



ANNO DECIMO QUARTO

GEORGII V REGIS.

A.D. 1923.

No. 1598.

An Act to make provision for the Abatement and Prevention of Sand Drifts, and for other purposes.

[Assented to, December 6th, 1923.]

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.

PART I.

1. This Act may be cited as the "Sand Drift Act, 1923."

Short title.

2. This Act shall come into operation on a day to be fixed by proclamation.

Commencement of Act.

3. The provisions of this Act are arranged in Parts, as follows :—

Arrangement of Act.

PART I.—Preliminary.

PART II.—Breakwind Reserves.

PART III.—Sand Drifts affecting Public Roads and Public Works—

DIVISION I.—Sand Drifts affecting Public Roads :

DIVISION II.—Sand Drifts affecting Public Works :

DIVISION III.—General Provisions.

PART IV.—Sand Drifts affecting Private Lands.

PART V.—Miscellaneous.

PART VI.—Evidence and Legal Procedure.

4. (1) In

PART I.

*Sand Drift Act.—1923.*Interpretation of
terms.

4. (1) In this Act—

“ Council ” means a Municipal or District Council :

“ Crown lands ” means and includes all lands in the State except—

- I. lands reserved for or dedicated to any public purpose :
- II. lands lawfully granted, or contracted to be granted, in fee simple by or on behalf of the Crown :
- III. lands subject to any agreement or lease lawfully granted by or on behalf of the Crown :

and includes all lands, which having been granted or held under agreement or lease, have been or are surrendered, or having been reserved or dedicated, have been or are lawfully resumed by proclamation ; and all lands which, having been lawfully held by any person for any estate or interest, have been or are lawfully forfeited to or resumed by, or by any means whatsoever have reverted or revert to, the Crown.

“ District ” means Municipality or District Council District :

“ Engineer-in-Chief ” means the Engineer-in-Chief for the State for the time being, or the person for the time being discharging the duties of the office of such Engineer-in-Chief :

“ Inspector ” means any person appointed by the Governor or a Council under section 5, and includes any inspector in the Local Government Department of the Public Service of the State :

“ Owner ” or “ Occupier ” includes the authorised agent of any owner or occupier, and every person in receipt of or entitled to rents or profits of any land and every person having the control or management of any land, and also includes a mortgagee in possession :

“ Public work ” means any railway, tramway, drain, or irrigation channel, and includes any other work or undertaking (whether of a kind similar to the works hereinbefore enumerated or not) which the Governor, by proclamation, declares to be a public work for the purposes of this Act :

“ Sand ” includes soil.

(2) Any land which is situated within an Irrigation Area continued by or proclaimed under the Irrigation Act, 1922, but not situate within a District shall, for the purposes of this Act, be deemed to be a District Council District, and the Minister of Irrigation shall, for the purposes of this Act, be deemed to be the District Council of such District.

Inspectors.

5. (1) Every inspector in the Local Government Department of the Public Service of the State shall, without any further appointment, be an inspector for the purposes of this Act for the whole State, and shall be deemed to have been appointed by the Governor.

(2) The

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PART I.

(2) The Governor may appoint any other person to be an inspector for the purposes of this Act for the whole State or for any particular portion of the State.

(3) Any Council may appoint any other person to be an inspector for the purposes of this Act for the District of such Council.

(4) Every person appointed as aforesaid shall, throughout the area for which he is so appointed, be an inspector for the purposes of this Act, and the exercise by every inspector appointed otherwise than for the whole State of his powers and duties under this Act shall be limited to the portion of the State or the District for which he was appointed.

PART II.

PART II.

BREAKWIND RESERVES.

6. (1) The Governor may, from time to time, by proclamation, reserve Crown lands as a breakwind reserve for the purpose of abating or preventing any sand drift, and may, in like manner, resume the whole or any portion of any lands so reserved.

Crown lands may be set apart as breakwind reserves.

(2) The Governor may, from time to time, by proclamation, declare that the whole or any part of any lands reserved for or dedicated to any public purpose shall be a breakwind reserve under this Act, and may, in like manner, revoke any such declaration.

