

No. 6358.

RIVER IMPROVEMENT ACT 1958.

An Act to consolidate the Law relating to River Improvement and Drainage.

[30th September, 1958.]

BE it enacted by the Queen's Most Excellent Majesty by and with the advice and consent of the Legislative Council and the Legislative Assembly of Victoria in this present Parliament assembled and by the authority of the same as follows (that is to say):—

1. This Act may be cited as the *River Improvement Act 1958*, and shall come into operation on a day to be fixed by proclamation of the Governor in Council published in the *Government Gazette*, and is divided into Parts and Divisions as follows:—

Short title, commencement and division.

Part I.—Introductory ss. 3–4.

Part II.—Districts and Authorities ss. 5–22.

Division 1.—Districts under the Commission s. 5.

Division 2.—Districts under Trusts ss. 6–16.

Division 3.—General ss. 17–22.

Part III.—Functions of Authorities ss. 23–32.

Part IV.—Financial ss. 33–49.

Part V.—Miscellaneous ss. 50–58.

2. (1) The Acts mentioned in the Schedule to the extent thereby expressed to be repealed are hereby repealed accordingly.

Repeal. Schedule.

(2) Except as in this Act expressly or by necessary implication provided—

- (a) all persons things and circumstances appointed or created by or under any of the repealed Acts or existing or continuing under any of such Acts immediately before the commencement of this Act shall under and subject to this Act continue to have the same status operation and effect as they respectively would have had if such Acts had not been so repealed;
- (b) in particular and without affecting the generality of the foregoing paragraph, such repeal shall not disturb the continuity of status operation or effect of any regulation by-law order application determination decision recommendation petition licence approval disapproval appointment condition notice declaration election consent vesting rate agreement saving liability or right made effected issued granted given presented passed fixed accrued incurred or acquired or existing or continuing by or under any of such Acts before the commencement of this Act.

PART I.—INTRODUCTORY.

Interpretation.
No. 5302
ss. 2, 3.

3. (1) In this Act unless inconsistent with the context or subject-matter—

“ Banks,”

“ Banks ” in addition to the meaning assigned to it by section three of the *Water Act* 1958 includes any banks defined under sub-section (3) of this section.

“ Com-
mission.”

“ Commission ” means the State Rivers and Water Supply Commission.

“ Council.”

“ Council ” means council of a municipality.

“ Part.”

“ Part ” means Part of this Act.

“ Public
authority.”

“ Public authority ” means the Board of Land and Works, The Victorian Railways Commissioners, any Authority under the *Water Act* 1958, the Country Roads Board, the Forests Commission, the State Electricity Commission of Victoria, the Melbourne and Metropolitan Board of Works, the Geelong Waterworks and Sewerage Trust, any Government Department, any municipality, and any body which is declared to be a public authority pursuant to this Act.

“ River.”

“ River ” includes any river stream creek or water-course, and any lake or artificial storage along any river stream creek or water-course.

- “River improvement authority” means the State Rivers and Water Supply Commission and any river improvement trust. “River improvement authority.”
- “River improvement district” or “district” means any river improvement district under this Act and includes any drainage district under this Act. “River improvement district.”
- “River improvement trust” means any river improvement trust constituted under this Act and includes any drainage trust constituted under this Act. “River improvement trust.”
- “River improvement works” includes any of the following:— “River improvement works.”
- (a) Clearing and removing obstructions from the bed and banks of a river;
 - (b) Widening deepening straightening diverting or otherwise improving a river;
 - (c) Prevention of and defence against flooding by river waters;
 - (d) Making new courses or outfalls for a river, defining and constructing the course of a river through a swamp or otherwise draining land;
 - (e) Preventing or minimizing erosion of the bed or banks of a river;
 - (f) Erecting any weir or any bank groyne dam or other defence against river waters;
 - (g) Cleansing a river or preventing or minimizing its pollution;
 - (h) Planting sowing and maintaining any trees shrubs plants or grasses in connexion with river improvement works;
 - (i) Any other works for general or any specific improvement of a river.

(2) The Governor in Council may by Order published in the *Government Gazette* declare any body to be a public authority for the purposes of this Act. Declaration of public authorities.

(3) For the purposes of this Act the Governor in Council may by Order published in the *Government Gazette* define the extent of any banks of any river and amend or revoke in whole or in part any such Order. Power to define banks.

(4) Notwithstanding anything in any other Act, but subject to this Act, any banks to the extent so defined together with any other banks and the bed of any river within a river improvement district shall for the purposes of this Act be under the management and control of the appropriate river improvement authority.

Savings as to bridges, taking of water, &c.
No. 5302 s. 4.

4. (1) Nothing in this Act shall apply to or affect—
- (a) any bridge tunnel or electrical or water conduit erected or constructed in under over across or along a river by any public authority or the erection maintenance management or control of any such bridge tunnel or conduit;
 - (b) any rights powers or authorities of the Crown or of any Government Department (including the Board of Land and Works, The Victorian Railways Commissioners, the State Electricity Commission and the State Rivers and Water Supply Commission) or of the Melbourne and Metropolitan Board of Works to impound store or take water from a river or to issue any licence or permit to use take or divert water therefrom; or
 - (c) any lands dams weirs reservoirs works buildings erections structures machinery plant pipes or things used or to be used in connexion with such impounding storage taking or conveying of water.

Saving of rights of Crown.

(2) Save as otherwise expressly provided in this Act with respect to the use flow and control of the water in a river the right of the Crown to the use flow and control of the water in rivers shall not be affected by this Act.

Saving as to certain rivers, &c.

(3) This Act shall not apply to or in respect of—

- (a) the rivers creeks and water-courses specified in the Twelfth Schedule to the *Melbourne and Metropolitan Board of Works Act 1958* to the extent specified in the said Schedule;
- (b) the rivers creeks and water-courses or portions thereof situate within any land owned by vested in or under the control and management of the Melbourne and Metropolitan Board of Works in relation to water supply; or
- (c) the Barwon River to the extent specified in the Eleventh Schedule to the *Geelong Waterworks and Sewerage Act 1958*.

PART II.—DISTRICTS AND AUTHORITIES.

DIVISION 1.—DISTRICTS UNDER THE COMMISSION.

Constitution of river improvement districts.
No. 5302 s. 5.

