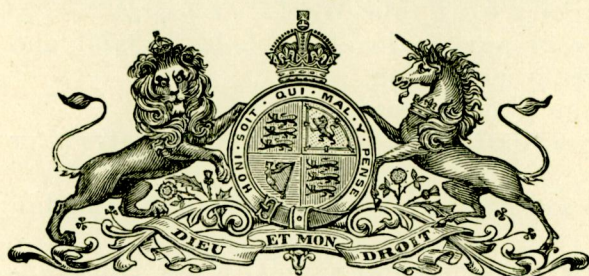


*This PUBLIC BILL originated in the LEGISLATIVE COUNCIL, and, having this day passed, is now ready for presentation to the LEGISLATIVE ASSEMBLY for its concurrence.*

*Legislative Council Chamber,  
Sydney, 9th September, 1909. }*

JOHN J. CALVERT,  
*Clerk of the Parliaments.*

## New South Wales.



ANNO NONO

# EDWARDI VII REGIS.

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Act No. , 1909.

An Act to consolidate the Acts relating to water supply, water conservation, irrigation, and drainage.

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

### *Preliminary.*

1. (1) This Act may be cited as the "Water and Drainage Short title. Act, 1909."

(2) The Acts mentioned in the Schedule hereto are, to the Repeal. extent therein expressed, hereby repealed.

(3) Any board constituted under the provisions of any Act Saving. hereby repealed, and being in existence at the time of the passing of this Act, shall be deemed to have been constituted under the provisions of this Act.

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(4) All persons appointed under the provisions of any Act hereby repealed, and holding office at the time of the passing of this Act, shall be deemed to have been appointed under the provisions of this Act.

(5) All regulations and by-laws made under the provisions of any Act hereby repealed, and being in force at the time of the passing of this Act, shall be deemed to have been made under the provisions of this Act.

2. In this Act—

“Minister” means Secretary for Public Works.

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

“Occupier” means person in actual possession.

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

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

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

“The board” means the board constituted by this Act.

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

“Trust” means trust constituted under this Act.

“Trustee” means member of a trust.

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

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

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

3. The provisions of this Act relating to works of drainage shall apply to works for the prevention of floods and the control of flood-waters.

4. Nothing in the Water Rights Act, 1902, shall affect the exercise of the powers conferred by this Act in relation to a river or lake, as defined by the first-mentioned Act, or shall affect the right of a trust to fix and levy rates under section thirty-four of this Act.

5. 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

Interpretation.

Act No. 93, 1902,  
s. 2.

Act No. 59, 1906,  
s. 2.

*Ibid.* s. 2 (3).

Extension of Principal  
Act to flood prevention  
works

*Ibid.* s. 5.

Effect of Water  
Rights Act.

*Ibid.* s. 17.

Constitution of  
board.

*Ibid.* s. 2 (1) and (2).

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Department of Public Works as the Governor may appoint, and including, where any work is situated in the Western Division, the Western Land Board constituted under the Western Lands Act of 1901.

*Loans for Works.*

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

Power to raise £200,000 a year for five years for purposes of water supply.  
Act No. 59, 1906; s. 5 and Sched., and s. 6.

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

Stock may be sold in London or Sydney.

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

Creation of stock.

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

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

(5) In respect of any stock issued in London under the provisions of this Act, the Governor may make regulations, not being inconsistent with the provisions of the Inscribed Stock Act, 1902, for carrying this Act into effect; and such regulations shall be published in the Gazette and laid before Parliament within fourteen days of the publication thereof, if Parliament be then sitting, and if Parliament be not sitting, then within fourteen days of the commencement of the next session thereof.

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

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

Sums borrowed, how to be accounted for and appropriated.

(7) Debentures or stock sold or issued under this Act are hereby declared to be for all purposes Government securities; and all corporations and other persons whatsoever shall have power to invest in the purchase of such debentures and stock any property held by them,

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

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them, whether as trustees or otherwise, which they are not expressly forbidden to invest in Government stock or securities, without on that account being liable as for a breach of trust or incurring any liability whatsoever, provided that such investment is in other respects reasonable and proper.

*State works.*

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

Construction of  
"State works."  
Act No. 93, 1902,  
s. 4.

*Works of water conservation costing five thousand pounds or less.*

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

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

*Constitution of trusts.*

9. In respect of any work of water conservation, the Minister may, and in respect of any works of water supply, irrigation, or drainage, or for the prevention of floods or the control of flood-waters, the Minister shall notify in the Gazette and in some newspaper circulating in the district affected by such works proposals for the construction of such works, and the constitution of a trust for maintaining, administering, and extending such works.

Constitution of  
trusts.  
*Ibid.* s. 6.  
Act No. 53, 1906,  
s. 5 and Schedule,  
and s. 8.

10. Any such proposal shall contain—

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

Contents of  
proposals.  
Act No. 93, 1902,  
s. 7.

(g)

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- (g) the number of trustees being either three or five ;  
 (h) the number of years within which the cost of the work shall be extinguished by a sinking fund.

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

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

*Ibid.* s. 8.

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

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

Witnesses' expenses.

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

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

*Ibid.* s. 9.

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

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

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

Act No. 59, 1906, s. 7.

*Works under other Acts.*

13. The Minister may, out of the funds raised under this Act, or out of the revenue account, or the loan account of the public works fund, carry out any work which he is authorised to carry out under the Public Watering Places Act, 1900, or the Artesian Wells Act, 1897.

Works under Public Watering Places Act and Artesian Wells Act.