(3) Section 289 of the District Councils Act, 1914, shall not apply to or in respect of any land reserved as or declared to be a breakwind reserve under the provisions of this section.

No. 1182 of 1914.

(4) Whenever any Crown lands have been reserved or declared to be reserved as a breakwind reserve by proclamation under subsection (1) or subsection (2) of this section, the Minister may—

- (a) plant such land with Marram or other grass or plants;
- (b) bush the land or cover the land with seaweed or other substance; or
- (c) do any other thing prescribed,

or may do some or all of these things.

7. (1) The Minister may take and acquire, either by agreement or compulsorily, any lands which may be required for the purposes of this Act for the purpose of such lands being reserved as a breakwind reserve under the provisions of section 6.

Minister may acquire land for purposes of Act.

(2) For the purposes of such taking and acquiring, the Lands Clauses Consolidation Act (except sections 10, 11, 16, 17, 110, 120, 136, and 137 thereof) and all Acts amending that Act, are incorporated with this Act; and for the purposes of this Act the following expressions,

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expressions, when used in the enactments so incorporated, shall have the following meanings, namely :—“The promoters of the undertaking” shall mean the Minister; “the Special Act” shall mean this Act; and “the bank” shall mean any bank carrying on business in the said State in which trustees are by law permitted to deposit their trust funds: Provided that for the purposes of section 13 of the Lands Clauses Consolidation Amendment Act, 1881, there shall be deemed to be no special Act, and that, notwithstanding anything contained in any of the said incorporated enactments, the powers of acquiring land under this Act may be exercised without any limit as to time.

PART III.

PART III.

SAND DRIFTS AFFECTING PUBLIC ROADS AND WORKS.

DIVISION I.

DIVISION I.—SAND DRIFTS AFFECTING PUBLIC ROADS.

The Council may require land to be planted, &c., to abate or prevent sand drift.
 Cf. (W.A.) 51, 1919, s. 4.

8. (1) Whenever it appears to any Council that there exists on any land in its District (not being Crown lands) any sand that is drifting on to or is likely to drift on to any public road, whether within or outside its District, the Council may, by notice in writing given to the owner of the land, and also to the occupier (if the owner is not the occupier), require him or them within a reasonable time to take such of the following measures as the Council shall think fit to abate or prevent such sand drift, that is to say—

- (a) to plant the land with Marram or other grass or with any specified plants:
- (b) to bush the land or cover the land with seaweed or other substance:
- (c) to do any other thing prescribed.

(2) Any notice given by the Council under or pursuant to this section shall be under the hand of the Mayor or Chairman or Clerk thereof, and shall specify the period for compliance with such notice, and the measure or measures to be taken by the person or persons to whom such notice is given. Such notice may specify different measures with respect to different areas of the land.

(3) If any of the requisitions of any notice given under or pursuant to this section is not complied with to the satisfaction of the Council within the period specified in the notice for compliance therewith, every owner or occupier to whom such notice has been given shall for every day on which any such requisition is not complied with, be liable to a penalty not exceeding One Pound.

Council may, to prevent sand drift, forbid land to be cleared.

9. (1) Whenever it appears to any Council that there exists on any land in its District (not being Crown lands) any sand, which, if such land is cleared, fallowed, cultivated, or grazed, is likely to drift

on

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DIVISION I.

on to, or to drift in greater quantities on to, any public road, whether within or outside its District, the Council may, by notice in writing given to the owner of the land and also to the occupier (if the owner is not the occupier) require him, for a period to be specified in such notice, to cease or refrain from clearing, fallowing, cultivating, and grazing such land, or any specified part thereof, or from doing any of such things.

(2) Any notice given by the Council under or pursuant to this section shall be under the hand of the Mayor or the Chairman or the Clerk thereof. Such notice may require the person or persons to whom it is given to cease or refrain from doing different things with respect to different areas of such land.

(3) If any of the requisitions of any notice given under or pursuant to this section is not complied with to the satisfaction of the Council during the whole of the period specified in the notice for compliance therewith, every owner or occupier to whom such notice has been given shall be liable, for every day on which any such requisition is not complied with, to a penalty not exceeding One Pound.

