directors.”

(4) The remaining directors of any trust or of any union of which the Minister has appointed a director, and all the directors of any other union shall be elected in the manner prescribed by the persons whose names are on the roll of voters of such trust or union. 20

(5) Any directors so elected are in this Act referred to as “ elected directors.” 25

Qualification for office. cf. Act No. 41, 1919, s. 30.

16. (1) Unless disqualified by this Act, every person whose name is on the roll of voters compiled under this Act shall be qualified for office as an elected director.

(2) A person shall be disqualified for office as an elected director if— 30

(a) he is not qualified or is disqualified to be a voter; or

(b) he has not before nomination paid all moneys in excess of the sum of five shillings that were at any time before the end of the month preceding that in which nomination day falls, due by him to the board; or 35

(c)

(c) he has been convicted of a felony and has not received a free pardon or served his sentence;
or

(d) he converts to his own use any property of the board.

5

17. (1) Elected directors shall, subject to the provisions of this Act, hold office until their successors are elected, and shall be eligible for re-election.

Tenure of office of directors.

(2) An extraordinary vacancy in the office of an elected director shall, subject to the provisions of this Act, be filled by the election of a director in the manner prescribed.

The director so elected shall, subject to the provisions of this Act, hold office for the balance of his predecessor's term of office.

15

(3) An appointed director shall hold office until his death or resignation or until he is removed by the Minister.

18. The office of an elected director shall—

20

(a) commence on the day of his election thereto;

(b) become vacant on the election of his successor or on the occurrence of an extraordinary vacancy.

Office of director.
cf. Act No. 41, 1919, s. 33.

19. (1) Before acting in office as a director, a person elected or appointed thereto shall before a justice of the peace (to whom it shall not be necessary to issue a writ of *dedimus potestatem*) take and subscribe and transmit to the Minister an oath of allegiance to His Majesty and make and subscribe and transmit to the Minister the following declaration of office:—

30

“ I, _____ having been elected (or appointed) a director of the Drainage Union (or Trust) do hereby declare that I will duly and faithfully fulfil the duties of the office according to the best of my judgment and ability.”

35

(2) Any neglect to transmit such oath and declaration to the Minister within one month after his election or appointment shall be deemed a refusal to accept office, and to cause an extraordinary vacancy.

40

Oath and declaration of office.
cf. *Ibid.* s. 33 (2).

Extra-ordinary vacancy.
cf. Act No. 41, 1919, s. 35.

20. An extraordinary vacancy in the office of an elected director shall occur if such director—

- (a) dies ; or
- (b) resigns his office by notice in writing addressed to the secretary ; or 5
- (c) is disqualified for the office ; or
- (d) ceases for any reason to hold office before the day appointed for an ordinary election.

Attendance at meetings.
cf. *Ibid.* s. 37.

21. (1) If any elected director does not attend at least one half the meetings of the board held during any year he shall at the end of such year cease to hold office, but shall be eligible for re-election if not otherwise disqualified. 10

(2) This section shall not apply to any absence caused by illness or other sufficient cause if— 15

- (a) such illness or other sufficient cause is duly set out in apologies received at the meetings from which he was absent, and if such apologies are accepted by resolution of the board ; or
- (b) the period of absence so caused is covered by leave of absence granted by the board before or after the absence, and before the end of the year, and the resolution granting such leave sets out the cause thereof. 20

(3) Where any such director was not in office at the commencement of the year any meetings held before his entry into office shall not in his case be counted in determining the number of meetings held during the year. 25

Quorum.

22. (1) Business shall not be transacted at any meeting of the board unless a quorum is present. 30

(2) The regulations may prescribe either generally or in respect of any particular board, or class of board, the number of directors who shall constitute a quorum. 35

Returning officer.

23. (1) For the purposes of the first general election of directors after the commencement of this Act, the Minister shall appoint a returning officer for each district, and for the purposes of any succeeding election a returning officer shall be appointed by the board. 40

(2)

(2) A director or a candidate for the office of director shall not be eligible for such appointment.

(3) The duties of a returning officer shall be as prescribed.

