

**DRAINAGE ACT 1939 No 29**

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[STATE ARMS]

New South Wales

**Drainage Act 1939 No 29**

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[STATE ARMS]

New South Wales

## **Drainage Act 1939 No 29**

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

### **Part 1 - Preliminary**

#### **1 Name of Act and commencement**

- (1) This Act may be cited as the *Drainage Act 1939*.
- (2) This Act shall commence upon a date to be appointed by the Governor and notified by proclamation published in the Gazette.

#### **2 Amendments and repeal**

- (1) **Note.** The amending provisions relating to the *Water Act 1912* are not reprinted: *Reprints Act 1972*, section 6.
- (2) **Note.** The amending provisions relating to the *Water (Amendment) Act 1919* are not reprinted: *Reprints Act 1972*, section 6.
- (3) The *Water (Costs Declaratory and Flood Prevention) Act 1924* is repealed.

#### **3 By-laws and regulations continued and savings**

- (1) (a) All by-laws made in pursuance of Part 3 of the *Water Act 1912–1936*, or any provisions which that Part replaced, by the trustees of any drainage trust shall continue in force until repealed by regulations made under this Act.
- (b) All regulations made by the Governor in pursuance of Part 3 of the *Water Act 1912–1936* or any provisions which that Part replaced and which relate to drainage trusts shall continue in force until repealed by regulations made under this Act.
- (c) All by-laws made in pursuance of Part 4 of the *Water Act 1912–1936* or any provisions which that Part replaced shall continue in force until repealed by regulations made under this Act.
- (2) On and from the commencement of this Act the following provisions shall have effect:
  - (a) all proclamations and notifications made or deemed to have been made under the *Water Act 1912–1936* relating to any union or trust to which this Act applies, and in particular any such proclamation or notification relating to:
    - (i) the cost of works,
    - (ii) the number of years within which the cost of works shall be extinguished,
    - (iii) the rate of interest on amounts due to the Colonial Treasurer, and
    - (iv) the instalments of such amounts,and in force at the commencement of this Act shall continue in force as if this Act had not been enacted,
  - (b) all rates, charges, fees, and sums of money which were immediately before the commencement of this Act due or payable to or leviable by or for any union or trust constituted or deemed to have been constituted under the *Water Act 1912–1936* shall be paid to and may be received, levied, and recovered by the board of the union or trust constituted by or under this Act for the district comprising the tract of land or trust district of such first-mentioned union or trust,
  - (c) all appraisements or assessments of the benefit received or estimated to be received by any lands within a district made for the purpose of rating such lands shall remain in force, and shall be used in connection with making and levying rates under this Act, until replaced by valuations made in pursuance of this Act,
  - (d) all suits, actions, and proceedings pending immediately before the commencement of this Act at the suit of a union or trust constituted or deemed to have been constituted under the *Water Act 1912–1936* shall be suits, actions, and proceedings pending at the suit of the board of the union or trust constituted by or under this Act for the district comprising the tract of land or trust district of such first-mentioned union or trust,
  - (e) all contracts, agreements, and undertakings entered into with and all securities lawfully given to or by a union or trust constituted or deemed to have been constituted under the

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

#### 4 Definitions

In this Act and any regulations made thereunder, unless the context or subject matter otherwise indicates or requires:

**Board** means board of directors of a union or trust.

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

**Director** means director of a union or trust.

**District** means the area for the time being of a union or trust.

**Drain** includes a natural watercourse.

**Local land board** means the land board for the land board district in which a work is situated, or if the work be situated in more than one land board district, such land board as the Ministerial Corporation may name.

**Ministerial Corporation** means the Water Administration Ministerial Corporation constituted by the *Water Administration Act 1986*.

**Owner** in relation to land includes every person who jointly or severally whether at law or in equity in respect of lands within a district:

- (a) is entitled to the land for an estate of freehold in possession, or

- (b) is a person to whom the Crown has lawfully contracted to sell the land under the *Crown Lands Consolidation Act 1913* or any other Act relating to the alienation of lands of the Crown, or
- (c) is entitled to receive, or is in receipt of, or if the land were let to a tenant would be entitled to receive the rents and profits thereof, whether as beneficial owner, trustee, mortgagee in possession, or otherwise, and includes every person who by virtue of this Act is deemed to be the owner:

Provided that the Crown shall be deemed to be the owner of:

- (a) all lands of the Crown, and
- (b) all lands vested in a statutory body representing the Crown or any other body prescribed by the regulations for the purposes of this paragraph.

***Owned*** and similar expressions have a meaning corresponding with that of owner.

***Prescribed*** means prescribed by this Act or by any regulations under this Act.

***Secretary*** means secretary of a union or trust.

***Works*** includes drains, embankments, flood-gates, tide-gates, pipes, fencing, machinery, appliances or structures used or proposed to be used by a board, whether within or outside the boundaries of a district.

## **5 Certain Acts not affected**

Unless otherwise expressly provided, nothing in this Act shall affect any of the provisions of:

the *Local Government Act 1993*,  
the *Water Board (Corporatisation) Act 1994*,  
the *Hunter Water Board (Corporatisation) Act 1991*,  
the *Irrigation Act 1912–1931*,  
the *Water Act 1912–1936*,  
the *Reclamation Act 1930*, or  
any Acts amending any of the said Acts.

## **Part 2 - Existing unions and trusts**

### **6 Existing unions**

- (1) Every tract of land within the limits of a drainage union which was constituted or deemed to have been constituted under Part 4 of the *Water Act 1912–1936* and which was in existence immediately before the commencement of this Act, shall be deemed to be a district for the purposes of this Act.
- (2) Every such union shall be deemed to have been constituted under this Act.
- (3) The directors of any such union holding office immediately before the commencement of this Act shall, subject to this Act, be the directors of the union until the day appointed for the first election of directors.

### **7 Existing trusts**

- (1) Every trust district over which, immediately before the commencement of this Act, a trust constituted or deemed to have been constituted under Part 3 of the *Water Act 1912–1936* for the purpose of any work of drainage, had



jurisdiction under that Act, shall be deemed a district for the purposes of this Act.

- (2) The trust so constituted for any such trust district shall, for the purposes of this Act, be the trust for such district.
- (3) The trustees of any such trust holding office immediately before the commencement of this Act shall, subject to this Act, be the directors of the trust until the day appointed for the first election of directors.
- (4) (Repealed)
- (5) Any amount which, immediately before the commencement of this Act, was due by a trust constituted or deemed to have been constituted under Part 3 of the *Water Act 1912–1936* for the purpose of any work of drainage, to the Colonial Treasurer in respect of works transferred to such trust in pursuance of the provisions of such Part, whether such amount is for capital cost, interest, or otherwise, shall be an amount due by the board of the trust constituted by or under this Act for trust district of such first-mentioned trust.
- (6)
  - (a) When all amounts due to the Colonial Treasurer immediately before the commencement of this Act have been repaid the trust shall cease to be a trust, and shall be deemed to be a union constituted under this Act.
  - (b) In any case where all amounts due to the Colonial Treasurer by a trust were repaid before the commencement of this Act, the trust shall, as from such commencement, be deemed to be a union constituted under this Act.
  - (c) Nothing contained in this subsection shall prejudice or affect in any way the continuity of a body corporate constituted by this Act but any such body corporate shall continue notwithstanding the provisions of this subsection.
- (7) Where by reason of payments of moneys to the Colonial Treasurer a trust is deemed to be a union constituted under this Act the directors or the manager, as the case may be, shall have and may exercise and perform all the powers, authorities, duties and functions of a board elected under this Act until the day appointed for the first election of directors.