Act No. 93, 1902, s. 10.

Act No. 59, 1906, s. 7.

*Completion of certain works.*

14. (1) The Minister may notify proposals for the constitution of trusts and for the completion of any works which on the twenty-ninth day of December, one thousand nine hundred and six, were in course of construction by him, and such trusts may be constituted and such

Proposals in respect of works in course of construction.

Act No. 59, 1906, s. 9.

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such works may be completed out of funds raised under this Act, or out of the revenue account or the loan account of the public works fund. The provisions of this Act shall apply to such works.

(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 aforesaid date, 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 this Act shall apply thereto, and the interest and charges payable by the trust shall commence to run : Works completed.

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.

(3) On the constitution of a trust under this section for any work the provisions of any Acts other than the provisions of this Act shall cease to apply thereto. Certain Acts not to apply.

*Construction of works.*

15. Every work, other than a State work, which the Minister is authorised by this Act to carry out shall be carried out under the Public Works Act, 1900, or any Act amending the same, and all the powers and provisions of the said Act relating to authorised works shall be applicable to such work, and for all purposes of the said Act such work shall be deemed to be an "authorised work," and the Minister shall be deemed a "Constructing Authority" within the meaning of the said Act : Works to be carried out under Public Works Act, 1900, and to be "authorised works," and Minister a "Constructing Authority" within that Act. Act No. 93, 1902, s. 12.

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

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

16. 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 the last-mentioned trust, so construct such works and amend the boundaries of the respective districts so as to include the Construction of works through another district. Act No. 59, 1906, s. 21.

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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.

*Transfer to trust.*

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

On notification of completion, trust to take over management.  
Act No. 93, 1902, s. 13.  
Act No. 59, 1906, s. 11.

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 twenty-ninth day of December, one thousand nine hundred and six.

18. 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 this Act in respect of works completed and taken over by a trust, except such powers as are conferred solely on the Minister.

Works not completed taken over by trust.  
Act No. 59, 1906, s. 10.

*Alteration of boundaries of trust districts.*

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

Minister on petition by two-thirds of occupiers or owners to refer proposed alteration to Board.  
Act No. 93, 1902, s. 14.

*Appointment and election of trustees.*

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

In certain cases Minister to appoint trustees; in other to direct their election.  
*Ibid.* s. 15.

(2)

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

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

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

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

Trustees to be elected for three years.  
*Ibid.* s. 16.

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

Method of first election of trustees.  
*Ibid.* s. 17.  
Act No. 59, 1906, s. 12 (1).

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.

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

Subsequent election of trustees.  
Act No. 93, 1902, s. 18.  
Act No. 59, 1906, s. 12 (2).

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.

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

Cumulative voting.  
Act No. 93, 1902, s. 19.

- (a) In the case of a trust placed in charge of drainage work or irrigation works, or works for the prevention of floods or the control of flood waters, the occupier of an area of land not exceeding fifty acres shall be entitled to one vote; of an area exceeding

Act No. 59, 1906, s. 5 and Schedule, and s. 12 (3).



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exceeding fifty acres but not exceeding three hundred acres, to two votes ; and of an area exceeding three hundred acres, to three votes.

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

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

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

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

**27.** The mode of election of trustees shall be as prescribed by the regulations.

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

*Powers and duties of trustees.*

**29.** The trustees shall be charged with the duty of maintaining and administering the works of water supply, water conservation, irrigation, and drainage, or for the prevention of floods or the control of flood waters, mentioned in the notification constituting the trust or thereafter constructed within the trust district.

- 30.** Trustees shall have the following duties and powers :—
- (a) They shall maintain in a state of efficiency the works under their charge.
- (b) They shall fix and levy rates to provide for the maintenance and management of such works and for interest, charges, and sinking fund.
- (c) They shall keep proper accounts of all moneys received and paid.

(d)

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(d) They shall pay to the Treasury at such times as may be fixed by the Minister the interest and charges payable by them and make due provision for a sinking fund, and all sums received on account of any such sinking fund shall be carried by the Colonial Treasurer to a special account to be entitled "The Water and Drainage Loan Redemption Fund," and all other sums to the Consolidated Revenue Fund.

(e) They may appoint, with the sanction of the Minister, such officers or servants as may be required.

**31.** The amount for which the trusts of the artesian wells at Mungyer and Neargo are liable under this 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.

Mungyer and  
Neargo.  
Act No. 59, 1906,  
s. 19.

**32.** The charges which, under this 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.

Euraba and Boomi.  
*Ibid.* s. 20.

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

Power of trustees or  
their officers to enter  
and inspect.  
Act No. 93, 1902,  
s. 26.

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

Trustees may fix and  
levy rates.  
*Ibid.* s. 27.  
Act No. 59, 1906,  
s. 5, and Schedule.

(a) In connection with the supply of water for stock purposes, a rate per acre of the land benefited by the works shall be fixed and the rate may vary in proportion to the benefit received as aforesaid. When water is supplied down a natural channel, a rate per mile of the lands benefited as aforesaid, measured according to the frontage to the channel, may be fixed, and the rate may vary in proportion to the benefit received.

(b) In connection with the supply of water for domestic purposes, a rate for each separate tenement in the trust district shall be fixed, and the rate may vary in proportion to the benefit received.

(c)

*Water and Drainage.*

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

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

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

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.

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

Trustees may sell additional water to ratepayers.  
Act No. 93, 1902, s. 28.

**36.** When a trust under this 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.

Sale of surplus water.  
Act No. 59, 1906, s. 13.