10. (1) Any notice given under or pursuant to section 8 or section 9 may, in addition to the requirement of the things mentioned in the said sections, require the person or persons to whom such notice is given, within the period to be specified in such notice in that behalf, to fence the land in respect of which such notice is given, or any specified part thereof, so as to secure such land or part against the trespass of stock of any or every kind.

Owner or occupier
may be required to
fence sand drift.

(2) If any such requisition to fence contained in any such notice given under or pursuant to section 8 or section 9 is not complied with to the satisfaction of the Council, within the period specified in the notice for compliance therewith, every owner or occupier to whom such notice has been given shall, for every day on which any such requisition is not complied with, be liable to a penalty not exceeding One Pound.

11. (1) With respect to any land not situated within any District, the Minister shall have and may exercise the same rights, powers, discretions, and authorities as a Council has and may exercise under sections 8, 9, and 10, with respect to land situated within its District.

With respect to
land not within a
District, Minister
to have powers of
Council.

(2) Any notice given by the Minister under or pursuant to the said sections may be under the hands of the Engineer-in-Chief.

(3) If any of the requisitions of any notice given under or pursuant to this section is not complied with to the satisfaction of the Minister within the period specified in the notice for compliance therewith or during the whole of the period specified in the notice for compliance therewith (as the case may be), every owner or occupier to whom such notice is given shall, for every day on which any such requisition is not complied with, be liable to a penalty not exceeding One Pound.

12. (1) If

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DIVISION I.

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Appeal to Minister
against requisitions
of notice.

12. (1) If any owner or occupier to whom any notice is given under this Division is of opinion that any requisition of such notice is unreasonable, such owner or occupier may within the prescribed time appeal to the Minister against such requisition by memorial, in the prescribed form, setting out the facts and the grounds of the appeal.

(2) A copy of such memorial shall be delivered by the appellant to the Council giving the notice containing the requisition appealed against, and such Council shall be entitled to be heard on such appeal.

(3) The Minister shall hear and determine such appeal in such manner as he thinks just, and may for that purpose appoint any officer to hold an inquiry into the matter and make a report to him, and the Minister may act on such report.

(4) The Minister may uphold or disallow the appeal in whole or in part, and may vary the requisition appealed against in such manner and to such extent as he thinks just, and he shall give such directions as he thinks fit for carrying his determination into effect.

(5) Such determination shall be binding on the appellant and on the Council, and on every other person or body affected thereby and shall not be liable to be called in question in any Court on any ground whatsoever.

(6) On the institution of any appeal as provided by the section, the Minister may direct that, pending the hearing and determination of such appeal or for such period as he may direct, the operation of the notice containing the requisition appealed against shall be suspended, but in the absence of any such direction any notice given under this Division shall not cease to be in full force and effect by reason merely of the institution of such appeal.

DIVISION II.

DIVISION II.—SAND DRIFTS AFFECTING PUBLIC WORKS.

When public work
affected by sand
drift, whether
within or outside
District, Minister
may exercise power
and discretion of
Council.

13. (1) Whenever it appears to the Minister that there exists on any land, whether situate within a District or not, any sand that is drifting on to, or, if such land is allowed to remain in its existing state, is likely to drift on to, or, if such land is cleared, fallowed, cultivated, or grazed, is likely to drift on to or to drift in greater quantities on to, any public work so as to interfere with such public work or render such public work ineffective or less effective for its purpose, the Minister, for the purpose of preventing or abating such sand drift, shall have and may exercise the same rights, powers, discretions, and authorities as a Council has, and may exercise under sections 8, 9, and 10 with respect to any sand drift affecting a public road.

(2) Any notice given by the Minister under this section may be under the hand of the Director of the Local Government Department.

(3) If

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(3) If any of the requisitions of any notice given under this section is not complied with to the satisfaction of the Minister within the time specified in the notice for compliance therewith or during the whole of the period specified in the notice for compliance therewith (as the case may be), every owner or occupier to whom such notice is given shall, for every day on which any such requisition is not complied with, be liable to a penalty not exceeding One Pound.

