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[CONFIDENTIAL.]

(Rough Draft for Consideration Only.)

No. , 1921.

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## A BILL

To authorise the establishment and carrying on of State industrial enterprises, and for the regulation of the same; to amend certain Acts; and for purposes connected therewith.

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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  
5 the same, as follows:—

**1.** This Act may be cited as the "State Enterprises Short title. Act, 1921."

37189

2—(2)

**2.**

Saving of  
Crown, &c.  
cf. State  
Enterprises  
Act of 1918  
(Q.), s. 2.

**2.** Nothing in this Act shall restrict or abridge—

- (a) any prerogative, right, power, or privilege of the Crown;
- (b) any right, power, privilege, or authority conferred upon any corporation by any Act of the Parliament of New South Wales creating such corporation or by any amending Act, so long as the right, power, privilege, or authority is exercised in accordance with the provisions of any such Act, and is not inconsistent with this Act.

Interpreta-  
tion.  
cf. *Ibid.* s. 3.

**3.** In this Act, unless the context otherwise indicates or requires,—

Employee.

“Employee” means any State officer or other person whosoever employed under this Act. 15

Minister.

“Minister” means the Chief Secretary or other Minister of the Crown for the time being charged with the administration of this Act.

Prescribed.  
Regulations.

“Prescribed” means prescribed by this Act.

“Regulations” means regulations made under the authority of this Act. 20

State  
enterprise.

“State enterprise” means a State enterprise to which this Act applies.

This Act.

“This Act” means this Act and all regulations, proclamations, and orders made thereunder. 25

State  
enterprises  
to which Act  
applies.  
cf. *Ibid.* s. 4.

**4.** (1) The Governor may, by proclamation in the Gazette, declare—

- (a) any enterprise or business which is carried on by or on behalf of the State, under the authority of an Act or otherwise, and whether such enterprise or business is carried on at or after the passing of this Act; and
- (b) any State department,  
to be a State enterprise, and upon the publication of any such proclamation, such enterprise, business, or department shall be a State enterprise to which this Act applies.

(2) This Act shall not apply to—

- (a) the business of the Railway Commissioners for New South Wales under the Government Railways Acts; or
- (b)

(b) the business of the Government Savings Bank of New South Wales under the Government Savings Bank Acts ; or

5 (c) the business of the Sydney Harbour Trust Commissioners.

5 **5.** For the purposes of this Act and for the purpose of doing all such things as are necessary to the carrying on of business under this Act, a State Trade Office shall be constituted. State trade office. cf. *Ibid.* s. 5.

10 **6.** (1) Subject to this Act, every State enterprise shall be administered by the Minister ; and the Minister is hereby authorised and empowered to carry on the same. Minister to manage State enterprises. cf. *Ibid.* s. 6.

(2) The provisions set forth in the Schedule to this Act shall be applicable to State enterprises carried on under this Act. Schedule.

Such provisions may from time to time be amended or added to by the Governor by proclamation published in the Gazette.

20 **7.** The Minister may appoint a secretary, who shall, subject to the direction of the Minister, have power to execute documents on his behalf and affix the seal of the Minister thereto. He shall also have such other powers and perform such other duties as are from 25 time to time determined by the Minister. Appointment of secretary. cf. *Ibid.* ss. 14, 16.

**8.** (1) The Minister shall be a corporation sole by the name of "The Minister for State Trade," and by that name shall have perpetual succession and an official seal which shall be judicially noticed, and shall be 30 capable in law of suing and being sued, and shall have power to take, purchase, sell, exchange, lease, and hold land, goods, chattels, and other property. Minister to be a corporation sole—powers and liabilities. cf. *Ibid.* s. 9.

The Minister, as such corporation, for all the purposes of this Act, shall have and may exercise all the powers, 35 privileges, rights, and remedies of the Crown.

(2) But, save as by this Act is expressly provided, no exchange, sale, or lease of any land vested in the Minister shall have any effect unless and until the same has been approved by the Governor.