*Powers of Minister where trust constituted.*

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

The Minister, on request by trustees to improve or extend any works under their charge, may prepare an estimate of the cost of the proposed work, and upon the receipt of an intimation from the trustees that such estimate has been approved by a special general meeting of voters, may proceed with the construction of proposed works.  
Act No. 93, 1902, s. 29.

Upon

*Water and Drainage.*

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

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

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

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

Power of Minister to enter and inspect.  
Act No. 93, 1902, s. 30.

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

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

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

Governor may dissolve trust, or appoint a manager.

*General and supplemental.*

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

Trustees to submit to Minister an audited statement of the account of the trust.  
*Ibid.* s. 31.

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

Power of Minister or trustees to construct conduit.  
*Ibid.* s. 32.

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

(2)

*Water and Drainage.*

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

41. (1) For the purposes of this Act 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.  
Act No. 59, 1906,  
s. 3.

(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.

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

Power of Minister to  
construct channels  
and embankments.

(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 this Act; or

*Ibid.* s. 14.

(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 this Act.

43. 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 this Act, or to which this Act 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.

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

*Ibid.* s. 15.

44. 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:

As to compensation.

*Ibid.* s. 16.

Provided

*Water and Drainage.*

Provided that where any such power is, after the commencement of the twenty-ninth day of December, one thousand nine hundred and six, 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.

45. Any person who—

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

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

Penalties.

Act No. 93, 1902,  
s. 33.

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

- the election of trustees and the making and revision of the rolls of voters, and the mode of voting;
- the election by the trustees of a chairman;
- the intervals within which meetings of trustees must be held;
- the procedure at such meetings;
- the appointment, payment, and dismissal of officers and servants;
- the fixing and notifying of rates;
- the hearing of appeals;
- the collection and recovery of rates and charging the same on lands in respect of which they are payable;
- the keeping of the accounts of trustees;
- regulating the payment to the Crown of interest and charges by the trust;
- regulating the proceedings of the Board;
- regulating special meetings of voters of a trust in pursuance of this Act;
- imposing any penalty not exceeding twenty pounds for any breach of the regulations.

Governor may make  
regulations.

*Ibid.* s. 34.

Such regulations shall be published in the Gazette.

47.

*Water and Drainage.*

47. (1) The trustees may, subject to the approval of the Governor, make by-laws—  
 prescribing the duties of their officers and servants ;  
 for regulating the supply of water from and the use of the works of the trust ;  
 prescribing the duties of persons as to the maintenance, clearing, cleansing, and repair of the works of the trust ;  
 imposing any penalty not exceeding ten pounds for any breach of the by-laws.

Trustees may make by-laws.  
*Ibid.*, s. 35.

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

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

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

How rates are to be recoverable.  
*Ibid.* s. 36.

SCHEDULE.

Number of Act.	Name of Act.	Extent of repeal.
No. 93, 1902 ...	Water and Drainage Act, 1902 ...	The whole.
No. 59, 1906 ...	Water and Drainage and Artesian Wells (Amending) Act, 1906.	Part II. The Schedule.



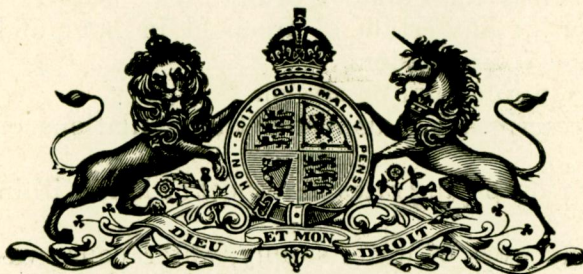


This PUBLIC BILL originated in the LEGISLATIVE COUNCIL, and, having this day passed, is now ready for presentation to the LEGISLATIVE ASSEMBLY for its concurrence.

Legislative Council Chamber,  
Sydney, September, 1909. }

Clerk of the Parliaments.

## New South Wales.



ANNO NONO

# EDWARDI VII REGIS.

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Act No. , 1909.

An Act to consolidate the Acts relating to water supply, water conservation, irrigation, and drainage.

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

### *Preliminary.*

1. (1) This Act may be cited as the "Water and Drainage Short title. Act, 1909."

(2) The Acts mentioned in the Schedule hereto are, to the Repeal. extent therein expressed, hereby repealed.

(3) Any board constituted under the provisions of any Act Saving. hereby repealed, and being in existence at the time of the passing of this Act, shall be deemed to have been constituted under the provisions of this Act.

*Water and Drainage.*

(4) All persons appointed under the provisions of any Act hereby repealed, and holding office at the time of the passing of this Act, shall be deemed to have been appointed under the provisions of this Act.

(5) All regulations and by-laws made under the provisions of any Act hereby repealed, and being in force at the time of the passing of this Act, shall be deemed to have been made under the provisions of this Act.

**2. In this Act—**

“Minister” means Secretary for Public Works.

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

“Occupier” means person in actual possession.

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

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

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

“The board” means the board constituted by this Act.

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

“Trust” means trust constituted under this Act.

“Trustee” means member of a trust.

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

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

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

**3.** The provisions of this Act relating to works of drainage shall apply to works for the prevention of floods and the control of flood-waters.

**4.** Nothing in the Water Rights Act, 1902, shall affect the exercise of the powers conferred by this Act in relation to a river or lake, as defined by the first-mentioned Act, or shall affect the right of a trust to fix and levy rates under section thirty-four of this Act.

**5.** 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

Interpretation.

