

SOUTH AUSTRALIA

LOWER RIVER BROUGHTON IRRIGATION TRUST ACT, 1938

This Act is reprinted pursuant to the Acts Republication Act, 1967, and incorporates all amendments in force as at 1 October 1991.

It should be noted that the Act was not revised (for obsolete references, etc.) by the Commissioner of Statute Revision prior to the publication of this reprint.

SUMMARY OF PROVISIONS

PART I PRELIMINARY

Section	
1.	Short title
2.	Commencement
3.	Arrangement of Act
4.	Interpretation

PART II CONSTITUTION OF THE TRUST AND ITS DISTRICT

5.	Constitution of the trust
6.	Common seal
7.	District of trust
8.	Wards

PART III MEMBERS OF THE TRUST

9.	Members
10.	Qualification for membership of trust
11.	Disqualification for membership of the trust
12.	Annual retirements of members
13.	Bi-ennial retirement of chairman
14.	Mode of election
15.	Eligibility for re-election
16.	Members to hold office until appointment of successor
17.	Casual vacancies
18.	Casual vacancies filled by appointment
19.	Disqualified person acting as member or auditor
20.	No writ of <i>quo warranto</i> allowed to try title to any office
21.	No <i>mandamus</i> to issue from Supreme Court
22.	Proceedings for trying of title of member, etc.
23.	Jurisdiction and powers of Court
24.	Procedure on non-compliance with order
25.	Time within which proceedings may be taken

PART IV MANAGEMENT OF THE TRUST

26.	Trust office
27.	Officers of the trust
28.	Authentication of documents by the trust
29.	Meetings
30.	Special meetings
31.	Notice of meeting
32.	Quorum
33.	Chairman of meetings
34.	Effect of vacancies
35.	Validity of proceedings of trust
36.	Provision for death or absence of secretary or other persons
37.	Revocation of resolutions
38.	Committees
39.	Minutes of meetings
40.	Evidence of minutes
41.	Contracts by trust
42.	Power to compound claims
43.	Banking of money
44.	Powers of entry by officers of trust
45.	By-laws

PART V
CONTROL OF THE RIVER BROUGHTON

General Powers of the Trust

- 46. Vesting of water
- 47. Construction of works by trust
- 48. Acquisition of land
- 49. Restriction on diversion of water
- 50. Power to control
- 51. Free passage to be given to supply water

Construction of Drains and Works on the Petition of Landholders

- 52. Petitions for drain
- 53. Form of petition
- 54. Preliminary inquiry
- 55. Trust's approval
- 56. Decision whether petitioners are majority of landholders and hold three-fourths in value of benefited lands
- 57. Construction of works
- 58. Cost to be paid by landholders
- 59. Final report
- 60. Preliminary apportionment of the cost
- 61. Objection to the apportionment
- 62. Determination of objection
- 63. Adjustment of apportionment
- 64. Final apportionment
- 65. Notice of apportionment
- 66. Repayment of cost of construction
- 67. Power to sell land for non-payment of instalments
- 68. Lessees to pay proportion of cost to landholder
- 69. Provision for apportionment of cost where land charged is subdivided

PART VI
ASSESSMENTS AND LAND RATES

- 70. Ratable value
- 71. Assessment
- 72. Ratepayers pending assessment of benefit
- 73. Assessment to be made by assessors
- 74. Power to adopt previous assessment
- 75. Removal of names
- 76. Insertion of names in assessment
- 77. Power to rectify errors and omissions
- 78. Notice of assessment
- 79. Appeal against assessment
- 80. Hearing of appeals
- 81. Time for appealing
- 82. Procedure on appeal
- 83. Appeals from decision of trust
- 84. Costs of appeal

Rates

- 85. Purpose of rate
- 86. Basis of rate
- 87. Entry of rate in assessment book
- 88. Notice to ratepayers
- 89. Person liable for rates
- 90. Notice before recovery of rates
- 91. Interest in default of payment
- 92. Liability of persons appearing in assessment book as owners
- 93. Recovery of rates

- 94. Power to sell land for non-payment of rates
- 95. Limitation of liability of trustee agent, or attorney

PART VII
LOANS

- 96. Power to borrow
- 97. Security for loan
- 98. Notice of loan
- 99. Poll on loans
- 99a. Power of Treasurer to make loans to trust

PART VIII
MEETINGS, ELECTIONS, AND POLLS

- 100. Ratepayers' meetings
- 101. Voting at meetings

Nominations and Elections

- 102. Nominations
- 103. Time and place for nomination
- 104. Requirements as to nominations
- 105. Proceedings on day of nomination
- 106. Notices of adjournment
- 107. Procedure on failure of election
- 108. Supplementary election
- 109. Notice of election
- 110. Procedure where trust fails to hold election

Mode of Holding Elections and Polls

- 111. Returning officers
- 112. Polling place and hours of voting
- 113. Scrutineers
- 114. Polling booths
- 115. Right to vote
- 116. Issue of voting papers
- 117. Contents of voting papers
- 118. Mode of voting
- 119. Assistance to voters
- 120. Persons entitled to be in polling place
- 121. Questions to voters
- 122. Voting twice and personation
- 123. Duty of returning officer as to ballot-box
- 124. Count of votes and result of poll
- 125. Destruction of voting-papers
- 126. Payment of rates before voting
- 127. Powers of returning officer
- 128. Bribery and corruption
- 129. Disqualification for bribery and corruption
- 130. Acts of agents
- 131. Bribery and corruption by unauthorized person
- 132. Rewards for voting or withholding vote
- 133. Offences by voters
- 134. No action for election expenses
- 135. Provision as to formal defects and impediments in election

PART IX
MISCELLANEOUS PROVISIONS

- 136. Penalty for obstructing trust, officers, etc.
- 137. False statements
- 138. Summary procedure
- 139. General Penalty
- 140. Conviction not to bar action
- 141. Services of notices
- 142. Saving provision as to rights of Crown to take waters
- 143. Provision for cases of doubt or difficulty

SCHEDULES

APPENDIX
LEGISLATIVE HISTORY

LOWER RIVER BROUGHTON IRRIGATION TRUST ACT, 1938

being

Lower River Broughton Irrigation Trust Act, 1938,
No. 2426 of 1938 [Assented to 22 December 1938]¹

as amended by

Lower River Broughton Irrigation Trust Act Amendment Act, 1940, No. 43 of 1940 [Assented to 28 November 1940]
Lower River Broughton Irrigation Trust Act Amendment Act, 1972, No. 97 of 1972 [Assented to 9 November 1972]
Statutes Amendment (Irrigation) Act, 1983, No. 15 of 1983 [Assented to 12 May 1983]²

¹ Came into operation 2 February 1939: *Gaz.* 2 February 1939, p. 334.

² Came into operation 30 June 1983: *Gaz.* 9 June 1983, p. 1625.

An Act to constitute a trust to control the waters of the lower portions of the River Broughton, to confer certain powers and duties upon the trust, and for purposes incidental thereto.

BE IT ENACTED by the Governor of the State of South Australia, with the advice and consent of the Parliament thereof, as follows:

PART I

PRELIMINARY

Short title

1. This Act may be cited as the *Lower River Broughton Irrigation Trust Act, 1938*.

Commencement

2. This Act shall commence on a day to be fixed by the Governor by proclamation.

Arrangement of Act

3. This Act is divided into Parts as follows:—

- PART I—Preliminary:
- PART II—Constitution of the trust and its district:
- PART III—Members of the trust:
- PART IV—Management of the trust:
- PART V—Control of the River Broughton:
- PART VI—Assessments and rates:
- PART VII—Loans:
- PART VIII—Meetings, elections, and polls:
- PART IX—Miscellaneous provisions.

Interpretation

4. In this Act, unless the context otherwise requires, or some other meaning is clearly intended:—

"chairman" means chairman of the trust:

"district" means the Lower River Broughton Irrigation District as constituted for the time being under this Act:

"landholder" means the owner of any freehold estate in land, the holder of land under agreement with the Crown for the sale of such land upon credit, the lessee of land held under perpetual lease from the Crown, and as to Crown lands unleased or leased on other than perpetual lease, the Minister of Lands:

"member" means member of the trust:

"owner", as regards land, includes the person for the time being receiving or entitled to receive the rents and profits of the land, whether on his own account or as trustee, attorney, or agent for another:

3.

"public notice" means notice given by advertisement in a newspaper circulating in the district, and by posting handbills on every place in the district appointed by the trust as a place for posting notices:

"ratable land" means all land shown in the assessment book as being benefited by works carried out by the trust:

"rate" means a rate declared under this Act:

"ratepayer" means an owner or occupier of land in the district or an owner of unoccupied land in the district, whose name appears in the assessment book in respect of that land as a ratepayer:

"River Broughton" includes any affluent, effluent, creek, anabranch or extension of, and any lake or lagoon connected with, the River Broughton:

"secretary" means the secretary of the trust:

"trust" means the Lower River Broughton Irrigation Trust constituted by this Act:

"works" includes all works constructed by the trust under this Act.

PART II

CONSTITUTION OF THE TRUST AND ITS DISTRICT

Constitution of the trust

5. (1) There shall be a trust called the "Lower River Broughton Irrigation Trust".

(2) The trust shall be a body corporate, and shall have perpetual succession, and shall by its corporate name be capable of suing and being sued, of purchasing, holding, and alienating land, of doing all acts necessary or expedient for carrying out the purposes of this Act.

Common seal

6. (1) The trust shall have a common seal, which shall be kept at the trust office.

