

SOUTH AUSTRALIA

TATIARA DRAINAGE TRUST ACT, 1949

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being

Tatiara Drainage Trust Act, 1949, No. 51 of 1949
[Assented to 1 December 1949]¹

as amended by

Tatiara Drainage Trust Act Amendment Act, 1968, No. 31 of 1968 [Assented to 12 December 1968]
Statute Law Revision Act (No. 2), 1975, No. 118 of 1975 [Assented to 4 December 1975]

¹ Came into operation 3 April 1952: *Gaz.* 3 April 1952, p. 717.

An Act to constitute a trust to be known as the Tatiara Drainage Trust, 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 *Tatiara Drainage Trust Act, 1949*.

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 drainage works affecting the district:

PART VI—Rates:

PART VII—Elections:

PART VIII—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:

"construct" includes erect and excavate:

"district" means the Tatiara Drainage District as constituted for the time being under this Act:

"drainage work" means—

(a) any bank, dam, weir, lock, fence, channel, drain, culvert, tunnel, or other work for regulating, controlling, diverting, or otherwise affecting the flow of water:

(b) any alteration of or addition to or part of any such work as mentioned in paragraph (a) of this definition;

but does not include any such work situated outside the Tatiara Drainage District:

"member" means member of the trust:

3.

"occupier" and "owner" have the same meaning as they have in the *Local Government Act, 1934-1948*, and its amendments:

"public notice" means notice by advertisement in the *Gazette* and in a newspaper circulating in the district:

"rate" means a rate declared under this Act:

"Tatiara Creek" includes any affluent, effluent, anabranch or extension of, and any creek (including Nalang Creek), lake or lagoon connected with, the Tatiara Creek:

"secretary" means the secretary of the trust:

"trust" means the Tatiara Drainage Trust constituted by this Act:

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

4.

PART II

CONSTITUTION OF THE TRUST AND ITS DISTRICT

Constitution of the trust

5. (1) There shall be a trust called the "Tatiara Drainage 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 Tatiara Drainage District for the purposes of this Act.

(2) The Governor may by proclamation made on the recommendation of the trust, at any time 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 four wards, and define and name each ward.

(2) The Governor may by proclamation made on the recommendation of the trust, at any time alter the boundaries or the number of the wards in any way recommended by the trust.

PART III

MEMBERS OF THE TRUST

Members

9. (1) The trust shall consist of a chairman and two members for each ward.

(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 other members.

(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 the trust

10. (1) Subject to this Act, a person shall not be eligible to be a member of the trust unless his name appears in the assessment-book kept pursuant to the *Local Government Act, 1934-1948*, as the owner or occupier of ratable property within the ward which he represents.

(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. A person shall not be eligible to hold office as the chairman or a member of the trust if he is—

(a) a minor:

(b) an undischarged bankrupt:

(c) in arrears for six months with the payment of any rates payable under this Act.

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 or appointment 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 commencement of the term of his predecessor.

(4) When it is necessary to draw lots under this section, the lots shall be drawn not later than the thirty-first day of May in the year in which the retirement is to take place.

(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.

Biennial 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 VII of this Act.

(2) Whenever a vacancy occurs in the office of chairman the secretary shall as soon as possible after the occurrence of the vacancy call a meeting of the members of the trust and the members present at that meeting or any adjournment thereof shall recommend a person for appointment as chairman.

(3) If a person is not so recommended for appointment as chairman within one month after the vacancy occurred, the Governor may appoint a chairman without any recommendation.

(4) A retiring chairman or member shall be eligible for re-appointment or re-election.

Members to hold office until appointment of successor

15. Every chairman and member shall notwithstanding his retirement be deemed to hold office until his successor is appointed.

Casual vacancies

16. (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, 1935-1945*:
- (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 sentenced to imprisonment for a crime:
- (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 secretary:
- (f) If his office is declared vacant by a judgment or order of a court:
- (g) If he is disqualified from holding office pursuant to any other provision of this Act.

(2) A chairman or any member appointed or elected to a casual vacancy shall hold office only for the balance of the term of chairman or member in whose place he was appointed.

Casual vacancies filled by appointment

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

Disqualified person acting as member or chairman

18. A person who—

- (a) being disqualified from acting as chairman, acts as chairman; or
- (b) being disqualified from acting as a member, acts as a member,

with knowledge of the existence of his disqualification, shall be guilty of an offence.