Act No. 93, 1902,  
s. 2.

Act No. 59, 1906,  
s. 2.

*Ibid.* s. 2 (3).

Extension of Principal  
Act to flood prevention  
works.

*Ibid.* s. 5.

Effect of Water  
Rights Act.

*Ibid.* s. 17.

Constitution of  
board.

*Ibid.* s. 2 (1) and (2).

*Water and Drainage.*

Department of Public Works as the Governor may appoint, and including, where any work is situated in the Western Division, the Western Land Board constituted under the Western Lands Act of 1901.

*Loans for Works.*

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

Power to raise £200,000 a year for five years for purposes of water supply.  
Act No. 59, 1906, s. 5 and Sched., and s. 6.

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

Stock may be sold in London or Sydney.

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

Creation of stock.

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

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

(5) In respect of any stock issued in London under the provisions of this Act, the Governor may make regulations, not being inconsistent with the provisions of the Inscribed Stock Act, 1902, for carrying this Act into effect; and such regulations shall be published in the Gazette and laid before Parliament within fourteen days of the publication thereof, if Parliament be then sitting, and if Parliament be not sitting, then within fourteen days of the commencement of the next session thereof.

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

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

Sums borrowed, how to be accounted for and appropriated.

(7) Debentures or stock sold or issued under this Act are hereby declared to be for all purposes Government securities; and all corporations and other persons whatsoever shall have power to invest in the purchase of such debentures and stock any property held by them,

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

*Water and Drainage.*

them, whether as trustees or otherwise, which they are not expressly forbidden to invest in Government stock or securities, without on that account being liable as for a breach of trust or incurring any liability whatsoever, provided that such investment is in other respects reasonable and proper.

*State works.*

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

Construction of  
"State works."  
Act No. 93, 1902,  
s. 4.

*Works of water conservation costing five thousand pounds or less.*

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

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

*Constitution of trusts.*

9. In respect of any work of water conservation, the Minister may, and in respect of any works of water supply, irrigation, or drainage, or for the prevention of floods or the control of flood-waters, the Minister shall notify in the Gazette and in some newspaper circulating in the district affected by such works proposals for the construction of such works, and the constitution of a trust for maintaining, administering, and extending such works.

Constitution of  
trusts.  
*Ibid.* s. 6.  
Act No. 59, 1906,  
s. 5 and Schedule,  
and s. 8.

10. Any such proposal shall contain—

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

Contents of  
proposals.  
Act No. 93, 1902,  
s. 7.

(g)

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- (g) the number of trustees being either three or five ;
- (h) the number of years within which the cost of the work shall be extinguished by a sinking fund.

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

Minister on petition by one-third of occupiers and owners to refer proposal to Board for inquiry. *Ibid.* s. 8.

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

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

Witnesses' expenses.

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

If no petition, or if Board reports in favour of proposal, the Governor may constitute the trust. *Ibid.* s. 9.

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

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

Upon notification of the trust, the Minister may carry out any works described in the proposal. Act No. 59, 1906, s. 7.

*Works under other Acts.*

13. The Minister may, out of the funds raised under this Act, or out of the revenue account, or the loan account of the public works fund, carry out any work which he is authorised to carry out under the Public Watering Places Act, 1900, or the Artesian Wells Act, 1897.

Works under Public Watering Places Act and Artesian Wells Act. Act No. 93, 1902, s. 10. Act No. 59, 1906, s. 7.

*Completion of certain works.*

14. (1) The Minister may notify proposals for the constitution of trusts and for the completion of any works which on the twenty-ninth day of December, one thousand nine hundred and six, were in course of construction by him, and such trusts may be constituted and such

Proposals in respect of works in course of construction. Act No. 59, 1906, s. 9.

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such works may be completed out of funds raised under this Act, or out of the revenue account or the loan account of the public works fund. The provisions of this Act shall apply to such works.

(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 aforesaid date, 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 this Act shall apply thereto, and the interest and charges payable by the trust shall commence to run : Works completed.

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.

(3) On the constitution of a trust under this section for any work the provisions of any Acts other than the provisions of this Act shall cease to apply thereto. Certain Acts not to apply.

*Construction of works.*

15. Every work, other than a State work, which the Minister is authorised by this Act to carry out shall be carried out under the Public Works Act, 1900, or any Act amending the same, and all the powers and provisions of the said Act relating to authorised works shall be applicable to such work, and for all purposes of the said Act such work shall be deemed to be an "authorised work," and the Minister shall be deemed a "Constructing Authority" within the meaning of the said Act : Works to be carried out under Public Works Act, 1900, and to be "authorised works," and Minister a "Constructing Authority" within that Act. Act No. 93, 1902, s. 12.

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

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

16. 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 the last-mentioned trust, so construct such works and amend the boundaries of the respective districts so as to include the Construction of works through another district. Act No. 59, 1906, s. 21.

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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.

*Transfer to trust.*

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

On notification of completion, trust to take over management.  
Act No. 93, 1902, s. 13.  
Act No. 59, 1906, s. 11.

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 twenty-ninth day of December, one thousand nine hundred and six.

18. 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 this Act in respect of works completed and taken over by a trust, except such powers as are conferred solely on the Minister.

Works not completed taken over by trust.  
Act No. 59, 1906, s. 10.

*Alteration of boundaries of trust districts.*

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

Minister on petition by two-thirds of occupiers or owners to refer proposed alteration to Board.  
Act No. 93, 1902, s. 14.