### **Part 3 - Constitution of unions**

#### **8 Application for constitution of union**

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

#### **9 Particulars of application**

- (1) The application shall be signed by at least one-fourth the number of owners of land included in such tract, and shall set out:
  - (a) the locality and boundaries of the tract proposed to be drained, or protected against floods or tides,

- (b) the nature and cause of the accumulation of water or flooding,
  - (c) the name and description of every owner of lands within the tract, and the respective portions and area held by each,
  - (d) the name suggested and the number of directors proposed for the union,
  - (e) a description of the works proposed to be constructed or used.
- (2) The application shall be in the prescribed form and shall be accompanied by the prescribed fee.
  - (3) The Ministerial Corporation may require additional information in respect of any application.

#### **10 Publication of notices**

- (1) The Ministerial Corporation shall cause notice of the application to be published in the Gazette and in a newspaper circulating in the locality.
- (2) The notice in the Gazette shall:
  - (a) indicate the boundaries of the tract of land proposed to be drained, or protected against floods or tides,
  - (b) give a short description of the works proposed to be constructed or used,
  - (c) appoint a time (not being earlier than eight weeks after the date of publication of the notice in the Gazette) and place at which objections may be lodged.

#### **11 Inquiry**

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

#### **12 Constitution of union**

- (1) Where no such inquiry is held, or where the person holding such an inquiry reports in favour of the application with or without modification the Governor may constitute a drainage union in conformity with the application, or with such modifications, if any, as the Ministerial Corporation may recommend.
- (2) The constitution and name of the union and a plan and description of the boundaries of its district shall be notified by the Ministerial Corporation in the Gazette.

### **Part 4 - Administration**

#### **13 Board of directors**

- (1) The powers, authorities, duties, and functions of each union and trust shall be vested in and may be exercised and performed by a board of directors.
- (2) The board of a union shall consist of not less than three nor more than seven directors.
- (3) The board of a trust shall consist of three directors.

#### **14 Incorporation of board**

- (1) Each board shall be a body corporate with perpetual succession and a common seal, and may sue and be sued in its corporate name and shall for the purposes and subject to the provisions of this Act be capable of

purchasing, holding, granting, demising, disposing of and alienating real and personal property, and of doing and suffering all such other acts and things as bodies corporate may by law do and suffer:

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

- (2) The corporate name of a board shall be "the Board of Directors of the Drainage Union (or Trust)".
- (3) No act or proceeding of the board shall be invalidated or prejudiced by reason only of the fact that at the time when such act or proceeding was done, taken or commenced there was a vacancy in the office of any member.

#### **15 Appointment and election of directors**

- (1) The Ministerial Corporation shall appoint one director of each trust.
- (2) Where any Crown lands are included in the district of any union, the Ministerial Corporation may appoint one director of such union.
- (3) Any directors appointed under subsection (1) or subsection (2) are in this Act referred to as "appointed directors".
- (4) The remaining directors of any trust or of any union of which the Ministerial Corporation has appointed a director, and all the directors of any other union shall be elected in the manner prescribed by the persons whose names are on the roll of voters of such trust or union.
- (5) Any directors so elected are in this Act referred to as "elected directors".

#### **16 Qualification for office**

- (1) Unless disqualified by this Act, every person whose name is on the roll of voters compiled under this Act shall be qualified for office as an elected director.
- (2) A person shall be disqualified for office as an elected director if:
  - (a) the person is not qualified or is disqualified to be a voter, or
  - (b) the person has not before nomination paid all moneys in excess of the sum of fifty cents that were at any time before the end of the month preceding that in which nomination day falls, due by the person to the board, or
  - (c) the person has been convicted of a felony and has not received a free pardon or served his or her sentence, or
  - (d) the person converts to his or her own use any property of the board.

#### **17 Tenure of office of directors**

- (1) Elected directors shall, subject to the provisions of this Act, hold office until their successors are elected, and shall be eligible for re-election.
- (2) An extraordinary vacancy in the office of an elected director shall, subject to the provisions of this Act, be filled by the election of a director in the manner prescribed.

The director so elected shall, subject to the provisions of this Act, hold office for the balance of the predecessor's term of office.
- (3) An appointed director shall hold office until death or resignation or until removed by the Ministerial Corporation.

#### **18 Office of director**

The office of an elected director shall:

- (a) commence on the day of election,

- (b) become vacant on the election of the director's successor or on the occurrence of an extraordinary vacancy.

## **19 Oath and declaration of office**

- (1) Before acting in office as a director, a person elected or appointed thereto shall before a justice of the peace (to whom it shall not be necessary to issue a writ of dedimus potestatem) take and subscribe and transmit to the secretary an oath of allegiance to His Majesty and make and subscribe and transmit to the secretary the following declaration of office:  
"I, \_\_\_\_\_ having been elected  
(or appointed) a director of the  
Drainage Union (or Trust) do hereby declare that  
I will duly and faithfully fulfil the duties of  
the office according to the best of my judgment  
and ability."
  - (2) Any neglect to transmit such oath and declaration to the secretary within one month after election or appointment shall be deemed a refusal to accept office, and to cause an extraordinary vacancy.

## **20 Extraordinary vacancy**

An extraordinary vacancy in the office of an elected director shall occur if such director:

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

## **21 Attendance at meetings**

- (1) If any elected director does not attend at least one half the meetings of the board held during any year the director shall at the end of such year cease to hold office, but shall be eligible for re-election if not otherwise disqualified.
- (2) This section shall not apply to any absence caused by illness or other sufficient cause if:
  - (a) such illness or other sufficient cause is duly set out in apologies received at the meetings from which the director was absent, and if such apologies are accepted by resolution of the board, or
  - (b) the period of absence so caused is covered by leave of absence granted by the board before or after the absence, and before the end of the year, and the resolution granting such leave sets out the cause thereof.
- (3) Where any such director was not in office at the commencement of the year any meetings held before his or her entry into office shall not in his or her case be counted in determining the number of meetings held during the year.

## **22 Quorum**

- (1) Business shall not be transacted at any meeting of the board unless a quorum is present.
- (2) The regulations may prescribe either generally or in respect of any particular board, or class of board, the number of directors which shall constitute a quorum.

## **23 Returning officer**

- (1) (a) For the purposes of:
  - (i) the first election of directors after the commencement of this Act,
  - (ii) the first election of directors after a union has been constituted or is deemed to have been constituted, and
  - (iii) the first election after the Ministerial Corporation has directed an election of directors in accordance with section 37,
 the Ministerial Corporation shall appoint a returning officer.
- (b) Subject to paragraph (a) the returning officer shall be appointed by the board.
- (2) A director or a candidate for the office of director shall not be eligible for such appointment.
- (3) The duties of a returning officer shall be as prescribed.

## **24 Election of directors**

- (1) Elections of directors shall, except as provided in this section, take place on the days appointed therefor respectively.
- (2) If it appears to the Ministerial Corporation to be impracticable or inconvenient to hold an election on the day appointed, the Ministerial Corporation may appoint a subsequent day, not being more than one month thereafter.
- (3) Where the time for the holding of a triennial ordinary election of directors is postponed in any district the election of chairperson of the board shall be postponed and shall be held at the first meeting of the board after the day of election of directors, and in such case the chairperson in office immediately before the election of directors may, if he or she is an appointed director, or if, being an elected director, he or she is re-elected as a director, act as chairperson until his or her successor is elected.
- (4) In the case of an extraordinary vacancy occurring within the last six months of any board's term of office, the Ministerial Corporation may order that an election shall not be held; but notwithstanding any such order the Ministerial Corporation may subsequently authorise the holding of an election to fill the vacancy, and appoint a day therefor.