DIVISION III.—GENERAL PROVISIONS.

DIVISION III.

14. Every inspector may, with or without assistants—

Power of inspector
to enter land and
inspect sand drift.

- (a) enter at any time upon any land :
- (b) inspect such land and every part thereof to ascertain whether any sand is drifting or, if such land is allowed to remain in its existing state, is likely to drift, from such land or part, or, if such land is cleared, fallowed, cultivated, or grazed, is likely to drift or to drift in greater quantities from such land or part :
- (c) inspect such land and every part thereof to ascertain whether or not the requisitions of any notice given under Division I. or Division II. of this Part have been or are being complied with :
- (d) remain upon such land for such time as is reasonably necessary for the purposes of such inspection.

15. Where an owner or occupier neglects or fails to comply with any of the requisitions of a notice given under Division I. or Division II. of this Part, any inspector, in addition to proceeding for and notwithstanding the infliction of a penalty in respect of such non-compliance—

Power of Council
on failure or
neglect of owner or
occupier.

- (a) may, with or without assistants, enter upon the land of such owner or occupier ;
- (b) use all such means, and take all such measures, and do and perform all and every such acts and things, as to him appear proper and necessary to be done to comply with the requisitions of such notice, or to remedy or mitigate the effects of any non-compliance with the requisitions of such notice ; and
- (c) remain upon, and shall have free right of ingress, egress, and regress into, over, and across such land for such period as may be necessary for the purposes aforesaid.

16. For the purposes of section 15 an owner or occupier who—

Owner or occupier
not commencing
and continuing to
comply to be in
default.

- (a) does not forthwith after the service upon him of any notice mentioned in that section comply or commence to comply therewith ; or

(b) having

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(b) having complied or having so commenced to comply does not continue such compliance, to the satisfaction of the Council or the Minister as the case may be,

shall be deemed to have neglected or failed to comply with such notice.

Cost and expenses recoverable from owner or occupier.

17. (1) The cost and expense incurred by any inspector in acting under section 15 shall be a debt due by the owner or occupier of the land to the appointers of such inspector and payable on demand.

(2) Until such cost and expense is paid by the owner or occupier liable to pay the same, the amount thereof shall be paid—

(a) where the land in respect of which such cost and expense is incurred is situated within a District, by the Council of such District, out of the general revenue thereof :

(b) in all other cases, by the Treasurer out of the general revenue of the State.

Amount recoverable not to exceed value of land.

18. In no case shall the amount recoverable by the appointers of any inspector from any owner or occupier of land for costs and expense incurred by such inspector in acting under this Act, exceed the value of the land in respect of which such cost and expense was incurred as at the time when such cost and expense was so incurred.

Provision where land is unoccupied.

19. Where the land from which the sand appears to the Council or the Minister to be drifting or to be likely to drift is unoccupied and no person is registered as the owner thereof, the following provisions shall apply :—

(1) The Council or the Minister (as the case may be) in lieu of giving the owner notice of its or his requisitions for the prevention or abatement of such sand drift, shall publish such notice once in the *Government Gazette*, and once in a newspaper circulating in a locality in which such land is situated, and upon such publication the notice shall be deemed to have been duly given to the owner of such land :

(2) An inspector may exercise all or any of the powers conferred upon him by section 15 forthwith upon the publication of such notice :

(3) Action may be taken or proceedings instituted under sections 22, 23, and 24 for the reimbursement or recovery of the cost and expense incurred by such inspector in acting under section 15 on such land, in the manner provided by this Act, without sending the notice required to be sent by section 20.

Notice may be given when cost of carrying out requisitions of notice unpaid for three months.

20. (1) Where the amount due and payable to a Council or to the Minister for the cost and expense incurred by an inspector in acting under section 15 on any land is unpaid for three months, such Council

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Council or the Minister may send to the registered owner of such land a notice in the form in the Schedule or in a form to the like effect.

(2) Such notice shall also be published three times in the *Government Gazette*.

21. The notice under section 20 shall be sent by post to the registered owner of the land, or to his agent or attorney in case there is any such attorney or agent resident in the State known to the Council or the Minister (as the case may be). Notice, how sent.

