

[CONFIDENTIAL.]

(Rough Draft for Consideration Only.)

No. , 1910.

A BILL

To amend the Water Rights Act, 1902 ; and for purposes consequent thereon or incidental thereto.

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

Preliminary.

1. This Act may be cited as the "Water Rights (Amending) Short title. Act, 1910."

2. In this Act "the Principal Act" means the Water Rights Definitions. Act, 1902.

In amendments or new provisions inserted by this Act in the Principal Act, the expression "this Act" means the Principal Act, as amended by this Act.

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3. In section three of the Principal Act—

Amendment of s. 3.

- (a) insert in the definition of “work” after “cutting” the words “excavation, well”;
- (b) add at the end of the definition of “work to which this Act extends” the words “and includes any excavation or well which affects the flow of any such river or the quantity of water in any such lake.”;
- (c) insert in the appropriate alphabetical positions in the section new definitions as follows:—

“Power” includes electrical energy.

“Power work” includes any work designed or used for generating power. Power work.

“Board” means board constituted under the provisions of the Water and Drainage and Artesian Wells (Amending) Act, 1906. Board.

4. The whole of Part III and the Schedule of the Principal Act is repealed. Repeal.

Works.

5. In section ten of the said Act—

Amendment of s. 10.

- (a) insert before “is proposed to be constructed or used” the words “of a portion of any land whereon any such work”;
- (b) insert after “water supply” the word “power.”

Licenses.

6. (1) In subsection one of section thirteen of the Principal Act insert at the end thereof the words “or as the Minister may consider desirable.” Amendment of s. 13.

(2) In paragraph (b) of subsection two of the same section omit “Schedule to this Act” and insert the words “regulations under this Act, and the license shall continue only so long as all charges for water are paid by the licensee.”

7. In section fifteen of the said Act—

Amendment of s. 15.

- (a) omit “except Class IV”;
- (b) omit “ten years and shall” insert the words “twenty-one years, and may in the discretion of the Minister”;
- (c) omit “a fee calculated in the manner and according to the scale set forth in the Schedule to this Act” insert “the fee prescribed by the regulations.”

8. In the first proviso to section nineteen of the Principal Act omit “hereinafter” and insert the words “in this Act.” Amendment of s. 19.

9. Where any person was, at the commencement of this Act, the holder of a license under the Principal Act, he may, within six months after such commencement, apply as prescribed to the Minister, Conversion of existing licenses.
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to convert such license into a license under the Principal Act as amended by this Act. If the Minister grants any such application, the amendments made in the said Act by the three last preceding sections of this Act shall apply to, and in respect of the license, and in particular—

- (a) the license shall be subject to such terms, limitations, and conditions, if any, as the Minister may consider desirable.
- (b) the fee for the license shall be calculated in the manner, and according to the scale set out in the regulations, and the license shall continue only so long as all charges for water are paid by the licensee ;
- (c) the period for the license shall be extended to twenty-one years, and the renewal of the license shall be in the option of the Minister, and on the payment of the fee prescribed by the regulations.

Power works and easements.

10. The following Parts, to be called respectively Part IV^A New Parts IV^A and IV^B. and Part IV^B are inserted next after Part IV of the Principal Act :—

PART, IV^A.

POWER WORKS.

Grant of licenses.

20A. Licenses for power works may be granted under this Licenses for power works. Part only.

Where power does not exceed ten thousand horse power.

20B. (1) If the board certifies that the power which may Applications for such licenses. be produced by the works will not exceed ten thousand horse-power, the application for any such license shall be made as in the case of a license under Part IV ; but before applying for such license the applicant shall cause to be inserted in two newspapers circulating in the district within which the proposed work will be situated, an advertisement setting out the name and address of the applicant, his intention to apply for the license, the nature and location of the proposed work, and such further particulars as may be prescribed.

He shall also within one week after making the application, give written notice thereof to the council of every local government area within which the work, or any water conserved by or affected by the work is situated.

(2) Such application shall be forwarded by the Application forwarded to board. Minister to the board as defined by this Act. (3)

(3) The board shall make an open inquiry into the matter of the application; and all the provisions of Part IV relating to an inquiry by the local land board shall apply to such inquiry; but there shall be no right of appeal from any report or recommendation of the board under this section. Inquiry by board.

20c. The board, after inquiry, shall report and make recommendations to the Minister as to— Report by board.