## **25 Appointed days for elections**

The appointed day for an election of directors shall be:

- (a) for the first election in accordance with this Act—the second day of February, one thousand nine hundred and forty,
- (b) for ordinary elections after the year one thousand nine hundred and thirty-nine—the last Friday in November, one thousand nine hundred and forty-two and the corresponding Friday in every third year thereafter,
- (c) for the first election after a union has been constituted, or is deemed to have been constituted by the operation of section 7 or section 58 or for the first election after the Ministerial Corporation has directed an election of directors in accordance with section 37—a Friday to be notified by the Ministerial Corporation: Provided that the next succeeding election shall be held on the day appointed for ordinary elections under paragraph (b),

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

## **26 Validity of elections**

- (1) No election under this Act shall be invalid by reason only of any of the following irregularities, that is to say:
  - (a) any formal defect or error in or relating to the election, if the election was held substantially in accordance with this Act, or
  - (b) any defect or want of title of any person who acted as returning officer.
- (2) If the Governor proclaims that any such irregularity does not invalidate the election, the proclamation shall be conclusive as to the matter stated therein.

## **27 Lapsed or void elections**

- (1) If an election under this Act does not take place on a day appointed therefor or is afterwards declared void for any reason, the board shall not thereby be deemed to be dissolved or to be disabled from taking any necessary steps for the election of directors in the future.
- (2) In any such case the election shall be held as in the case of an extraordinary vacancy, and every act necessary to be done for completing the election shall be as valid as if the election were held upon the day or within the time originally appointed for that purpose.

## **28 Plural voting**

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

- (a) not exceeding 20 hectares, one vote,
- (b) exceeding 20 hectares but not exceeding 120 hectares, two votes,
- (c) exceeding 120 hectares, three votes.

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

## **29 Roll of voters etc**

- (1) Where an election of a director or a general meeting is to be held the returning officer shall prepare a roll of voters in the manner and within the time prescribed.
- (2) The roll shall include the names and descriptions of all owners within the district, including the Crown and the lessees of the Crown, the area of land held by each, and the number of votes to which each is entitled.
- (3) Any Magistrate shall constitute a revision court.
- (4) A revision court shall hear claims and objections and revise the roll of voters as prescribed.
- (5) A revision court shall, for the purposes of this Act, have the powers of a Local Court, and the appointment and procedure of such revision court shall be as prescribed.

## **30 Office of chairperson**

- (1) Each board shall at the first meeting held after an ordinary election of directors elect one of its members to be the chairperson.
- (2) The chairperson shall hold office for one year, and shall be eligible for re-election.

### **31 Secretary and auditor**

- (1) Every board shall appoint and employ a secretary and an auditor, and on the occurrence of a vacancy shall, within three months thereafter, appoint and employ a secretary or auditor to fill such vacancy.
- (2) The duties of a secretary and of an auditor shall be as prescribed.
- (3) The secretary may be required to give security for due performance of his or her duties.

### **32 Powers and duties of boards etc**

- (1) A board shall have the following powers and duties:
  - (a) it shall maintain in a state of efficiency the works under its charge, and renew such works where necessary,
  - (b) it may construct, alter, or extend any works in accordance with any authority and consent given under this Act,
  - (c) it shall make, levy and collect rates,
  - (d) it shall pay to the Colonial Treasurer any amounts due,
  - (e) it may appoint such officers and servants as may be required,
  - (f) it shall institute where necessary legal proceedings for the recovery of outstanding rates or other amounts,
  - (g) it shall keep the prescribed books and accounts,
  - (h) generally it shall manage the affairs of the union or trust and do such acts as may be necessary or desirable for carrying out the purposes of this Act.
- (2) The construction of works outside a district shall not be commenced until the consent of the Ministerial Corporation has been obtained.
- (3) The provisions of Part 2 of the *Water Act 1912–1936* relating to licences and permits shall not apply and shall be deemed never to have applied to or in respect of the works of any union or trust constructed before the commencement of this Act.
- (4) No works affecting any navigable waters shall be commenced without the sanction of the Governor.

In this section the expression "navigable waters" has the meaning given to that expression in Part 8 of the *Navigation Act 1901–1935*.

### **33 Entry on lands**

- (1) A board or any person authorised by it may enter any land within or outside its district for the purpose of making inspections or surveys, constructing, maintaining and effecting extensions and alterations to the works, and for any other purpose in the exercise of its powers and duties, notwithstanding that no easement or right to enter or use such land may have been granted or acquired.
- (2) The board shall make full compensation for damage occasioned to any land in the exercise of its powers and duties under this Act.

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

Failing agreement as to the amount of compensation to be paid, the board or any person interested in the subject-matter of any claim for compensation may refer the claim to the local land board which shall consider such claim.

The decision of the local land board shall be final.
- (3) For the purposes of this section land includes street or road.

### **34 Extension of works**

The board shall carry out such extensions of works as are authorised by a majority of votes cast at a general meeting:

Provided that in the case of a trust, the consent of the Ministerial Corporation shall be obtained before the extensions are commenced.

### **35 Amendment of boundaries**

- (1) The boundaries of a district may from time to time, on application by the board, be amended by the Governor.
- (2) Any such application shall contain particulars of the lands proposed to be added to or excised from the district, and which have or are capable of being increased in value or which have decreased in value respectively by reason of the operations of the board.
- (3) The Ministerial Corporation shall cause notices of any such application to be published in a newspaper circulating in the locality.
- (4) The notice shall:
  - (a) give particulars of the lands proposed to be added to or excised from the district,
  - (b) appoint a time (not being earlier than eight weeks after the date of publication of the notice) and place at which objections may be lodged.
- (5) After expiration of the appointed time and upon consideration of any objection lodged the Ministerial Corporation may recommend and the Governor may approve an application with such modification, if any, as the Ministerial Corporation, upon investigation, may recommend.
- (6) The approval of the Governor, and particulars of the alterations made in the boundaries of the district, shall be notified by the Ministerial Corporation in the Gazette.

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

- (7) This section shall apply to trusts and to unions constituted either before or after the commencement of this Act, but shall not authorise an amendment of the boundaries of the district of a trust so as to exclude from such district any ratable land.

### **36 Power of entry**

- (1) A person authorised by the Ministerial Corporation may at any time enter a trust district and:
  - (a) inspect or survey the works, and
  - (b) inspect the records and accounts of the board.
- (2) If, as a result of an inspection, the Ministerial Corporation is satisfied that the works are not kept in repair and efficient working order, the Ministerial Corporation may cause to be made such repairs or renewals as the Ministerial Corporation considers to be necessary.
- (3) For the purposes of subsection (2), the Ministerial Corporation has the powers of the board and the cost of any repairs or renewals made shall be repaid as prescribed.