5. (1) The Governor in Council may subject to this Act constitute any area a river improvement district under the jurisdiction and control of the Commission notwithstanding that such area or any part thereof forms part of or includes any irrigation and water supply district waterworks district^(a) flood protection district or drainage district under the *Water Act 1958* or any drainage area under the *Drainage Areas Act 1958*.

(a) As to urban districts under the *Water Act 1958*, see section 66 thereof.

(2) The Minister may by writing under his hand publish his declaration that the lands included in any area defined in such declaration ought to be constituted a river improvement district under the jurisdiction and control of the Commission.

(3) Every such declaration shall give a general description of the scheme of works proposed for such district, a provisional estimated cost of such works and proposals for financing the scheme (including provision for maintenance).

(4) Such declaration shall be published in the *Government Gazette* and in some newspaper circulating generally within such area, a copy thereof shall be sent to each council within whose municipal district any part of the proposed river improvement district is situate, and a copy thereof shall be laid before both Houses of Parliament; and not less than thirty days after it has been so laid before Parliament the Governor in Council may make an Order constituting such area a river improvement district under the jurisdiction and control of the Commission.

(5) Every such Order in Council shall—

- (a) specify the boundaries of the district;
- (b) assign a name to the district;
- (c) give a general description of the scheme of works for the service of the district;
- (d) state a provisional estimated cost of such scheme and proposals for financing the scheme;
- (e) contain such provisions not inconsistent with this Act as according to the facts and circumstances of each case the Governor in Council thinks fit.

(6) Such district shall from the date of its constitution become subject to the jurisdiction and control of the Commission for the purposes for which the district was constituted; and the Commission shall be the river improvement authority under this Act empowered to manage and control the works for the service of such district.

DIVISION 2.—DISTRICTS UNDER TRUSTS.

6. (1) A council of a municipality or the councils of two or more municipalities jointly or the Commission may as in this Division provided make application to the Minister for the constitution of a river improvement district under the jurisdiction and control of a river improvement trust.

Applications for constitution of river improvement districts under river improvement trusts.

No. 5302 s. 6.

(2) Such an application may be made notwithstanding that—

- (a) part of the proposed river improvement district is outside the municipal district or districts of the council or councils making the application; or

(b) the proposed river improvement district or any part thereof forms part of or includes any irrigation and water supply district waterworks district flood protection district or drainage district under the *Water Act 1958* or any drainage area under the *Drainage Areas Act 1958*.

(3) The Commission may make such an application whether or not it has received a petition in that behalf by landholders within the proposed river improvement district.

General plan and description to be prepared. No. 5302 s. 7.

7. (1) Every such applicant shall cause to be prepared a general plan and description of the proposed works showing their character and extent.

(2) The description shall clearly set forth the object and purpose of the proposed works, a provisional estimate of their cost, proposals for financing the scheme (including provision for maintenance) and a statement of the net annual value or (as the case requires) unimproved capital value of the property to be benefited thereby.

(3) The applicant shall forward such general plan and description to the Minister with an application for submission to the Governor in Council for his sanction for the constitution of a river improvement trust.

(4) The applicant shall if required by the Minister furnish details of the proposed works and details of all proposed interferences with any public or private property and such other information as he requires.

Entry upon lands.

(5) For any of the purposes aforesaid the applicant may by officers surveyors engineers agents or servants enter at all reasonable hours in the day-time into any lands and make any surveys and take any levels which may be deemed necessary.

Expenses.

(6) Any expenses incurred for the said purposes by a council may be paid out of the municipal fund of the municipality.

Notification of proposal. No. 5302 s. 8.

8. (1) A notice stating that the application and general plan and description have been forwarded to the Minister and stating in what place copies of such general plan and such description have been deposited for inspection shall be published by the applicant once at least in each week for three weeks—

(a) in some newspaper circulating generally in the area in respect of which the application is made;

(b) in the *Government Gazette*; and

(c) in one at least of the Melbourne daily newspapers.

(2) The applicant shall forward to the Minister before he submits any application to the Governor in Council a true copy of all notices published pursuant to this section and a copy of every relevant newspaper and a reference to the date and page of every relevant *Government Gazette*.

9. (1) Within one month after the last publication of any such notice in the *Government Gazette* any person having any property or interest likely to be affected by the proposed works or on or near any of the rivers likely to be affected thereby may forward to the Minister a petition to the Governor in Council to refuse the application or to amend or alter the plan thereof or to make such other order in reference thereto as the petitioner may pray.

Petitions
respecting the
proposal.
No. 5302 s. 9.

(2) Every signature to any such petition other than the common seal of a municipality shall be verified by statutory declaration and no petition shall be received by the Minister unless it is accompanied by such declaration.

(3) A true copy of the application general plan and description forwarded to the Minister shall be deposited, for the inspection (without payment) of any person who desires to inspect the same, at the municipal offices of every council which is a party to the application or (as the case requires) at the head office of the Commission, and also at the office of the Minister.

Inspection
of plan.

10. (1) At the expiration of two months after the last publication of any such notice in the *Government Gazette* the Minister (if satisfied that the provisions of this Act have been substantially complied with) shall submit the application and the general plan and description accompanying it and all petitions which have been received in respect of such application to the Governor in Council together with any recommendations as to the granting of such application or as to any alterations or additions thereto he may think desirable.

Application
and plans to
be submitted
to Governor
in Council.
No. 5302 s. 10.

(2) The Governor in Council may approve of the application with or without alterations or additions in the general plan and the description thereof or with or without any conditions or may disapprove of the application and shall make an Order in Council accordingly.

Approval or
otherwise by
Order in
Council.

11. (1) If the Governor in Council approves of the application with or without alterations additions or conditions he may by Order in Council published in the *Government Gazette* constitute a river improvement trust in accordance with the provisions of such Order and of this Act.

Constitution
of river
improvement
trust.
No. 5302 s. 11.

Drainage trusts in lieu of river improvement trusts.

(2) Where the proposed works of the trust consist principally of drainage works the Governor in Council may so constitute the trust as a drainage trust with a drainage district under this Act instead of as a river improvement trust with a river improvement district and the provisions of this Act shall in all respects apply to such drainage trust and drainage district respectively as if the trust were a river improvement trust with a river improvement district.

Trust to be a corporation.
No. 5302 s. 12.