*Appointment and election of trustees.*

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

In certain cases Minister to appoint trustees; in other to direct their election.  
*Ibid.* s. 15.

(2)

*Water and Drainage.*

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

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

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

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

Trustees to be elected for three years.  
*Ibid.* s. 16.

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

Method of first election of trustees.  
*Ibid.* s. 17.  
Act No. 59, 1906, s. 12 (1).

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.

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

Subsequent election of trustees.  
Act No. 93, 1902, s. 18.  
Act No. 59, 1906, s. 12 (2).

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.

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

Cumulative voting.  
Act No. 93, 1902, s. 19.

- (a) In the case of a trust placed in charge of drainage work or irrigation works, or works for the prevention of floods or the control of flood waters, the occupier of an area of land not exceeding fifty acres shall be entitled to one vote; of an area exceeding

Act No. 59, 1906, s. 5 and Schedule, and s. 12 (3).



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exceeding fifty acres but not exceeding three hundred acres, to two votes; and of an area exceeding three hundred acres, to three votes.

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

- (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. Act No. 59, 1906, s. 12 (3).

**25.** Any person entitled to vote at the election of trustees may be elected as trustee. But no person who has been convicted of any criminal offence shall be capable of being appointed or elected or to act as a trustee, and where a trustee becomes incapable as aforesaid, his office shall become vacant. Qualification of persons entitled to be elected as trustees. Act No. 93, 1902, s. 20.

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

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

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

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

*Powers and duties of trustees.*

**29.** The trustees shall be charged with the duty of maintaining and administering the works of water supply, water conservation, irrigation, and drainage, or for the prevention of floods or the control of flood waters, mentioned in the notification constituting the trust or thereafter constructed within the trust district. Duties of trustees. Ibid. s. 24. Act No. 59, 1906, s. 5, and Schedule.

**30.** Trustees shall have the following duties and powers:—

- (a) They shall maintain in a state of efficiency the works under their charge. Powers and duties of trustees. Act No. 93, 1902, s. 25.
- (b) They shall fix and levy rates to provide for the maintenance and management of such works and for interest, charges, and sinking fund.
- (c) They shall keep proper accounts of all moneys received and paid.

(d)

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- (d) They shall pay to the Treasury at such times as may be fixed by the Minister the interest and charges payable by them and make due provision for a sinking fund, and all sums received on account of any such sinking fund shall be carried by the Colonial Treasurer to a special account to be entitled "The Water and Drainage Loan Redemption Fund," and all other sums to the Consolidated Revenue Fund.
- (e) They may appoint, with the sanction of the Minister, such officers or servants as may be required.

**31.** The amount for which the trusts of the artesian wells at Mungyer and Neargo are liable under this 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.

Mungyer and  
Neargo.  
Act No. 59, 1906,  
s. 19.

**32.** The charges which, under this 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.

Euraba and Boomi.  
*Ibid.* s. 20.

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

Power of trustees or  
their officers to enter  
and inspect.  
Act No. 93, 1902,  
s. 26.

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

Trustees may fix and  
levy rates.  
*Ibid.* s. 27.  
Act No. 59, 1906,  
s. 5, and Schedule.

- (a) In connection with the supply of water for stock purposes, a rate per acre of the land benefited by the works shall be fixed and the rate may vary in proportion to the benefit received as aforesaid. When water is supplied down a natural channel, a rate per mile of the lands benefited as aforesaid, measured according to the frontage to the channel, may be fixed, and the rate may vary in proportion to the benefit received.
- (b) In connection with the supply of water for domestic purposes, a rate for each separate tenement in the trust district shall be fixed, and the rate may vary in proportion to the benefit received.
- (c)

*Water and Drainage.*

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

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

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

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.

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

**36.** When a trust under this 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.

*Powers of Minister where trust constituted.*

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

Upon

Act No. 59, 1906,  
s. 18.

Trustees may sell  
additional water to  
ratepayers.  
Act No. 93, 1902, s. 28.

Sale of surplus  
water.  
Act No. 59, 1906, s. 13.

The Minister, on request  
by trustees to improve or  
extend any works under  
their charge, may prepare  
an estimate of the cost of  
the proposed work, and  
upon the receipt of an  
intimation from the trust-  
tees that such estimate  
has been approved by a  
special general meeting  
of voters, may proceed  
with the construction of  
proposed works.  
Act No. 93, 1902, s. 29.

*Water and Drainage.*

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

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

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

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

Power of Minister to enter and inspect.  
Act No. 93, 1902,  
s. 30.

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

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

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

Governor may dissolve trust, or appoint a manager.

*General and supplemental.*

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

Trustees to submit to Minister an audited statement of the account of the trust.  
*Ibid.* s. 31.

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

Power of Minister or trustees to construct conduit.  
*Ibid.* s. 32.

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

*Water and Drainage.*

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

41. (1) For the purposes of this Act 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.  
Act No. 59, 1906,  
s. 3.

(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.

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

Power of Minister to  
construct channels  
and embankments.

(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 this Act; or

*Ibid.* s. 14.

(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 this Act.

43. 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 this Act, or to which this Act 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.

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

*Ibid.* s. 15.

44. 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:

As to compensation.

*Ibid.* s. 16.

Provided

*Water and Drainage.*

Provided that where any such power is, after the commencement of the twenty-ninth day of December, one thousand nine hundred and six, 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.