(2) The corporate name of the trust shall be part of the seal.

(3) Judicial notice shall be taken of the seal of the trust.

District of trust

7. (1) As soon as possible after the commencement of this Act the Governor shall by proclamation define the land which shall constitute the Lower River Broughton Irrigation District for the purposes of this Act.

(2) The district shall consist of those lands which in the Governor's opinion are likely to be benefited by the construction under this Act of works on the Lower River Broughton.

(3) After the first election of members of the trust has been held, the Governor may by proclamation made on the recommendation of the trust, alter the district by adding any land thereto or excluding any land therefrom.

Wards

8. (1) The Governor shall, by the first proclamation defining the district, divide the district into wards, and define and name each ward.

(2) After the first members of the trust have been elected the Governor may by proclamation made on the recommendation of the trust, alter the wards in any way recommended by the trust, but so that there shall always be three wards.

PART III

MEMBERS OF THE TRUST

Members

9. (1) The trust shall consist of a chairman and six other members, each ward being represented by two members.

(2) The first chairman shall be appointed by the Governor and every subsequent chairman shall be appointed by the Governor on the recommendation of the trust.

(3) The first members shall be appointed by the Governor, and all subsequent members shall be elected or appointed as provided by this Act.

Qualification for membership of trust

10. (1) Subject to this Act, the following persons shall be eligible for membership of the trust:—

(a) Where the election or appointment is made before any assessment has been made under this Act, any owner or occupier of land within the ward for which a member is required:

(b) Where the election or appointment is made at any later time, any ratepayer being the owner or occupier of land within the ward for which a member is required.

(2) The chairman need not be an owner or occupier of land within the district or a ratepayer.

Disqualification for membership of the trust

11. (1) The following persons shall not be eligible to hold office as the chairman or a member of the trust:—

(a) a minor:

(b) an undischarged bankrupt:

(c) a ratepayer in arrears for six months with the payment of any rate for which he is liable in respect of ratable land within the district:

(d) a person who directly or indirectly participates or is interested in any contract with, or employment under, the trust.

(2) No person shall be disqualified from holding office as the chairman or a member by reason of his receiving travelling expenses incurred in pursuance of and authorized to be paid by a resolution of the trust, or acting as returning officer or deputy returning officer under this Act, or receiving remuneration for so acting, or by reason of his being a member of a company, incorporated under the law of the United Kingdom or any British possession, which is concerned with any contract or dealing with the trust; but neither the chairman nor any member shall vote on a question relating to a contract or dealing with a company of which he is a member.

(3) No person shall be disqualified from holding office as the chairman by reason of his receiving an honorarium paid to him by the trust in pursuance of a resolution of the trust.

Annual retirements of members

12. (1) On the first Saturday in July in each year one member for each ward being the member who has been longest in office since his last election shall retire.

(2) If the two members for any ward have so been in office for an equal time, they shall draw lots to decide who shall retire.

(3) A member appointed to a casual vacancy shall for purposes of this section be regarded as having been in office from the time when his predecessor was last elected or appointed.

(4) When it is necessary to draw lots under this section, the lots shall be drawn at least one week before the day on which notice is given of the day for the nomination of candidates for the election.

(5) If any members required by this section to draw lots fail to do so within the time prescribed by this section, the chairman shall in the presence of three ratepayers draw lots on behalf of the members.

Bi-ennial retirement of chairman

13. On the first Saturday in July in the second year after the year in which the trust is first constituted, and on the first Saturday in July in each alternate year thereafter the chairman shall retire.

Mode of election

14. (1) The election of members shall take place as provided in Part VIII of this Act.

(2) Whenever it is necessary for the trust to recommend a person for appointment as chairman the secretary shall as soon as possible after the election of members of the trust has been completed call a meeting of the members of the trust and those members shall at that meeting or any adjournment thereof recommend a person for appointment as chairman.

(3) If the members fail to recommend a person for appointment as chairman within one month after the chairman has retired the Governor may appoint the chairman without any recommendation.

Eligibility for re-election

15. A retiring chairman or member shall be eligible for re-appointment or re-election.

Members to hold office until appointment of successor

16. Every chairman and member shall notwithstanding his retirement hold office until his successor is appointed.

Casual vacancies

17. (1) Any of the following acts or events shall cause a casual vacancy in the office of the chairman or any member, namely:—

- (a) If he dies or becomes a mental defective within the meaning of the *Mental Defectives Act, 1935-1936*:

7.

- (b) If he is adjudicated bankrupt or executes a statutory deed of assignment for the benefit of his creditors, or compounds with his creditors for less than one hundred cents in the dollar:
 - (c) If he is convicted by the Supreme Court of any offence, triable on indictment:
 - (d) If he is absent without leave of the trust for four or more consecutive ordinary meetings of the trust:
 - (e) If he resigns by notice to the trust:
 - (f) If his office is declared vacant by a judgment or order of a court.
- (2) A chairman or any member appointed or elected to a casual vacancy shall—
- (a) be deemed for the purpose of future retirements to have been appointed or elected at the time when the chairman or member in whose place he was appointed or elected was last appointed or elected:
 - (b) hold office only for the balance of the term of that chairman or member.

Casual vacancies filled by appointment

18. When any casual vacancy occurs in the office of a member the chairman and remaining members of the trust shall select a person qualified under this Act to fill that vacancy.

Disqualified person acting as member or auditor

19. Any person who at the time of his election or appointment to the office of chairman, member or auditor is to his own knowledge disqualified to act in that office, or who after his election becomes disqualified, and who in any manner acts as chairman, member or auditor with knowledge of the existence of his disqualification, shall be guilty of an offence.

No writ of *quo warranto* allowed to try title to any office

20. No writ of *quo warranto* or information in the nature of a *quo warranto* or other proceeding shall issue, or be filed or had, or taken in the Supreme Court, to try or question the title of the trust or the title of any person to act as chairman, member, or auditor, or in any office or place under the trust.

No *mandamus* to issue from Supreme Court

21. No *mandamus* shall issue from the Supreme Court to admit or restore to office, or to compel the trust to proceed to the election or appointment of any chairman, member, auditor, officer, or other person to any office or place under the trust, or to compel any person or persons to proceed to any ballot, or to compel the production or delivery of any books, voting-papers, or other documents or papers, to the production or possession whereof the trust or person may be entitled under this Act.

Proceedings for trying of title of member, etc.

22. The proceedings:—

- (a) for trying the title of a chairman, member, auditor, officer, or other person to his office or place; or

8.

- (b) for trying the right of any person to be admitted or restored to any such office or place; or
- (c) to compel his restoration or admission; or
- (d) to compel the trust to proceed to any election or appointment; or
- (e) to try the validity of any assessment or rate; or
- (f) to compel the production or delivery of any books, voting-papers, or other documents or papers, to the production or possession whereof the trust or any person may be entitled under this Act,

shall be had and taken before, and determined in a summary way by, a court of summary jurisdiction constituted by a special magistrate.

Jurisdiction and powers of Court

23. (1) The complaint for the purposes of the last preceding section may be laid at the instance of the trust, or by any ratepayer or other person interested.

(2) The court of summary jurisdiction may make an order—

- (a) declaring that any person is or is not entitled to any office or place or that any office or place is vacant:
- (b) commanding the trust to proceed to take the necessary steps for and hold any election, or to make any appointment, or to compel any person or persons to proceed to any ballot that may be necessary:
- (c) quashing any assessment or rate which for any reason is invalid:
- (d) to compel the production or delivery of any books, voting-papers, or documents by or to the trust, or any officer thereof, to or by any person.

(3) No order to admit or restore any person to any office or place shall be made whilst any other person is in possession of such office or place.

Procedure on non-compliance with order

24. On non-compliance with any order made by any court of summary jurisdiction under the last preceding section, any court of summary jurisdiction may on complaint laid at the instance of the trust, or by any ratepayer or person interested, order any sum of money to be paid by or to the trust, or any officer thereof, to or by any person, as compensation for any injury sustained by reason of the non-compliance with any such order, and may order any such officer or person to be imprisoned, either for a specified time, not exceeding six months, or until the order aforesaid is obeyed. Any such imprisonment may be ordered in addition to or without any order for payment of money as aforesaid.

Time within which proceedings may be taken

25. (1) No proceedings to try the title of any person to any office or place shall be taken under this Part except upon a complaint laid within two months from the time at which the person whose title is disputed was appointed or elected, or the cause arose by reason whereof such person is liable to be ousted, whichever last happens.

(2) No proceedings to try the validity of any assessment or rate shall be had or taken except upon a complaint laid within two months from the time at which notice of the assessment or rate appeared in the *Government Gazette*.

PART IV

MANAGEMENT OF THE TRUST

Trust office

26. The trust shall maintain within the district, or within the town of Port Pirie an office suitable for transacting the business of the trust.

Officers of the trust

27. (1) The trust shall appoint a secretary and may appoint any other officers and servants.

(2) The secretary and every other officer and servant shall carry out such duties as are allotted to him by the trust.

Authentication of documents by the trust

28. Subject to the provisions of this Part as to contracts made by the trust, every order, summons, notice, or other document requiring to be authenticated by the trust shall be sufficiently authenticated without the common seal of the trust, if signed by the chairman, by two members, or by the secretary.

Meetings

29. (1) Ordinary meetings of the trust shall be held at the trust office at such times as the trust from time to time determines.

(2) Special meetings may be held at any time and at the trust office or at any place within the district.