22. If, after one month from the third publication as required by section 20 of such notice, the amount mentioned therein as being due and payable by an owner or occupier, or any portion thereof, remains unpaid, the Council or the Minister (as the case may be)— Land may be let for payment of cost of destruction.

(a) may let the land mentioned in such notice, or any part thereof, for a year, and so on from year to year, until such amount or portion and all other amounts made payable under this Act are paid and discharged ; and

(b) may receive and retain the rents and apply the same in payment—

I. in the first place, of all costs of and attending the notice, the publication thereof, and the letting ; and

II. in the next place, in and towards the payment of the cost and expense incurred by the inspector in acting under section 15 on the land mentioned in the notice, including as well the cost and expense incurred at the time of the first publication of the notice as any cost and expense incurred either by an inspector in acting under section 15 on the said land up to the time of such letting, or in any way whatsoever connected with non-payment of the amount at any time recoverable by the Council or the Minister (as the case may be), or for any act done or performed under the provisions hereof, until the owner or occupier has paid and discharged the same ; and

(c) shall hold any surplus of rent for the owner of the land.

23. (1) Instead of letting the land under section 22 the Council or the Minister (as the case may be) may apply by petition to the Supreme Court for a sale of all or any part of the land. Land may be sold for payment of cost and expense incurred by inspector.

(2) Such petition shall not, where the owner or occupier is unknown, be presented until after one month from the third publication of the notice as required by section 20.

(3) Such petition shall not, where the owner or occupier is known, be presented until after the expiration of six months from the third publication as aforesaid of such notice and service of a copy thereof

or

or to the like effect upon such owner or occupier, or his authorised or generally recognised agent in the State, by delivering the same at or sending it by post addressed to such owner or occupier, or agent, at his last known place of abode in the State.

(4) The Court, on being satisfied by affidavit or otherwise that the moneys mentioned in such notice are lawfully due, and were owing at the time of the first publication of such notice, and that all things required by this Act to be done have been done, may make an absolute order in the first instance, or may grant a rule, calling upon the owner or occupier, if known, or all whom it may concern, if the owner or occupier is unknown, to show cause why an order should not be made for the sale by public auction of the land comprised in such petition, or so much thereof as may be sufficient to pay—

- (a) the cost and expense incurred at the time of the first publication of the notice :
- (b) the cost and expense incurred by any inspector or inspectors in acting under section 15 on the land up to the time of the application for sale :
- (c) all costs and expenses of and attending the notice, the application, and the sale :
- (d) all other costs, charges, and expenses for any act done or performed by the petitioners, or by their authority, for carrying out the provisions of this Part.

(5) Unless good cause is shown to the contrary within the time fixed by such rule, the Court shall order—

- (a) the sale of the land in manner aforesaid ;
- (b) payment out of the proceeds of such sale of the said costs, charges, and expenses in preference to any mortgage or other security on such land ; and
- (c) that a conveyance, or if the property is under the provisions of the Real Property Act, 1886, or any Act amending the same, a memorandum of transfer (which the Registrar-General is hereby directed to register) be executed by the Master of the Court in a form to be approved by a Judge.

No. 380 of 1886.

(6) Such conveyance, or the registration of such memorandum of transfer (as the case may be), shall vest an indefeasible estate in fee simple in the said land in the purchaser, his heirs, and assigns, free from all encumbrances.

(7) The balance arising from the proceeds of such sale shall remain and be subject to any future or other order of the Court for the behoof of the persons interested therein.

Different lands may be included in one petition.

(8) Where lands belonging to different owners are included in any notice under section 20, the same may be included in one petition for sale, and the Court may make such orders as to the apportionment

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apportionment of the costs and expenses of and incidental to the sale of such lands, or any part thereof, as are deemed just.

(9) The provisions of this section shall apply notwithstanding the provisions of the Real Property Act, 1886.

No. 380 of 1886.