5 **24.** (1) Elections of directors shall, except as provided in this section, take place on the days appointed therefor respectively.

Elections of directors.
cf. Act No. 41, 1919,
s. 38.

10 (2) If it appears to the Minister to be impracticable or inconvenient to hold an election on the day appointed, he may appoint a subsequent day, not being more than one month thereafter.

15 (3) Where the time for the holding of a triennial ordinary election of directors is postponed in any district the election of chairman of the board shall be postponed and shall be held at the first meeting of the board after the day of election of directors, and in such case the chairman in office immediately before the election of directors may, if he is an appointed director, or if, being an elected director, he is re-elected as a director, act as
20 chairman until his successor is elected or appointed.

(4) In the case of an extraordinary vacancy occurring within the last six months of any board's term of office, the Minister may order that an election shall not be held ; but notwithstanding any such order
25 the Minister may subsequently authorise the holding of an election to fill the vacancy, and appoint a day therefor.

25. The appointed day for an election of directors shall be—

Appointed days for elections.
cf. *Ibid.* s. 39.

30 (a) for the first election in accordance with this Act—the twenty-fifth day of November, one thousand nine hundred and thirty-eight;

35 (b) for ordinary elections after the year one thousand nine hundred and thirty-eight—the last Friday in November, one thousand nine hundred and forty-one, and the corresponding Friday in every third year thereafter;

40 (c) for the first election after a union has been constituted, or for an election where the Minister has directed that the powers, duties, and

and obligations vested in the manager of a trust shall be re-vested and reimposed upon a board—a Friday to be notified by the Minister : Provided that the next succeeding election shall be held on the day appointed for ordinary elections under paragraph (b) of this section ;

- (d) for elections to fill extraordinary vacancies—a Friday fixed and advertised by the returning officer being within one month after the occurrence of such vacancy.

Validity of elections. cf. Act No. 41, 1919, s. 41.

26. (1) No election under this Act shall be invalid by reason only of any of the following irregularities, that is to say—

- (a) any formal defect or error in or relating to the election, if the election was held substantially in accordance with this Act; or
(b) any defect or want of title of any person who acted as returning officer.

(2) If the Governor proclaims that any such irregularity does not invalidate the election, the proclamation shall be conclusive as to the matter stated therein.

Lapsed or void elections. cf. *Ibid.* s. 42.

27. (1) If an election under this Act does not take place on a day appointed therefor or is afterwards declared void for any reason, the board shall not thereby be deemed to be dissolved or to be disabled from taking any necessary steps for the election of directors in the future.

(2) In any such case the election shall be held as in the case of an extraordinary vacancy, and every act necessary to be done for completing the election shall be as valid as if the election were held upon the day or within the time originally appointed for that purpose.

Plural voting. cf. Act No. 44, 1912, s. 46 (1) (a).

28. At an election of directors or at a general meeting of a union or trust, a person whose name is on the roll of voters shall be entitled to exercise votes according to the area of land which he holds within the district, that is to say—

- (a) not exceeding fifty acres, one vote ;
(b) exceeding fifty acres but not exceeding three hundred acres, two votes ;
(c) exceeding three hundred acres, three votes.

Where

Where the Crown is on the roll of voters the votes may be exercised by some officer of the Public Service authorised in writing by the Minister.

29. (1) Where an election of a director or a general meeting of owners is to be held the returning officer shall prepare a roll of voters in the manner and within the time prescribed.

Roll of voters.

(2) The roll shall include the names and descriptions of all owners within the district, including the Crown and the lessees of the Crown, the area of land held by each, and the number of votes to which each is entitled.

(3) Any stipendiary or police magistrate shall constitute a revision court.

Revision court.

(4) A revision court shall hear claims and objections and revise the roll of voters as prescribed.

cf. Act No. 41, 1919, ss. 68, 69.

(5) A revision court shall, for the purposes of this Act, have the powers of a court of petty sessions, and the appointment and procedure of such revision court shall be as prescribed.

30. (1) Each board shall elect one of its members to be the chairman at the first meeting held after a general election of directors.

Office of chairman.

(2) The chairman shall hold office for one year, and shall be eligible for re-election.