- (a) the nature of the work proposed to be constructed;
- (b) the period to be allowed for constructing the work;
- (c) the volume of water to be from time to time diverted from any river or lake;
- (d) the points at which water may be so diverted, and at which such volumes shall be returned;
- (e) the volume of water to be from time to time provided for the channel of a river between the points of diversion and return;
- (f) what storage works are necessary for the efficient production of power;
- (g) the probable effect of the construction and use of the work on the movement and spawning of fish;
- (h) the period for which the license is to be granted, and the times for and periods and conditions of the renewal of a license;
- (i) the security to be given for the performance of the conditions of the license, and the conditions on which such security may be released and returned;
- (j) the charges to be paid to the Crown in respect of the license for the first ten years, and the method of fixing the charges for any subsequent period;
- (k) the maximum charges to be made by the licensee or any person claiming under him for the power produced directly or indirectly by the work, or for the supply of water for producing power;
- (l) the proportion of the total of such power which shall be available, and if required, be apportioned for the lighting of streets or public buildings or the propulsion of cars on railways or tramways, or for any other public purpose.

20d. After the receipt of the report of the board the Minister may, in his discretion, refuse the application or recommend the Governor to issue the license. If the Minister so recommends, the Governor may grant the license for such term not exceeding twenty-one years, and subject to such conditions as he may think fit, or may refuse to grant the license. Grant or refusal of application.

Within

Within fourteen days after the grant of the license, or if Parliament is not then sitting, within fourteen days after the next meeting of Parliament the Minister shall lay before each house of Parliament a copy of the license together with the report of the board and minutes of the evidence taken in the inquiry before the board relating to the application for the license.

20E. On breach of or failure to carry out any conditions of any such license the penalty shall be forfeiture by the Minister of the license or the payment by the licensee to the Crown of a pecuniary penalty to be recovered as a Crown debt as may in any case be prescribed by the license. Penalty for contravention of license.

Whether power does or does not exceed ten thousand horse-power.

20F. Provisional orders may, on application as prescribed, be obtained from the board by any person (hereinafter referred to as "the applicant"), who proposes to construct and use any power work, whether the power to be produced by the work exceeds or does not exceed ten thousand horse-power. Provisional orders may be obtained.

20G. The following provisions shall be observed with respect to any such provisional order:— Procedure in obtaining provisional orders.

- (a) Notice of intention to apply for the order shall be published and given as in the case of an application for a license;
- (b) The applicant shall deposit with the board a printed draft of the provisional order as proposed by him and a sufficient number of printed copies of such draft; such copies to be sold by the board or by any person appointed by them at the price of not more than one shilling each copy;
- (c) The applicant shall publish the proposed provisional order once in a newspaper in which the advertisement of the intended application was published.
- (d) The applicant shall furnish the board with such plans, estimates, and other documents as may be required by them.

20H. The board shall hold an open inquiry, and shall consider the application and also any objection thereto that may be lodged with them on or before the day appointed by them, and shall determine whether or not the application may be proceeded with. Inquiry by board.

20I. Where it appears to the board expedient and proper that the application should be granted with or without addition or modification, or subject or not to any restrictions or conditions, and it has been proved to their satisfaction that the requirements of Board may settle provisional order.

of this Act have been complied with, the board may settle and make a provisional order accordingly, and forward such order, with such report thereon as they think fit to make to the Minister.

20J. All expenses of and connected with the preparation and making of a provisional order shall be paid by the applicant ; and the board may require the applicant to give security for such costs before they proceed with the provisional order.

20K. On such provisional order being received by him, the Minister shall as soon as practicable thereafter, at the request of the applicant, introduce or procure to be introduced into either House of Parliament a bill to confirm such provisional order, with such alterations (if any) therein as he thinks fit to make. The order proposed to be confirmed shall be set out at length in the Schedule to the Bill.

Until confirmation by Act of Parliament, a provisional order under this Act shall not have any operation.

PART IVB.

EASEMENTS.

20L. In this Part—

“ Easement of abutment ” means an easement giving the right to occupy by means of a dam or weir the banks of a river and land adjacent thereto.

“ Easement of conduit ” means an easement giving the right to occupy land for, and to construct and maintain thereon a conduit for water or power and includes works necessary for the use of the conduit.

“ Easement of storage ” means an easement giving the right to submerge any land with water by means of a dam or weir, and includes the right to pass over other land for purposes necessary to the full enjoyment of the easement, and for access to the water stored.

“ The dominant tenement ” means the land in virtue of which the easement has been acquired.

“ The servient tenement ” means the land subject to the easement.