Proceedings for trying title of member, etc.

19. (1) The proceedings—

- (a) for trying the title of a chairman, or member, to his office; or
- (b) for trying the right of any person to be admitted or restored to any such office; 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 rate; or
- (f) to compel the production or delivery of any books, voting-papers, or other documents or papers pursuant to 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.

(2) No other proceedings in any court shall be taken for any of the purposes aforesaid.

Jurisdiction and power of Court

20. (1) A complaint for the purposes of the last preceding section may be laid by the trust, or a person acting on behalf 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 that any office is vacant:
- (b) commanding the trust or any person to take the necessary steps for and hold any election, or to make any appointment:
- (c) quashing any 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.

Procedure on non-compliance with order

21. (1) 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 by the trust, or a person acting on behalf of the trust, or by any ratepayer or person interested, order that—

8.

- (a) any sum of money 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 that order:
- (b) any such officer or person be imprisoned, either for a specified time, not exceeding six months, or until the order aforesaid is obeyed.

(2) 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

22. 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.

Chairman's allowance

23. The trust may, out of its revenue, pay to the chairman and members, or any of them, such remuneration or allowances as the trust fixes by resolution.

PART IV

MANAGEMENT OF THE TRUST

Trust office

24. The trust shall maintain within the district, or within the town of Bordertown an office suitable for transacting its business.

Officers of the trust

25. (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

26. 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

27. (1) Ordinary meetings of the trust shall be held at the trust office at such times as the trust determines.

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

(3) Any meeting may be adjourned to any time and place.

(4) Any business required to be done at an ordinary meeting may be done at a special meeting.

Special meetings

28. (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 notice, signed by them, and given to the chairman and such member and stating the object of the meeting and the time and place of holding it.

Notice of meeting

29. Except as otherwise provided by the last preceding section or the by-laws, four days notice of every meeting, signed by the secretary, shall be given to the chairman and 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

30. (1) At all meetings of the trust, except where otherwise provided by this Act, the chairman and half of the other members, or a majority of the members, shall form a quorum.

(2) If at the expiration of half-an-hour after the time fixed for holding a meeting a quorum is not present the meeting shall lapse.

Chairman of meetings

31. (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 chairman or other person so presiding shall have a deliberative vote, and, in case of equality of votes, a casting vote also.

Effect of vacancies

32. 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

33. All acts and proceedings of the trust, or of any committee of the trust, shall notwithstanding any defect in the election or appointment of the chairman or any member 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.

Resolution

34. (1) A resolution or decision of the trust shall be valid if agreed to by a majority of the members present at a meeting of the trust.

(2) A resolution passed at a meeting of the trust shall not 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 that meeting; and
- (b) the revocation or alteration is determined upon by the chairman and three members or by four members of the trust.

Committee

35. The trust may appoint committees of its members, for the purpose of obtaining information and making recommendations to the trust.

Minutes of meetings

36. (1) The trust shall cause full minutes of every meeting of the trust and of every meeting of a committee of the trust, 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 shall be put before the trust or the committee (as the case may be) as early as is convenient and if found correct shall be confirmed, and if not found correct shall be amended and confirmed. When confirmed, they shall be signed by the chairman of the meeting at which they were confirmed.

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

(4) The minutes of a meeting shall be *prima facie* evidence of the transactions and matters therein recorded.

(5) A document purporting to be a copy of any such minutes and purporting to be certified by the secretary or chairman as a true copy shall be *prima facie* evidence of the minutes of a meeting.

(6) All courts and persons acting judicially shall take judicial notice of the signature of the secretary or chairman when appearing in any such document as mentioned in subsection (5) of this section.

Contracts by trust

37. (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 its common seal:
- 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 its common seal, 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 by the trust may be varied or discharged in the same manner in which it is authorized by this section to be made.

Power to borrow

38. (1) The trust may—

- (a) borrow money for the purpose of defraying any expenses incurred or to be incurred by it in the execution of its powers and duties under this Act:
- (b) give such security for money so borrowed as may be agreed upon between the trust and the person lending the money.

(2) The Treasurer may lend the trust such amount of money, not exceeding one thousand pounds, as the trust requires for expenses incurred or to be incurred by the trust before rates are received under this Act.

