

Queensland



ANNO QUARTO DECIMO

ELIZABETHAE SECUNDAE REGINAE

No. 34 of 1965

An Act to Amend "The River Improvement Trust Acts,
1940 to 1959," in certain particulars

[ASSENTED TO 25TH OCTOBER, 1965]

BE IT ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Assembly of Queensland in Parliament assembled, and by the authority of the same, as follows:—

1. (1) **Short title.** This Act may be cited as "*The River Improvement Trust Acts Amendment Act of 1965.*"

(2) **Principal Act.** "*The River Improvement Trust Acts, 1940 to 1959,*" are in this Act referred to as the Principal Act.

(3) **Collective title.** The Principal Act and this Act may be collectively cited as "*The River Improvement Trust Acts, 1940 to 1965.*"

2. Amendment of s. 2 (1). Subsection (1) of section two of the Principal Act is amended by omitting the definition "Minister" and inserting in its stead the following definition:—

“ “Minister”—The Minister for Local Government and Conservation or other Minister of the Crown for the time being charged with the administration of this Act: the term includes a Minister of the Crown temporarily performing the duties of the Minister charged with the administration of this Act;”.

3. Amendment of s. 3 (4). Section three of the Principal Act is amended by omitting subsection (4) and inserting in its stead the following subsection:—

“(4) (a) Subject to paragraph (b) of this subsection, the Governor in Council may by Order in Council exclude from the Burdekin River Improvement Area or any other river improvement area the whole or portion of the area or part of the area of a Local Authority which is for the time being included therein.

(b) Where the Governor in Council so excludes the whole of the area or part of the area of a Local Authority, and within that area or part, works have been constructed by the Trust concerned, the Governor in Council shall by Order in Council—

(i) notwithstanding subsection (2) of this section, constitute the area of that Local Authority or such part thereof as the Governor in Council thinks fit a river improvement area under such name as shall be therein set forth; and

(ii) declare and apportion the assets and liabilities of the Trust concerned in such manner as to him appears just and give such directions as in his opinion are necessary to give effect thereto.

(c) A declaration, apportionment or direction made pursuant to this subsection shall be binding and effective on all persons and shall not be questioned in any proceedings whatever.”.

4. Repeal of and new s. 8. The Principal Act is amended by repealing section eight and inserting in its stead the following section:—

“[8.] **Borrowing.** (1) Subject to this Act a Trust may from time to time, with the prior authority of the Governor in Council, borrow money—

(a) from the Treasurer;

(b) by the sale of debentures; or

(c) partly in one and partly in another of the ways specified in paragraphs (a) and (b) of this subsection,

for the purposes of exercising any powers or discharging any functions or duties conferred or imposed by this Act.

(2) Before entering into negotiations to borrow money, a Trust shall first obtain the sanction of the Treasurer authorizing it to enter upon such negotiations and, for this purpose, shall furnish the Treasurer such information as he requires.

(3) A Trust shall not borrow any money pursuant to any negotiations sanctioned by the Treasurer under subsection (2) of this section unless the authority of the Governor in Council thereto is first obtained.

In the case of a loan to be raised in whole or in part by the sale of debentures the authority shall be given by Order in Council.

The Order in Council shall declare the amount that may be borrowed, the purposes for which the loan shall be borrowed, the currency of the loan, the amount of interest payable thereon, the terms and conditions for the redemption of the loan, whether by yearly or half-yearly payments or payments into a sinking fund, and such other conditions as the Governor in Council thinks proper to impose.

(4) Before proceeding to borrow any sum under and in pursuance of this section the Trust shall at a special meeting called for the purpose pass a resolution to borrow that money. Notice of such special meeting and a copy of the resolution to be moved at the meeting shall be given to each member of the Trust at least seven days before the date of the meeting.”.