31. (1) Every board shall appoint and employ a secretary and an auditor, and on the occurrence of a vacancy shall, within three months thereafter, appoint and employ a secretary or auditor to fill such vacancy.

Secretary and auditor.

(2) The duties of a secretary and of an auditor shall be as prescribed.

(3) The secretary may be required to give security for due performance of his duties.

32. (1) A board shall have the following powers and duties :—

Powers and duties of boards.

(a) it shall maintain in a state of efficiency the works under its charge, and renew such works where necessary;

cf. Act No. 44, 1912, s. 53.

(b)

- (b) it may construct, alter, or extend any works in accordance with any authority and consent given under this Act ;
- (c) it shall make, levy and collect rates ;
- (d) it shall pay to the Colonial Treasurer any amounts due ;
- (e) it may appoint such officers and servants as may be required ;
- (f) it shall institute where necessary legal proceedings for the recovery of outstanding rates or other amounts ;
- (g) it shall keep the prescribed books and accounts ;
- (h) generally it shall manage the affairs of the union or trust and do such acts as may be necessary or desirable for carrying out the purposes of this Act.

Works
outside
district.

(2) The construction of works outside a district shall not be commenced until the consent of the Minister has been obtained. 20

Board of union
or trust not
required to take
out license
under Part II,
Water Act,
1912-1936.

(3) The provisions of Part II of the Water Act, 1912-1936, relating to licenses and permits shall not apply in respect of the works of any union or trust situated wholly within the district of such union or trust.

Entry on
lands.
cf. Act No.
44, 1912,
s. 54.

33. (1) A board or any person authorised by it may enter any land within or outside its district for the purpose of making inspections or surveys, constructing, maintaining and effecting extensions and alterations to the works, and for any other purpose in the exercise of its powers and duties, notwithstanding that no easement or right to enter or use such land may have been granted or acquired. 25 30

(2) The board shall make full compensation for damage occasioned to any land in the exercise of its powers and duties under this Act. 35

Any claim for compensation shall be lodged with the board not later than six months after the date upon which the owner of the land becomes aware that such damage was occasioned.

(d)

Failing

Failing agreement as to the amount of compensation to be paid, the board or any person interested in the subject-matter of any claim for compensation may refer the claim to the Valuer-General, who shall consider such claim and within ninety days after such reference communicate his decision to the board and to the persons interested.

The decision of the Valuer-General shall be final.

(3) For the purposes of this section land includes street or road.

34. The board shall carry out such extensions of works as are authorised by a majority of votes cast at a general meeting of voters of any trust or union:

Provided that in the case of a trust, the Minister's consent shall be obtained before the extensions are commenced.

35. (1) The boundaries of a district may from time to time, on application by the board, be amended by the Governor.

(2) Any such application shall contain particulars of the lands proposed to be added to or excised from the district, and which have or are capable of being increased in value or which have decreased in value respectively by reason of the operations of the board.

(3) The Minister shall cause notices of any such application to be published in the Gazette and in a newspaper circulating in the locality.

(4) The notice in the Gazette shall—

- (a) give particulars of the lands proposed to be added to or excised from the district;
- (b) appoint a time (not being earlier than eight weeks after the date of publication of the notice in the Gazette) and place at which objections may be lodged.

(5) After expiration of the appointed time and upon consideration of any objection lodged the Minister may recommend and the Governor may approve an application with such modification, if any, as the Minister, upon investigation, may consider desirable.

(6) The approval of the Governor, and particulars of the alterations made in the boundaries of the district, shall be notified by the Minister in the Gazette.

As from the date of publication of such notification the boundaries of the district shall be deemed to be altered accordingly. 5

(7) This section shall apply to trusts and to unions constituted either before or after the commencement of this Act, but shall not authorise an amendment of the boundaries of the district of a trust so as to exclude from such district any land which has increased in value or is capable of increasing in value within the meaning of section forty. 10

DIVISION 2.—Unions.

Borrowing money by unions.
cf. Act No. 44, 1912, s. 97.

Navigable waters.
cf. *Ibid.* s. 94.