(3) Any meeting may be adjourned to any time and to the trust office or any place within the district, and any business required to be done at an ordinary meeting may be done at a special meeting.

Special meetings

30. (1) The chairman may call a special meeting at any time, and, on the requisition in writing of any three members, shall call such a meeting.

(2) If after receiving any such requisition the chairman refuses or for seven clear days fails to call a meeting, any three members may call the meeting by public notice, signed by them, and stating the object of the meeting and the time and place of holding it.

Notice of meeting

31. Except as otherwise provided by the last preceding section or the by-laws, seven days notice of every meeting, signed by the secretary, shall be sent by post to every member, informing him of the time and place of meeting, and, in the case of a special meeting, of the business to be done thereat.

Quorum

32. (1) At all meetings of the trust, except where otherwise provided by this Act, the chairman and three other members, or any four members, shall form a quorum.

(2) The secretary, in the absence of the chairman and all the members, or the chairman or any member present alone, or the majority of members present at a meeting at which there is no quorum, may, at the expiration of half an hour from the time fixed for the meeting, adjourn the meeting and any business which could have been transacted at the meeting may be transacted at the adjourned meeting.

Chairman of meetings

33. (1) At every meeting of the trust the chairman, or, if the chairman is absent, a member chosen by the members present, shall preside.

(2) The person so presiding shall have a deliberative vote, and, in case of equality of votes, a casting vote also.

Effect of vacancies

34. Notwithstanding any vacancy in the office of the chairman or a member, the business of the trust shall be carried on by the members actually in office, who shall have all the powers of the trust.

Validity of proceedings of trust

35. All acts and proceedings of the trust, or of any committee of the trust, or of any person acting as chairman, or a member, shall notwithstanding that it may afterwards be discovered that there was some defect in the election or appointment of the chairman or any member or any such person or that he was incapable of holding office, be as valid as if he had been duly elected or appointed and was capable of holding office.

Provision for death or absence of secretary or other persons

36. (1) If, in consequence of death, absence, or any lawful impediment, it is impossible or inconvenient for the secretary or any member or other person to perform any particular matter or thing which by this Act he is required to perform, the chairman, or, if for the like reason it is impossible or inconvenient for the chairman, the trust may perform the matter or thing, or appoint some member or other person to perform it.

(2) The trust may authorize the chairman to carry into effect any decision of the trust.

Revocation of resolutions

37. No resolution passed at any meeting of the trust shall be revoked or altered, unless—

- (a) written notice of an intention to propose the revocation or alteration at a subsequent meeting of the trust is given or posted to each of the members seven days at least before holding the meeting; and
- (b) the revocation or alteration is determined upon by the chairman and three members or by four members of the trust.

Committees

38. (1) The trust may appoint committees of its members, and may delegate to any such committee such of its powers and duties under this Act as the trust thinks fit, and may remove any members of a committee and appoint other members in their place.

(2) The trust may, from time to time, make such by-laws as the trust thinks fit for the guidance of its committees.

(3) The decisions of a committee shall, unless otherwise ordered by the trust, not be carried into effect until they have been approved by the trust.

(4) A committee may appoint a sub-committee of its members to inquire into and report to the committee upon any matter.

(5) In no case shall a committee be authorized to declare any rate; and no expenditure or payment or contract to expend or pay any sum of money exceeding forty dollars, made by a committee, shall be lawful or valid unless the expenditure, payment, or contract is approved or ratified by the trust.

(6) A committee appointed under this Act may (subject to the by-laws of the trust) meet from time to time and adjourn as the committee thinks fit; but no business shall be transacted at any meeting of any such committee unless three members are present.

(7) At the first meeting of any committee or sub-committee one of its members shall be appointed chairman of the committee or sub-committee. All questions in committee shall be determined by a majority of votes of the members present. The chairman of the committee shall have a deliberative vote, and, in case of equality of votes, a casting vote.

(8) The chairman of the trust shall be *ex officio* a member of every committee or sub-committee.

Minutes of meetings

39. (1) The trust shall cause minutes of every meeting of the trust and of every meeting of a committee of the trust, and of the proceedings thereat, with the names of the members who attend at each meeting, and the names of all members voting on any question for the decision of which a division is called, to be duly made in books provided for the purpose, and to be kept by the secretary, under the superintendence of the trust.

(2) The minutes of every meeting of the trust and of every meeting of a committee, except its last meeting, shall be put for confirmation to the next succeeding meeting, or, if that is omitted, to some subsequent meeting, and, if found correct, shall be signed by the chairman of the meeting at which they are confirmed, or if he refuses or neglects so to do for seven days after the meeting, then by any two members present and entitled to vote at the meeting.

(3) The minutes of the last meeting of a committee shall, if found correct, be signed at the meeting, or some adjournment thereof by the chairman thereof.

Evidence of minutes

40. (1) Every minute purporting to be any such minute as aforesaid and to be so signed, or a copy of or extract from any such minute purporting to be attested by the seal of the trust and signed by the secretary, shall in all courts, and before all persons acting judicially be receivable as evidence of the transactions and matters therein recorded without proof that the meeting to which the minute refers was duly convened or held, or that the persons attending thereat were members of the trust or committee, or of the signature of the chairman or members, or of the fact of his having been such chairman, or of their having been members entitled to sign the minutes or of the affixing of the seal or of the signature of the secretary. All such matters shall be presumed until the contrary is proved.

(2) All minute books shall, at all reasonable times, be open to the inspection of any member and of any creditor of the trust. Every ratepayer may inspect and take copies of the minutes at all reasonable times on payment of ten cents to the secretary.

Contracts by trust

41. (1) The trust may enter into contracts for the purposes of this Act, and every such contract may be made, varied, or discharged as follows:—

- I. Any contract which, if made between private persons, would be by law required to be in writing and under seal, the trust may make in writing and under the common seal of the trust:
- II. Any contract which, if made between private persons, would be by law required to be in writing signed by or on behalf of the parties to be charged therewith, the trust may make in writing under the common seal as aforesaid, or in writing signed by any person acting under the authority of the trust, express or implied:
- III. Any contract which, if made by private persons, would be by law valid although only made by parol, may be made by the trust in either of the two ways aforesaid, or by parol by any person acting under the authority of the trust, express or implied.

(2) All contracts made according to the provisions herein contained shall be effectual in law and binding on the parties thereto.

(3) A contract made on behalf of the trust may be varied or discharged in the same manner in which it is authorized by this section to be made.

Power to compound claims

42. The trust may compound with any person who has entered into any contract with the trust, or by or against whom any action or proceeding has been brought or threatened on behalf of or against the trust, for any cause whatsoever, for such sums of money or other consideration as the trust thinks proper.

Banking of money

43. (1) All money received on account of the trust shall be paid into a bank appointed by the trust.

(2) Payment into the bank shall in every case be made as soon as the moneys in hand amount to ten dollars or more.

(3) Every payment of two dollars or more made on behalf of the trust shall be by cheque on the bank, drawn by the chairman and by a member authorized from time to time by the trust in that behalf, or in case of the absence of the chairman, drawn by two members authorized from time to time by the trust, and in each case countersigned by the secretary.

(4) Payments of less than two dollars may be made out of a petty cash fund, replenished from time to time by cheques drawn and countersigned as aforesaid.

Powers of entry by officers of trust

44. In addition to its powers under the *Compulsory Acquisition of Land Act, 1925*, the trust shall, for the purposes of this Act, have power by the chairman or any member or officer to enter at all reasonable hours into and upon any building or land within the district for the purpose of making any inspection necessary or convenient to be made in connection with any work or operation of the trust.

By-laws

45. Subject to the approval of the Minister, the trust may, from time to time, make by-laws for or relating to all or any of the following subjects:—

- (a) The appointment of the time and place for meetings of the trust, whether ordinary or special, and the procedure at and conduct of such meetings:
- (b) The powers and duties, and the control, supervision, and guidance of all officers, servants, and persons employed by the trust:
- (c) The leasing, care, or control of any works:
- (d) The measures to be taken to prevent and remedy the waste, undue consumption, obstruction, and contamination of water contained in or supplied from any part of the works, and to regulate the supply and use of any such water:
- (e) Stopping the supply of water to or for the benefit of any ratepayer whose rates are in arrear, or to any ratable land the rates in respect of which are in arrear:
- (f) The protection of every part of the works from trespass or injury:
- (g) Preventing unauthorized persons using (except for travelling stock on roads abutting on or crossing the River Broughton), directly or indirectly, water contained in any works of the trust:
- (h) Regulating the number, form, material, dimensions, construction, and arrangement of pipes, fittings and other apparatus which may be used for drawing water from the works under the control of the trust:
- (i) Prescribing penalties recoverable summarily and not exceeding one hundred dollars for any breach of any by-law:
- (j) And generally for prescribing any matters necessary or convenient to be prescribed for the execution of the powers of the trust and the due administration of this Act.

PART V

CONTROL OF THE RIVER BROUGHTON

General Powers of the Trust

Vesting of water

46. Subject to section 143, the ownership of all water in that part of the River Broughton which is in the district of the trust, or in any works of the trust, shall vest in the trust and shall be subject only to such rights as are lawfully granted under this Act.

Construction of works by trust

47. The trust may erect, construct, repair and maintain weirs, dams, sills, embankments, channels, drains, watercourses, and any other works, plant and equipment which the trust deems necessary for the purpose of conserving, diverting, regulating, controlling, and distributing any waters in that part of the River Broughton which is within the district of the trust.

Acquisition of land

48. (1) The trust may acquire by agreement or compulsory process any land which it requires for the purpose of carrying into execution any of its powers duties or functions under this Act.