45. Any person who—

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

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

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

- the election of trustees and the making and revision of the rolls of voters, and the mode of voting;
- the election by the trustees of a chairman;
- the intervals within which meetings of trustees must be held;
- the procedure at such meetings;
- the appointment, payment, and dismissal of officers and servants;
- the fixing and notifying of rates;
- the hearing of appeals;
- the collection and recovery of rates and charging the same on lands in respect of which they are payable;
- the keeping of the accounts of trustees;
- regulating the payment to the Crown of interest and charges by the trust;
- regulating the proceedings of the Board;
- regulating special meetings of voters of a trust in pursuance of this Act;
- imposing any penalty not exceeding twenty pounds for any breach of the regulations.

Such regulations shall be published in the Gazette.

Penalties.

Act No. 93, 1902,  
s. 33.

Governor may make  
regulations.

*Ibid.* s. 34.

47.

*Water and Drainage.*

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

Trustees may make by-laws.  
*Ibid.*, s. 35.

prescribing the duties of their officers and servants ;  
for regulating the supply of water from and the use of the works of the trust ;  
prescribing the duties of persons as to the maintenance, clearing, cleansing, and repair of the works of the trust ;  
imposing any penalty not exceeding ten pounds for any breach of the by-laws.

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

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

**48.** All rates and all charges imposed by or under this Act or the regulations or by-laws may be recovered in any Court of competent jurisdiction.

How rates are to be recoverable.  
*Ibid.* s. 36.

SCHEDULE.

Number of Act.	Name of Act.	Extent of repeal.
No. 93, 1902 ...	Water and Drainage Act, 1902 ...	The whole.
No. 59, 1906 ...	Water and Drainage and Artesian Wells (Amending) Act, 1906.	Part II. The Schedule.

The Trustees have organized a Board of Trustees and having this day  
passed a resolution for the purpose of the Executive Committee of the Association

and have appointed the following as the Executive Committee of the Association  
for the year 1900

President - \_\_\_\_\_  
Secretary - \_\_\_\_\_  
Treasurer - \_\_\_\_\_

and have also appointed the following as the Executive Committee of the Association  
for the year 1900

President - \_\_\_\_\_  
Secretary - \_\_\_\_\_  
Treasurer - \_\_\_\_\_

and have also appointed the following as the Executive Committee of the Association  
for the year 1900

President - \_\_\_\_\_  
Secretary - \_\_\_\_\_  
Treasurer - \_\_\_\_\_

and have also appointed the following as the Executive Committee of the Association  
for the year 1900

President - \_\_\_\_\_  
Secretary - \_\_\_\_\_  
Treasurer - \_\_\_\_\_

and have also appointed the following as the Executive Committee of the Association  
for the year 1900

President - \_\_\_\_\_  
Secretary - \_\_\_\_\_  
Treasurer - \_\_\_\_\_

and have also appointed the following as the Executive Committee of the Association  
for the year 1900

President - \_\_\_\_\_  
Secretary - \_\_\_\_\_  
Treasurer - \_\_\_\_\_

and have also appointed the following as the Executive Committee of the Association  
for the year 1900

President - \_\_\_\_\_  
Secretary - \_\_\_\_\_  
Treasurer - \_\_\_\_\_



Legislative Council.

No. , 1909.

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## A BILL

To consolidate the Acts relating to water supply, water conservation, irrigation, and drainage.

[MR. JOHN HUGHES ;—1 *September*, 1909.]

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

*Preliminary.*

1. (1) This Act may be cited as the "Water and Drainage Short title. Act, 1909."

(2) The Acts mentioned in the Schedule hereto are, to the Repeal. extent therein expressed, hereby repealed.

(3) Any board constituted under the provisions of any Act Saving. hereby repealed, and being in existence at the time of the passing of this Act, shall be deemed to have been constituted under the provisions of this Act.

(4) All persons appointed under the provisions of any Act hereby repealed, and holding office at the time of the passing of this Act, shall be deemed to have been appointed under the provisions of this Act.

(5) All regulations and by-laws made under the provisions of any Act hereby repealed, and being in force at the time of the passing of this Act, shall be deemed to have been made under the provisions of this Act.

Interpretation.

Act No. 93, 1902,  
s. 2.

Act No. 59, 1906,  
s. 2.

*Ibid.* s. 2 (3).

Extension of Principal  
Act to flood prevention  
works.

*Ibid.* s. 5.

Effect of Water  
Rights Act.

*Ibid.* s. 17.

Constitution of  
board.

*Ibid.* s. 2 (1) and (2).

**2. In this Act—**

“Minister” means Secretary for Public Works.

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

“Occupier” means person in actual possession.

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

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

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

“The board” means the board constituted by this Act.

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

“Trust” means trust constituted under this Act.

“Trustee” means member of a trust.

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

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

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

**3.** The provisions of this Act relating to works of drainage shall apply to works for the prevention of floods and the control of flood-waters.

**4.** Nothing in the Water Rights Act, 1902, shall affect the exercise of the powers conferred by this Act in relation to a river or lake, as defined by the first-mentioned Act, or shall affect the right of a trust to fix and levy rates under section thirty-four of this Act.

**5.** 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

Department of Public Works as the Governor may appoint, and including, where any work is situated in the Western Division, the Western Land Board constituted under the Western Lands Act of 1901.

*Loans for Works.*

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

Power to raise £200,000 a year for five years for purposes of water supply.  
Act No. 59, 1906, s. 5 and Sched., and s. 6.

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

Stock may be sold in London or Sydney.

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

Creation of stock.