5. Insertion of new ss. 8A, 8B, 8C, 8D, 8E, 8F, 8G, 8H, 8I, 8J, 8K and 8L. The Principal Act is amended by inserting after section eight as inserted by this Act the following sections:—

“ [8A.] **Further loan where amount borrowed inadequate.** In the event of any money borrowed pursuant to the provisions of section eight of this Act proving inadequate for the purposes for which the same was borrowed, the Trust shall—

- (a) obtain the permission of the Treasurer to borrow such further sums as are necessary for such purposes; and
- (b) upon obtaining the permission of the Treasurer, pass a resolution authorizing it to borrow such further sums for such purposes; and
- (c) notify the Minister of the passing of the resolution.

whereupon the Minister, if satisfied of such inadequacy and that it arose owing to circumstances beyond the control of the Trust may certify accordingly.

When the Minister so certifies, the Trust shall be at liberty to borrow such further sums as necessary for such purposes without the procedure prescribed by subsection (4) of section eight of this Act being complied with.

[8B.] **Application of loan moneys.** (1) All moneys borrowed by a Trust shall be expended for the purposes for which such Trust was authorized to borrow the same and, except as prescribed by this section, not otherwise.

(2) If any amount of a loan remains unexpended upon the completion of the purpose for which such loan was borrowed such amount shall be applied as directed by the Treasurer.

(3) A person advancing money to a Trust and receiving in consideration of an advance any debentures issued under the authority of this Act shall not be bound to inquire whether the issue of such debentures was in fact duly authorized or into the application of the money advanced or be in any way responsible for the non-application or misapplication thereof.

[8C.] **Repayment of Treasury loans.** (1) Every loan advanced by the Treasurer under the provisions of this Act shall be liquidated by the payment to the Treasurer by the Trust on the first days of January and July, respectively, in every year of such instalments of principal and interest

at the prescribed rate as will permit the said loan to be wholly redeemed within the prescribed period of the said loan, and such sums shall continue to be payable until all moneys advanced from time to time by the Treasurer, together with the interest accrued thereon, have been so paid.

The Treasurer may at any time make any adjustment which he considers necessary to be made with respect to the period of any loan or the calculation of interest thereon or with respect to any other matter requiring adjustment.

(2) In the months of February and August, respectively, in every year, the Treasurer shall cause to be published in the *Gazette* a statement showing, with respect to a Trust to which a loan has been advanced by the Treasurer under this Act, the amount of money which is then overdue and in arrear and also the total of the principal sum then remaining unpaid.

If thereafter on the thirtieth day of April, or the thirty-first day of October, respectively, any part of such money so overdue and in arrear remains unpaid or if the Treasurer pays any money under a guarantee given by him in relation to moneys borrowed by a Trust under the authority of this Act, the Treasurer may, by notification in the *Gazette*, appoint a receiver to collect on his behalf and to pay to the Treasury all or any moneys from time to time due and owing to the Trust concerned to the amount stated in such notification.

The Treasurer may from time to time make all such orders and give all such directions with respect to the powers and duties of such receiver and the management by him of the affairs of the Trust concerned as the Treasurer thinks proper, and judicial notice shall be taken of such orders and directions.

Thereupon such receiver shall from the date stated in such notification be the only person legally entitled to receive the revenues of the Trust concerned, and shall be deemed to that extent and for that purpose to be a "public accountant" within the meaning of "*The Audit Acts, 1874 to 1965.*"

[8D.] Debentures. (1) Subject to this Act, all debentures shall be issued in such series, at such time, and in such a manner as the Trust thinks fit, and shall be a charge upon all the assets and revenues of the Trust howsoever arising, subject to any prior debentures issued according to law.

Such debentures shall bear interest at the rate and shall be repayable on the date respectively prescribed in the Order in Council referred to in subsection (3) of section eight of this Act.

(2) Every such debenture shall be under the seal of the Trust and shall be signed by the chairman and secretary, and when so sealed and signed shall be deemed to have been duly issued, and the holder thereof shall not be bound to inquire whether such issue was in fact duly authorized.