Managers  
and other  
employees.  
cf. *Ibid.* s. 16.

**9.** (1) The Minister may appoint and employ such managers and such officers, clerks, and other employees to assist in the execution of this Act as he thinks necessary.

(2) The Minister shall pay such salaries, wages, 5 and allowances to the employees respectively as he may deem fit.

(3) No manager, officer, or other employec of any State enterprise shall have a pecuniary interest in any private business similar to that of the State enter- 10 prise in which he is employed.

(4) The Acts relating to the Public Service and to Superannuation shall not apply to persons appointed under this section: Provided that any person so appointed who, prior to such appointment, was a con- 15 tributor to the superannuation fund, shall be entitled to continue to contribute thereto.

State trade  
accounts.  
cf. *Ibid.* s. 17.

**10.** (1) Notwithstanding anything in the Audit Act, 1902, to the contrary there shall be created under this Act, in respect of each State enterprise, a separate and 20 distinct banking account to be called the "State [*naming enterprise*] Account."

(2) All moneys received by the Minister under this Act shall be paid into the proper banking account.

(3) All payments in respect of each State enter- 25 prise, together with such contributions to reserve fund or sinking fund, if any, as the Minister from time to time directs, shall be payable out of the proper banking account.

(4) All payments in respect of the administration 30 of the State Trade Office and of this Act shall be apportioned between and payable out of the divers banking accounts created pursuant to this Act in such proportions as the Minister from time to time directs.

(5) The salaries, wages, and allowances of any 35 officers or employees of the Public Service who are employed for any purposes under this Act shall be paid out of the account of the State enterprise in which they are employed.

11. The Governor may from time to time, upon  
obtaining from the Minister such security as in the  
opinion of the Governor is necessary or desirable by  
warrant under the hand of the Colonial Treasurer, direct  
5 and authorise loans to be made to the Minister out  
of the Loan Fund or by the issue of debentures, which  
debentures the Governor is hereby authorised to issue,  
for the purposes of the business of the Minister. Such  
loans shall bear such interest and shall be repayable upon  
10 such terms as the Governor may determine.

Loans,  
&c., by  
Government  
to Minister.  
cf. *Ibid.* s. 18.

12. (1) The Governor may at any time, by procla-  
mation in the Gazette, vest in fee-simple in the  
Minister any Crown land to be used for the purposes of  
the business of the Minister.

Power to  
vest lands in  
the Minister.  
cf. *Ibid.* s. 19.

15 The value of any land vested in the Minister  
under this section shall be fixed by the Governor, and  
the amount thereof shall be debited against the proper  
fund.

(2) The Secretary for Lands may from time to  
20 time, by notification in the Gazette, set apart for the  
purposes of this Act any unalienated Crown lands, as  
defined in the Crown Lands Acts, which in his opinion  
may be required for the purposes of this Act, and may  
from time to time, by like notification, exempt any of  
25 the said lands so set apart from the operation of this  
Act, and thereupon the lands so exempted shall cease to  
be subject thereto.

Setting  
apart Crown  
lands.

13. (1) The Governor may from time to time make  
all such regulations as he thinks fit for giving full effect  
30 to this Act.

Regulations.

(2) All regulations purporting to be made by  
the Governor shall be published in the Gazette, and  
upon such publication shall have the force of law.

## SCHEDULE.

cf. *Ibid.*  
Schedule.  
General  
powers of  
Minister.

## 1. For all the purposes of this Act—

- (i) The Minister shall have and may exercise all the powers, privileges, rights, and remedies of the Crown ;  
(ii) All legal proceedings may be brought by or against the Minister in his official name. 5

The foregoing powers shall be in addition to any other powers conferred upon the Minister by this Act.

Vesting of assets  
and liabilities in  
Minister.