12. The commissioners of every river improvement trust shall be a body corporate by the corporate name assigned to it by the Governor in Council and shall have perpetual succession and shall adopt and use a common seal and be capable in law of suing and being sued and shall have power to take purchase sell lease exchange and hold property for the purposes of the trust under this Act and to deal therewith in manner provided by this Act.

Orders in Council.
No. 5302 s. 13.

Principal works.

River improvement district.

Number and election or appointment of commissioners.

13. Every Order in Council constituting a river improvement trust shall—

- (a) give a general description of the proposed works;
- (b) specify the boundaries of the district to be called the river improvement district of the trust;
- (c) specify the number (not being more than nine nor less than five) of commissioners of the trust and state how many of them are to be appointed by the Governor in Council and how many (if any) are to be elected by councils named in the Order or by the ratepayers of the river improvement district (as the case may be):

Provided that where the river improvement district is wholly within the municipal district of one municipality the council of such municipality may be appointed as the commissioners of the trust;

Corporate name.

Other provisions.

- (d) assign a corporate name to the trust;
- (e) contain such provisions (not inconsistent with this Act) as according to the nature of the application and the facts and circumstances of the case the Governor in Council thinks fit.

Application of *Water Act* ss. 143 (2), 151, 156-158, 160, 167-179.

Officers of trusts, accounts audit &c.

No. 5302 s. 14;
No. 5637 s. 5.

14. The provisions of sub-section (2) of section one hundred and forty-three and sections one hundred and fifty-one, one hundred and fifty-six to one hundred and fifty-eight, one hundred and sixty and one hundred and sixty-seven to one hundred and seventy-nine of the *Water Act* 1958 shall with such adaptations as are necessary extend and apply in relation to river improvement

trusts and officers thereof, and for the purpose of such application any reference in any of the said sections to a waterworks trust or waterworks district shall be read and construed as a reference to a river improvement trust or river improvement district respectively.

15. (1) Any person holding any office or place of profit under or in the gift of a river improvement trust or participating in any manner whether directly or indirectly in any contract with any such trust or in the profit of such contract—

(a) shall be incapable of being or continuing a commissioner of such trust; and

(b) if such a commissioner, shall be liable to a penalty of not more than One hundred pounds.

(2) Every officer employed by a river improvement trust who—

(a) exacts or accepts on account of anything done by virtue of his office or in relation to the matters to be done under this Act any fee reward whatsoever other than the salary or allowance by way of salary allowed by the trust; or

(b) is in any wise concerned or interested in any bargain or contract made by the trust—

shall be incapable of being afterwards employed by the trust and shall be liable to a penalty of not more than One hundred pounds.

(3) Notwithstanding anything in the preceding sub-sections of this section no person shall in respect of anything done under this Act be disqualified from being a commissioner or officer of a river improvement trust or member of a council or shall be liable to a penalty by reason of—

(a) being beneficially interested in any newspaper in which the trust or council inserts advertisements; or

(b) being a shareholder or member of any incorporated company consisting of more than twenty persons which has entered into any contract with or done any work for the trust or council; or

(c) receiving from any works of the trust or council any benefit which any member of the public (not being a commissioner or officer of the trust or councillor or officer of the council) might receive, and paying in connexion therewith such rates or contributions (if any) as any such member of the public might pay or be required to pay.

Incapacity
of and
penalty for
commissioners
and officers
benefiting
improperly
from their
office.
No. 5302 s. 15.

Regulations
as to
commissioners
and trusts.
No. 5302 s. 16.

16. The Governor in Council may make regulations for or with respect to—

- (a) the qualification disqualification election appointment removal and term of office of commissioners of river improvement trusts and the filling of vacancies among such commissioners;
- (b) proceedings of such commissioners;
- (c) generally, any matter necessarily incidental to the foregoing paragraphs of this section or necessary or expedient to be prescribed to give effect to this Division.

DIVISION 3.—GENERAL.

Additional
Orders in
Council re
constitution of
districts &c.
No. 5302 s. 17.

17. (1) The Governor in Council may from time to time after any river improvement district has been duly constituted make additional Orders in Council not inconsistent with the provisions of this Act relating to such district and its river improvement authority; and may in any such Order—

- (a) make any Order which might have been made in the original Order in Council constituting such district or the trust therefor;
- (b) increase or diminish the extent of the river improvement district of the river improvement authority;
- (c) alter the corporate name of any river improvement trust;
- (d) repeal any of the provisions of any previous Order in Council relating to the river improvement authority.

(2) When the district of any river improvement authority has been or is about to be increased or diminished, the Governor in Council may make such Order as appears just for the purpose of apportioning any debts or liabilities between the various localities affected or to be affected by the increasing or diminishing of such district and for determining whether in the case of a river improvement trust the commissioners shall continue in office or shall be replaced at a date specified in the Order by persons appointed or elected in accordance with the provisions of such Order, and for determining all other matters and things which it appears desirable or proper so to determine; and every such Order shall be in all respects binding on the river improvement authority the ratepayers and other persons thereby affected.

(3) Every Order in Council made under this section shall be published in the *Government Gazette*.

18. (1) The Governor in Council on the recommendation of the Commission may by Order published in the *Government Gazette* unite any two or more river improvement districts or transfer the jurisdiction and control over any river improvement district from a river improvement trust to the Commission or *vice versa*.

Union of districts, and transfer of control of districts.
No. 5302 s. 18.

(2) Every such Order in Council shall—

- (a) state the name and boundaries of every district so united or transferred;
- (b) assign a name to any new district or trust so formed;
- (c) in the case of a district to be under the control of a trust, specify the number (not being more than nine nor less than five) of persons who under the provisions of this Act shall hold office as commissioners of the trust; and state how many of them are to be appointed by the Governor in Council and how many (if any) are to be elected by councils named in the Order or by the ratepayers of the river improvement district (as the case may be);
- (d) state the date on which the Order shall come into force;
- (e) contain such other provisions not inconsistent with this Act as having regard to the facts and circumstances of the case the Governor in Council thinks fit.

(3) Upon any such union or transfer the river improvement authority controlling the district so formed or transferred shall be the successor in law of each of the river improvement authorities of the districts so united or (as the case may be) of the authority from which it is transferred in respect of the district so formed or transferred, and all property powers rights liabilities and obligations of and all matters and things (not otherwise provided for) made or done by or on behalf of any outgoing authority in respect of its district so merged or transferred shall vest in and attach to and shall be deemed to have been made or done by or on behalf of the incoming authority.