(2) The *Compulsory Acquisition of Land Act, 1925*, is incorporated with this Act.

Restriction on diversion of water

49. (1) No person shall—

- (a) take, except for domestic purposes or for watering cattle or other stock, any water from any part of the River Broughton which is within the district of the trust, or from any works of the trust; or
- (b) construct any drain, pipe, weir, dam, sill, embankment, channel, or other works for the purpose of taking or diverting water from any such part of the River Broughton or from any works of the trust,

unless the trust has granted him a licence in writing to do so.

(2) The occupier of any land on which at the time of the commencement of this Act there exists any drain, pipe, weir, dam, sill, embankment, channel or other works for the purpose of taking or diverting water from any such part of the River Broughton shall not, after three months from the first appointment of members of the trust, allow that drain, pipe, weir, dam, sill, embankment, channel, or other works to continue to exist in such a form as to be capable of so taking or diverting water unless the trust has granted him a licence authorizing him to maintain such drain, pipe, weir, dam, sill, embankment, channel or other works.

(3) The trust may remove or otherwise render ineffective any drain, pipe, weir, dam, sill, embankment, channel or other works constructed or allowed to exist in contravention of this section and for that purpose may by its agents and servants enter and remain on any land and do any work necessary. No person shall be entitled to compensation by reason of anything done under this section.

(4) Any person contravening this section shall be guilty of an offence and liable to a penalty not exceeding one hundred dollars.

(5) Any licence granted under this section may authorize the person so licensed to construct, maintain, and use a private drain, private drainage works or a pipe or other works or equipment through or on any land; and any question of compensation between such person and the owners or occupiers of any land for any damage arising from or in connection with the construction, maintenance, and use of such drain, works, pipe or equipment shall be determined by the trust: Provided that any person aggrieved by any such determination may appeal therefrom in manner prescribed to the Local Court of Full Jurisdiction of Port Pirie and that court shall hear and determine the appeal in accordance with the regulations.

Power to control

50. The trust shall have power to regulate and control the flow of the waters of the River Broughton over the lands adjacent thereto, and to execute all works and do all things necessary for those purposes.

Free passage to be given to supply water

51. Every owner or occupier of land through which a channel, watercourse, or drain is cut by the trust, or over which an aqueduct or pipe is conducted or carried by the trust, shall give free passage to water of supply or drainage turned into the channel, water-course, drain, aqueduct, or pipe by the trust.

Construction of Drains and Works on the Petition of Landholders

Petitions for drain

52. A petition may be presented to the trust by landholders, requesting that any weir, dam, sill, embankment, channel, drain, or other work for promoting or regulating the flow of water on land (hereafter in this Part called "the works") indicated in the petition be constructed.

Form of petition

53. Such petition shall be in the form in the first schedule hereto, and each signature thereto shall be witnessed by some person who shall make a declaration before a justice of the peace in the form at the end of the said schedule; and any person wilfully making any false statement in such declaration shall be guilty of a misdemeanour, and shall be liable to imprisonment for any term not exceeding two years.

Preliminary inquiry

54. The trust shall forthwith upon receiving a petition—

- (a) ascertain what lands will, in its opinion, be benefited by the works:
- (b) prepare an estimate of the cost of constructing the works.

Trust's approval

55. (1) If the trust after due inquiry considers that it is expedient to construct the works, it may by notice in the *Gazette* declare—

- (a) that it approves of the construction of the works;
- (b) what lands in its opinion will be benefited by the works; and

(c) the estimated cost of constructing the works.

(2) The trust's declaration shall be conclusive as to what lands will be benefited by the works.

Decision whether petitioners are majority of landholders and hold three-fourths in value of benefited lands

56. (1) Unless within one month of the publication of the trust's declaration in the *Gazette*, a substantial number of the petitioners, by notice in writing received by the trust, withdraw the petition, the trust shall decide whether or not the petitioners are a majority of the landholders of the lands which will be benefited by the works, and whether or not the value of the lands of which they are the landholders is at least three-fourths of the value of all the lands which will be benefited by the works. A "substantial number" means a number considered by the trust to be substantial.

(2) In this section "value" means—

- I. as to lands assessed for the purposes of land tax, the unimproved value of such lands as so assessed:
- II. as to lands not so assessed, the unimproved value of such lands as assessed by the trust.

(3) Upon deciding as in subsection (1) of this section mentioned, the trust shall publish its decision by notice in the *Gazette*, and such notice shall be conclusive as to the accuracy of such decision.

Construction of works

57. (1) If the trust decides that the petitioners are a majority of the landholders of the lands which will be benefited by the works, and that the value of the lands of which they are the landholders is at least three-fourths of the value of the lands which will be benefited by the works, the trust shall, after the publication of its decision in the *Gazette*, proceed with the construction of the works out of money to be borrowed by the trust for the purpose:

Provided that before the construction of the works is proceeded with the trust shall supply to one of the petitioners, to be nominated for the purpose by a majority of the petitioners a plan and specification of the works, together with an estimate of the cost thereof:

Provided also that so soon as tenders shall have been received for the works copies of all tenders and the amounts thereof shall be similarly supplied to the person nominated by the petitioners.

(2) If within twenty-one days from the receipt of the tenders by the petitioners' nominee a majority of the petitioners signify to the trust that they do not desire the works to be proceeded with, the trust shall not accept any tender for the works. The costs of the preparation of plans and calling for tenders shall be borne by the petitioners, who shall be jointly and severally liable for the amount thereof.

Cost to be paid by landholders

58. The cost of constructing the works shall be deemed to be an advance by the trust to all the landholders of the lands which will be benefited by the works, and such advance shall be repaid to the trust by such landholders, with interest thereon at a reasonable rate to be fixed by the trust, in the proportions to be ascertained as hereinafter mentioned.

Final report

59. When the construction of the works is completed the trust shall, by notice in the *Gazette*, notify the date of completion of the works and the cost of construction thereof, and such notice shall be conclusive as to such matters, notwithstanding that the cost as so notified differs from any previous estimate of the cost.

Preliminary apportionment of the cost

60. (1) The trust shall, within two years after the date of completion of the works, make a preliminary apportionment of the cost of the construction thereof amongst all the landholders of the lands benefited by the works, as declared by the trust's declaration.

(2) The trust shall, by notice published in the *Gazette*, set forth the preliminary apportionment. Such notice may be in the form in the second schedule hereto. The *Gazette* containing such notice shall be conclusive as to such apportionment.

(3) Any apportionment made under this section after the expiration of two years from the date of completion of the works shall be as valid for all purposes as if it had been made before the expiration of that term: Provided that the trust may, if in its opinion the delay in making the apportionment has resulted in hardship to any landholder thereby affected, postpone for such period as the trust thinks fit the date from which that landholder is to commence payment of the proportion of the cost of construction apportioned to him.

Objection to the apportionment

61. Any landholder may, within two months after the publication of the notice of preliminary apportionment, object to the proportion of the cost apportioned to him by such apportionment. The objection shall be made by notice served on the trust, and may be in the form in the third schedule hereto.

Determination of objection

62. (1) Every objection shall be considered by the trust at a time fixed by notice given to the objector, not being less than seven days after the giving of such notice, and at a place fixed by such notice: Provided that the consideration of any objection may be adjourned from time to time and from place to place as the trust deems convenient.

(2) The objector may attend any meeting of the trust held to consider his objection, and may adduce before the trust any relevant evidence.

(3) The trust may make any inquiries it deems necessary, and inform itself in such manner as it deems fit for the purpose of determining the objection, and shall not be bound to observe any rules of evidence or procedure.

(4) The trust shall consider every objection and determine it in such manner as it deems fair and equitable, and may confirm or increase or decrease the amount of the cost apportioned to the objector, and may, if the amount is confirmed or increased, order the objector to pay the costs occasioned by the objection.

(5) The determination of the trust shall be final, and not subject to any appeal or to be questioned in any way.

Adjustment of apportionment

63. If upon the consideration of any objection to the preliminary apportionment the amount apportioned to any landholder is altered the trust shall adjust the amounts apportioned to other landholders as may be found necessary.

Final apportionment

64. The trust shall forthwith, after the time for objecting has expired, if no objection is pending, or if any objection is pending, then forthwith after the determination of all objections, make its final apportionment of the cost of the construction of the works, and fix the yearly instalments to be paid by each landholder to the trust, and the date upon which the first instalment is to be paid.

Notice of apportionment

65. (1) The trust shall publish in the *Gazette* a notice setting forth the final apportionment, the yearly instalments, and the date upon which the first instalments are to be paid.

(2) Such notice may be in the form in the fourth schedule hereto, and shall be conclusive evidence of all matters set forth therein, and of the validity thereof.

Repayment of cost of construction

66. (1) The amount of the proportion of the cost of construction apportioned to any landholder shall be a debt due from such landholder to the trust, and shall be paid by such landholder to the trust, with interest on the balance thereof owing for the time being at the rate fixed by the trust, in forty-two equal yearly instalments. The amount of the annual instalment for every two hundred dollars payable by a landholder in respect of the proportion of the cost of construction apportioned to him shall be fixed by notice published by the trust in the *Gazette* at the time of publication of the notice of the final apportionment.

(2) The first of such instalments shall become due on the first day after the expiration of two years from the date of the completion of the works, and one of such instalments shall fall due on the same day in each year thereafter until the whole debt has been paid: Provided that any landholder may at any time pay the balance of the amount payable in respect of his land, with any interest then due, whereupon his liability and the charge upon his land shall cease.