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

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

(5) In respect of any stock issued in London under the provisions of this Act, the Governor may make regulations, not being inconsistent with the provisions of the Inscribed Stock Act, 1902, for carrying this Act into effect; and such regulations shall be published in the Gazette and laid before Parliament within fourteen days of the publication thereof, if Parliament be then sitting, and if Parliament be not sitting, then within fourteen days of the commencement of the next session thereof.

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

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

Sums borrowed, how to be accounted for and appropriated.

(7) Debentures or stock sold or issued under this Act are hereby declared to be for all purposes Government securities; and all corporations and other persons whatsoever shall have power to invest in the purchase of such debentures and stock any property held by them,

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

them, whether as trustees or otherwise, which they are not expressly forbidden to invest in Government stock or securities, without on that account being liable as for a breach of trust or incurring any liability whatsoever, provided that such investment is in other respects reasonable and proper.

*State works.*

Construction of  
"State works."  
Act No. 93, 1902,  
s. 4.

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

*Works of water conservation costing five thousand pounds or less.*

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

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

*Constitution of trusts.*

Constitution of  
trusts.  
*Ibid.* s. 6.  
Act No. 59, 1906,  
s. 5 and Schedule,  
and s. 8.

9. In respect of any work of water conservation, the Minister may, and in respect of any works of water supply, irrigation, or drainage, or for the prevention of floods or the control of flood-waters, the Minister shall notify in the Gazette and in some newspaper circulating in the district affected by such works proposals for the construction of such works, and the constitution of a trust for maintaining, administering, and extending such works.

Contents of  
proposals.  
Act No. 93, 1902,  
s. 7.

10. Any such proposal shall contain—

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

(g)

- (g) the number of trustees being either three or five ;
- (h) the number of years within which the cost of the work shall be extinguished by a sinking fund.

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

Minister on petition by one-third of occupiers and owners to refer proposal to Board for inquiry.  
*Ibid.* s. 8.

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

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

Witnesses' expenses.

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

If no petition, or if Board reports in favour of proposal, the Governor may constitute the trust.  
*Ibid.* s. 9.

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

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

Upon notification of the trust, the Minister may carry out any works described in the proposal.  
Act No. 59, 1906, s. 7.

*Works under other Acts.*

13. The Minister may, out of the funds raised under this Act, or out of the revenue account, or the loan account of the public works fund, carry out any work which he is authorised to carry out under the Public Watering Places Act, 1900, or the Artesian Wells Act, 1897.

Works under Public Watering Places Act and Artesian Wells Act.  
Act No. 93, 1902, s. 10.  
Act No. 59, 1906, s. 7.

*Completion of certain works.*

14. (1) The Minister may notify proposals for the constitution of trusts and for the completion of any works which on the twenty-ninth day of December, one thousand nine hundred and six, were in course of construction by him, and such trusts may be constituted and such

Proposals in respect of works in course of construction.  
Act No. 59, 1906, s. 9.

such works may be completed out of funds raised under this Act, or out of the revenue account or the loan account of the public works fund. The provisions of this Act shall apply to such works.

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 aforesaid date, 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 this Act 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 this Act shall cease to apply thereto.

*Construction of works.*

Works to be carried out under Public Works Act, 1900, and to be "authorised works," and Minister a "Constructing Authority" within that Act.  
Act No. 93, 1902, s. 12.

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

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

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

Construction of works through another district.  
Act No. 59, 1906, s. 21.

16. 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 the 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.

*Transfer to trust.*

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

On notification of completion, trust to take over management.  
Act No. 93, 1902, s. 13.  
Act No. 59, 1906, s. 11.

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 twenty-ninth day of December, one thousand nine hundred and six.

18. 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 this Act in respect of works completed and taken over by a trust, except such powers as are conferred solely on the Minister.

Works not completed taken over by trust.  
Act No. 59, 1906, s. 10.

*Alteration of boundaries of trust districts.*

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

Minister on petition by two-thirds of occupiers or owners to refer proposed alteration to Board.  
Act No. 93, 1902, s. 14.

*Appointment and election of trustees.*

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

In certain cases Minister to appoint trustees; in other to direct their election.  
*Ibid.* s. 15.

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

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

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

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

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

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.

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

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.

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

- (a) In the case of a trust placed in charge of drainage work or irrigation works, or works for the prevention of floods or the control of flood waters, the occupier of an area of land not exceeding fifty acres shall be entitled to one vote; of an area exceeding

Trustees to be elected for three years.

*Ibid.* s. 16.

Method of first election of trustees.

*Ibid.* s. 17.

Act No. 59, 1906, s. 12 (1).

Subsequent election of trustees.

Act No. 93, 1902, s. 18.

Act No. 59, 1906, s. 12 (2).

Cumulative voting.

Act No. 93, 1902, s. 19.

Act No. 59, 1906, s. 5 and Schedule, and s. 12 (3).



exceeding fifty acres but not exceeding three hundred acres, to two votes ; and of an area exceeding three hundred acres, to three votes.

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

- (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. Act No. 59, 1906, s. 12 (3).

**25.** Any person entitled to vote at the election of trustees may be elected as trustee. But no person who has been convicted of any criminal offence shall be capable of being appointed or elected or to act as a trustee, and where a trustee becomes incapable as aforesaid, his office shall become vacant. Qualification of persons entitled to be elected as trustees. Act No. 93, 1902, s. 20.

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

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

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

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

*Powers and duties of trustees.*

**29.** The trustees shall be charged with the duty of maintaining and administering the works of water supply, water conservation, irrigation, and drainage, or for the prevention of floods or the control of flood waters, mentioned in the notification constituting the trust or thereafter constructed within the trust district. Duties of trustees. Ibid. s. 24. Act No. 59, 1906, s. 5, and Schedule.