### **37 Ministerial Corporation's power to remove directors of a trust**

- (1) In the event of any delay in the election of directors of a trust, or in the event of any default by a director or the board of a trust in the discharge of the director's or the board's duties under this Act or any regulation made hereunder, or of the voters failing to elect the required number of directors, the Ministerial Corporation may by notification published in the Gazette remove a director or the board, if any, from office and either:



- (a) direct the election of another director or another board, or
- (b) appoint a manager of the affairs of the trust and vest in the manager all the powers, authorities, duties, and functions by this Act conferred or imposed on the board:

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

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

## **Part 5 - Rating**

### **Division 1 - Valuations**

#### **38 Appointment of valuer**

- (1) Each board shall, from time to time, appoint a valuer who shall make valuations in accordance with this Act.
- (2) A valuer appointed under this Act shall determine the increased value accrued, accruing or to accrue to each portion of land within the district by reason of works used or proposed to be used by the board.
- (3) The provisions contained in the Schedule shall apply to valuations made under this Act.

#### **39 Valuations for existing boards**

- (1) The board of each of the unions and trusts which are deemed to have been constituted under Part 2 shall appoint a valuer for the purposes of section 38 within sixty days after the commencement of this Act.
- (2) A valuer appointed under this section shall make the valuations within three months of his or her appointment.
- (3) The Ministerial Corporation may, upon application by a board:
  - (a) extend the time for the appointment of a valuer,
  - (b) authorise that an appointment be not made under this section, or
  - (c) extend the time for making the valuations.
- (4) Valuations made under this section shall come into force on the first day of January, one thousand nine hundred and forty.

#### **40 Valuations for new boards**

The first valuation made for a board constituted after the commencement of this Act shall come into force either on the first day of January preceding or the same day following the making as the board may decide.

#### **41 Valuations after first valuation**

A valuation made after the first valuation in accordance with section 39 or section 40 shall come into force on the first day of January next following the making.

## **Division 2 - Making and levying rates**

#### **42 Annual estimates**

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

- (a) Construction, maintenance, extension and alteration of works.
- (b) Payment to the Colonial Treasurer of any amounts due or becoming due.
- (c) Repayment of loans, and payment of interest thereon.
- (d) Defraying costs of administration.
- (e) Meeting all other expenditure whatsoever in carrying out its powers, authorities, duties and functions.

#### **43 Rates, making and levying**

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

Provided that rates so made and levied shall not, except with the consent of the Ministerial Corporation previously obtained, exceed:

- (a) in the case of a union—ten per centum on the aggregate of the increased value of all land within the district, or the maximum amount levied in any year before the commencement of this Act, whichever is the greater,
  - (b) in the case of a trust—the maximum rate which, immediately before the commencement of this Act, might be assessed under the *Water Act 1912–1936*.
- (2) Every such rate shall:
  - (a) be made by resolution of the board,
  - (b) be levied by the service of a rate notice.
- (3) Every rate shall be levied in respect of a separate parcel of land, but any rate in respect thereof may be included in the same rate notice with any rate in respect of the same or different land.
- (4) In any case where the name of any owner liable to pay the rate is not known to the board, it shall be sufficient to rate such owner by the designation of "owner" without stating the owner's name.
- (5) Where land which was not ratable has become ratable the rate thereon shall be proportionate to the portion of the year during which the land is ratable; and in any such case the first valuation made of the land after it becomes ratable shall be deemed to have come into force concurrently with the land becoming ratable.
- (6) Where land which was ratable has not been valued because of omission from the valuation book, the first valuation thereof after discovery of the omission shall come into force as from the first day of January of the then current year; and the rate may be levied accordingly.
- (7) Rates may be levied in respect of all ratable land within the district.
- (8) All land within a district in respect of which any increased value has been appraised or assessed under the *Water Act 1912–1936*, or has been determined under this Act, shall be ratable, except land owned by the Crown (not being land held under a lease from the Crown by any person for private purposes) which is situated within the district of a trust or within the

district of a union which, pursuant to section 7 or section 58, has ceased to be a trust and is deemed to be a union constituted under this Act.

#### **44 Irregularities**

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

#### **45 Rate-book**

- (1) Every rate shall be entered in a rate-book which shall be in the prescribed form.
- (2) An alteration or amendment in the rate-book may be made in respect of any rate by altering such of the particulars entered therein as may be prescribed.
- (3) An alteration or amendment in the rate-book shall have effect upon adoption by the board as though made when the rate was made.
- (4) An alteration or amendment in the rate-book made in conformity with the resolution of the board shall be made in the prescribed manner.

### **Division 3 - Liability for rates**

#### **46 Due date**

Every rate shall be due and payable to and recoverable by the board on the expiration of one month after service of the rate notice.

#### **47 Liability of owner**

Every rate shall, except where this Act otherwise expressly provides, be paid to the board by the owner of the land in respect of which the rate is levied.

#### **48 Liability of occupier**

- (1) Where the ratable person:
  - (a) is a resident outside New South Wales, or
  - (b) is unknown to the board, or
  - (c) has not after reasonable efforts by or on behalf of the board to effect service been served in any legal proceedings for the recovery of the rate, or
  - (d) is a bankrupt, or
  - (e) dies, or
  - (f) has had a verdict or judgment against him or her for the amount of the rate,

the board may serve upon any person in occupation of the land a notice of the amount of the rate, or of such verdict or judgment, and a demand that any rent then due or thereafter to become due by such person in respect of the land be paid by that person as it falls due to the board in liquidation of the amount of the rate, or verdict, or judgment.

- (2) In default of payment of rent as aforesaid the board may recover from such person in occupation the amount of the demand or any outstanding portion thereof, as a debt.
- (3) Any payment to the board under this section shall be a valid discharge to the payer for such rent as against all other persons whomsoever.

- (4) Nothing in this section shall apply to a person who is in occupation for or on behalf, or as an officer or employee of the Crown, or as an employee of any council (within the meaning of the *Local Government Act 1993*).

**49 Lessees of land owned by the Crown**

- (1) Where the land is owned by the Crown and is held by any person under lease therefrom the rate shall be paid to the board by the holder of the lease.
- (2) Where the land is held under a lease from the Crown by two or more persons successively in the same year, whether with or without any interval between their holding, the board may, if it thinks fit:
- (a) make such adjustment (if any) of the rate, whether paid or unpaid, as it thinks proper between such persons,
  - (b) recover from each of such persons that person's proportion of the rate as fixed by the adjustment,
  - (c) make any refund in accordance with the adjustment,
  - (d) write off any amount in respect of the interval between the holding of such persons.

**50 Joint owners**

- (1) Where land is owned or held jointly by two or more persons, such persons shall be jointly and severally liable to the board for the rate, but as between themselves each shall only be liable for such part of the rate as is proportionate to his or her interest in the land.
- (2) If any of such persons pays to the board more than his or her proportionate part, he or she may recover the excess by way of contribution from the others.

**51 Tenant may recover proportion of rates**

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

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

**Division 4 - Miscellaneous**

**52 Charge of rates on land**

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

Provided that:

- (a) no such charge for any rate or costs shall be of any effect as against a bona fide purchaser for value who at the time of purchase made due inquiry but had no notice of the liability, and
- (b) a purchaser shall be deemed to have made due inquiry who has in good faith obtained a certificate of the secretary as to the amount (if any) due in respect of rates and costs.

- (2) Where the land is owned by the Crown the charge shall not affect or extend to:
  - (a) the estate or interest of the Crown in the land, or
  - (b) the estate or interest of any person holding under a lease from the Crown where the lease is granted after the rate is levied, whether the land has been previously held under a lease from the Crown or not.
- (3) The charge shall rank *pari passu* with any charge on the land under any other Act.