## 2. (1) On the passing of this Act—

- (a) All property, whether real or personal, corporeal or incorporeal, and all moneys and securities for money, and all interest thereon, and all books, documents, and other property held by or on behalf of any Minister of the Crown or State department or State officer in relation to or in connection with any State enterprise existing at the passing of this Act ; and 10  
15

- (b) All the assets and liabilities of or in connection with any such enterprise ;

and all powers, authorities, rights, title, interest, and obligation in or with respect to them or any of them, shall by virtue of this Act pass to and become vested in and imposed upon the Minister. and shall forthwith be divested and discharged from the person or persons in or upon whom the same were formerly vested, conferred, or imposed. 20

Capital cost.

(2) For all purposes of this Act, the capital cost of each such enterprise shall be deemed to be the amount appearing at the passing of this Act in the respective books of account as capital cost of each such enterprise. 25

Adjustment of  
accounts.

(3) The Colonial Treasurer shall cause to be made in the books of the Treasury such adjustment of accounts as will give due effect to the foregoing provisions of this section. 30

Rights of action  
and under  
contracts.

(4) From and after the passing of this Act any right of action accrued to or against, and any agreement, mortgage, bond, lease, deed, guarantee, covenant, or obligation made or entered into by or with, the Crown or any Minister of the Crown or State department or State officer, in relation to or in connection with any enterprise aforesaid, may be prosecuted and enforced, by or against the Minister, as if the right of action had originally accrued to or against, or the agreement, mortgage, bond, lease, deed, guarantee, covenant, or obligation had been made or entered into by or with the Minister. 35  
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Agents.

## 3. (1) The Minister may appoint any person to act as his agent.

At the request of the Minister, any clerk of petty sessions and any other State officer shall act as such agent within his district, and with, under, and subject to such powers, conditions, and limitations as are contained in such request. 45

(2) Every employee or agent whose duties involve the receipt or custody of moneys or securities shall give such security for the due and faithful performance of his duties as to the Minister seems proper, and shall be deemed to be an accounting officer within the meaning of the Audit Act, 1902. 50

4. The signatures of the Minister and of the secretary, if any, shall be judicially noticed. Judicial notice.

5. The Minister may from time to time, by writing under his hand, delegate to the secretary, or any officer appointed to assist him, any of the powers, functions, or duties conferred or imposed on the Minister by this Act, and such person shall thereupon for the purpose for which he has been deputed have all the powers and may exercise all the functions of the Minister. Delegation by Minister.

6. The Minister may from time to time, for the purposes of this Act, establish branches of the State Trade Office or of any department thereof at any place in New South Wales, and establish agencies of the State Trade Office at any place within or outside New South Wales, and may close any branch or agency. Branches and agencies.

7. (1) All real and personal property of any kind (including all money and securities for money) already vested in His Majesty, or that may hereafter be purchased, acquired, or held in any manner for the purposes of the State Trade Office or any State enterprise shall be held by the Minister under this Act, and shall be and are deemed to be vested in the Minister on behalf of His Majesty according to the nature of the estate and interest therein respectively. Particular powers of Minister.

(2) The Minister, on behalf of His Majesty, shall, with respect to such real and personal property, and any estate or interest therein, have the power—

- (i) to sell, lease, exchange, or make partition ;
- (ii) to accept or make surrender of leases ;
- (iii) to assign, reconvey, or discharge mortgages, securities, or other obligations, either wholly or in part ;
- (iv) to enter into, modify, or alter any contract or agreement with any person for all or any of the purposes of this Act ;
- and
- (v) generally to exercise all other rights, powers, functions, and authorities thereover.

(3) Any property so held may from time to time be sold or disposed of upon such terms and conditions in all respects as the Minister thinks proper.

(4) All rights, powers, functions, and authorities given to or vested in His Majesty by this Act, or under any instrument taken or purported to be taken under the authority thereof, in respect of such real and personal property, shall and may be lawfully exercised by the Minister on behalf of His Majesty as fully and effectually as the same might or could be exercised by His Majesty ; and every instrument executed by the Minister, and every act or thing done by the Governor under or for the purposes of this Act, shall have the same force and effect as if the same instrument were executed by, or such act or thing were done by, His Majesty.