(3) Interest at the rate of five per cent, shall be paid on the amount of any instalment which remains unpaid for more than six months after it falls due. The interest shall be chargeable from the day upon which the instalment falls due.

(4) In computing the amounts of the yearly instalments the interest for the first two years shall be added to the amount of the proportion of the cost of construction.

Power to sell land for non-payment of instalments

67. The trust shall have the like power to sell land for non-payment of moneys owing to it under this Part as a district council has to sell land for non-payment of rates under Part XIV of the *Local Government Act, 1934-1936*, and that Part of that Act shall *mutatis mutandis* apply to the trust as if the trust were a district council and the secretary of the trust were the clerk of a district council, and moneys due under this Part were rates.

Lessees to pay proportion of cost to landholder

68. (1) Where any land benefited by the works is subject to a lease to any person other than the landholder of such land, the lessee under that lease shall pay to the landholder during the currency of that lease such proportion of each annual instalment payable by the landholder as may be agreed between them.

(2) In default of agreement, the amount of the proportion to be paid by the lessee shall be settled by the trust on the application of either the landholder or the lessee.

(3) Such application shall be made by notice given to the other party and the trust.

(4) The application shall be heard by the trust at a time fixed by notice given to both parties, not being less than seven days after notice is so given, and at a place fixed by such notice: Provided that the hearing may be adjourned from time to time and from place to place as the trust deems convenient.

(5) The trust may inform itself in such manner as it deems fit for determining the proportion to be paid by the lessee, and shall not be bound to observe any rules of evidence or procedure.

(6) The trust shall determine the matter as it deems fair and equitable, and may order either party to pay the costs of the application, not exceeding ten dollars.

(7) The determination of the trust shall be final, and not subject to any appeal or to be questioned in any way.

Provision for apportionment of cost where land charged is subdivided

69. (1) Where after notice of the final apportionment any land included in such notice belonging to one and the same landholder is subdivided (whether as the result of a sale or otherwise), and becomes vested in two or more different landholders the trust shall further apportion between such landholders the amount by such notice apportioned to such landholder in respect of such land, and fix the yearly instalments to be paid by each of such landholders to the trust and the date upon which the first instalment is to be paid: Provided that in making such apportionment the trust shall take into account the total amount of the instalments (if any) already paid by such landholder.

(2) The trust shall publish in the *Gazette* a notice setting forth such apportionment, the yearly instalment, and the date upon which the first instalments are to be paid, and such notice shall be conclusive evidence of all matters set forth therein, and of the validity thereof.

(3) The provisions of this Part relating to payment by landholders of the amount of cost apportioned to them, to the payment of part of that cost by lessees to landholders, and to the recovery of such cost, shall apply, *mutatis mutandis*, to and in respect of any amount apportioned under the authority of this section in the same manner as to an amount apportioned to a landholder in the first instance under this Part.

(4) This section shall apply in the case of any one or more further subdivisions beyond that referred to in subsection (1) hereof.

PART VI

ASSESSMENTS AND RATES

Ratable value

70. In this Part the expression "ratable value" in relation to any land means the assessed amount of the increase in the value of the fee simple of the land, which increase has accrued from all the works (not being works constructed on the petition of landholders) constructed by the trust under this Act prior to the making of the assessment.

Assessment

71. (1) The trust shall, whenever the trust considers it necessary for the purposes of this Act, cause to be prepared and entered in a book or other record to be called the "Assessment Book" an assessment which shall contain the name (as a ratepayer) of every person who is the owner or occupier of ratable land within the district, the description, area, and situation of the land and the ratable value thereof.

(2) The assessment shall be signed in the said book or record by the chairman and two members and the secretary, who shall specify in the book the date of the signature. The assessment shall thenceforth, subject to any alterations made on appeal, be binding on the ratepayer until a new assessment is in like manner prepared, entered, and signed.

Ratepayers pending assessment of benefit

72. (1) During the period between the commencement of this Act and the making of the first assessment of ratable value under this Act every owner and occupier of land within the district shall be regarded as a ratepayer in respect of his land.

(2) During the said period the trust shall keep an assessment book showing the name and the description, area and situation of the land of each such ratepayer and any other particulars which the trust thinks it convenient to insert.

Assessment to be made by assessors

73. (1) Every assessment, except as by this Act otherwise provided, shall be made by one or more assessors, to be appointed by the trust.

(2) Every such assessor shall, for the purpose of making the assessment, have power to put to the owner, occupier or person in charge of any ratable land, any questions for the purpose of obtaining any information necessary to enable the assessor to state correctly the particulars by this Act required to be stated in the assessment book with regard to the land.

(3) If, after being informed by the assessor of his being an assessor, and of his purpose in putting the questions, and of his authority under this Act to put them, any such owner or occupier or person in charge refuses or wilfully omits to answer any such questions to the best of his knowledge and belief, or wilfully makes any false statement in answer to any such question, he shall be guilty of an offence against this Act and liable to a penalty not exceeding twenty dollars.

Power to adopt previous assessment

74. The trust may, instead of causing any new assessment to be made by assessors, approve as a new assessment the last previous assessment, with such alterations and additions as may appear necessary.

Removal of names

75. Every person whose name appears in the assessment book as owner or occupier of any ratable land shall be entitled to have his name removed from the book, if—

- (a) he has ceased to be the owner or occupier of the land; and
- (b) he has given notice in writing thereof to the trust under his hand; and
- (c) all rates for which he is liable and of which notice has been duly given him, have first been paid.

Insertion of names in assessment

76. An owner or occupier of any ratable land, whose name does not appear in the assessment book as such, may apply to the trust to have his name inserted in the assessment book, and shall be entitled to have his name inserted accordingly, except within ten days immediately preceding any annual election.

Power to rectify errors and omissions

77. Except within ten days immediately preceding any annual election, all errors and omissions in the assessment book, with regard to any ratable land, or the ownership or occupancy thereof (including errors and omissions arising from changes of ownership), shall be rectified by the trust immediately on the discovery thereof. A minute shall be made of any such rectification, and a copy thereof, signed by the secretary, shall be entered in the assessment book, and every copy thereof; and the assessment book and every copy thereof, shall be rectified accordingly.

Notice of assessment

78. (1) Public notice of the making of any assessment, and of the place or places where copy or copies thereof may be inspected, shall be given within fourteen days from the making or adoption. The notice shall state whether a previous assessment has been adopted or not.

(2) Notice in writing of the making of every assessment, and of the making of any alteration or rectification of or addition to any assessment, shall, within fourteen days from the making of the assessment, alteration, rectification, or addition, be given by posting or delivering the same to every person appearing in the assessment book as the owner, or occupier of the land concerned. If no person appears in the assessment book as owner or occupier, the notice shall be given by advertisement in the *Gazette*.

Appeal against assessment

79. Any ratepayer may appeal against the assessment or any alteration or rectification thereof, or addition thereto, on any of the grounds following:—

- I. That he is not the owner or occupier of the whole or any or some particular part of the ratable land for which his name appears as owner or occupier:
- II. That any ratable land, or the owner or occupier of any ratable land, within the district is omitted from the assessment:
- III. That any land included in the assessment is not ratable:
- IV. That the ratable value of any land is assessed above or below the true ratable value.

Hearing of appeals

80. (1) Any such appeal may be made either to the trust or directly to the Local Court of Full Jurisdiction nearest to the trust office.

(2) From the decision of the trust on any such appeal the appellant may appeal to the said Local Court.

(3) The decision of the Local Court shall be final, whether the appeal is to the Local Court direct or after a previous appeal to the trust.

Time for appealing

81. (1) Every appeal to the trust or to the Local Court direct shall be commenced within twenty-one days after the written notice of the assessment has been given to the appellant.

The appeal shall be instituted by a notice setting out the name and address of the appellant, the land owned or occupied by him, and the grounds of the appeal.

(2) If the appeal is to the trust the notice shall be given to the secretary; if the appeal is to the Local Court the notice shall be given to the clerk of the Local Court, and also to the secretary. Notice shall also be given to the person (if any) whose name it is proposed to insert in the assessment, or whose property is alleged to be omitted, fourteen days before the hearing of the appeal.

(3) Appeals made to the Local Court direct shall be heard at the sittings of the Local Court next after the expiration of seven days from the last day on which notice of appeal may be given.

(4) Appeals made to the trust shall be heard by the trust as early as possible after the last day on which notice of appeal may be given. Notice of the day appointed by the trust for the hearing of appeals shall, fourteen days before the day of hearing, be given by advertisement in a newspaper, and be posted on a conspicuous part of the trust office.

Procedure on appeal

82. (1) On the hearing of an appeal the secretary shall produce the assessment book containing the assessment, alteration, rectification, or addition appealed against.

(2) Where the appeal is to the trust the trust shall hear the appellant and his witnesses without administering any oath.

(3) Where the appeal is to the Court all evidence shall be given on oath.

(4) The trust or the Court may make such order as it deems just, and shall cause any alteration occasioned by the decision of the appeal to be made in the assessment book.

Appeals from decision of trust

83. (1) Every appeal from the decision of the trust given or made on the hearing of any appeal to the trust as hereinbefore provided shall be commenced by a written notice setting out the name and address of the appellant, the land owned or occupied by him and the grounds of the appeal.

(2) The notice shall, within ten days after the giving or making of the decision, be served on the secretary and the clerk of the Local Court.

(3) The appeal shall come on for hearing at the sittings of the Local Court next after the expiration of seven days from the service of the notice on the clerk of the Local Court.