**53 Notice of transfer**

- (1) If a person liable to pay rates in respect of any ratable land transfers his or her estate or interest in such land, or in any part thereof, such person and the transferee shall (except as provided in this section) within one month of such transfer give notice thereof to the board.
- (2) It shall not be necessary to give notice under this section of any mortgage nor of the discharge of any mortgage.

**54 Overdue rates, extra charge**

- (1) Overdue rates shall be increased in accordance with this section.
- (2) If any rate is unpaid at the expiration of three months from the due date, the amount due shall be increased by a sum calculated at the rate of five per centum per annum, and the increase shall be deemed to be part of such rate.
- (3) The calculation under subsection (2) shall be made in respect only of as many complete months as have expired between the due date and the date of payment, excluding any remaining portion of a month.
- (4) If in any case the percentage is less than three cents, the increase shall be three cents.
- (5) The charge under this section shall continue to apply to all unpaid rates notwithstanding that judgment may have been obtained in any court.

**55 Sale of land for rates**

- (1) Where any rate levied in respect of land within a district after the commencement of this Act is overdue for more than seven years, the board may apply to the Public Trustee to sell the land.
- (2) Division 5 of Part 2 of Chapter 17 of the *Local Government Act 1993* applies to the sale of land under this section as if the board were a council within the meaning of that Act.
- (3) For the purposes of subsection (2), a reference in those provisions to the general manager or public officer of a council is taken to be a reference to the appropriate officer of the board.
- (4) For the purposes of subsection (2) and the application of section 716 (3) of the *Local Government Act 1993*, land may be sold to the board, a member of the board, a relative of a member of the board, a member of staff of the board or a relative of a member of staff of the board in the case of sale by public auction, but may not be so sold in the case of sale by private treaty.

**Part 6 - Borrowing**

**56 Governor's consent to loans**

- (1) Except as provided in this Part the board of a union or of a trust shall not borrow for any purpose or in any way whatever.

- (2) There shall be three methods only in which the board of a union or trust may borrow. These methods are by way of:
  - (a) limited overdraft,
  - (b) ordinary loan,
  - (c) renewal loan.
- (3) The board of a union or trust shall not borrow by way of ordinary loan or renewal loan unless the consent of the Governor has been previously obtained and the terms of the loan approved by the Governor.  
The consent of the Governor to a borrowing by the board of a trust by way of ordinary loan shall not be given except when the borrowing is authorised under subsection (4) of section 58 or is for the purpose of paying an amount due to the Colonial Treasurer.
- (4) The consent of the Governor to a borrowing by the board of a union or trust by way of ordinary loan or renewal loan shall for the purpose of any security in respect of such borrowing be conclusive evidence that the board is authorised to borrow the amount mentioned in the instrument of consent.

#### **57 Limited overdrafts**

- (1) The board of a union or trust may borrow by way of limited overdraft.
- (2) Subject to this section the amount which may be borrowed by the board by way of overdraft shall not exceed one half of the income of the board, that is to say:
  - (a) one half of the income as shown by the last audited accounts, or
  - (b) if there are no audited accounts, one half of the income as estimated by the board.
- (3) No greater sum shall be borrowed under this section than the amount stated in a certificate of the auditor of the board as being the sum which may be borrowed within the limits imposed by this section.
- (4) The board may borrow and re-borrow from time to time within the limits provided by this section.
- (5) A certificate in the prescribed form purporting to be the certificate of the auditor of the board shall be conclusive as regards any lender that the amount mentioned therein may be lawfully borrowed and such certificate shall continue to be operative as regards any lender until such lender shall receive a new certificate.

#### **58 Extinction of debt to Crown**

- (1) Where an amount is payable or is deemed to be payable by a trust to the Colonial Treasurer under the *Water Act 1912–1936* or this Act, and the Ministerial Corporation is satisfied, after due public inquiry, by some person appointed by the Ministerial Corporation for the purpose, that:
  - (a) the trust is not reasonably capable of discharging its obligations in respect of the unpaid portion of that amount, or
  - (b) the works upon which such amount or any part thereof was expended were not fully advantageous to the trust,
 the Ministerial Corporation may certify to the Governor the sum which, in the opinion of the Ministerial Corporation, may be accepted in full settlement of the unpaid portion of that amount.
- (1A) A public inquiry shall not be held under subsection (1) unless an application for the review of the indebtedness of the trust concerned is lodged with the Ministerial Corporation on or before the thirty-first day of March, one thousand nine hundred and forty-one.

- (2) Upon the approval of the Governor of a certificate given under subsection (1) the board of the trust concerned may, at any time within the period specified in the certificate, pay to the Colonial Treasurer the sum stated in the certificate; and upon payment by the trust to the Colonial Treasurer of such sum, the liability in respect of which the certificate was given shall be deemed to be extinguished, and the trust shall cease to be a trust and shall be deemed to be a union constituted under this Act.  
Nothing contained in this subsection shall prejudice or affect the continuity of a body corporate constituted by this Act but any such body corporate shall continue notwithstanding the provisions of this subsection.
- (3) A certificate shall not be given under this section after the thirty-first day of December, one thousand nine hundred and forty-one.
- (4) Where the Governor has approved of a certificate given under this section the board of the trust concerned may borrow any sum not exceeding the sum stated in the certificate on such terms as the Governor may approve.
- (5) The board shall apply the sum so borrowed for the purpose of payment of the sum stated in the certificate.

#### **59 Security**

Any moneys borrowed by a board in accordance with this Act shall be deemed to be secured upon the income of the board.

#### **60 Protection of investors**

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

#### **61 Debentures etc**

- (1) For securing the repayment of the principal and interest of any moneys borrowed in accordance with this Act a board may in the prescribed manner issue debentures, mortgage-deeds or bonds in or to the effect of forms to be prescribed.
- (2) All such debentures, mortgage-deeds or bonds shall notwithstanding the provisions of any other Act have priority as between the respective holders thereof according to their respective dates of execution:  
Provided that a debenture, mortgage-deed or bond given by a board for securing the repayment (with or without interest) of a renewal loan raised for the purpose of repaying or renewing (in whole or part) any loan (with or without the interest thereon) which is secured by a debenture, mortgage-deed or bond shall have the same priority as such last-mentioned debenture, mortgage-deed or bond whether the renewal loan is made by the holder of such debenture, mortgage-deed or bond or not.
- (3) The holders of debentures by which the same loan was raised shall as between themselves rank *pari passu*.

#### **62 Transfer of debentures and coupons**

Every debenture issued under the provisions of this Act and every coupon originally annexed to the debenture and whether separated therefrom or not, may be transferred by simple delivery.

#### **63 Payments of debentures and coupons**

- (1) The holder of any debenture issued under the provisions of this Act shall be entitled to receive payment from the board of the principal sum therein stated upon presentation of the debenture on or after the date when and at the place where the same is payable.

- (2) The holder of any coupon originally annexed to the debenture, and whether separated therefrom or not, shall be entitled to receive payment from the board of the interest mentioned in the coupon upon presentation of the same on or after the date when and at the place where the interest is payable.

#### **64 Lost debentures**

- (1) If any debenture issued under this Act is lost or accidentally burnt or otherwise destroyed before the same has been paid off, the board may, subject to the provisions of this section, issue a new debenture in lieu thereof.
- (2) The new debenture with interest coupons annexed shall bear the same date number principal sum and rate of interest as the lost or destroyed debenture.
- (3) The new debenture shall not be issued unless and until:
  - (a) a judge of the Supreme Court has been satisfied by affidavit of the person entitled to the lost or destroyed debenture or of some person approved by the judge that the same has been lost or accidentally burnt or otherwise destroyed before it has been paid off,
  - (b) such advertisements as the judge may direct have been published,
  - (c) six months have elapsed since the publication of the last of the advertisements, and
  - (d) sufficient security has been given to the board to indemnify the board against any double payment if the missing debenture is at any time thereafter presented for payment.