Effect of union or transfer.

(4) Any action suit prosecution or other proceeding whatsoever commenced by or against any such outgoing authority shall not abate or be discontinued or be prejudicially affected by such union or transfer but shall continue as if commenced by or against the incoming authority as effectually to all intents and purposes as if such incoming authority were the authority which was the original party to such action suit prosecution or other proceeding.

(5) Upon any such union or transfer all the by-laws in force in any of the districts united or transferred at the time of union or transfer which are applicable to the altered circumstances shall become by-laws of the district formed by the union or transferred and may be amended or revoked by the incoming authority pursuant to this Act; but until so amended or revoked every such by-law shall remain in force in the district only in which it was in force previously, and every by-law which cannot be restricted to such particular district shall be deemed inapplicable and all by-laws which are inapplicable to the altered circumstances shall be revoked by virtue of the union or transfer.

New com-
missioners.

(6) (a) Where so required new commissioners shall be elected and appointed for the district formed by such union or transferred, in accordance with the Order in Council under which such union or transfer takes place, and in the same manner as if such district were a newly-formed district.

(b) Upon the completion of the first election and appointment of such new commissioners or (as the case requires) on the transfer of the district to the Commission the commissioners of the trusts of the districts so united or transferred shall go out of office.

Abolition
of river
improvement
districts.
No. 5302 s. 19.

19. (1) On the recommendation of the Commission the Governor in Council may by Order published in the *Government Gazette* abolish any river improvement district and (where the case so requires) dissolve the trust controlling the district and by the same or any other Order published in the *Government Gazette* may provide for the disposition of all the existing works and property of such district.

(2) No such Order shall be made until provision is made to the satisfaction of the Governor in Council for discharge of all the liabilities of the district at the time of making such Order or within a time to be named in such Order.

Effect of
inclusion of
drainage
area under
*Drainage
Areas Act*
or part
thereof in
river
improvement
or drainage
district under
this Act.
No. 5302 s. 20.

20. (1) Where any drainage area under the *Drainage Areas Act* 1958 is wholly situate within the boundaries of a river improvement (or drainage) district constituted under this Act such drainage area shall, if the Order constituting such district so directs, be abolished and the property income assets rights and liabilities thereof shall thereupon vest in the river improvement authority for the purposes of this Act.

(2) Where a part only of any such drainage area is situate within the boundaries of any such river improvement (or drainage) district such part shall, if the Order constituting such district so directs, be excised from such drainage area, and the jurisdiction of the Council in respect of such part shall thereupon cease; and the Governor in Council may by Order published in the

Government Gazette apportion settle adjust and determine the extent of the respective interests and obligations of the parties in regard to any property income assets rights or liabilities affected by such excision; and the property income assets rights and liabilities attaching to such portion as so determined shall thereupon vest in the river improvement authority for the purposes of this Act.

21. On the recommendation of the Commission the Governor in Council by Order published in the *Government Gazette* may convert one or more drainage areas under the *Drainage Areas Act* 1958 (with or without any variation of the boundaries thereof by way of addition or excision) into a river improvement district (or drainage district) under this Act, and by the same or any other Order published in the *Government Gazette* may provide for any matters incidental to such conversion, including (without affecting the generality of the foregoing)—

Conversion of drainage areas under *Drainage Areas Act* into river improvement or drainage districts under this Act.

No. 5302 s. 21.

- (a) whether the district is to be under the jurisdiction and control of the Commission or of a river improvement trust (or drainage trust) and, if under a trust, the constitution of the trust in accordance with this Act;
- (b) the variation of the boundaries of the area or district;
- (c) the disposition of any works and property of the area and the discharge of any liabilities of the area;
- (d) the temporary continuation of any charges imposed under the *Drainage Areas Act* 1958 (whether on lands within or outside the boundaries of the district as redefined by any such Order);
- (e) the temporary levying of charges within any one or more of the drainage areas so converted, so as to enable satisfactory adjustment of finances on such conversion;
- (f) the continuation or maintenance of any works for the drainage of the area.

22. (1) Before any action is taken under section eighteen or section twenty-one of this Act—

- (a) to unite any two or more river improvement districts or transfer the jurisdiction and control over any river improvement district from a river improvement trust to the Commission or *vice versa*; or
- (b) to convert one or more drainage areas under the *Drainage Areas Act* 1958 into a river improvement (or drainage) district under this Act—

Procedure to be adopted before uniting, converting, &c., districts.

No. 5302 s. 22.

the Minister shall by writing under his hand give notice of intention that such action is to be taken.

(2) Every such notice shall give a general description of the proposed re-organization and shall be published in the *Government Gazette* and in some newspaper circulating generally within the area concerned, and a copy thereof shall be sent to each river improvement trust or council concerned, and a copy thereof shall be laid before both Houses of Parliament; and not less than thirty days after it has been so laid before Parliament the Governor in Council may take the action under section eighteen or (as the case requires) section twenty-one of this Act.

PART III.—FUNCTIONS OF AUTHORITIES.

River
improvement
works.
No. 5302 s. 23.

23. (1) A river improvement authority may within its river improvement district carry out and maintain river improvement works.

(2) The Commission may carry out and maintain river improvement works on any land which is not within a river improvement district.

(3) A river improvement trust may with the consent of the Governor in Council carry out and maintain river improvement works on any land which is not within its river improvement district.

(4) The Commission may by agreement with a river improvement trust carry out and maintain river improvement works in the district of such trust on such terms and conditions as are agreed upon.

(5) Any works under the foregoing provisions of this section may be carried out and maintained on such basis of financial contribution between the river improvement authority and land owners or occupiers concerned as is agreed upon.

(6) In the event of a river improvement trust failing in the opinion of the Commission satisfactorily to carry out and maintain river improvement works within its district the Commission may carry out river improvement works in such district at the expense of the trust or on such basis of financial contribution between the Commission and the trust as the Governor in Council determines.

(7) The council of a municipality with the consent of the Commission may within its municipal district (and whether within or outside a river improvement district) carry out and maintain river improvement works at the expense of the municipality or on such basis of financial contribution between the municipality the Commission and land owners or occupiers concerned as is agreed upon (and the municipal fund is hereby to the necessary extent appropriated accordingly).