(5) Where land, whether with or without any improvements, is resumed or otherwise acquired by the Minister, such power shall be exercised under the Public Works Act, 1912: Provided that, in estimating the compensation to be paid on such resumption or other acquirement by the Minister, no allowance shall be made for any increase in value by reason of any matter arising out of the exercise of powers under this Act.

(6)

(6) The Minister may erect buildings and repair, equip, furnish, and maintain the same; and let offices or other accommodation in any building or premises for such rent as he thinks proper.

(7) The Minister may arrange with any State officer or department carrying on insurance business for the making and carrying into effect of insurance contracts in relation to the business, property, or employees of the Minister. 5

(8) The Minister may arrange with any Government department to supply such department with the products of a State enterprise at prices to be agreed upon, such prices not to exceed current market rates of the commodity. 10

(9) For the purpose of carrying on business, the Minister shall have and may exercise all such powers, authorities, and discretions, and may do all such acts and things as a private person carrying on business in New South Wales has or may exercise or do. 15

Contracts, &c.

8. (1) The Minister may enter into contracts either at the State Trade Office or at branch offices or agencies, and either by himself or through the medium of such officers or agents as he from time to time appoints for that purpose.

(2) Subject to this Act, the Minister shall have power from time to time to enter into, perform, and enforce any contracts which may be lawfully entered into by or with any person in or in relation to any business of the kind carried on by the Minister; and generally to do whatever he deems necessary in connection with or incident to such business. 20 25

(3) Any contract which if made between private persons, or any power which if exercised by private persons—  
 firstly, must be by deed or in writing under seal;  
 secondly, must be in writing signed by the parties thereto or the persons executing the power; 30  
 thirdly, may be made or exercised orally without writing,  
 when entered into or exercised by the Minister,  
 in the first case, shall be in writing under his seal, and signed by or on behalf of the Minister;  
 in the second case, shall be in writing, signed by or on behalf of 35  
 the Minister;  
 in the third case, may be made or exercised orally, without writing,  
 by or on behalf of the Minister.

Powers of inquiry.

9. The Minister is hereby empowered to cause investigations to be made and from time to time to report and make recommendations to the Governor upon all or any of the following matters:— 40

- (i) Any question relating to the trade, commerce, or business of New South Wales;
- (ii) markets for goods produced or manufactured in New South Wales, and trade with other countries, and the mode of marketing; 45
- (iii) generally as to how the trade, industries, and commerce of New South Wales can be best encouraged, developed, and protected.



10. All moneys in any fund of the State Trade Office, or payable into that office by any person, and also all debts and other moneys for the time being owing to the Minister by any person, on any account whatsoever, are hereby declared to be the property of the Crown and  
 5 recoverable with interest accordingly by the Minister as from debtors to the Crown.

All moneys to be property of Crown.

11. (1) There shall be paid out of each such fund of the State Trade Office any expenditure of or in relation to the State enterprise to which it relates, including charges for management, maintenance, working  
 10 expenses, and interest on capital, and reserve fund, or sinking fund if any.

Payments out of such funds.

- (2) All payments—
- (a) for the purchase of land or buildings, or any expenditure thereon ;
- 15 (b) for the purchase of stock, goods, stock in trade, furniture, fixtures, fittings, machinery, implements, or plant deemed necessary by the Minister for the conduct of his business, or any expenditure thereon ;
- 20 (c) for expenses deemed necessary by the Minister for the administration of this Act and the management of State enterprises and the State Trade Office ;

Certain payments appropriated.

shall be payable out of the proper funds, respectively, of the State Trade Office under the authority of this Act without any further or other appropriation by Parliament.

25 12. (1) The receipt given by any person to the Minister for any moneys paid under this Act shall be an absolute discharge to the Minister ; but nothing herein shall prejudice or affect the right of any person claiming to be entitled to receive any such money to recover the same from the person to whom the Minister has paid  
 30 the same.

Discharge of Minister.

(2) In the event of any doubt or dispute as to the person legally entitled to receive any moneys payable under this Act, the Minister may pay the same into the Supreme Court in its equitable jurisdiction to abide the orders of that Court.