#### **65 Appointment of receiver**

- (1) If for six months default is made by the board in making any payment whether of principal or interest to the holder of any debenture, coupon, mortgage deed or bond issued under the provisions of this Act, the holder may apply to the Supreme Court in its equitable jurisdiction for the appointment of a receiver of the rates and other income of the board.
- (2) The court may make such orders and give such directions as it may deem proper for and with respect to:
  - (a) the appointment of a receiver,
  - (b) the removal of a receiver,
  - (c) the appointment of a receiver in place of a receiver previously appointed.
- (3) A receiver shall be deemed to be an officer of the court, and shall act under its direction.

#### **66 Powers and duties of receiver**

- (1) The receiver shall have power to make, levy and collect all income and in particular all rates payable to the board but the rates so made and levied shall not exceed such limit as the Court may fix and for the purposes of this subsection the receiver shall be deemed the board and may (subject to the direction of the court) exercise all the powers thereof.
- (2) The receiver shall discharge such duties of the board and of any officer or servant thereof as may be directed by the court.

#### **67 Commission**

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

#### **68 Application of moneys received**



The receiver shall, subject to any order of the Court, pay and apply all moneys received by the receiver in the following order, that is to say:

- (a) firstly in payment of the costs, charges and expenses of collection and of the receiver's commission,
- (b) secondly in payment of the amount due and payable to the holder of the debenture, coupon, mortgage-deed or bond,
- (c) thirdly in payment of all the residue of the moneys to the board.

## **Part 7 - General**

### **69 Plans of drainage**

- (1) The board of each union shall before commencing any works furnish to the Ministerial Corporation for public reference a plan showing accurately the position, direction, width, depth and such other particulars of such works as the Ministerial Corporation may require.
- (2) The board shall cause a copy of such plan to be lodged for like reference with the council of the area within which the district of the union is situated or where such district is situated within more than one area, then with the council of each such area, and shall notify the fact of such lodgment shortly describing the proposed works in a newspaper circulating in the locality. In this subsection the words *council* and *area* have the same meanings as they have respectively in the *Local Government Act 1993*.

### **70 Dissolution**

- (1) When all amounts due by the board of any union have been repaid the owners being not less than one-third in number of those within the district may present a petition to the Governor under their hands for the dissolution of the union.
- (2) The Governor may notify such petition in a newspaper circulating in the locality, and if no sufficient cause to the contrary is shown by other owners within the district, shall proclaim that the union is dissolved.

### **71 Debts**

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

### **72 Collection of debts**

- (1) A board shall take prompt action to collect or recover any rate or other due debt.
- (2) When all practical means shall have failed to effect the collection or recovery of any rate or debt the board may take such steps as may be prescribed towards having the debt written off.

### **73 Accounts**

- (1) The accounts of a board shall be audited once every year.
- (2) A board shall each year publish in a newspaper circulating in the locality a statement of the receipts and payments or alternatively of the income and expenditure for the next preceding year, certified under the hands of the chairperson of the board or manager and the auditor, or forward a copy of such statement to each owner of land within the district.

The board shall forward a copy of the statement to the Ministerial Corporation.

**74 (Repealed)**

**75 Penalties**

Any person who:

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

shall be liable to a penalty not exceeding 0.5 penalty unit, and in the case of a continuing offence to a penalty not exceeding 0.1 penalty unit for each day during which the offence continues, and shall also be liable to be sued by the board or by any person affected for compensation on account of loss or damage caused by his or her offence.

**76 Power to make drains through other lands**

- (1) Any owner of ratable land may, for the purpose of draining the owner's land or preventing the flooding thereof, make and cut drains through any adjacent or neighbouring land:

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

- (2) Such owner constructing such drains shall be liable at law to make full compensation for any damage thereby occasioned to the proprietor of such adjacent or neighbouring land.
- (3) The amount of such compensation shall be determined by the local land board.
- (4) The provisions of section 101 of the *Water Act 1912–1936* shall apply to and in respect of the cleansing or repair of any drain so made and cut.

**77 Service of notices**

- (1) Any notice required or authorised by or under this Act to be served shall be in writing and shall be sufficiently served if served in accordance with this section.
- (2) The service may be personal or by post or, where the notice relates to ratable land and the owner or ratable person is unknown to the board, may be by affixing the notice on any conspicuous part of the ratable land.

**78 Regulations**

- (1) The Governor may make regulations not inconsistent with this Act prescribing all matters which by this Act are required or permitted to be prescribed, or which are necessary or convenient to be prescribed for carrying out or giving effect to this Act, and in particular and without prejudice to the generality of the foregoing power may make regulations for and with respect to:
  - (a) the preparation and revision of rolls of voters,
  - (b) the appointment and notification of days for enrolment,
  - (c) the notification and inspection of rolls,
  - (d) the nomination of candidates for any election held under this Act,

- (e) the method of voting, and whether by post or by personal attendance at a polling-place,
- (f) the preparation, form, and printing of ballot-papers,
- (g) the conduct of elections,
- (h) the procedure at meetings of boards and meetings of voters,
- (i) the appointment, payment and dismissal of officers and servants,
- (j) the making and levying of rates and the time within which rates shall be made,
- (k) the keeping of accounts of boards,
- (l) the qualifications to be held by auditors,
- (m) the appointment, powers and duties of valuers,
- (n) the form, preparation, sealing, keeping and inspection of the valuation book, the entries which are to be made therein, the alteration of minor errors not affecting the amount of the valuation; and the mode of making and authenticating entries in conformity with the order of a court,
- (o) objections to a local land board, and the duties of the board and its servants in relation thereto.

(2), (3) (Repealed)

## **79 Savings and transitional provisions**

Schedule 2 has effect.

## **Schedule Schedule 1**

(Section 38)

### **1 Valuation periods**

- (1) A valuation in respect of all lands within the district shall be made:
  - (a) once at least in every three years,
  - (b) for a valuation period, that is to say, for a period not exceeding three years.
- (2) Notwithstanding any other provision in this Act the board may cause any valuation to be made at any time whether during the currency of any valuation period or otherwise.
- (3) A valuation (together with any amendments made therein in accordance with law) shall remain in force until a fresh valuation comes into force.

### **2 Inclusive valuations**

- (1) Where several parcels of land adjoin, are owned by the same person, are of the same class of tenure, and no part is let to any person they shall be included in one valuation, unless the board otherwise directs:  
Provided that any such parcels of land shall be valued separately if buildings are erected thereon which are obviously adapted to separate occupation.
- (2) Where several parcels of land adjoin, are owned by the same person, are of the same class of tenure, and are all let to one person, they shall be included in one valuation, unless the board otherwise directs.

### **3 Separate valuations**

- (1) Where several parcels of land owned by the same person are not of the same class of tenure, or are separately let to different persons, they shall be separately valued.

- (2) Lands which are separately owned, or lands which do not adjoin shall be separately valued provided that all lands which are separated by a road generally used by the public may be included in one valuation if owned by the same person and worked as one holding.
- (3) Where a part of a parcel of land which has been valued is sold, conveyed or resumed, fresh valuations shall be made of the portion sold, conveyed or resumed and of the part remaining.
- (4) Where a part only of a parcel of land is ratable, the part which is ratable shall be separately valued.