36. The board of a union may, with the Governor's approval, borrow money for the construction or extension of works for the purposes of this Act. 15

37. No works affecting any navigable waters shall be commenced without the sanction of the Governor.

In this section the expression "navigable waters" has the meaning given to that expression in Part VIII of the Navigation Act, 1901-1935. 20

DIVISION 3.—Trusts.

Minister's power of entry.
cf. *Ibid.* s. 60.

38. The Minister, by himself or his officers, may at any time enter a trust district and make an inspection or survey of the works and may inspect the records and accounts of the board. 25

If upon such inspection the Minister is of opinion that any of such works are not kept in repair and efficient working order, or any of such works need renewing, he may cause such repairs or renewals as he may think necessary to be made at the cost of the board, and for the purpose of effecting such repairs or renewals he shall have the powers of the board. Such cost shall be repaid as prescribed. 30

Minister's power to remove directors of a trust.
cf. *Ibid.* s. 59.

39. (1) In the event of any delay in the election of directors of a trust, or in the event of any default by a director or the board of a trust in the discharge of his or its 35

its duties under this Act or any regulation made here-
under, or of the voters failing to elect the required
number of directors, the Minister may by notification
published in the Gazette remove a director or the board,
5 if any, from office and either—

(a) direct the election of another director or another
board; or

10 (b) assume all powers, duties and obligations by
this Act conferred or imposed on the board, and
vest the same in a person whom he shall appoint
as manager of the affairs of the trust :

15 Provided that the Minister may at any time after the
appointment of a manager appoint a director and direct
the election of the remaining directors, and upon such
appointment and election all such powers, duties, and
obligations shall be re-vested in and re-imposed upon the
board.

(2) Where an elected director has been removed
from office under this section he shall not be eligible for
20 re-election unless the Minister shall otherwise direct.

PART V.

RATING.

DIVISION 1.—*Assessments.*

25 40. (1) The Valuer-General shall as soon as practicable in respect of the district of every union, whether
constituted before or after the commencement of this
Act, and of the district of every trust, make an assess-
ment of the increased value accrued or accruing to each
portion of land within the district by reason of works
30 used or proposed to be used by the board.

(2) Upon completion of such assessment the
Valuer-General shall furnish to the board a list (in this
Part referred to as a "valuation list") giving particu-
lars within his knowledge of the ownership, occupation,
35 title and description of all lands within the district,
including

Assessments
of increased
value.

Valuation
lists.
cf. Act No.
2, 1916,
s. 48.
cf. Act No.
44, 1912,
s. 86.

including Crown lands, together with an assessment of the increased value referred to in subsection one of this section. Such valuation list shall be used for the purpose of rating for the next period in respect of which a rate is levied, and as from the commencement of such period replace the assessments or appraisements then current. 8

Increase
in value.

(3) Lands within the district may be deemed to have increased in value or be capable of increasing in value, notwithstanding that prior to the construction of works taken over by a trust, or the construction of works by a union, such lands were not subject to floods or not covered with water, and notwithstanding that works have not been constructed or maintained by an owner so as to take advantage of the works of the trust or union. 10
15

New
valuation
lists.

(4) The Valuer-General may from time to time, and shall at least once in every three years after the date upon which the first valuation list has been furnished for any district, make a new assessment in respect of such district and furnish a new valuation list to the board. 20

Cost of
assessment.

(5) Towards defraying the cost of any such assessment each board shall pay to the Consolidated Revenue Fund such sums, at such periods, as the Colonial Treasurer may decide. 25

Notices and
objections.

41. For the purposes of this Act, the provisions of Part III of the Valuation of Land Act, 1916, shall apply to notices of and objections to assessments by the Valuer-General.

DIVISION 2.—*Making and levying rates.* 30

Annual
estimates.
cf. Act No.
44, 1912,
s. 88.

42. The board shall for each current year commencing on the first day of January cause an estimate to be made of the amount required for such current year for the following purposes :—

(a) Construction, maintenance, extension and alteration of works. 35

(b) Payment to the Colonial Treasurer of any amounts due or becoming due.