Disputes by claimants.

35 13. (1) With respect to any State enterprise established after the passing of this Act, the capital cost thereof shall be determined and declared by a committee consisting of the Auditor-General, the Under Secretary to the Treasury, and some person nominated in that behalf by the Minister as soon as possible after the first capital expenditure  
 40 thereon is complete.

Capital cost.

(2) Accretions to capital cost or extraordinary losses of capital in connection with any State enterprise, whether established before or after the passing of this Act, shall be determined and declared by the aforesaid committee as and when such accretions or losses shall occur.

45 (3) Notice of every such determination and declaration shall be given in writing to the Minister, and shall be acted on.

(4) The Minister shall determine the amount of ordinary depreciation of the assets of each State enterprise, and such determination shall be acted on.

- Reserve funds. 14. The Minister may, out of the net profits of any State enterprise earned during any year, set apart or invest or otherwise deal with such sum as he thinks proper towards a reserve fund for meeting losses and depreciation, and for extensions of business, and for such other purposes as he deems necessary. 5
- Investments. 15. The Minister may invest any portion of the reserve funds or sinking funds, if any, of the State Trade Office in any of the investments in which, under the Public Trustee Act, 1913, or any Act amending the same, the Public Trustee is authorised to invest trust funds. 10
- Annual balance-sheets. 16. (1) The Minister shall cause proper books of account to be kept in relation to each State enterprise, and shall, in each year, prepare and transmit to the Governor balance-sheets and statements of accounts, setting forth a true statement of the financial position and the transactions of the State Trade Office in its several enterprises for 15 the preceding financial year audited by the Auditor-General; and a copy of such balance-sheets and statements shall be laid before each House of Parliament as soon as practicable.  
The Auditor-General shall have, in respect of such accounts, balance-sheets and statements, all the powers conferred upon him by any Act 20 relating to the auditing of the public accounts.  
(2) Each such balance-sheet and statement shall—  
(a) show a profit and loss account;  
(b) show assets and liabilities; and  
(c) be in the form prescribed by the Auditor-General. 25
- Application of profits. 17. (1) As soon as conveniently may be after the thirtieth day of June in each year, the Minister shall report to the Governor what, if any, in his opinion, are the net surplus profits of the State Trade Office in its several enterprises after transferring such sums to the reserve funds as the Minister thinks proper. 30  
(2) The aforesaid report of the Minister shall be presented to Parliament.  
(3) Such profits of such enterprises respectively shall be dealt with as follows:—  
(a) Until the total indebtedness on capital account of the enterprise concerned has been discharged, the net surplus profits of such enterprise shall be applied in and towards the discharge of such indebtedness. 35  
(b) Thereafter such net surplus profits shall be allocated in such manner as the Minister shall direct. 40
- Delivery of matters in possession of employee at removal. 18. (1) If any employee is dismissed or is suspended, or resigns, or dies, absconds, or absents himself, and if he or his wife, widow, or any of his family or representatives refuses or neglects, after seven days' notice in writing, to deliver to the Minister or his agent any property as herein defined in the possession or custody of such employee at 45 the occurrence of any such event as aforesaid, then any justice of the peace, upon application by the Minister or his agent, may order any member of the police force with proper assistance to enter and take possession of such property, and deliver the same to the Minister or his agent, and, if necessary, to remove any person. 50  
(2)

(2) Every employee shall from time to time, when required by the Minister, make and deliver to him or to his agent a true account in writing under his hand of all moneys received by him on behalf of the Minister. Officers to account on demand.

5 Such account shall state how and to whom and for what purpose such moneys have been disposed of.

Together with such account, he shall deliver the vouchers and receipts for such payments.

He shall pay to the Minister or to his agent all moneys which appear to be owing from him upon the balance of such account.