#### **4 Land extending outside the area**

Where any land in respect of which one valuation would otherwise be made under this Schedule is not wholly within the district but extends both inside and outside the district, the part within the district shall be separately valued.

#### **5 Valuers**

- (1) Every valuer shall before acting:
  - (a) make a statutory declaration before a justice of the peace that the valuer will value impartially and truly, and
  - (b) deliver the declaration to the secretary.
- (2) Every valuer may at all times during the day enter on any land for the purposes of this Act; and the owner or occupier or manager thereof shall answer any questions put to him or her by the valuer, and generally afford all necessary information to enable a correct valuation to be made.
- (3) Every person who in any way obstructs or hinders any valuer in the exercise of the valuer's functions under this Act, or refuses to answer any relevant question or to afford any information in the person's power when duly required to do so, shall be liable to a penalty not exceeding 0.5 penalty unit.

#### **6 Valuation book**

- (1) Every valuation shall be entered into a valuation book.
- (2) The valuation book shall be kept as prescribed.
- (3) Subject to the provisions of this Act any particulars in the valuation book may be entered in the rate book.

#### **7 Alterations in valuation book**

- (1) Alterations may be made in the valuation book by resolution of the board at any time in any case where:
  - (a) it is found there has been an error as to the area, ownership or occupation of land,
  - (b) the valuer certifies in writing that the valuer has made an arithmetical mistake in calculation of values, or
  - (c) there has been a change of owners or occupiers and it is necessary in consequence to alter the names and other particulars forming part of the entry of the valuation.
- (2) Where any land has been subdivided, and a portion sold or let, the valuation of the land and any unpaid rates may be apportioned accordingly by the board on the recommendation of the valuer.
- (3) Alterations and apportionments under the preceding subclauses of this clause shall, for the purposes of notice and objection, be deemed to be valuations.
- (4) Other minor errors in the valuation book not affecting the amount of the valuation may be altered as prescribed.

- (5) An alteration in the valuation book made in conformity with this Schedule shall be initialled by the chairperson of the board; and, where a resolution of the board is necessary to authorise the alteration, a reference to the minute of the resolution shall be inserted in the valuation book.

## **8 Notice of valuation**

- (1) Notice of valuation shall be given by service of a valuation notice.
- (2) The notice:
- (a) shall be in or to the effect of the form prescribed,
  - (b) may include any number of separate valuations provided that each valuation shall be separately shown,
  - (c) may be included in a rate notice,
  - (d) may designate any ratable person, whose name is unknown to the board, as "the owner" without stating the person's name,
  - (e) shall state a time not being less than thirty days after service within which any person ratable in respect of the land may lodge with the board a written objection to the valuation,
  - (f) may be served in any manner prescribed by or under this Act for the service of notices by the board,
  - (g) shall be served upon every person ratable in respect of the land:
- Provided that where more than one person is ratable in respect of any land, and the notice is served upon one or more of such persons, the omission to serve the notice upon any other ratable person shall not affect the liability of the land or of any ratable person upon whom the notice is served:
- Provided also that in the case of the lessee of private land the liability for and the right to recover rates shall not (unless the name of the lessee is on the roll of voters) be affected by reason only of the fact that notice has not been given to the lessee.
- (3) Where the Crown is the ratable person the board shall comply with any request of the Colonial Treasurer for the grouping or separation of rates on rate notices.

## **9 Objections**

- (1) Any ratable person may object to any valuation notice of which has been served on the person in accordance with this Act.
- (2) The objection shall:
- (a) be in or to the effect of the form prescribed,
  - (b) be lodged with the secretary within the time stated in the valuation notice.
- (3) The secretary shall forthwith forward the objection to the local land board.
- (4) The only grounds upon which objection may be taken under this clause shall be:
- (a) that the values assigned are wrong,
  - (b) that separate valuations have been made where one valuation should have been made,
  - (c) that one valuation has been made where separate valuations should have been made,
  - (d) that any apportionment of the valuation is not correct,

- (e) that the person named in or served with the valuation notice as a ratable person in respect of the ratable land is not such a ratable person,
- (f) that the land is not ratable.
- (5) The fact that an objection has been lodged shall not affect the valuation which is objected to, and any rate may be made, levied, and recovered on the valuation as if no objection were pending:  
Provided that, if the valuation be altered on objection, a due adjustment shall be made, and any amount paid in excess shall be refunded and any amount short-paid shall be recoverable as arrears.
- (6) Forms of objection shall on application be supplied by the board free of charge to any person who has the right to object.

## **10 Local land board**

- (1) The local land board shall hear and determine all objections duly lodged, and if it upholds any objection it shall make such order as it deems necessary for giving effect thereto, and in particular may:
  - (a) alter any valuation to such amount as it deems proper,
  - (b) direct that ratable lands be included in one valuation, and determine the amount of such inclusive valuation, or in lieu thereof direct that an inclusive valuation be made,
  - (c) direct that ratable lands be not included in one valuation and determine the amount of the separate valuations, or in lieu thereof direct that separate valuations be made,
  - (d) determine the correct apportionment of any valuation,
  - (e) direct that the name of the objector be struck out of any valuation on the ground that the objector is not a ratable person in respect of the ratable land,
  - (f) direct that the valuation be struck out on the ground that the land is not ratable,
  - (g) determine whether any part of the land included in a valuation is ratable, and the value of that part.
- (2) An objector may appear at the local land board personally or by counsel or solicitor or by an agent authorised by the objector in writing.

## **11 Consequential alterations**

Where the local land board makes an order with respect to any valuation the board shall make such consequential alterations in the valuation book as are necessary in order that the entries may be in conformity with the order.

## **12 Invalid valuations**

- (1) Where the local land board or any court holds that a valuation is invalid for any reason except that the land is not ratable, the board may cause a fresh valuation to be made in place of the valuation held to be invalid.
- (2) Any valuation so made shall for the purposes of any rate made or to be made be deemed to have come into force at the time when the invalid valuation would if valid have come into force.

# **Schedule 2 Savings and transitional provisions**

## **1 Regulations**

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the *Statute Law Revision (Local Government) Act 1995*.

- (2) A provision referred to in subclause (1) may, if the regulations so provide, take effect from the commencement of this Act or from a later date.
- (3) To the extent that a provision referred to in subclause (1) takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate:
  - (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of the person existing before the date of publication, or
  - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of publication.

## 2 Transitional provision for the recovery of rates

- (1) A rate levied in respect of land within a district that has not been paid before the amendment of section 55 by the *Statute Law Revision (Local Government) Act 1995* may be recovered as if the section had not been so amended.
- (2) Proceedings for the recovery of such a rate commenced, but not completed, before that amendment may be completed as if the section had not been so amended.

## Notes

The following abbreviations are used in the tables of Acts and amendments:

Am	amended	pp	pages
cl	clause	Rep	repealed
cll	clauses	Sch	Schedule
Div	Division	Sec	section
GG	Government Gazette	Secs	sections
Ins	inserted	Subdiv	Subdivision
No	number	Subst	substituted
p	page		

This Act is reprinted with the omission of all amending provisions authorised to be omitted under sec 6 of the Reprints Act 1972.