(3) The Trust may authorize the sale or disposal of any such debentures in Queensland or in places beyond Queensland, and may appoint an agent or agents to negotiate such sale.

(4) Every debenture shall specify the place and time where and when the principal and interest are payable.

(5) Any debenture may at the option of the lender be issued with or without coupons.

If issued with coupons, the debenture shall have annexed thereto for every payment (whether of principal or interest, or principal and interest) to grow due thereon a coupon.

(6) Every debenture and every coupon annexed to any debenture shall be transferable by delivery.

(7) In the case of any debenture issued with coupons the holder of any such coupon shall be entitled to receive from the Trust payment of the sum specified in the coupon upon presentation thereof, either annexed to or separated from the debenture, at the place where, and on or after the date when, such sum is payable.

(8) In the case of any debenture issued without coupons, the lender or, in the event of the transfer of such debenture at any time or from time to time, the transferee for the time being shall, subject to this subsection, be entitled to receive payments from the Trust in respect of principal or interest, or both, in accordance with the terms and conditions of the debenture.

A transferee with respect to whom the Trust has not been given notice as prescribed shall not be entitled to receive, and the Trust shall not be liable to make to such a transferee, any payment in respect of any debenture issued without coupons except under attachment by process of law and then only to the extent of moneys due and payable to such transferee under the debenture and unpaid by the Trust to the lender or a prior transferee.

The entitlement of a transferee with respect to whom the Trust has been given notice as prescribed to receive any payment in respect of a debenture issued without coupons shall be subject to any payment which, having become due and payable under such debenture before the Trust was given such notice, was made by it to the lender or a prior transferee.

In this subsection the expression "notice as prescribed" means a notice in writing signed by the transferor and transferee and verified to the satisfaction of the Trust.

(9) The power under this Act of the Governor in Council to make regulations shall include power to make regulations prescribing standard forms of debentures.

A lender may agree to accept a standard form of debenture, but no lender shall be bound to do so.

[8E.] (1) **Notice of trusts not to be received.** No notice of any trust express, implied or constructive shall be received by any Trust or by any officer or other employee or any agent of that Trust in relation to any debentures issued by that Trust under the authority of this Act and the Trust or any such officer, other employee or agent shall not be bound to see to the execution of any such trust to which any such debentures may be subject.

(2) **Loan to be authorized investment.** Unless expressly forbidden by the instrument (if any) creating the Trust, an investment by a trustee of trust funds in a loan raised under the authority of this Act shall be and be deemed to be an authorized investment by the trustee pursuant to the provisions of section four of "*The Trustees and Executors Act of 1897*" (as amended by subsequent Acts) and such Act shall be read and construed accordingly.

[8F.] **Guarantee of loans.** (1) Notwithstanding anything to the contrary contained in any Act, the amount of any loan borrowed by any Trust by the sale of debentures under the authority of the Governor in Council with interest at the authorized rate shall be guaranteed by the Treasurer on behalf of the Government of Queensland.

(2) All moneys payable by the Treasurer pursuant to this section shall be paid out of moneys to be from time to time appropriated by Parliament for the purpose.

(3) The provisions of section five of "*The Local Bodies' Loans Guarantee Acts, 1923 to 1957*," shall, with any necessary adaptations thereof, extend and apply in respect of moneys paid by the Treasurer pursuant to this section.

[8G.] **Brokerage.** A Trust may pay moneys by way of brokerage for or in respect of the making, procuring, negotiating, or obtaining the loan of any money which the Governor in Council has by Order in Council authorized that Trust to borrow:

Provided that no moneys shall be paid by the Trust by way of brokerage for or in respect of the loan of any moneys borrowed by it unless the Treasurer has approved of the payment of brokerage, which approval may be given by the Treasurer subject to such terms and conditions as to him shall seem fit.