**30.** Trustees shall have the following duties and powers :— Powers and duties of trustees. Act No. 93, 1902, s. 25.

- (a) They shall maintain in a state of efficiency the works under their charge.
- (b) They shall fix and levy rates to provide for the maintenance and management of such works and for interest, charges, and sinking fund.
- (c) They shall keep proper accounts of all moneys received and paid.

(d)

- (d) They shall pay to the Treasury at such times as may be fixed by the Minister the interest and charges payable by them and make due provision for a sinking fund, and all sums received on account of any such sinking fund shall be carried by the Colonial Treasurer to a special account to be entitled "The Water and Drainage Loan Redemption Fund," and all other sums to the Consolidated Revenue Fund.
- (e) They may appoint, with the sanction of the Minister, such officers or servants as may be required.

Mungyer and Neargo.  
Act No. 59, 1906,  
s. 19.

**31.** The amount for which the trusts of the artesian wells at Mungyer and Neargo are liable under this 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.  
*Ibid.* s. 20.

**32.** The charges which, under this 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.

Power of trustees or their officers to enter and inspect.  
Act No. 93, 1902,  
s. 26.

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

Trustees may fix and levy rates.  
*Ibid.* s. 27.  
Act No. 59, 1906,  
s. 5, and Schedule.

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

- (a) In connection with the supply of water for stock purposes, a rate per acre of the land benefited by the works shall be fixed and the rate may vary in proportion to the benefit received as aforesaid. When water is supplied down a natural channel, a rate per mile of the lands benefited as aforesaid, measured according to the frontage to the channel, may be fixed, and the rate may vary in proportion to the benefit received.
- (b) In connection with the supply of water for domestic purposes, a rate for each separate tenement in the trust district shall be fixed, and the rate may vary in proportion to the benefit received.
- (c)

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

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

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

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. Act No. 59, 1906, s. 18.

35. The trustees shall have power to sell water by measure to any ratepayer in addition to the quantity to which he is entitled by payment of rates. Trustees may sell additional water to ratepayers. Act No. 93, 1902, s. 28.

36. When a trust under this 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. Sale of surplus water. Act No. 59, 1906, s. 13.

*Powers of Minister where trust constituted.*

37. If the trustees by request in writing desire the Minister to improve or extend any works under their charge or increase the quantity of water supplied, the Minister may prepare an estimate of the cost of the proposed work and the interest thereon payable by the trust and a statement of the additional charge to be paid by the trust in respect of the increase of the quantity of water supplied. Such estimate and statement shall be supplied to the trustees. The Minister, on request by trustees to improve or extend any works under their charge, may prepare an estimate of the cost of the proposed work, and upon the receipt of an intimation from the trustees that such estimate has been approved by a special general meeting of voters, may proceed with the construction of proposed works. Act No. 93, 1902, s. 29.

Upon

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

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

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

Power of Minister to enter and inspect.  
Act No. 93, 1902, s. 30.

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

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

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

Governor may dissolve trust, or appoint a manager.

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

*General and supplemental.*

Trustees to submit to Minister an audited statement of the account of the trust.  
*Ibid.* s. 31.

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

Power of Minister or trustees to construct conduit.  
*Ibid.* s. 32.

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

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

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

41. (1) For the purposes of this Act 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.  
Act No. 59, 1906,  
s. 3.

(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.

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

Power of Minister to  
construct channels  
and embankments.

- (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 this Act; or

*Ibid.* s. 14.

- (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 this Act.

43. 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 this Act, or to which this Act 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.

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

*Ibid.* s. 15.

44. 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:

As to compensation.

*Ibid.* s. 16.

Provided

Provided that where any such power is, after the commencement of the twenty-ninth day of December, one thousand nine hundred and six, 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.

Penalties.

Act No. 93, 1902,  
s. 33.

45. Any person who—

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

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

Governor may make  
regulations.

*Ibid.* s. 34.

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

- the election of trustees and the making and revision of the rolls of voters, and the mode of voting;
- the election by the trustees of a chairman;
- the intervals within which meetings of trustees must be held;
- the procedure at such meetings;
- the appointment, payment, and dismissal of officers and servants;
- the fixing and notifying of rates;
- the hearing of appeals;
- the collection and recovery of rates and charging the same on lands in respect of which they are payable;
- the keeping of the accounts of trustees;
- regulating the payment to the Crown of interest and charges by the trust;
- regulating the proceedings of the Board;
- regulating special meetings of voters of a trust in pursuance of this Act;
- imposing any penalty not exceeding twenty pounds for any breach of the regulations.

Such regulations shall be published in the Gazette.

47.

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

Trustees may make by-laws.  
*Ibid.*, s. 35.

prescribing the duties of their officers and servants ;  
for regulating the supply of water from and the use of the works of the trust ;  
prescribing the duties of persons as to the maintenance, clearing, cleansing, and repair of the works of the trust ;  
imposing any penalty not exceeding ten pounds for any breach of the by-laws.

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

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

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

How rates are to be recoverable.  
*Ibid.* s. 36.

SCHEDULE.

Number of Act.	Name of Act.	Extent of repeal.
No. 93, 1902 ...	Water and Drainage Act, 1902 ...	The whole.
No. 59, 1906 ...	Water and Drainage and Artesian Wells (Amending) Act, 1906.	Part II. The Schedule.

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