(c)

- (c) Repayment of loans, and payment of interest thereon.
- (d) Defraying costs of administration.
- (e) Meeting all other expenditure whatsoever in carrying out its powers, authorities, duties and functions.

5

43. (1) Subject to the provisions of this Act, the board shall in respect of each year commencing on the first day of January next preceding the making thereof, make and levy rates upon all ratable land in the district in respect of the increased values as shown in the current valuation list sufficient to meet the estimated amount required for such year :

Rates, making and levying.

10

Provided that rates so made and levied shall not, except with the Minister's consent previously obtained, exceed—

15

- (a) in the case of a union—ten pounds per centum on the aggregate of the increased values of all land within the district, or the maximum amount levied in any year before the commencement of this Act, whichever is the greater ;
- (b) in the case of a trust—the maximum rate which, immediately before the commencement of this Act, might be assessed under the Water Act, 1912-1936.

20

25

(2) Every such rate shall—

- (a) be made by resolution of the board ;
- (b) be levied by the service of a rate notice.

30

(3) Every rate shall be levied in respect of a separate parcel of land, but any rate in respect thereof may be included in the same rate notice with any rate in respect of the same or different land.

Land rated—
separate
parcels.
Act No. 41,
1919, s. 139
(3).

35

(4) In any case where the name of any owner liable to pay the rate is not known to the board, it shall be sufficient to rate such owner by the designation of "owner" without stating his name.

cf. *Ibid.*
s. 139 (6).

40

(5) Where land which was not ratable has become ratable the rate thereon shall be proportionate to the portion of the year during which the land is ratable ; and in any such case the first valuation made

cf. *Ibid.*
s. 139 (7).

of

of the land after it becomes ratable shall be deemed to have come into force concurrently with the land becoming ratable.

cf. Act No.
41, 1919,
s. 139 (8).

(6) Where land which was ratable has not been valued because of omission from the valuation list, the first valuation thereof after discovery of the omission shall come into force as from the first day of January of the then current year; and the rate may be levied accordingly. 5

Land owned
by the
Crown.

(7) Rates may be levied in respect of all ratable land within the district, including ratable land owned by the Crown. 10

Definition
of ratable
land.

(8) All land within a district in respect of which any increased value has been appraised or assessed under the Water Act, 1912-1936, or this Act, shall be ratable, except land owned by the Crown (not being land held under a lease from the Crown by any person for private purposes) and situated within the district of a trust. 15

Irregu-
larities.
cf. *Ibid.*
s. 140.

44. If for any reason any rate is not made within or by the time prescribed by or under this Act, or if any irregularity in making or levying any rate affects or may be considered to affect the validity of any rate, the Governor may extend the time for the making of the rate, and may authorise the doing by the board of such acts as may be necessary to cure the irregularity and to validate the rate. 20 25

Rate-book.
cf. *Ibid.*
s. 142.

45. (1) Every rate shall be entered in a rate-book which shall be in the prescribed form.

(2) An alteration or amendment in the rate-book may be made in respect of any rate by altering such of the particulars entered therein as may be prescribed. 30

(3) An alteration or amendment in the rate-book shall have effect upon adoption by the board as though made when the rate was made. 35

(4) An alteration or amendment in the rate-book made in conformity with the resolution of the board shall be made in the prescribed manner.

DIVISION

DIVISION 3.—*Liability for rates.*

46. Every rate shall be due and payable to and recover-
 able by the board on the expiration of one month
 after service of the rate notice.
- 5 47. Every rate shall, except where this Act otherwise
 expressly provides, be paid to the board by the owner of
 the land in respect of which the rate is levied.
48. (1) Where the ratable person—
- 10 (a) is a resident outside New South Wales; or
 (b) is unknown to the board; or
 (c) has not after reasonable efforts by or on behalf
 of the board to effect service been served in any
 legal proceedings for the recovery of the rate;
 or
- 15 (d) is a bankrupt; or
 (e) dies; or
 (f) has had a verdict or judgment given against
 him for the amount of the rate,
- the board may serve upon any person in occupation of
 20 the land a notice of the amount of the rate, or of such
 verdict or judgment, and a demand that any rent then
 due or thereafter to become due by such person in
 respect of the land be paid by him as it falls due to the
 board in liquidation of the amount of the rate, or verdict,
 25 or judgment.
- (2) In default of payment of rent as aforesaid
 the board may recover from such person in occupation
 the amount of the demand or any outstanding portion
 thereof, as a debt.
- 30 (3) Any payment to the board under this sec-
 tion shall be a valid discharge to the payer for such rent
 as against all other persons whomsoever.
- (4) Nothing in this section shall apply to a
 person who is in occupation for or on behalf, or as the
 35 servant of the Crown, or of any shire or municipal
 council.
49. (1) Where the land is owned by the Crown and
 is held by any person under lease therefrom the rate
 shall be paid to the board by the holder of the lease.
- (2)