Section fourteen of "*The Money Lenders Acts, 1916 to 1962*," shall not apply or extend to brokerage to which the Trust is authorized to pay under and in accordance with this subsection, and which brokerage has been approved by the Treasurer and is agreed to be paid by the Trust subject to the terms and conditions, if any, imposed by the Treasurer.

[8H.] **Remedies of debenture holders.** If a Trust makes default in making a payment whether of principal or interest to the holder of any debenture or coupon issued by the Trust under the authority of this Act such holder may make application to and procure all necessary orders and directions from the Supreme Court for the appointment of a receiver and such court shall have power to make all such orders for the appointment of such a receiver and for his removal and the appointment of another in his place as may be necessary and to make any orders and give any directions which such court thinks proper.

A receiver appointed pursuant to this section shall be deemed to be an officer of such court and shall act under its direction.

[8I.] (1) **Remuneration of receiver.** A receiver appointed by the Treasurer pursuant to section 8C of this Act shall be entitled to such commission or remuneration for his services as the Treasurer orders.

A receiver appointed by the Supreme Court pursuant to the last preceding section shall be entitled to such commission or remuneration as the court orders.

The commission or remuneration of a receiver shall be payable out of the revenue of the borrowing authority in relation to which he was appointed.

(2) **Powers and duties of receiver.** A receiver whether appointed by the Treasurer or the Supreme Court may collect all the revenue payable to the Trust in relation to which he was appointed and, for the purposes of this section, a receiver shall be deemed to be such Trust and may exercise all the powers of such Trust.

A receiver shall pay and apply all moneys received by him in the course of his receivership as follows:—

- (a) Firstly, in payment of the costs, charges and expenses of collection and of his commission or remuneration;
- (b) Secondly, if he was appointed by the Treasurer, in payment of the amount due and payable to the Treasurer including any money paid by the Treasurer under a guarantee given by the Treasurer in relation to moneys borrowed by the Trust under the authority of this Act together with interest on such amount at such rate as is specified by the Treasurer and, if he was appointed by the Supreme Court upon the application of a holder of any debenture or coupon in payment, subject to any order of the court, to such holder or to and amongst the holders of debentures or coupons of the same series as such holder or to the holders of debentures or coupons generally in such order of priority as the court thinks fit the amount due and payable to such holder or, as the case may be, holders;
- (c) Thirdly, in payment of the residue of such moneys to the Trust.

[8J.] **Moneys recoverable as debt.** If a Trust makes default in making a payment referred to in section 8H of this Act, the person to whom such payment should have been made may recover the amount in respect of which such default has been made as a debt by action against the Trust in any court of competent jurisdiction.

[8K.] **Regulations relating to loans.** The power conferred on the Governor in Council by this Act to make regulations includes the power to make such regulations relating to the raising and repayment of loans under the authority of this Act and, without limiting the generality of the foregoing power,—

- (a) prescribing the form of and the manner of the issuing of debentures, providing for the keeping and inspection of and the taking of copies of or extracts from the register of debentures and providing for lost or defaced debentures or coupons and the destruction of discharged debentures or coupons;
- (b) prescribing matters relating to the raising of loans outside the State;
- (c) providing for sinking funds and other methods for the repayment of moneys borrowed, providing for and appointing trustees of a debt redemption fund with respect thereto and prescribing the powers, functions and duties of such trustees and regulating and controlling all or any matters with respect to such debt redemption fund, trustees, sinking funds or other methods aforesaid.

[8L.] **Illegal borrowing.** (1) A person who lends money to a Trust otherwise than in accordance with this Act or some other Act shall have no remedy or right whatsoever to recover money from the Trust in respect of that loan.

(2) If a Trust borrows any money which it is not legally authorized to borrow, all the members who have consented to the borrowing of such money shall be jointly and severally liable to repay the same and to pay all interest thereon to the person from whom the same was borrowed,

and the same may be recovered from such members or any of them as money lent by such person to such members by action in any court of competent jurisdiction.

