

(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) Act, 1910." Short title.

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

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.

- 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 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- 4.** The whole of Part III of the Principal Act is repealed.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 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.

Power

Power works and easements.

9. The following Parts, to be called respecting Part IVA and Part IVB are inserted next after Part IV of the Principal Act:—

New Parts IVA and IVB.

PART IVA.

POWER WORKS.

Grant of licenses.

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

20B. (1) 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. Applications for such licenses.

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 Minister to the board as defined by this Act. Application forwarded to board.

(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)

- (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 or electrical energy produced directly or indirectly by the work ;
- (l) the proportion of the total of such power or energy 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 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.

PART IVB.

EASEMENTS.

20F. In this Part—

Definitions.

- “Easement of abutment” means an easement giving the right to occupy by means of a dam or weir the banks of a river or 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 works necessary for the use of the conduit.

“Easement

“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.

20G. 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:—

Acquisition of easements.

- (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) 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, and, in the case of an easement of conduit, the locality of the proposed conduit;
 - (v) the compensation 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) 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.

20H. On the grant of any such easement or on the determination of a court or board constituting 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.

20I. 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.

20J. Any easement acquired under this Part shall lapse if the works specified in the demand of the owner 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 respective owners of the dominant and servient tenements, 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.

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

- (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) the prevention of the pollution of water and water supply, and the obstruction or injury 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.

11. The Schedule to the Principal Act is repealed.

Repeal of Schedule.