(4) On the hearing of the appeal the secretary shall produce the assessment book containing the assessment, alteration, rectification, or addition in question, and the Local Court may make such order as it deems just, and shall cause any alteration occasioned by the decision of the appeal to be made in the assessment book by the clerk of the Local Court.

Costs of appeal

84. The Local Court, on the hearing of any appeal, may make such order as it deems just for the payment by any party to the appeal to any other party to the appeal of the costs of the appeal.

Rates

Purpose of rate

85. The trust may declare and levy rates for any of the following purposes:—

- (a) Defraying the cost of construction of any works carried out or to be carried out by the trust pursuant to this Act:
- (b) Paying the interest on and repaying the capital of any loan lawfully raised by the trust:
- (c) Paying the costs and expenses of the administration of this Act and of doing anything which the trust may lawfully do.

Basis of rate

86. (1) During the period between the commencement of this Act and the making of the first assessment of ratable value the rates shall be—

- (a) of an amount fixed by the trust for every hectare of land within the district; or
- (b) of an amount fixed by the trust for each block of land separately occupied; or
- (c) of an amount calculated in any other way which the trust may think just.

(2) After an assessment of ratable value has been made the rates shall be of an amount fixed by the trust for each dollar of the ratable value of the land in the district.

Entry of rate in assessment book

87. Whenever a rate is declared the secretary shall make entries in the assessment book showing the amount in the dollar and the date of declaration of the rate and the amount payable by each ratepayer.

Notice to ratepayers

88. The secretary shall give written notice to each occupier of land in respect of which rates are payable, of the date of the declaration of every rate, the amount payable by the ratepayer, and the land in respect of which that amount is payable.

Person liable for rates

89. The person primarily liable for the payment of rates in respect of any ratable land shall be the person for the time being appearing in the assessment book as the occupier of the land. In default of payment by or recovery from him, or if the land is or becomes unoccupied, then the person for the time being appearing in the assessment book as the owner of the land shall be liable.

Notice before recovery of rates

90. Every rate shall become due and payable when it is declared, but no rate shall be recoverable by action from any person until twenty-one days after a written notice from some officer of the trust has been served on that person, informing him of the amount of the rate payable by him, and in respect of what land the rate is payable.

Interest in default of payment

91. (1) If any rate is not paid before the end of three months after it becomes due and payable, interest determined in accordance with this section shall be added to the amount of the rate, and shall thenceforth for all purposes be deemed to be a part of the rate, and shall be paid by the person or persons liable to pay the rate, and be recoverable from any person liable to pay the rate, and in such manner as if it were part thereof: Provided that no such interest shall be added to the amount of any rate payable by a person resident in the State unless the rate has remained unpaid for the space of twenty-one days after notice of the rate has been given to that person.

(2) Where an amount payable by way of rates remains unpaid for three months or more after the day on which the rates became due and payable, interest shall be added to the outstanding amount as follows:

(a) upon the expiration of the first three months, five per centum of the amount then outstanding shall be added to that amount;

and

(b) upon the expiration of each succeeding month, a further one per centum of the total amount then outstanding (including interest) shall be added to that amount.

(3) Where rates became due and payable before the commencement of the *Statutes Amendment (Irrigation) Act, 1983*, and an amount payable by way of those rates or a fine on those rates (or both) remains unpaid for one month or more after the commencement of that amending Act, then, upon the expiration of each month after the commencement of that amending Act, interest of one per centum of the amount then outstanding (including any fine or interest) shall be added to that amount.

Liability of persons appearing in assessment book as owners

92. Every person appearing in the assessment book as the owner of any land shall continue liable for all rates declared in respect of that land, notwithstanding any change in the ownership thereof prior to the declaration of the rates, except as to rates declared after he, having ceased to be owner, has given written notice to the secretary of the change of ownership, stating who is the person who has become owner.

Recovery of rates

93. Rates may be recoverable from any person liable to pay them, in the name of the trust, by action in any court of competent jurisdiction.

Power to sell land for non-payment of rates

94. The trust shall have the same power to sell land for non-payment of rates as a district council has under Part XIV of the *Local Government Act, 1934-1936*, and that Part of that Act shall *mutatis mutandis* apply to the trust as if the trust were a district council and the secretary of the trust were a clerk of a district council.

Limitation of liability of trustee agent, or attorney

95. No trustee, agent, or attorney for any owner of ratable land shall be liable to pay any money recovered or penalty imposed under the provisions of this Act in excess of the amount then in his hands or under his control and belonging to his *cestui que trust*.

PART VII

LOANS

Power to borrow

96. The trust may, subject to this Part, borrow money for the following purposes:—

- (a) For defraying any of the general administrative costs of the trust incurred before rates are collected under this Act:
- (b) For constructing any works which the trust is authorized to construct.

Security for loan

97. The trust may subject to this Part give security for any money borrowed by it—

- (a) by the issue of debentures containing, if the trust thinks fit, a charge on the future rates of the trust and power to appoint a receiver:
- (b) by the execution of any other form of security.

Notice of loan

98. Before borrowing any sum of one thousand dollars or more for the construction of works the trust shall give notice twice by advertisements in a newspaper circulating in the district stating—

- (a) the amount of money proposed to be borrowed:
- (b) the works on which the money is to be spent.

Poll on loans

99. If one twentieth or more of the ratepayers in the assessment book demand a poll in writing delivered to the secretary within one month after the second notice of the proposed borrowing, the loan shall not be raised—

- (a) unless a poll has first been held on the question whether the money shall be borrowed and the works carried out; and
- (b) a majority of the ratepayers voting at the poll vote in favour of the loan and the proposed works.

Power of Treasurer to make loans to trust

99a. (1) Subject to this Act the Treasurer may out of money provided by Parliament for the purpose lend to the trust any sum or sums of money not exceeding fourteen thousand dollars in the aggregate.

(2) Any money so lent shall be lent for such period and on such terms and conditions and on such security as the Treasurer thinks fit: Provided that such terms conditions and security shall not be inconsistent with the other provisions of this Act.

PART VIII

MEETINGS, ELECTIONS, AND POLLS

Ratepayers' meetings

100. (1) Meetings of ratepayers may be called by the trust at any time.

(2) Whenever ten ratepayers, by notice under their hands, left at the trust office, require the trust to call a meeting of ratepayers for the consideration of any matters specified in the notice, the trust shall do so within two weeks from the day when the notice is left, the meeting to be held within five weeks from that day.

Voting at meetings

101. At any meeting of ratepayers the chairman of the meeting shall in the usual way take a show of hands for every proposition and amendment touching the object of the meeting, and shall declare that proposition carried for which in his opinion the largest show of hands appears: Provided that if any ratepayer request a ballot, a ballot shall forthwith be taken.

Nominations and Elections

Nominations

102. (1) No person shall be capable of being elected as a member of the trust unless duly nominated in writing.

(2) Every nomination shall be in a form fixed by the returning officer and shall—

- (a) state the name of the candidate, his place of residence and his occupation:
- (b) be signed by not less than two ratepayers as nominators:
- (c) contain an undertaking by the candidate that he will act as a member if elected.

Time and place for nomination

103. (1) Twelve o'clock noon on the second Saturday in June of each year shall be the hour and day of nomination; and the office of the trust shall be the place of nomination.

(2) Ten clear days before the day of nomination the trust shall give public notice of the hour, day and place of nomination.

Requirements as to nominations

104. No candidate shall be validly nominated unless a written nomination complying with this Act is lodged in the trust office not later than the hour of nomination: Provided that a nomination shall not be invalid by reason only of any formal defect so long as it substantially complies with this Act.

Proceedings on day of nomination

105. (1) On the day of nomination the returning officer shall attend at the trust office at the hour of noon, and shall there and then publicly open and read aloud all the nominations lodged in the office.

(2) If for any office there is only one candidate nominated the returning officer shall declare that candidate to be elected to that office as from the first Saturday in the July next ensuing.

(3) If more than one candidate is nominated for any office the returning officer shall adjourn all further proceedings in respect of the election until the first Saturday in the July following, when the election shall be by ballot, as by this Act provided.

Notices of adjournment

106. The returning officer upon any such adjournment shall forthwith give notice thereof, and of the object thereof, and the names of the several candidates, and the day, hour, and place when and where the election is to take place, by affixing handbills in a conspicuous place on the outside of the office of the trust and in such other places as he deems necessary.

Procedure on failure of election

107. Whenever—

- (a) any annual or supplementary election from any cause wholly or in part fails to be made upon the day appointed by this Act; or
- (b) any such election being made, afterwards becomes wholly or in part void,

a supplementary election shall be held.

Supplementary election

108. (1) Immediately upon the happening of any such failure or avoidance, the trust shall by public notice appoint a day, not being earlier than seven days nor later than twenty-one days from the giving of the notice and an hour and place for the nomination of the persons to be elected.

(2) The nomination shall take place on the day and at the hour and place so appointed in like manner as at the annual election.

(3) If for any office there is only one candidate nominated, the returning officer shall declare that candidate to be elected to that office as from the day of nomination.

(4) If more than one candidate is nominated for any office, the returning officer shall adjourn all further proceedings in respect of the election until a day to be fixed by him for the election, not being less than six nor more than ten clear days from the day of nomination.

(5) On the day so fixed the election shall take place in like manner as at the annual election.

Notice of election

109. Within forty-eight hours from the election of any person to any office in connection with the trust, the returning officer shall cause to be delivered or posted to that person a notice informing him of the election, and within fourteen days of the election shall cause a notice thereof to be inserted in the *Gazette*.