(8) In carrying out river improvement works a river improvement trust or council shall (except in cases of emergency) act under the general control and supervision of the Commission as required by the Commission.

(9) Except in cases of emergency, before any river improvement trust—

- (a) enters into any contract for the execution of any works or the furnishing of any goods to the amount of Five hundred pounds or upwards; or
- (b) undertakes any works the estimated cost of which is Five hundred pounds or upwards—

the trust shall submit plans and specifications of the works to the Commission and obtain the consent in writing of the Commission thereto.

24. For the purposes of this Act any river improvement authority or council may—

Surveys and investigations.
No. 5302 s. 24.

- (a) cause to be made such surveys and investigations as it thinks necessary in order to ascertain what river improvement works should be carried out by it;
- (b) cause to be prepared such maps on such scales and setting forth such information ascertained by the said surveys and investigations as it thinks fit;
- (c) from time to time cause such maps to be revised and the date of each revision to be expressed thereon;
- (d) keep such maps or copies thereof at its offices and permit the same to be inspected during office hours by any person free of charge; and
- (e) supply to any person applying therefor a copy of any such map at a reasonable charge.

25. Subject to and for the purpose of this Act and so far as is necessary for the exercise by it of any powers conferred on it by this Act any river improvement authority or council may—

General powers as to works.
No. 5302 s. 25.

- (a) enter upon any land to make surveys or to take levels or to acquire any information, and set out such parts thereof as it thinks necessary;
- (b) after giving reasonable notice to any person or authority concerned, enter upon lands or public or private streets or roads and carry out river improvement works thereon and maintain alter discontinue or remove any such river improvement works and enter upon any such lands streets or roads for the purposes of such maintenance alteration discontinuance or removal;

- (c) erect construct and maintain any works buildings or machinery;
- (d) after giving (except in case of emergency) reasonable notice to any person or authority materially concerned and with the consent of the Governor in Council, divert impound or take away water from any river and divert any part of the course or alter temporarily or permanently any part of the course of any river;
- (e) blast any rock.

Works to vest in authority.
No. 5302 s. 26.

26. All river improvement works constructed or in process of construction by any river improvement authority or council shall vest in such authority or council.

River improvement works on private land.
No. 5302 s. 27.

27. Where any river improvement authority or council carries out any river improvement works on private land—

- (a) the carrying out and maintenance of such works shall not be taken to vest the land in such authority or council;
- (b) no person shall without the consent in writing of such authority or council remove alter destroy or interfere with any such works or cause any such removal alteration destruction or interference, and such consent may be given subject to such conditions as such authority or council thinks fit.

Acquisition of land.
No. 5302 s. 28.

28. (1) Subject to and for the purposes of this Act the Commission or (with the consent of the Governor in Council) any river improvement trust may by agreement purchase or take on lease for such term as it thinks fit or compulsorily take any land or any right or easement in or over any land.

Application of *Lands Compensation Act* for purposes of this Act.

(2) *The Lands Compensation Act 1958* is hereby incorporated with and shall be read and construed as part of this Act.

(3) In the construction of the said Act for the purposes of this Act, unless inconsistent with the context or subject-matter—

- “the Board of Land and Works” and “the Board” shall mean the river improvement authority; and
- “the special Act” shall mean this Act.

Application of *Water Act Part VI, Div. 2, Compensation for injury by flooding.*
No. 5302 s. 29.

29. The provisions of Division two of Part VI. of the *Water Act 1958* shall extend and apply for the purposes of this Act in all respects as if every river improvement authority under this Act were an authority under the *Water Act 1958*.

30. (1) Notwithstanding anything in any Act—

- (a) the Governor in Council, on the recommendation of the Minister of Water Supply after consultation with the Commissioner of Crown Lands and Survey, may by Order published in the *Government Gazette* declare that any land of the Crown which forms or abuts on or is adjacent to the banks of any river shall, subject to such conditions as the Governor in Council thinks fit, be placed under the management and control of a river improvement authority for the purposes of this Act; and
- (b) any such Order shall have effect accordingly notwithstanding any reservation or setting apart of such land or proclamation affecting the use of such land in force at the time of such Order, and any such reservation setting apart or proclamation shall, unless otherwise specified in such Order, thereupon be deemed to be revoked so far as it affects such land.

Power to place Crown lands adjacent to banks of rivers under management and control of authorities.
No. 5302 s. 30.

(2) Her Majesty may at any time without payment of compensation by Order in Council published in the *Government Gazette* resume any land of the Crown which by or under this Act has been placed under the management and control of any river improvement authority and which is required for any public purpose or for any public highway, and thereupon such land shall be deemed to be surrendered to the Crown and to be unalienated land of the Crown freed and discharged from all reservations trusts encumbrances limitations or restrictions whatsoever.

Power to Crown to resume certain lands vested in authorities.

(3) Any river improvement authority may at any time surrender to the Crown any land of the Crown which is by or under this Act placed under the management and control of the authority, and thereupon such land shall be deemed to be unalienated land of the Crown freed and discharged from all reservations trusts encumbrances limitations or restrictions whatsoever.

31. (1) The Commission or (with the consent of the Commission) any river improvement trust may—

- (a) sell or lease any land acquired by it under this Act (not being land of the Crown placed under its management and control);
- (b) for such period and for such purposes and on such terms and conditions as it thinks fit grant licences authorizing persons to occupy any land of the Crown which by or under this Act has been placed under its management and control, and revoke or renew any such licence.

Power to sell, lease &c. lands.
No. 5302 s. 31.

(2) Every such licence shall state the period (not exceeding fifteen years) purpose terms and conditions for and under which it is granted and the rate of payment therefor.

Research and
experiments.
No. 5302 s. 32.

32. The Commission may—

- (a) conduct research and experiments into methods and types of river improvement work;
- (b) publish the results thereof;
- (c) advise river improvement trusts in relation thereto.

PART IV.—FINANCIAL.

Funds.
No. 5302 s. 33.

33. (1) Each river improvement authority shall in respect of any river improvement district under its control keep a fund to be known as the “[*Name of District*] River Improvement [*or Drainage*] Fund” (hereinafter referred to as “the fund”).

(2) Into the fund shall be paid—

- (a) all sums levied under this Act by such authority by way of rates on properties in such district;
- (b) all sums made available to such authority for the purposes of this Act in relation to such district from moneys voted by Parliament for the purpose or provided by any municipality;
- (c) all sums borrowed by such authority by overdraft under this Act in relation to such district;
- (d) any other sums received by such authority in relation to such district.