(3) If any moneys are appropriated from any fund for the purpose of repaying any money so borrowed or paying interest thereon, the members who have consented to the misappropriation of such moneys for that purpose shall be jointly and severally liable to refund the same with interest at the rate of eight pounds per centum per annum, and the same may be recovered from such members or any of them by action in any court of competent jurisdiction at the suit of the Minister or any person thereunto authorized by the Minister who, upon recovery, shall pay the amount recovered into the fund in question, but shall be personally entitled to full costs of suit, including costs as between solicitor and client.

(4) The provisions of this section shall be construed so as not to prejudice the operation of the provisions of subsection (3) of section 8B of this Act."

6. Amendment of s. 9. Section nine of the Principal Act is amended by omitting the words "Minister for Public Lands and Irrigation" wheresoever appearing and inserting in their stead the words "Minister for Lands".

7. Amendment of s. 10 (7). Section ten of the Principal Act is amended by omitting subsection (7) and inserting in its stead the following subsections:—

"(7) The Commissioner or any person authorized in writing by him in that behalf or any member of a Trust or any of its officers or employees authorized in writing on that behalf by the Trust may enter upon any land—

- (a) where an emergency exists, forthwith;
- (b) in any other case, upon seven days' notice in writing being given to the owner or occupier of that land,

for the purpose of—

- (c) examining whether any of the provisions of this Act or any requisition, notice or order issued pursuant to this Act is being complied with or is being contravened;
- (d) making any plan or survey or taking levels;
- (e) making any inspection or examination;
- (f) otherwise in or for carrying out any of the powers, duties or authorities conferred or imposed upon the Trust by or pursuant to this or any other Act.

The power to enter upon any land includes power to—

- (g) remain upon that land for such time as is necessary to achieve the purpose of such entry;
- (h) take such assistants, vehicles, materials, equipment or things as are necessary to achieve the purpose of such entry.

(8) Where, consequent upon the exercise of a power conferred by subsection (7) of this section, loss or damage results to the owner or occupier of the land in respect whereof such power is exercised, the Trust, or as the case may be, the Commissioner shall pay compensation therefor to the person or persons entitled thereto.

If the amount of such compensation is not agreed upon it shall be determined by the court or tribunal which would be authorized under this Act to determine the compensation payable in the event of the Trust or, where the Commissioner is to pay compensation, the Trust constituted in respect of the river improvement area in which the land in question is situated, taking the land concerned.”.

8. Repeal of and new s. 11. The Principal Act is amended by repealing section eleven and inserting in its stead the following section:—

“**[11.] Improvement notices.** (1) A Trust may by notice in writing (in this section called an “improvement notice”) prohibit an owner of land within the river improvement area for which it is constituted or, if the owner is not the occupier, the occupier of that land from—

- (a) doing and executing or continuing to do and execute;
- (b) suffering or permitting the doing and executing or suffering or permitting the continuance of the doing and executing of, any act, matter, or thing whatsoever which in the opinion of the Trust—
- (c) was the cause of or contributed to any damage already done by flood or cyclone to any bank of any river within the river improvement area; or
- (d) is likely to cause or contribute to any such damage in the future.

In this section “prohibit” includes control and regulation.

An improvement notice may be addressed to any number of persons and may be given to one of such persons on behalf of all of such persons and in such event shall be deemed to have been given to all the persons to whom it is addressed.

(2) Where an owner or occupier of land within a river improvement area has done or executed or suffered to be done or executed any act, matter or thing which the Trust constituted for that area is authorized by subsection (1) of this section to prohibit then, notwithstanding that it did not impose such prohibition, the Trust concerned may by notice in writing (in this section called “an improvement notice”) direct such owner or occupier to take and do such steps and things as the Trust deems necessary to abate, remedy or prevent any damage so specified in subsection (1) of this section already caused, or which in the opinion of the Trust would be caused or contributed to in the future, by the doing of such act, matter or thing (which damage so directed to be abated, remedied or prevented shall be specified in the improvement notice) and to restore the surrounding area to its former condition as nearly as practicable.