20M. (1) An easement of abutment, conduit, or storage may be acquired in respect of the land on which works are or are proposed to be constructed in pursuance of a license under this Act, in the following manner :—

(a) The occupier of such land shall give to the owner of the land over which the easement is desired, and to every lessee and mortgagee of such land, a notice demanding such easement, and stating approximately—

- (i) the land over which an easement of abutment is required ;
- (ii)

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Expenses of
provisional orders.

Act confirming
provisional order.

Definitions.

Acquisition of
easements.

- (ii) the line of the conduit in connection with which an easement of conduit is required ;
- (iii) the land over which an easement of storage is required ;
- (iv) the nature and locality of the works to be constructed in pursuance of the license ;
- (v) the compensation pecuniary or otherwise offered.

For the purpose of enabling him to give the particulars above required, such occupier may, subject to the regulations, enter any land and take levels and make surveys and marks, and fix pegs and stakes.

- (b) The owner upon whom such notice has been served may with the concurrence of the lessee and mortgagee (if any) grant such easement as demanded or upon agreed terms.
- (c) If no such agreement is come to, the said occupier may apply to the Minister to refer the matter to a court or a local land board as hereinafter provided for inquiry and determination, giving notice thereof to the said owner ; and such matter may accordingly be so referred.
- (d) If, in the opinion of the Minister, the amount of compensation which would be payable to the said owner if the easement were granted is of or over two thousand pounds, such reference shall be to a court consisting of a Judge of the Supreme Court and two assessors, one appointed by the said occupier, and one by the said owner. The decision of the judge and of one assessor shall be final.

But, if in the opinion of the Minister, the said amount is under two thousand pounds, such reference shall be to the board.

- (e) The court or the said board may determine that the demand should be refused on the ground that the easement is not necessary for the purpose of the works constructed or proposed to be constructed or any works to be used in connection therewith, or that the demand is not made in good faith, or may determine that the demand should be granted, with or without such modifications as it thinks just, in which case the court or the local land board shall assess what compensation (if any) should be payable to the owner, lessee, and mortgagee respectively in respect of the easement, or may, in the case of an easement of storage, allot to such owner in lieu or partly in lieu of compensation, a share of the benefit to accrue from the storage of water by the work.

(f)

- (f) The determination of the court or the said board that the easement be granted shall be in writing, and shall, when deposited with the Registrar-General in pursuance of this Act, operate and have the same effect as a grant of the easement upon the terms of and as limited by such determination.
- (g) The grant of any such easement shall not, unless by agreement of the parties, extend beyond the term of the license for works on the dominant tenement in force at the time of such grant, and any renewal of such license.

(2) The provisions of this section shall apply where works have been constructed or are proposed to be constructed on Crown lands; in which case the Crown shall have the powers and duties of an occupier of land on which works are, or are proposed to be, constructed in pursuance of a license under this Act; but an easement granted to the Crown shall be perpetual.

20n. On the grant of any such easement or on the determination of a court or board having the effect of any such grant, the document evidencing such grant or determination shall forthwith be deposited with the Registrar-General, who shall cause proper memorials to be made on the registers of the dominant and servient tenements, and upon the duplicate grants, certificates, or other instruments of title to the said tenements. Registration of easement.

20o. On the resumption by the Crown of the works on a dominant tenement, any easement held in respect thereof shall vest in the Crown. Forfeiture of license.

20p. Any easement acquired under this Part shall lapse if the works specified in the demand of the occupier of the dominant tenement are not completed within three years from the time when the easement has been acquired, or within such further time as may be agreed upon by the occupier and owner of the dominant and servient tenements respectively, or as may be allowed by the local land board, or in the case of a power work by the board as defined by this Act on application made to it. Lapse of easement on failure to construct works.

11. Subsection one of section twenty-one of the Principal Act is repealed, and the following is substituted:— Regulations.

(1) The Governor may make regulations prescribing or relating to—

- (a) the forms of licenses for works and the transfer of such licenses;
- (b) the procedure of the board;
- (c) fees payable for licenses and charges to be made for water;
- (d) enabling a licensee to sell or otherwise dispose of water or power, and imposing conditions thereon;

(e)

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- (e) the prevention of the pollution of water and water supply, and the obstruction or injury to or interference with works ;
 - (f) the imposition of a penalty not exceeding *fifty* pounds for any breach of the regulations, or where the breach is a continuing one, not exceeding *five* pounds for each day during which the breach continues ;
 - (g) generally for the purposes of carrying out the provisions of this Act, and providing for and controlling procedure thereunder.
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