(3) The fund shall be applied only in and towards the administration of this Act and the carrying out of works by such authority in relation to such district under this Act.

River
improvement
rates.
No. 5302 s. 34.

34. For the purposes of this Act any river improvement authority may from time to time but not oftener than once in every year make and levy a rate to be called the “[*Name of District*] River Improvement [*or Drainage*] Rate” in respect of properties within its river improvement district rateable to any municipality.

Estimate of
moneys
required to be
raised by
rating.
No. 5302 s. 35.

35. (1) Before proceeding to make any such rate (hereinafter referred to as a river improvement rate) a river improvement trust shall cause an estimate to be prepared of the moneys required for one year for the purposes of this Act showing the several sums available for such purposes the several sums required and the total net annual value or (as the case requires) unimproved capital value of all properties within the river improvement district rateable to any municipality.

(2) The total amount to be raised by any river improvement rate shall not exceed the estimated moneys required as aforesaid less the estimated sums available as aforesaid.

Amount to be raised.

(3) Such estimate shall before the rate is made and on or before the thirtieth day of September in each year be submitted for the approval of the Minister.

Submission to Minister.

(4) If in the opinion of the Minister the proposed rate is not sufficient for the said several purposes the Minister may refer the estimate back to the trust for amendment.

(5) If the trust fails to submit an estimate as aforesaid on or before the said date or fails within four weeks to amend the estimate to such an extent as would in the opinion of the Minister be sufficient for the said several purposes the Minister shall determine the amount of the rate to be made and levied and the rate so determined shall be made and levied accordingly by the trust.

Procedure when trust fails to submit &c. estimate.

(6) The Minister shall also have power to disallow from the said estimate all moneys which he considers would be an improper expenditure and may reduce the estimate accordingly.

Power of Minister to disallow.

(7) When the accounts of the trust are audited any expenditure not covered by the approved estimate or not specially permitted by the Minister shall be deemed and taken to have been unlawful.

Unlawful expenditure.

36. (1) For the purpose of making and levying any river improvement rate the properties to be rated may be arranged in so many and such divisions as are determined by the Governor in Council having regard to the relative extent of the benefits which may be expected to be derived by such properties from the river improvement works for the district, and any such property may be allotted proportionately as between two or more such divisions.

Rating divisions. No. 5302 s. 36.

(2) Any land which does not or is not expected to derive any benefit from river improvement works in the district may be included in a division in respect of the lands in which no rate shall be made and levied.

(3) Notwithstanding anything in this Part where any property rateable under this Part would apart from this sub-section be rated under this Part at an amount less than One shilling the rate payable under this Part in respect of such property shall be One shilling.

37. (1) Every river improvement rate shall be made by by-law, and the by-law shall state—

Rating by-laws. No. 5302 s. 37.

(a) the river improvement district in respect of the lands in which the rate is made;

- (b) the amount in the pound of such rate; or the amounts in the pound in respect of the lands in the several divisions if the lands in such district are arranged in divisions;
- (c) the period (if any) for which the rate is made; and
- (d) the time when and the place where the rate is payable.

(2) Every such by-law shall be subject to approval by the Governor in Council and shall be published in the *Government Gazette* and in some newspaper circulating generally in the river improvement district; and the rate shall be deemed to have been made on the date of the said publication in the *Government Gazette*.

Valuation.
No. 5302 s. 38.

38. Except where any river improvement trust under the powers conferred by the next succeeding section makes a valuation of the properties within its river improvement district, the trust shall adopt the net annual value or (as the case requires) the unimproved capital value set out in the valuation for the time being of the properties within its district for the purposes of the municipal rate of the municipality in the municipal district of which such properties are situate as the valuation of such properties respectively for the purposes of making and levying any river improvement rate.

Application
of *Water Act*
Pt. VIII.,
Div. 3,
Subdivisions
2-5.
Valuations,
recovery of
rates, &c.
No. 5302 s. 39.

39. (1) All the provisions of subdivisions 2 to 5 of Division three of Part VIII. of the *Water Act* 1958 so far as applicable shall extend and apply with respect to rates made and levied under this Part and shall with such adaptations as are necessary be read and construed and take effect accordingly.

(2) Without affecting the generality of the foregoing, for the purpose of such application and extension any reference in any of the said subdivisions to an authority shall be read and construed as a reference to a river improvement authority.

Rivers and
Streams
Fund, and
payments
thereinto
and
application
thereof.
No. 5302
ss. 40 (2), 49;
No. 3944
s. 2 (2).
No. 5838 s. 8.

40. (1) There shall be kept in the Treasury an account to be called the "Rivers and Streams Fund".

Into that Fund there shall be paid—

- (a) all fees received by the Crown in respect of water frontages under the *Local Government Act* 1958;
- (b) the net revenue from the issue of licences and permits under section two hundred and four of the *Water Act* 1958;
- (c) out of moneys made available by Parliament for the purpose, such sums as the Treasurer of Victoria approves.

(2) The money to the credit of that Fund—

- (a) shall be applied on the recommendation of the Minister after consultation with the Commission for or towards river improvement; and
- (b) may be applied in payment into the fund of any river improvement authority of such sums as the Minister on the recommendation of the Commission approves.

41. (1) On the recommendation of the Commission there may be paid into the fund of any river improvement authority—

- (a) out of moneys made available by Parliament for the purpose, such sums as the Treasurer of Victoria approves;
- (b) out of the Rivers and Streams Fund sums as provided in the last preceding section.

(2) There may be paid into the fund of any river improvement authority any sums made available by any municipality for the purpose (and the municipal fund of any municipality may be appropriated for the purpose accordingly).

42. Any river improvement trust may for the purposes of this Act accept and take from any bank any advances by way of overdraft of the current account kept by such trust with any bank or banks but so that the principal moneys owing on overdraft for such purposes do not at any time exceed the sum of Seven hundred and fifty pounds or a sum not exceeding one-half of the prior year's revenue from rates under this Act, whichever sum is the greater.

43. (1) The Governor in Council may out of any moneys legally available for the purpose from time to time make advances by way of loan to any river improvement authority on such terms and conditions as the Governor in Council determines.