(3) The terms and conditions of any such loan shall be agreed upon between the Treasurer and the trust.

(4) This Act without further appropriation shall be sufficient authority for any such loan.

(5) The trust shall declare, levy and collect such rates as are necessary to repay any loan made under this section as it becomes due.

Power to compound claims

39. The trust may compound any claim made by or against the trust for such sums of money or other consideration as the trust thinks proper.

Banking of money

40. (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 money in hand amounts to ten dollars or more.

Accounts and Audit

41. (1) The trust shall keep proper accounts of all its financial transactions and shall cause those accounts for each financial year to be audited, as soon as is convenient after the end of that year, by an auditor holding a local government auditor's certificate under the *Local Government Act, 1934-1949*.

(2) The auditor shall present his report to the secretary, who shall lay it before the trust at the first meeting of the trust held after the report is received by the secretary.

Powers of entry by officers of trust

42. The trust shall, for the purposes of this Act, have power by the chairman or any member or officer at all reasonable hours to enter and inspect any structure building or land.

By-laws

43. 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) Prescribing any matters necessary or convenient to be prescribed for the purpose of the administration of this Act by the trust:
- (d) Prescribing penalties recoverable summarily and not exceeding one hundred dollars for any breach of any by-law.

PART V

CONTROL OF DRAINAGE WORKS AFFECTING THE DISTRICT

Licences for drainage work

44. (1) A person shall not commence to construct, or construct, any drainage work for the purpose of diverting, preventing, restricting, controlling, regulating or otherwise affecting—

(a) the flow of water in the Tatiara Creek, or of water that may overflow from that creek;

or

(b) the drainage of water over, upon or through land in the district,

unless he has obtained from the trust a licence to construct that work.

(2) A person shall not remove any drainage work which diverts, prevents, restricts, controls, regulates or otherwise affects—

(a) the flow of water in the Tatiara Creek, or of water that overflows from that creek;

or

(b) the drainage of water over, upon or through land in the district,

unless he has obtained from the trust a licence to do so.

(3) If a person contravenes subsection (1) or (2) of this section he shall be guilty of an offence and liable to a fine not exceeding four hundred dollars.

Applications for licence

45. (1) Every application for a licence such as mentioned in the preceding section shall be made in a form fixed by the trust and shall contain all the information indicated in that form.

(2) An applicant for a licence shall furnish the trust with any additional information which the trust may require as to the work proposed to be done.

Notice of applications

46. (1) Upon receipt of an application in the proper form the trust shall—

(a) insert in a newspaper circulating generally in the district an advertisement stating that the application has been received, the name of the applicant, and a short general description of the work to be done:

(b) affix a notice in a conspicuous place in or upon the trust's office stating the same matters as the advertisement.

(2) The advertisement shall also specify a day, not earlier than one month from the date of the publication of the advertisement in the newspaper, before which any person objecting to the proposed work may deliver a notice of objection to the trust.

Objections to grant of licence

47. (1) A person who objects to the grant of a licence shall give written notice to the trust of his objection and of the grounds thereof within the time fixed by the advertisement: Provided that the trust may if it deems it just to do so extend the time for giving a notice of objection under this section.

(2) An objector may by his notice of objection claim that he will suffer damage from the work to be done pursuant to the licence, and may ask the trust to fix the amount of compensation which shall be paid to him by the applicant in the event of the licence being granted.

Hearing of objections

48. Before deciding an application for a licence the trust shall give the applicant and any objector an opportunity of placing before the trust any evidence, information or arguments in support of or in opposition to the grant of the licence.

Power to grant licences

49. (1) After consideration of an application and all evidence, information and arguments submitted by the applicant and the objectors, if any, the trust shall decide whether or not it will grant the licence.

(2) If the trust grants a licence it may do so either unconditionally or upon conditions.

(3) A licence may contain conditions—

(a) as to the locality and nature of the works to be carried out pursuant thereto, the mode of construction and the materials to be used:

(b) requiring the applicant to pay to any other person a sum of money fixed by the trust and specified in the licence, by way of compensation for such damage as in the trust's opinion is likely to accrue to that other person from the construction of the works authorized by the licence:

(c) any other conditions which the trust deems just.

(4) A person to whom any money is due and payable pursuant to a condition of a licence may bring an action for that money in any court having jurisdiction in personal actions up to the amount claimed.