Due date.
 cf. Act No.
 41, 1919,
 s. 143.

Liability
 of owner.
 cf. *Ibid.*
 s. 144.

Liability of
 occupier.
 cf. *Ibid.*
 s. 150.

Lessees of land
 owned by the
 Crown.
 cf. *Ibid.*
 s. 145.

(2) Where the land is held under a lease from the Crown by two or more persons successively in the same year, whether with or without any interval between their holding, the board may, if it thinks fit—

- (a) make such adjustment (if any) of the rate, whether paid or unpaid, as it thinks proper between such persons ; 5
- (b) recover from each of such persons his proportion of the rate as fixed by the adjustment ;
- (c) make any refund in accordance with the adjustment ; 10
- (d) write off any amount in respect of the interval between the holding of such persons.

Joint owners.
cf. Act No. 41, 1919, s. 147.

50. (1) Where land is owned or held jointly by two or more persons, such persons shall be jointly and severally liable to the board for the rate, but as between themselves each shall only be liable for such part of the rate as is proportionate to his interest in the land. 15

(2) If any of such persons pays to the board more than his proportionate part, he may recover the excess by way of contribution from the others. 20

Tenant may recover proportion of rates.

51. Where after the passing of this Act a person in occupation under any lease or as tenant to the owner, has paid rates in respect of lands within a district and there is no sufficient provision in the lease or in some other written instrument with reference to the payment of rates, the person in occupation may recover from the lessor or owner the whole or such proportion of the rates as the court before which the action is tried shall think just. 25 30

This section shall not apply in respect of rates payable upon any land within the district of a trust, during the currency of any lease or tenancy thereof entered into before and existing at the commencement of this Act.

DIVISION 4.—*Miscellaneous.*

35

Charge of rates on land.
cf. *Ibid.* s. 152.

52. (1) Every rate under this Act shall, together with any costs awarded to the board, be and remain a charge on the land in respect of which such rate is made and levied, in priority to all sales, conveyances, transfers, mortgages, charges, liens and encumbrances whatsoever: 40
Provided

Provided that—

5 (a) no such charge for any rate or costs shall be of any effect as against a bona fide purchaser for value who at the time of purchase made due inquiry but had no notice of the liability ; and

10 (b) a purchaser shall be deemed to have made due inquiry who has in good faith obtained a certificate of the secretary as to the amount (if any) due in respect of rates and costs.

(2) Where the land is owned by the Crown the charge shall not affect or extend to—

(a) the estate or interest of the Crown in the land ; or

15 (b) the estate or interest of any person holding under a lease from the Crown where the lease is granted after the rate is levied, whether the land has been previously held under a lease from the Crown or not.

20 (3) The charge shall rank *pari passu* with any charge on the land under any other Act.

25 **53.** (1) If a person liable to pay rates in respect of any ratable land transfers his estate or interest in such land, or in any part thereof, such person and the transferee shall (except as provided in this section) within one month of such transfer give notice thereof to the board.

Notice of transfer. cf. Act No. 41, 1919, s. 163.

(2) It shall not be necessary to give notice under this section of any mortgage nor of the discharge of any mortgage.

30 **54.** (1) Overdue rates shall be increased in accordance with this section.

Overdue rates, extra charge.

35 (2) If any rate is unpaid at the expiration of three months from the due date, the amount due shall be increased by a sum calculated at the rate of five per centum per annum, and the increase shall be deemed to be part of such rate.

cf. *Ibid.* s. 158.