(2) As a condition of any such loan the Governor in Council may apply any of the provisions of Part VII. of the *Water Act* 1958 with such adaptations as are necessary.

44. (1) Every river improvement authority shall cause a separate account to be kept in a bank of all moneys which are the proceeds of any loan under the last preceding section.

(2) All moneys forming part of any such loan shall be paid into that account and shall be applied only to the purposes for which they were borrowed.

Payments into fund of a river improvement authority.
No. 5302 ss. 40 (1), 41.

Overdraft.
No. 5302 s. 42.

Loans by Governor in Council.
No. 5302 s. 43.

Water Act, Part VII.

Loan account.
No. 5302 s. 44.

(3) Save as otherwise expressly provided there shall not be disbursed out of any such moneys—

- (a) any payment of principal interest or sinking fund on account of the moneys so borrowed; or
- (b) any payment on account of the loan so granted.

(4) Any commissioner or officer of a river improvement authority who wilfully sanctions or concurs in any contravention of this section shall be liable to a penalty of not more than Two hundred pounds.

Payments by councils for benefits received by lands in drainage areas.
No. 5302 s. 45.

45. (1) Where any land in a drainage area under the *Drainage Areas Act* 1958 is not within a river improvement district but benefits or is expected to benefit from river improvement works of the river improvement authority controlling such district, the council controlling the drainage area is hereby authorized to pay to such authority from the funds available for works within the drainage area such sums as are agreed upon between the council and such authority.

(2) Such sum shall be assessed on the basis of the amount of rates that would have been payable under this Act in respect of such land if such land had been included in the river improvement district.

Grants to councils &c. towards river improvement works.
No. 5302 s. 46.

46. On the recommendation of the Commission there may be paid from moneys made available by Parliament for the purpose to any council or public authority sums towards the cost incurred or to be incurred by it in carrying out or maintaining river improvement works.

Financial control of trusts by Commission.
No. 5302 s. 47.

47. Every river improvement trust shall in relation to finance operate under the general direction and control of the Commission.

Rating by Commission in lieu of defaulting trust.
No. 5302 s. 48.

48. (1) If a river improvement trust fails to reimburse the Commission any costs of or contributions for works which under this Act are payable by the trust to the Commission, the Commission may, after giving to such trust three months' notice of its intention so to do, exercise subject to this section the rating powers of such trust in lieu of such trust.

(2) Thereupon, until the Commission is fully reimbursed, the Commission in lieu of such trust shall have and may exercise all the powers of the trust in respect of the making and levying of rates under this Part in relation to the river improvement district concerned.

(3) Any moneys received by the Commission pursuant to the last preceding sub-section over and above the costs to be reimbursed to it (together with interest at such rate as the Treasurer of Victoria determines) and the expenses of administering this section shall be paid by the Commission into the river improvement fund of the district.

49. (1) Subject to this section a river improvement trust may from time to time with the consent of the Governor in Council borrow such sums of money as it thinks requisite for the purposes of this Act.

Borrowing
by river
improvement
trusts.
No. 5637
ss. 7-18;
No. 5669
s. 2 (a) (c).

(2) The provisions of Division 2 of Part VII. of the *Water Act* 1958 and of the Ninth and Tenth Schedules thereto and of any relevant regulations thereunder shall extend and apply to and in relation to any such borrowing as if the river improvement trust were an authority referred to therein.

PART V.—MISCELLANEOUS.

50. (1) The Minister may, subject to such covenants and conditions as he thinks fit to impose, grant a licence to any person whomsoever to do all or any of the following:—

Licences for
drainage
easements.
No. 5302 s. 50.

- (a) Cut construct and use any drain upon and through any land whatever described in such licence;
- (b) Deepen widen clean repair or otherwise improve any drain;
- (c) Construct and operate pumping machinery and plant on any such land in relation to such drain.

(2) The licensee may by virtue of such licence and for the purposes therein expressed enter upon such land but shall make compensation to the owner or occupier of such land or other person entitled to receive the same for any damage occasioned by such entry.

(3) The amount of such compensation shall be determined and recovered in accordance with the provisions of the *Lands Compensation Act* 1958 as incorporated with and modified by Part VI. of the *Water Act* 1958.

51. (1) Save as otherwise expressly provided with respect to any works authorized by this Act to be carried out by a river improvement authority, where any such works may interfere with any land property undertaking or works of any public authority—

Construction
of works
affecting
public
authorities.
No. 5302 s. 51

- (a) such first-mentioned works shall not be proceeded with by the river improvement authority unless every such public authority concerned has agreed thereto or a determination has been made with respect thereto by the Governor in Council as hereinafter provided;

- (b) in default of agreement between the river improvement authority and any such public authority all matters in difference between them shall be determined by the Governor in Council whose decision shall be final and binding upon the parties;
- (c) any such agreement or determination may provide for all or any of the following matters:—
- (i) Any new altered or substituted works reasonably necessary for preventing interference with or protecting any such land property undertaking or works of any such public authority;
 - (ii) The payment or apportionment of the payment of the cost of such new altered or substituted works, and the supervision of the making and execution thereof and the payment or apportionment of the expenses of such supervision;
 - (iii) Any other matters necessary or expedient to be provided.

(2) Unless within two months after service of notice in writing by the river improvement authority on any such public authority that the river improvement authority proposes to proceed with any such works such public authority delivers to the river improvement authority a statement of its objections to any such proposed works such public authority shall be taken to have agreed thereto.

(3) The foregoing provisions of this section shall apply with such adaptations as are necessary to any case where any works authorized to be carried out by any such public authority may interfere with any land property undertaking or works of a river improvement authority under this Act.

Settlement of disputes between river improvement authorities and public authorities and of questions as to vesting of properties &c.
No. 5302 s. 52.

52. (1) Save where provision is otherwise expressly made for the determination of differences or questions the Governor in Council may by Order determine—

- (a) any difference arising under this Act (whether arising out of the construction of this Act or not) between any river improvement authority and any public authority touching or relating to the fulfilment and exercise of the duties powers privileges or authorities of any river improvement authority or any public authority; or

(b) any question (whether arising out of the construction of this Act or not) as to whether any land or works to be vested in or placed under the management and control of a river improvement authority by or under this Act are so vested in or placed under the management and control of the river improvement authority.