(5) A licence shall render lawful the construction of works in accordance with its terms and conditions, and the maintenance, use and operation of works so constructed.

Removal of works

50. (1) If after the passing of this Act any drainage work or part of a drainage work is constructed without a licence under this Part or in contravention of any condition of a licence, the trust may by notice in writing order the person who constructed the drainage work or part thereof or his successor in title to the land on which it was constructed, to take such steps as the trust indicates in the notice to demolish the drainage work or part thereof or to render it ineffective.

(2) Where any drainage work that diverts, prevents, restricts, controls, regulates or otherwise affects—

(a) the flow of water in the Tatiara Creek or of water that overflows from that creek;

or

(b) the drainage of water over, upon or through land in the district,

has been constructed before the commencement of the *Tatiara Drainage Trust Act Amendment Act, 1968*, and the trust is of the opinion that the drainage work has caused or will cause injury to any land (including any road or street) it may by notice in writing order the occupier of the land on which it is constructed to take such action as is specified in the notice to demolish the drainage work or to render it ineffective.

(3) Before making an order under this section the trust shall give the person against whom the order is proposed to be made at least one month's notice of its intention to make the order and shall give that person an opportunity to show cause why the order should not be made and to place before the trust any evidence information or arguments relevant to the proposed order.

(4) If a person fails to comply with any requirement of such a notice the trust may itself do the work specified in the notice and recover from that person by action in any court of competent jurisdiction the amount of the expense incurred by the trust in doing the work.

PART VI

RATES

Ratable value

51. In this Part "ratable value" means the value of ratable property as shown on the day when rates are declared, in the assessment book kept pursuant to the *Local Government Act, 1934-1948*.

Declaration of rates

52. The trust may declare and levy rates for the purpose of paying the costs and expenses of the administration of this Act and of doing anything which the trust may lawfully do.

Basis of rates

53. Every rate shall be of an amount fixed by the trust for each dollar of the ratable value of all ratable property within the district.

Notice to ratepayers

54. 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.

Liability of owner and occupier for payment of rates

55. (1) The occupier for the time being and also the owner for the time being of the property rated shall be liable to the payment of rates.

(2) A person who becomes the owner of any ratable property by reason of being a mortgagee in possession shall not be liable, in respect of that ratable property, to the payment of any rates declared in respect of any financial year previous to the financial year in which he becomes the owner as aforesaid. Nothing in this subsection shall be deemed to limit the powers of the trust under section 60.

Notice before recovery of rates

56. 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 an officer of the trust has been served on that person, informing him of the amount of the rate payable by him, and of the land in respect of which the rate is payable.

Fine in default of payment

57. (1) If any rate is not paid before the first day of March after it becomes due and payable, a fine equal to five per centum thereof 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 liable to pay the rate, and be recoverable from that person: Provided that no such fine shall be added to the amount of any rate unless the rate has remained unpaid for twenty-one days after notice of the rate has been given to the person by whom it is payable.

(2) The trust may by resolution remit the whole or a part of any fine added to a rate by virtue of this section.

Liability of persons appearing in assessment book as owners

58. 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, and the name of the new owner.

Recovery of rates

59. Rates shall be recoverable by the trust from any person liable to pay them by action in any court of competent jurisdiction.

Power to sell land for non-payment of rates

60. 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, 1934-1948*, 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

61. No trustee, agent, or attorney for any owner or occupier 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 the owner or occupier.

PART VII

ELECTIONS

Nomination

62. (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

63. (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

64. 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

65. (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 only one candidate is nominated for an office 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 an 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

66. 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 hand-bills 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

67. 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

68. (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 only one candidate is nominated for an office 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

69. 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

70. 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

Returning officers

71. For every election 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.

Polling place and hours of voting

72. The trust shall appoint polling places for the election. The voting at the election 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

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

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

Polling booths

74. 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 or a list of the persons entitled to vote, to be furnished for use at each polling place.

Right to vote

75. (1) At every election every person who on the eighth day preceding the election was shown in an assessment book kept pursuant to the *Local Government Act, 1934-1948*, as a ratepayer under that Act in respect of property owned or occupied by him in a ward shall be entitled to one vote in that ward.

(2) A person shall not vote at an election unless he is at least eighteen years of age on the day of that election.