40 (3) The calculation under subsection two of this section shall be made in respect only of as many complete months as have expired between the due date and the date of payment, excluding any remaining portion of a month

(4)

(4) If in any case the percentage is less than threepence, the increase shall be threepence.

(5) The charge under this section shall continue to apply to all unpaid rates notwithstanding that judgment may have been obtained in any court. 5

Sale of land for rates.
cf. Act No. 41, 1919, s. 602, et seq.

55. (1) Where any rate levied in respect of land within a district after the commencement of this Act is overdue for more than seven years, the board may apply to the Public Trustee to sell the land.

(2) The provisions of sections six hundred and two to six hundred and thirteen inclusive of the Local Government Act, 1919, as amended by subsequent Acts, shall apply to sales under this section, and for that purpose "secretary" and "board" shall be read instead of "town or shire clerk" and "council" respectively, and where, in those sections, any form, matter, or thing is required or authorised to be prescribed by ordinance, such form, matter, or thing may be prescribed by regulation made under this Act. 10 15

PART VI.

20

GENERAL.

DIVISION 1.—*Unions.*

Plans of drainage.
cf. Act No. 44, 1912, s. 93.

56. (1) The board of each union shall each year before commencing any works furnish to the Minister for public reference a plan showing accurately the position, direction, width, depth and such other particulars of such works as the Minister may require. 25

(2) The board shall cause a copy of such plan to be lodged for like reference with the nearest clerk of petty sessions, and shall notify the fact of such lodgment shortly describing the proposed works in a newspaper circulating in the locality. 30

57.

57. A person advancing money to the board of a union shall not be bound to inquire into the application of the money advanced or be in any way responsible for the non-application or mis-application thereof.

Protection of investors. cf. Act No. 41, 1919, s. 197.

5 58. (1) If for six months default is made by the board of a union in making any payment of borrowed money, whether of principal or interest, the person who has advanced such money may apply to the Supreme Court in its equitable jurisdiction for the appointment of a receiver.

Appointment of receiver. cf. *Ibid.* s. 193.

10 (2) The court may make such orders and give such directions as it may deem proper for and with respect to—

- 15 (a) the appointment of a receiver ;
 (b) the removal of a receiver ;
 (c) the appointment of a receiver in place of a receiver previously appointed.

(3) A receiver shall be deemed to be an officer of the court, and shall act under its direction.

20 59. (1) The receiver shall have power to make and levy all rates and collect all moneys payable to the board of the union, and for the purposes of this subsection the receiver shall be deemed the board of the union, and may (subject to the direction of the court) exercise all the powers thereof.

Powers and duties of receiver. cf. *Ibid.* s. 194.

(2) The receiver shall discharge such duties of the board of the union and of any officer or servant thereof as may be directed by the court.

30 60. The receiver shall be entitled to such commission as remuneration for his services as the court may order, and the commission shall be payable out of the rates or any other moneys of the board.

Commission. cf. *Ibid.* s. 195.

35 61. The receiver shall, subject to any order of the court, pay and apply all moneys received by him in the following order, that is to say—

Application of moneys received. cf. *Ibid.* s. 196.

- (a) firstly in payment of the costs, charges and expenses of collection and of his commission ;
 (b)

(b) secondly in payment of the amount due and payable to the person who has advanced money to the board;

(c) thirdly in payment of all the residue of the moneys to the board. 5

Dissolution.
cf. Act No.
44, 1912,
s. 99.

62. (1) When all amounts due by any board have been repaid the owners being not less than one-third in number of those within the district may present a petition to the Governor under their hands for the dissolution of the union. 10

(2) The Governor may notify such petition, and if no sufficient cause to the contrary is shown by other owners within the district, shall proclaim that the union is dissolved.

DIVISION 2.—*Unions and trusts.* 15

Debts.
cf. Act No.
41, 1919,
s. 590.

63. (1) Any rate, charge, fee, or money due to a board under the provisions of this Act or of any regulation under this Act may be recovered as a debt in any court of competent jurisdiction.