(2) The Governor in Council for the purpose of any such determination may by that or any subsequent Order settle adjust or apportion any matters or things between any river improvement authority and any public authority in such manner as he thinks just.

(3) Every Order made under this section shall be final conclusive and binding.

53. Every person who unlawfully injures or interferes with any works of any river improvement authority under this Act or the bed or banks of any river in a river improvement district shall be liable to a penalty of not more than Fifty pounds.

Penalty for interfering with works &c.
No. 5302 s. 53.

54. Every person who contravenes or fails to comply with any provision of this Act or of any regulation or by-law made under this Act shall be liable—

Penalties.
No. 5302 s. 54.

(a) to the penalty expressly provided therefor; or

(b) (if no penalty is expressly provided therefor) to a penalty of not more than Twenty pounds and, in the case of any offence which is continued or repeated after a conviction or order of any court in relation to the offence, to a further penalty of not more than Two pounds for each day on which the offence is so continued or repeated.

55. (1) Subject to and for the purposes of this Act any river improvement authority may with the approval of the Governor in Council make by-laws for or with respect to—

By-laws.
No. 5302 s. 55.

(a) preventing or minimizing interference with the flow of water in or the silting up of or injury to or pollution of any river, including prohibiting the depositing therein of any materials matters or substances likely to cause such interference silting up injury or pollution;^(a)

(b) prohibiting or regulating the removal of soil earth gravel sand or other materials from the bed and banks of any river;

(c) generally, the management and control of any river and the banks thereof and any river improvement works carried out constructed or in course of construction by the river improvement authority in connexion therewith.

(a) See also *Water Act 1958*, section 379 (2).

(2) By-laws under this section—

- (a) may apply to the whole of any river and the bed and banks thereof or to the whole or any particular part of any such river or bed or banks or to the whole or any particular part of any works or in respect only of any specified period or periods or day or days;
- (b) may impose a penalty of not more than Twenty pounds for any contravention of or failure to comply with the by-laws and, in the case of a continuation or repetition of the offence after a conviction or order of any court in relation to the offence, a further penalty of not more than Two pounds for each day on which the offence is so continued or repeated; and
- (c) shall be published in the *Government Gazette*.

Revocation
of by-laws.

(3) Without prejudice to any other method of revocation any by-law under this section may be revoked by Order of the Governor in Council published in the *Government Gazette*.

Regulations.
No. 5302 s. 56.

56. (1) The Governor in Council may make regulations for or with respect to prescribing any matter or thing authorized or required to be prescribed under this Act or necessary or expedient to be prescribed for the purposes of this Act.

Publication of
regulations.

(2) All regulations made under this Act shall be published in the *Government Gazette* and shall be laid before both Houses of Parliament within fourteen days after the making thereof if Parliament is then sitting and if Parliament is not then sitting then within fourteen days after the next meeting of Parliament, and a copy of all such regulations shall be posted to each Member of Parliament.

Conversion
of Yatchaw
Waterworks
Trust into
Drainage
Trust.
No. 5492 s. 2.

57. (1) It is hereby declared that notwithstanding anything in the *Water Act 1928* or in the *River Improvement Act 1948* the Governor in Council, pursuant to section two of the *Water Act 1950*, by Order declared that the Yatchaw Waterworks Trust (which was constituted by section one hundred and fifty-three of the *Water Act 1905*) from a date specified in the Order be converted into a drainage trust under the *River Improvement Act 1948*.

(2) The said section two enacted that such Order in Council should—

- (a) give a general description of the works and proposed works of the drainage trust;
- (b) specify as the boundaries of the district of the drainage trust the existing boundaries of the waterworks trust;

- (c) specify the number (not being more than nine nor less than five) of commissioners of the drainage trust and state how many of them were to be appointed by the Governor in Council and how many (if any) were to be elected by councils named in the Order or by the ratepayers of the district (as the case may be);
- (d) assign a corporate name to the drainage trust;
- (e) provide for the transfer from the waterworks trust to the drainage trust of all property income assets rights and liabilities of the waterworks trust;
- (f) contain such other provisions as having regard to the facts and circumstances of the case the Governor in Council thought fit.

(3) The said section two also enacted that by virtue of that section such Order in Council should have effect according to the tenor thereof.

58. (1) It is hereby declared that notwithstanding anything in the *Water Act 1928* or in the *River Improvement Act 1948* the Governor in Council, pursuant to section three of the *Water Act 1950*, upon the request of the Bendigo Creek Trust by Order declared that the said Trust (which was constituted under the *Bendigo Creek Act 1914*) from a date specified in the Order be converted into a river improvement trust under the *River Improvement Act 1948*.

Conversion of
Bendigo
Creek Trust
into River
Improvement
Trust.
No. 5492 s. 3.

(2) The said section three enacted that such Order in Council should—

- (a) give a general description of the works and proposed works of the river improvement trust;
- (b) specify the boundaries of the district of the river improvement trust;
- (c) specify the number (not being more than nine nor less than five) of commissioners of the river improvement trust and state how many (if any) of them were to be appointed by the Governor in Council and how many (if any) were to be elected by councils named in the Order or by the ratepayers of the district (as the case might be);
- (d) assign a corporate name to the river improvement trust;
- (e) provide for the transfer from the Bendigo Creek Trust to the river improvement trust of all property income assets rights and liabilities of the Bendigo Creek Trust;

(f) contain such other provisions as having regard to the facts and circumstances of the case the Governor in Council thought fit.

Payments by municipalities.

(3) The said section three also enacted that by virtue of that section such Order in Council should have effect according to the tenor thereof.

(4) Subject to the approval of the Governor in Council the said river improvement trust may from time to time determine what periodical payments (if any) shall be made to the fund of the said river improvement trust by any municipality in the municipal district of which any part of the district of the river improvement trust is situate; and each such municipality shall make such payments accordingly.

SCHEDULE.

Section 2.

Number of Act.	Title of Act.	Extent of Repeal.
3944 ..	<i>Country Roads Board Fund Act 1930</i> ..	Section 2 (2).
5302 ..	<i>River Improvement Act 1948</i> ..	The whole.
5492 ..	<i>Water Act 1950</i>	Sections 2 and 3.
5637 ..	<i>Water Act 1952</i>	Section 5.
5669 ..	<i>Water (Amendment) Act 1953</i> ..	Section 2 (a), (c).
5838 ..	<i>Water Act 1954</i>	Section 8.