If he fails to render such account, or to deliver all such vouchers and receipts in his possession or power, or to pay the balance thereof when required, or if for three days after being required he fails to deliver to the Minister or his agent all property in his possession or power, then, upon a complaint made as for a breach of duty, a court of petty sessions may hear and determine the matter in a summary way, and may adjust and declare the balance owing by such employee, and make such other orders as appear to the court to be just. Summary remedy.

(3) If any employee or agent having in his possession or power any property as herein defined— Insolvency, &c., of employee.

(a) becomes insolvent ; or

(b) makes an assignment for the benefit of his creditors ; or

(c) has any execution, attachment, or other process issued against his land, goods, chattels, or effects,

25 the Minister may apply to such employee or agent, or his assignee or trustee, or to the sheriff or other person executing such process, or to his executors or administrators, or to any other person having legal right, as the case may be, and may demand that all such property be paid over or delivered up to the Minister or such person as he may appoint.

30 The party so applied to and having the same shall on such demand deliver over to the Minister, or to such person as aforesaid, all such property, and shall pay out of the estate, assets, or effects of such employee or agent all moneys due by him to the Minister before any other of the debts of the said employee or agent are paid or satisfied, and before the money directed to be levied by such process as aforesaid is paid over to the party issuing the same. All assets, land, goods, chattels, estate, and effects of such employee or agent shall be bound to the payment and discharge thereof accordingly.

40 (4) If the Minister or his agent makes oath that he has good reason to believe, upon grounds to be stated in his deposition, and does believe, that it is the intention of any employee or agent to abscond or that he has absconded, any justice of the peace may, if he thinks fit, issue a warrant in the first instance for the bringing of such employee or agent before such justice or court as aforesaid. When warrant may issue.

45 (5) For the purposes of this section, the term "property" includes any building or any part thereof or any appurtenance thereof, or any books, papers, securities, documents, or property whatsoever relating to the execution of this Act or the business of the Minister or belonging to the Minister. Meaning of "property."

(6)

**Sureties not to be discharged.**

(6) No such proceeding against or dealing with any such employee or agent shall deprive the Minister of any remedy which he might otherwise have against such employee or agent or any surety.

**Service of notices.**

19. Any notice under this Act may be served personally or by post, addressed to the last known place of residence or business of the person to be served. 5

**Protection of Minister and employees from personal liability.**

20. (1) No matter or thing done and no agreement entered into by the Minister or any employee or other person on his behalf or under his direction shall, if the matter or thing was done or the agreement was entered into bona fide for the purposes of this Act, subject the Minister or any such person to any personal liability in respect thereof. 10

(2) An action shall not be brought against any employee or other person for anything done or intended or omitted to be done under this Act until the expiration of one month after notice in writing has been served on the person to be sued, clearly stating the cause of action and the name and place of abode of the intended plaintiff and of his solicitor or agent. 15

**Notice of action.**

On the trial of any such action the plaintiff shall not be permitted to go into evidence of any cause of action which is not stated in the notice so served. 20

Unless such notice is proved, the Court shall find for the defendant.

Every such action shall be commenced within twelve months next after the accruing of the cause of action, and not afterwards.

Any person to whom any such notice of action is given may tender amendments to the plaintiff, his solicitor, or agent, at any time within one month after service of the notice, and in case the same is not accepted may plead such tender. 25

**Obstruction.**

21. Any person who in any way resists, interferes with, hinders, or obstructs any officer or person in the exercise or discharge of any power or duty under this Act is guilty of an offence, and is liable to a penalty not exceeding *one hundred pounds*. 30

**Recovery of penalties.**

22. (1) All penalties imposed by this Act may be recovered at the option of the Minister, either in a summary way under the Justices Act, 1902, or by action in the Supreme Court before a judge thereof sitting without a jury: 35

Provided that no proceeding for the recovery of a penalty shall be instituted by any person whomsoever without the written direction of the Minister.

Any such proceeding may be instituted within six months after the fact of the commission of the offence against or failure of compliance with this Act came to the knowledge of the Minister. 40

(2) All penalties recovered under this Act shall be paid to the Minister for the purposes of the State Trade Office.