Procedure where trust fails to hold election

110. If—

- (a) the trust fails to proceed, as required by this Act, to any election for twenty-one days from the last day on which the election is required by this Act to be held; or

(b) by resignation or otherwise it happens that there are no members of the trust,

any justice resident within the district, or any special magistrate, may, upon the request in writing of any three ratepayers, do every act by this Act required to be done for holding the election, including the appointment of a day hour and place for nomination and a returning officer.

Mode of Holding Elections and Polls

Returning officers

111. For every election or poll the trust shall appoint a returning officer, who shall, *mutatis mutandis*, have all the powers conferred by *The Ballot Act of 1862*, on a returning officer in case of an election, including the power to appoint deputies, and shall preside at the election or poll.

Polling place and hours of voting

112. The trust shall appoint polling places for the election or poll. The voting at the election or poll shall commence at nine o'clock in the morning, and shall continue until all the voters present in each polling place at five o'clock in the afternoon have had an opportunity of voting, and shall then close.

Scrutineers

113. (1) For the purpose of an election each candidate may appoint in writing one scrutineer to be present at each polling place.

(2) At a poll the trust shall appoint one scrutineer to be present at each polling place and the persons who demanded the poll may by writing under their hands or the hands of any three of them, appoint one scrutineer for each polling place.

(3) Any scrutineer may inspect the scrutiny and count of votes.

Polling booths

114. At every election the returning officer, if it appears to him expedient, may cause booths to be erected, or rooms to be hired and used as booths, at each polling place; and the booths shall be divided into compartments as the returning officer thinks most convenient. The returning officer shall before the day fixed for taking votes, cause a copy of the assessment book to be furnished for use at each polling place.

Right to vote

115. (1) At an election every person of the age of eighteen years or upwards, whose name appears as a ratepayer in the assessment book in force for the time being, shall have one vote in each ward in which property owned or occupied by him is situated.

(2) At a poll every person of the age of eighteen years or more, whose name appears as a ratepayer in the assessment book in force for the time being, shall have one vote.

(3) Any such ratepayer who at the time of the holding of the election or poll is distant more than 30 kilometres from the polling place, or is unable to attend owing to illness, may, subject to the proviso hereinafter contained, vote by his attorney under power, such power to be produced to the returning officer at the election or poll: Provided that a statutory declaration by the ratepayer as to his absence or intended absence, or as to such illness, is produced.

(4) A joint tenant or tenant in common or joint occupier shall have the same voting rights as if he were the sole owner or occupier, as the case may be, of land.

Issue of voting papers

116. (1) Every person entitled to vote shall present himself personally or by attorney, to the returning officer or his deputy, at the polling place, and state his Christian name and surname, abode, profession or occupation, whether he is an owner or occupier of land and the place where his land is situate.

(2) The returning officer or deputy shall thereupon place a mark against the name of the voter or of his principal on the copy of the assessment book, and hand the voter a voting-paper which voting-paper or voting-papers shall bear the initials of the returning officer or deputy.

Contents of voting papers

117. (1) In the case of an election the voting-paper shall contain the Christian names and surnames of the candidates arranged in alphabetical order, according to the surnames, and if there are several candidates of the same surname, then according to the Christian names of the candidates, and if there are several candidates of the same Christian names and surname, then as to those candidates in such order as the returning officer thinks proper. Every such voting-paper shall have a square printed opposite to the name of each candidate.

(2) In the case of a poll the voting-paper shall contain particulars of the proposal in respect of which the poll is taken and underneath such particulars the following sentences shall be written:—

I agree to the above proposal.

I object to the above proposal.

Every voting-paper shall have a square printed opposite to each of the said sentences.

(3) At the foot of the voting paper there may be inserted a direction that a vote is to be indicated by a cross within a square on the voting-paper.

(4) Except as above provided, nothing shall be inserted in or placed on any voting-paper.

Mode of voting

118. (1) The returning officer shall provide one or more separate apartments in each polling booth.

(2) The voter shall, on receiving his voting-paper, immediately retire to such an apartment, and there alone and in private, without interruption, indicate his vote or votes by making a cross within the square on his voting-paper which is opposite the name of the candidate for whom he intends to vote, or opposite the affirmation or negation of the proposition voted upon, and shall then fold the paper and immediately deliver it so folded to the returning officer or his deputy, who shall forthwith publicly, and without opening the paper, deposit it in a box to be provided for that purpose.

(3) No voting-paper so deposited in any box shall on any account be taken therefrom unless in the presence of the scrutineers after the close of the poll.

(4) No voting-paper shall be received unless it is so folded as to render it impossible for the returning officer, his deputy, or any other person, to see how the vote is given.

Assistance to voters

119. Any voter may signify to the returning officer or his deputy that by reason of blindness or defective eyesight he is unable to vote without assistance; and thereupon the returning officer or deputy, if satisfied of such inability, shall permit any agent named by the voter to accompany him into the apartment or place for voting to mark the voting-paper on the voter's behalf, and shall receive the paper from the agent and deposit it in the ballot-box.

Persons entitled to be in polling place

120. The only persons who shall be allowed to remain in the polling place or room shall be the persons about to vote, the returning officer, the deputy returning officers, and the scrutineers.

Questions to voters

121. No inquiry shall be permitted at any election or poll as to the right of any person to vote, except as follows, that is to say:—The returning officer or his deputy may, or if required by any scrutineer shall, put to any person applying for a voting-paper at the time of his so applying, but not afterwards, the following questions, or any of them, and no other:—

- (i) Are you the person whose name appears as and as a ratepayer in the assessment book of the Lower River Broughton Trust; or (in case of a person claiming to vote as attorney for a ratepayer). Are you the person mentioned as attorney for in the power of attorney under which you claim to vote, and is the person appointing you the person whose name appears as and as a ratepayer in the assessment book of the Lower River Broughton Irrigation Trust?
- (ii) Have you already voted at the present election (or poll) except in a different capacity from that in which you now claim to vote?

No person shall be entitled to vote unless his answer to the first question, if put, is in the affirmative, and to the second, if put, is in the negative. Any person who wilfully makes a false answer to either of such questions shall be guilty of an offence.

Voting twice and personation

122. Any person who in the same capacity votes a second time in a ward for which he has already voted, or offers to vote a second time in such a ward, at any election or poll, or who personates any other person for the purpose of voting at any such election or poll, shall be guilty of a misdemeanour, and liable to be imprisoned for any term not exceeding six months.

Duty of returning officer as to ballot-box

123. (1) Immediately before taking the votes the returning officer or deputy returning officer shall exhibit the ballot-box empty.

(2) Immediately upon the close of the voting, the returning officer or deputy returning officer shall publicly close and seal the box containing the voting-papers.

(3) Any returning officer or deputy returning officer who unlawfully tampers with any ballot-box or voting-paper shall be guilty of a misdemeanour, and liable to be imprisoned for any term not exceeding six months.

Count of votes and result of poll

124. (1) At the close of the election or poll the returning officer shall—

- (a) fix a time, as soon as conveniently may be, for examining the votes and declaring the result of the election or poll:
- (b) in the presence of such of the scrutineers as choose to be present, open all the boxes containing voting-papers delivered in at the election or poll:
- (c) examine the voting-papers, and reject all such as contain crosses against the names of a larger number of persons than are required to be elected, or against both the affirmation and the negation of any proposition, or contain anything other than such matters as are hereinbefore prescribed for such voting-papers:
- (d) openly declare the general state of the votes at the close of the election or poll, as the same is made up by him from the voting-papers:
- (e) declare the name or names of the person or persons who have been duly elected, and in the event of the number of votes being found to have been equal for any two or more candidates, shall, by his casting-vote, decide which candidate shall be elected:
- (f) declare any proposition or propositions carried or not, according as the majority of votes shall be for or against it and in the event of an equal number of votes for and against a proposition, shall by his casting-vote, decide for or against it.

(2) No returning officer shall vote at any election or poll at which he is returning officer, except in case of an equality of votes as aforesaid; but this provision shall not apply to a deputy returning officer.

Destruction of voting-papers

125. The returning officer shall destroy all voting-papers upon the expiration of two months after the declaration of the result of the election or poll: Provided that if upon such expiration any legal proceedings are pending as a result of the election, the voting-papers shall be kept until the proceedings have been completed.

Payment of rates before voting

126. (1) Except where otherwise provided, no person shall be entitled to nominate a candidate for election or to vote at any election or poll of ratepayers unless, before the day of nomination, or (as the case may be) at least ten days before the poll, all sums then due in respect of any rates which have been declared six months prior to the election or poll, and for the payment of which he is primarily liable, have been paid.

(2) Any ratepayer or collector of rates or scrutineer appointed under this Act may object to any person voting if any such rates are not paid.

(3) The secretary shall cause a list of all persons whose rates are paid in accordance with this section to be prepared for use at every polling place, and the list shall constitute the voters' roll in respect of that polling place. For the purpose of the annual elections, the list shall be compiled from the assessment book for the year ending the thirtieth day of June preceding the day of election.

Powers of returning officer

127. (1) Every returning officer and his deputy shall have authority—

- (a) to maintain and enforce order and keep the peace at any election or poll held by him:
- (b) without any other warrant than this Act, to cause to be arrested and taken before a justice any person reasonably suspected of knowingly and wilfully making a false answer to any of the questions which may be put to him under this Act or of personating or attempting to personate any voter, or of attempting unlawfully to vote more than once at the same election or poll, or of leaving or attempting to leave the polling-place after having received a voting-paper and before having deposited the same in the box, or of causing a disturbance at any election or poll:
- (c) to cause any person to be removed who obstructs the approaches to any polling-place or conducts himself in a disorderly manner there.