(2) Proceedings under this Act for the recovery of any rate, charge, fee, or money so due to a board shall be deemed to be for the recovery of a debt or liquidated demand within the meaning of—

(a) Section twenty-four of the Common Law Procedure Act, 1899. 25

(b) Section sixty-four of the District Courts Act, 1912-1936.

(c) Section twenty-five of the Small Debts Recovery Act, 1912-1933.

Collection
of debts.

64. (1) A board shall take prompt action to collect or recover any rate or other due debt. 30

(2) When all practical means shall have failed to effect the collection or recovery of any rate or debt the board may take such steps as may be prescribed towards having the debt written off. 35

Accounts.

65. (1) The accounts of a board shall be audited once every half-year.

(2)

(2) A board shall each year publish in a newspaper circulating in the locality a statement of the income and expenditure for the next preceding year, certified under the hands of the chairman of the board or manager **5** and the auditor, or forward a copy of such statement to each owner of land within the district.

The board shall forward a copy of the statement to the Minister.

66. The accounts of boards shall be subject to inspection, examination and audit under the Trustees Audit Act, 1912. Audit.

67. Any person who—

- 15** (a) obstructs any person acting in the exercise of his powers and duties under this Act or any regulation made thereunder; or
- (b) interferes with or wilfully or negligently injures or destroys the works; or
- 20** (c) wilfully destroys, removes, obliterates or defaces any mark, peg, stake, or level fixed for the purposes of this Act; or
- (d) commits any breach of the provisions of this Act or of any regulation made thereunder,

Penalties.
cf. Act No. 44, 1912, s. 71.

shall be liable to a penalty not exceeding *twenty* pounds, and in the case of a continuing offence to a penalty not **25** exceeding *five* pounds for each day during which the offence continues, and shall also be liable to be sued by the board or by any person affected for compensation on account of loss or damage caused by his offence.

68. (1) Any owner of land may, for the purpose of draining his land or preventing the flooding thereof, make and cut drains through any adjacent or neighbouring land: Power to make drains through other lands.

cf. *Ibid.* s. 104.

35 Provided that, where such adjacent or neighbouring land is within a district, the consent of the board shall first be obtained.

(2) Such owner constructing such drains shall be liable at law to make full compensation for any damage thereby occasioned to the proprietor of such adjacent or neighbouring land.

(3) The amount of such compensation shall be determined by the local land board constituted under the Crown Lands Consolidation Act, 1913.

(4) The provisions of section one hundred and one of the Water Act, 1912-1936, shall apply to and in respect of the cleansing or repair of any drain so made and cut. 5

Regulations.

69. (1) The Governor may make regulations not inconsistent with this Act prescribing all matters which by this Act are required or authorised to be prescribed, or which are necessary or convenient to be prescribed for carrying out or giving effect to this Act, and in particular and without limiting the generality of the foregoing power may make regulations for and with respect to— 10

- (a) the preparation and revision of rolls of voters; 15
- (b) the appointment and notification of days for enrolment;
- (c) the notification and inspection of rolls;
- (d) the nomination of candidates for any election held under this Act; 20
- (e) the method of voting, and whether by post or by personal attendance at a polling-place;
- (f) the preparation, form, and printing of ballot-papers;
- (g) the conduct of elections and the method of voting whether by postal voting or otherwise; 25
- (h) the procedure at meetings of boards and meetings of voters;
- (i) the appointment, payment and dismissal of officers and servants; 30
- (j) the making and levying of rates and the time within which rates shall be made;
- (k) the keeping of accounts of boards;
- (l) the qualifications to be held by auditors. 35

(2) Such regulations shall— 35

- (a) be published in the Gazette;
- (b) take effect from the date of publication or from a later date to be specified therein; and

(c)

(c) be laid before both Houses of Parliament within
fourteen sitting days of publication if Parliam-
ent is in session, and if not, then within four-
teen sitting days after the commencement of the
5 next session.

(3) If either House of Parliament passes a reso-
lution of which notice has been given at any time within
fifteen sitting days after such regulation has been laid
before such House disallowing the regulation or part
10 thereof, such regulation or part shall thereupon cease to
have effect.

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