Such notice shall specify the time within which the directions specified therein shall be complied with.

(3) A person to whom an improvement notice is given or is deemed to have been given pursuant to this section and every person who subsequent to the giving of such notice becomes the owner or occupier of the land in respect of which it was given whether or not he had or would be deemed in law to have had notice of its existence shall comply in every respect with such notice unless it has ceased to subsist or to operate.

(4) A person who is required by this section to comply with an improvement notice and who fails to comply in every respect with such notice shall be guilty of an offence and liable to a penalty of—

(a) in respect of a first offence, not more than one hundred pounds;

(b) in respect of a second or subsequent such offence (whether committed in respect of non-compliance with the same provision or any other provision of the improvement notice or with any subsequent improvement notice issued pursuant to this section), not more than five hundred pounds.

A person guilty of an offence against this subsection shall, in addition to the penalty in respect thereof, be liable to a daily penalty of not more than ten pounds for each and every day during which such offence is continued after a conviction therefor.

(5) Where, consequent upon the compliance with an improvement notice, damage results to a cultivated crop growing on the land in respect of which the improvement notice was given, the Trust which gave the notice shall pay compensation therefor to the owner or, as the case may be, occupier of the land concerned.

If the amount of compensation cannot be agreed upon it shall be determined by the court or tribunal which would be authorized under this Act to determine the compensation payable in the event of the Trust taking the land concerned.

(6) If any person being required by this Act to so comply fails to comply with an improvement notice the Trust concerned may do or cause to be done such acts as, in the opinion of the Trust, are necessary to fully comply with such notice and, if it does so, such person shall be liable (and, in the case of more than one such person, jointly and severally liable) to pay to the Trust the expenses reasonably incurred by the Trust in effecting such compliance and such expenses together with costs may be recovered as a debt at the suit of the Trust in any court of competent jurisdiction or by way of complaint under "*The Justices Acts, 1886 to 1964.*"

The provisions of this subsection or the recovery of any expenses or costs pursuant hereto shall not affect the liability of the person concerned to be prosecuted and penalized for his failure to comply with such a notice.

For the purposes of this subsection the Trust concerned and its employees and agents with such assistants as may be required for the purpose together with all tools, equipment and implements reasonably required for the purpose may enter and remain upon, pass and repass over any land.

(7) Upon convicting any person of a failure to comply with an improvement notice a court may, in lieu of or in addition to any penalty for such failure, order such person to pay to the Trust concerned the whole of the expenses proved to the satisfaction of such court to have been reasonably incurred by the Trust in effecting compliance with such notice.

(8) If any person being required by this Act to so comply fails to comply with an improvement notice the Trust concerned may apply to the Supreme Court of Queensland that an order for *mandamus* be made or an injunction be issued directed to such person to compel him to comply with such notice or, as the case may be, to refrain from contravening such notice and such court may grant any such remedy as it considers just.

For the purposes of an application made pursuant to this subsection the Trust concerned shall be deemed to possess a sufficient interest or right in law to support the grant of such a remedy.”.

9. Amendment of s. 14 (3). The second paragraph of subsection (3) of section fourteen of the Principal Act is amended by inserting after the words “ Local Authority ” where first appearing therein, the following words:—

“ or the whole of any division of any Local Authority ”.

10. Amendment of s. 20. Section twenty of the Principal Act is amended by adding the following subsection:—

“(4) Upon convicting any person for an offence in respect of damaging or destroying or attempting to damage or destroy any works, a court may, in lieu of or in addition to any penalty therefor, order such person to pay to the Trust concerned the whole of the expenses reasonably incurred by the Trust as a result of the commission of such offence.

A defendant shall not be required to pay, pursuant to this subsection, an amount by way of reimbursement for making good damage to any works other than works which he has directly damaged.”.