(2) All members of the police force and special constables shall aid the returning officer, his deputy, or other person so appointed as aforesaid in the performance of his duty.

Bribery and corruption

128. The following acts shall be deemed and taken to be acts of bribery and corruption on the part of any candidate, whether committed by the candidate or by any agent authorized to act for him, that is to say:—

- I. Giving money or any other article whatsoever to any elector with a view to influencing his vote:
- II. Holding out to any elector any promise or expectation of profit, advancement, or enrichment in any shape in order to influence his vote, or making use of any threat to an elector, or otherwise intimidating him in any manner with a view to influencing his vote:
- III. Treating any elector or supplying him with meat, drink, lodging, horse or carriage hire, or conveyance by steam or otherwise whilst at the election or whilst engaged in coming to or going from the election:
- IV. Paying to any elector any sum of money for acting or joining in any procession during the election, or before or after the election:
- V. Keeping open or allowing to be kept open any public house, shop, booth, or tent, or place of entertainment, whether liquor or refreshment of any kind be distributed at such places of entertainment or not:
- VI. Giving any dinner, supper, breakfast or other entertainment at any place whatsoever to any number of electors with a view to influencing their votes.

Disqualification for bribery and corruption

129. The commission of any one of the acts mentioned in the preceding section shall, on proof thereof, be held to render void the election of the person committing the act, and to disqualify him from being elected for the same office during the whole period that may intervene between the commission of the act and the time of the next periodical election.

Acts of agents

130. The acts of all authorized agents of a candidate shall, in matters connected with elections, be held to be acts of their principal, if it is proved that the acts were committed with his knowledge or consent.

Bribery and corruption by unauthorized person

131. If any of the above-mentioned acts, hereby declared to be acts of bribery and corruption, are committed by any person not the authorized agent of any candidate, the said person shall be guilty of a misdemeanour, and liable to a fine not exceeding four hundred dollars, or imprisonment for not more than six months.

Rewards for voting or withholding vote

132. If any person who has, or claims, to have, any right to vote in any election directly or indirectly asks, receives, or takes any money or other reward by way of gift, employment, or other reward whatsoever, for himself or for any of his family or kindred, to give his vote or to abstain from giving his vote in any such election; he shall be guilty of a misdemeanour and liable to a fine not exceeding four hundred dollars or imprisonment for not more than six months.

Offences by voters

133. Any voter wilfully infringing any of the provisions of this Part, or obstructing the voting by any unnecessary delay in performing any act within the said polling booth or room, shall be guilty of an offence punishable summarily and liable to a fine not exceeding two hundred dollars.

No action for election expenses

134. No action, suit, or other proceeding shall be maintainable against any person who is a candidate at any election for or in respect of any costs or expenses whatsoever in or about or relating to the election.

Provision as to formal defects and impediments in election

135. (1) No election or poll shall be held to be void in consequence solely of any delay in the holding of the election or poll at the time appointed, or the absence of the returning officer or any deputy returning officer, or any error on the part of any returning officer, or deputy returning officer, which does not affect the result of the election or poll, or of any error or impediment of a mere formal nature.

(2) Within the period of twenty days before or after the day appointed for the holding of any election or poll, the Governor may by proclamation extend the time allowed for the holding of the election or poll, and may adopt, or cause to be adopted, such measures as may be necessary to remove any obstacle by which the due course of any election or poll may be impeded, and may supply any deficiency that may otherwise affect the same.

PART IX

MISCELLANEOUS PROVISIONS

Penalty for obstructing trust, officers, etc.

136. Any person who at any time obstructs the trust, or the chairman or any member of the trust or any officer or person employed by the trust in the performance of anything which they are respectively empowered to do by this or any other Act shall be guilty of an offence.

False statements

137. Any person who is examined upon oath, affirmation, or declaration by any court or the trust, or any justice or justices or other person, under the authority of this Act, and who wilfully, upon any such examination, makes any false statement, shall be guilty of perjury, and be punished accordingly.

Summary procedure

138. All proceedings for any offence against this Act (not being a felony or misdemeanour), shall be disposed of summarily.

General Penalty

139. The penalty for any offence against this Act (not being a felony or misdemeanour) for which no other penalty is specially provided shall be a fine not exceeding one hundred dollars.

Conviction not to bar action

140. The imposition of a penalty for any offence under this Act shall not affect any action or other remedy at the instance of the trust or any person for compensation for or the prevention of injury that may result from the offence.

Services of notices

141. (1) Subject to subsection (2) of this section any notice or other document required or permitted by this Act or any by-law under this Act to be served on any person may be served—

- (a) by post; or
- (b) by serving it personally on that person; or
- (c) by leaving it with some adult inmate at the place of residence of that person; or
- (d) if it relates to land which is unoccupied and the owner whereof is unknown to the trust, by putting it up in some conspicuous part of the land in which case it shall not be necessary in the notice to name the person to be served.

(2) Every notice or other document required or permitted by this Act or any by-law made under this Act to be served on the trust, may be served—

- (a) by being given personally to the chairman or the secretary of the trust; or
- (b) by post.

(3) This section shall not render invalid any mode of service otherwise permitted by law.

Saving provision as to rights of Crown to take waters

142. If pursuant to any Act, any waters (whether of the River Broughton or any other waters) are conserved, diverted, distributed or otherwise disposed of by the Minister of Works, the Government of the State, or any instrumentality of the Government, no person (including the trust and any ratepayer of and landholder within the district of the trust) shall be entitled to any compensation in respect of such conservation, diversion, distribution, or disposal in excess of the amount to which that person would have been entitled if this Act had not been passed.

Provision for cases of doubt or difficulty

143. If any doubt or difficulty arises in connection with the appointment or election of the chairman or any member or officer of the trust or as the result of any alteration in the district of the trust or in any ward or in connection with the management, work, or operations of the trust, or otherwise in connection with the administration of this Act, the Governor may by proclamation make any order or declaration for the purpose of removing the doubt or difficulty or determining what is to be done in the circumstances, and the provisions of the proclamation shall be as valid and effectual as if they were enacted in this Act: Provided that no such proclamation shall be inconsistent with any express provision of this Act or shall diminish or take away any proprietary right of any person.

SCHEDULES

THE FIRST SCHEDULE

LOWER RIVER BROUGHTON IRRIGATION TRUST ACT, 1938

Form of Petition to Construct Works

To the Lower River Broughton Irrigation Trust.

We, the undersigned, being a majority of landholders, and representing three-fourths in value of the land to be improved by the construction of the works hereinafter mentioned, hereby request you to construct the works following, namely [*describe works*].

The following are the lands which will in our opinion be benefited by such works [*here set out sections or blocks and hundreds*].

And we each undertake to pay our proportion of the cost of the construction of such works at the times and in the manner provided by the *Lower River Broughton Irrigation Trust Act, 1938*.

The full names, addresses and occupations of each of us, and particulars of the lands to be benefited by the works of which we are landholders, are set out below:—

Christian and Surname in Full	Address	Occupation	Particulars of Land giving Section Number and Hundred	Signature	Signature of Witness
-------------------------------	---------	------------	---	-----------	----------------------

Dated the day of 19

Declaration by Witness

I solemnly and sincerely declare that the signatures to the above petition, opposite to which my name is signed, are the genuine signatures of the persons whose signature they purport to be.

[*Signature of Witness*]

Declared before me at this day of 19

..... *Justice of the Peace*

THE SECOND SCHEDULE

LOWER RIVER BROUGHTON IRRIGATION TRUST ACT, 1938

Notice of Apportionment

The Lower River Broughton Irrigation Trust has made a preliminary apportionment of the cost of construction of [describe works] amongst the landholders of the lands benefited by such works.

Name of Landholder	Section or Block and Hundred	Amount of Apportionment
		\$ c.

Dated the day of 19

.....	}	Chairman of the Trust
.....		
.....		Secretary of the Trust

THE THIRD SCHEDULE

LOWER RIVER BROUGHTON IRRIGATION TRUST ACT, 1938

Notice of Objection

To the Lower River Broughton Irrigation Trust,

Take notice that I object to the amount of the cost of [*here describe the works*] apportioned to me by the preliminary apportionment of the Lower River Broughton Irrigation Trust, on the ground that such amount is too much.

Dated the day of 19

(Signature of objector)

(Address and occupation)

THE FOURTH SCHEDULE

LOWER RIVER BROUGHTON IRRIGATION TRUST ACT, 1938

*Notice of Final Apportionment of the Cost of
Constructing the [describe works]*

Name of Landholder	Section or Block and Hundred	Proportion of Cost to be Borne by Landholder	Interest for Two Years as per Section 66	Amount of Annual Instalments to be Paid by Each Landholder	Date when First Instalment Becomes Due
			\$ c.		\$ c.

Dated the day of 19

.....	}	Chairman to the trust
.....		
.....		Secretary to the trust

APPENDIX

Legislative History

Legislative history prior to 3 February 1976 appears in marginal notes and footnotes included in the consolidation of this Act contained in Volume 6 of The Public General Acts of South Australia 1837-1975 at page 708.

Section 91: amended and redesignated as s. 91(1) by 15, 1983, s. 12
Section 91(2) and (3): inserted by 15, 1983, s. 12(c)