(3) Any such ratepayer who at the time of the holding of the election is distant more than twenty miles 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: 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

76. (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 shall bear the initials of the returning officer or deputy.

Contents of voting papers

77. (1) 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 the names of those candidates shall be arranged 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) 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.

(3) At the head of the voting-paper there may be inserted the name of the trust, the ward in which the election is being held and the number of members to be elected in that ward.

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

Mode of voting

78. (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, 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 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

79. 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 person named by the voter to accompany him into the voting apartment and to mark fold and deposit his voting-paper for him.

Persons entitled to be in polling place

80. 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

81. No inquiry shall be permitted at any election 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 *here name the council*]; 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 [*here name the council*]?
- (ii) Have you already voted at the present election 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

82. 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 who personates any other person for the purpose of voting at any such election, shall be guilty of a misdemeanour, and liable on conviction in the Supreme Court to be imprisoned for any term not exceeding six months.

Duty of returning officer as to ballot-box

83. (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

84. (1) At the close of the election 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:
- (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:
- (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 contain anything other than the matters prescribed by this Act:
- (d) openly declare the general state of the votes at the close of the election, 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.

(2) A returning officer shall not vote at any election 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

85. The returning officer shall destroy all voting-papers upon the expiration of two months after the declaration of the result of the election: 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 nominating or voting

86. (1) A person shall not be entitled to nominate a candidate for election unless, before the day of nomination, all sums then due in respect of any rates which have been declared six months prior to the nomination, and payable on property of which he is the owner or occupier, have been paid.

(2) A person shall not be entitled to vote at an election unless at least eight days before the election all rates declared at least twelve months before the day of the election and payable on property of which he is the owner or occupier have been paid.

(3) The secretary shall cause a list of all persons whose rates have not been paid in accordance with this section to be prepared for use at every polling-place.

Powers of returning officer

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

- (a) to maintain and enforce order and keep the peace at any election 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 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 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:
- (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

88. The following acts shall, if done with a view to influencing the elector's vote, be acts of bribery and corruption on the part of any person:—

- I. Giving money or any other article whatsoever to any elector:
- II. Holding out to any elector any promise or expectation of profit, advancement, or enrichment in any shape or making use of any threat to an elector, or otherwise intimidating him:

- III. Treating any elector or supplying him with meat, drink, lodging, horse or carriage hire, or conveyance to or from a polling booth:
- 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. Giving any dinner, supper, breakfast or other entertainment at any place whatsoever to any elector.

Disqualification for bribery and corruption

89. 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.

Act of agents

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

Bribery and corruption by certain persons

91. If any act declared by this Act to be an act of bribery and corruption, is committed by any person not the authorized agent of any candidate, that person shall be guilty of an offence, and liable to a fine not exceeding four hundred dollars.

Rewards for voting or withholding vote

92. 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 valuable consideration or 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 an offence and liable to a fine not exceeding four hundred dollars.

Offences by voters

93. Any voter who obstructs the voting by any unnecessary delay in performing any act within a polling booth or room, shall be guilty of an offence.

No action for election expenses

94. 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

95. (1) No election shall be held to be void in consequence solely of any delay in holding it at the time appointed, or the absence of the returning officer or any deputy returning officer, or any error or defect, which does not affect the result of the election.

(2) Within the period of twenty days before or after the day appointed for the holding of any election, the Governor may by proclamation extend the time allowed for the holding of the election, 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 may be impeded, and may supply any deficiency that may otherwise affect the election.

PART VIII

MISCELLANEOUS PROVISIONS

Obstructing trust, officers etc.

96. Any person who obstructs any person in the performance of anything which he is empowered to do by this Act shall be guilty of an offence.

Summary procedure

97. All proceedings for any offence against this Act shall, except where otherwise provided, be disposed of summarily.

General penalty

98. The penalty for any offence against this Act which is punishable summarily and for which no other penalty is specially provided shall be a fine not exceeding one hundred dollars.

Conviction not to bar action

99. The imposition of a penalty for any offence under this Act shall not affect any action or other remedy available by law to an aggrieved person in respect of the act or conduct constituting the offence.

Services of notices

100. (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 on 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, by letter addressed to the said chairman or secretary.

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

Provision for cases of doubt or difficulty

101. 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.