## Table of Acts

Drainage Act 1939 No 29. Assented to 7.11.1939. Date of commencement, 1.12.1939, sec 1 (2) and GG No 187 of 1.12.1939, p 5546. This Act has been amended as follows:

**1940**      No 41              Drainage (Amendment) Act 1940. Assented to 5.12.1940.  
Date of commencement of sec 2, 1.12.1939, sec 2 (2).

<b>1952</b>	No 53	Local Government (Further Amendment) Act 1952. Assented to 4.12.1952. Date of commencement, 1.1.1953, sec 1 (2) and GG No 272 of 19.12.1952, p 4601.
<b>1965</b>	No 33	Decimal Currency Act 1965. Assented to 20.12.1965. Date of commencement of sec 4, 14.2.1966, secs 1 (3), 2 (1) and the Currency Act 1965 (Commonwealth), sec 2 (2). Amended by regulation published in Gazette No 20 of 18.2.1966, p 822.
<b>1972</b>	No 48	Reprints Act 1972. Assented to 9.10.1972.
<b>1973</b>	No 9	District Court Act 1973. Assented to 10.4.1973. Date of commencement, 1.7.1973, sec 2 and GG No 75 of 8.6.1973, p 2158.
<b>1975</b>	No 72	Metric Conversion Act 1975. Assented to 6.11.1975. Date of commencement of Sch, Items 111, 112, 1.11.1976, sec 4 (3) and GG No 141 of 29.10.1976, p 4729.
<b>1980</b>	No 196	Miscellaneous Acts (Crown Land Titles) Amendment Act 1980. Assented to 22.12.1980. Date of commencement of Sch 1 (except as provided in sec 2 (4)–(6)), 1.10.1981, sec 2 (3) and GG No 141 of 25.9.1981, p 5107).
<b>1983</b>	No 153	Miscellaneous Acts (Public Finance and Audit) Repeal and Amendment Act 1983. Assented to 29.12.1983. Date of commencement of Sch 1, 6.1.1984, sec 2 (2) and GG No 4 of 6.1.1984, p 19.
<b>1986</b>	No 201	Drainage (Amendment) Act 1986. Assented to 18.12.1986. Date of commencement, 1.1.1987, sec 2 (2) and GG No 195 of 19.12.1986, p 6267.
<b>1987</b>	No 48	Statute Law (Miscellaneous Provisions) Act (No 1) 1987. Assented to 28.5.1987. Date of commencement of Sch 32, 1.9.1987, sec 2 (12) and GG No 136 of 28.8.1987, p 4809.
<b>1991</b>	No 53	Hunter Water Board (Corporatisation) Act 1991. Assented to 11.12.1991. Date of commencement of Sch 1, 1.1.1992, sec 2 and GG No 180 of 20.12.1991, p 10554.
<b>1992</b>	No 112	Statute Law (Penalties) Act 1992. Assented to 8.12.1992. Date of commencement, assent, sec 2.



<b>1994</b>	No 88	Water Board (Corporatisation) Act 1994. Assented to 12.12.1994. Date of commencement of Sch 7, 1.1.1995, sec 2 and GG No 170 of 16.12.1994, p 7400.
<b>1995</b>	No 11	Statute Law Revision (Local Government) Act 1995. Assented to 9.6.1995. Date of commencement of the provisions of Sch 1 relating to the Drainage Act 1939, 23.6.1995, sec 2 (1) and GG No 77 of 23.6.1995, p 3279.
	No 99	Statute Law (Miscellaneous Provisions) Act (No 2) 1995. Assented to 21.12.1995. Date of commencement of Sch 3, 3 months after assent, sec 2 (3). Amended by Statute Law (Miscellaneous Provisions) Act 1996 No 30. Assented to 21.6.1996. Date of commencement of Sch 3, 3 months after assent, sec 2 (3).
<b>1997</b>	No 152	Environmental Planning and Assessment Amendment Act 1997. Assented to 19.12.1997. Date of commencement, 1.7.1998, sec 2 and GG No 101 of 1.7.1998, p 5119.
<b>1999</b>	No 31	Statute Law (Miscellaneous Provisions) Act 1999. Assented to 7.7.1999. Date of commencement of Schs 4 and 5, assent, sec 2 (1).

This Act has also been amended pursuant to an order under secs 8 (2) and 9 (3) of the *Reprints Act 1972 No 48* (formerly *Acts Reprinting Act 1972*). Order dated 2.4.1974 and published in Gazette No 59 of 24.5.1974, p 1953, declaring that the *Drainage Act 1939* is an enactment to which sec 8 (2) and sec 9 (3) of the *Acts Reprinting Act 1972* apply.

### **Table of amendments**

No reference is made to certain amendments made by the *Decimal Currency Act 1965*, the *Reprints Act 1972*, and Schedule 3 (amendments replacing gender-specific language) to the *Statute Law (Miscellaneous Provisions) Act (No 2) 1995*.

Sec 1	Am 1999 No 31, Sch 5.35.
Sec 4	Am 1980 No 196, Sch 1; 1986 No 201, Sch 1 (1); 1995 No 11, Sch 1.
Sec 5	Am 1991 No 53, Sch 1; 1994 No 88, Sch 7; 1995 No 11, Sch 1; 1997 No 152, Sch 4.9.
Sec 7	Am 1940 No 41, sec 2 (1) (a).
Secs 8–10	Am 1986 No 201, Sch 1 (2).

Sec 11	Am 1986 No 201, Sch 1 (2) (3).
Secs 12, 14	Am 1986 No 201, Sch 1 (2).
Sec 15	Am 1986 No 201, Sch 1 (4).
Sec 17	Am 1986 No 201, Sch 1 (2).
Sec 19	Am 1940 No 41, sec 3 (a).
Sec 23	Am 1986 No 201, Sch 1 (2).
Sec 24	Am 1986 No 201, Sch 1 (2) (5).
Sec 25	Am 1940 No 41, sec 2 (1) (b); 1986 No 201, Sch 1 (2).
Sec 28	Am 1975 No 72, Sch; 1986 No 201, Sch 1 (2).
Sec 29	Am 1999 No 31, Sch 4.28 [1] [2].
Sec 32	Am 1986 No 201, Sch 1 (2).
Sec 34	Am 1986 No 201, Sch 1 (6).
Sec 35	Am 1986 No 201, Sch 1 (2).
Sec 36	Subst 1986 No 201, Sch 1 (7).
Secs 37, 39	Am 1986 No 201, Sch 1 (2).
Sec 43	Am 1986 No 201, Sch 1 (8).
Sec 48	Am 1995 No 11, Sch 1.
Sec 54	Am 1965 No 33, First Sch (am GG No 20 of 18.2.1966, p 822).
Sec 55	Am 1952 No 53, sec 13 (4); 1995 No 11, Sch 1.

Sec 56	Am 1940 No 41, sec 3 (b).
Sec 58	Am 1940 No 41, sec 3 (c); 1986 No 201, Sch 1 (2) (9).
Sec 69	Am 1986 No 201, Sch 1 (2); 1995 No 11, Sch 1.
Sec 71	Am 1973 No 9, Sch 2.
Sec 73	Am 1940 No 41, sec 3 (d); 1986 No 201, Sch 1 (2).
Sec 74	Rep 1983 No 153, Sch 1.
Sec 75	Am 1992 No 112, Sch 1.
Sec 78	Am 1987 No 48, Sch 32.
Sec 79	Ins 1995 No 11, Sch 1.
Sch	Am 1992 No 112, Sch 1.
Sch 2	Ins 1995 No 11, Sch 1.