24. (1) Where any money payable under this Act by any owner or occupier to a Council or to the Minister (as the case may be) remains due and unpaid for the space of one month after notice in writing to pay the same has been given to such owner or occupier, any person thereunto authorised by the Council or the Minister (as the case may be) may, at any time thereafter so long as any money remains so unpaid, without any warrant, enter upon any land of such owner or occupier, and distrain the goods, chattels, and effects found thereon for the amount remaining due and unpaid.

Distress may be levied.

(2) If the amount for which the distress is levied, together with all reasonable costs of such notice, entry, and distraint, is not paid within five days after such levy, then the said distress, or so much thereof as is sufficient to pay the amount remaining unpaid and costs, may be sold.

(3) Any surplus remaining after payment of such amount and costs, and the costs of and incidental to the sale, shall be returned to the owner of the goods, chattels, and effects distrained.

25. No compensation or damages shall be payable to the owner or occupier of any land or to any other person, by reason only of—

No compensation payable.

- (a) the giving of any notice under this Part ;
- (b) the doing, or the ceasing or refraining from the doing, of any thing pursuant to a notice under this Part ;
- (c) the doing of any thing by an inspector under section 15 or of any entry made for the purposes of that section or of section 14 ; or
- (d) the doing of any thing or the making of any entry authorised by the provisions of this Act.

26. No inspector shall be deemed a trespasser, or be liable for any damage occasioned by him in the exercise of the powers, discretions, and authorities, or any of them, by this Act conferred upon him, unless such damage is occasioned by or under the authority of such inspector wilfully and without necessity.

No person acting *bona fide* liable for damage.

27. (1) Any land with respect to which any notice has been given under Division I. or Division II. of this Part shall be under the care, control, and management of the Council, or the Minister, according to which authority gave the notice.

Sand drift land to be under management of Council or Minister.

(2) The authority having the care, control, and management of any land with respect to which notice has been given under this Act may, from time to time, take such action as it or he thinks fit to maintain and

and preserve any planting, bushing, covering, fencing, or other thing required by the requisition of any notice under this Act to be done for the prevention or abatement of any sand drift, and may, by its or his servants or workmen, enter upon any land for that purpose.

(3) The authority having the care, control, and management of any such land may make by-laws—

- (a) regulating, controlling, or prohibiting the use or occupation of such land :
- (b) making provision for maintaining or preserving the effect of any thing done under this Act for the prevention or abatement of any sand drift :
- (c) prescribing the methods required to be used by owners or occupiers of any land upon which any planting, bushing, covering, or fencing has been done pursuant to the requisition contained in any notice under this Act, to preserve and maintain such planting, bushing, covering, or fencing, and requiring such owners or occupiers to put such methods into operation :
- (d) prescribing any matter or thing necessary or convenient for carrying out any of the provisions of this Act or for better effecting the objects and purposes of this Act :
- (e) imposing a penalty not exceeding Twenty Pounds for the breach of the same or any other by-law.

(4) The provisions contained in the Municipal Corporations Act, 1890, relating to by-laws and to the making and effect thereof, shall apply to all by-laws made by a Municipal Council under the powers conferred by this section, and to the making and effect thereof. The provisions contained in the District Councils Act, 1914, relating to by-laws and to the making and effect thereof, shall apply to all by-laws made by a District Council under the powers conferred by this section, and to the making and effect thereof. Any by-law made by the Minister under the powers conferred by this section shall not have any force or effect until confirmed by the Governor.

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PART IV.

SAND DRIFTS AFFECTING PRIVATE LANDS.

28. This Part of this Act shall apply only within such parts of the State as the Governor, by proclamation, declares to be areas within which this Part of this Act shall apply.

This Part of this Act to apply only within proclaimed areas.

29. In this Part of this Act—

“ Applicant occupier ” means the occupier of the land on to which it is alleged in any application for relief under section 30 that the sand is drifting or likely to drift :

“ Defendant occupier ” means the occupier of the land on which it is alleged in any application for relief under section 30 that the sand exists which is drifting to or likely to drift, and to whom a notice has been given under the said section.

Interpretation of terms.

30. (1) Whenever it appears to the occupier of any land that there exists on any other land (not being Crown lands) any sand that is drifting on to, or is likely to drift on to, or is likely to drift in greater quantities on to, his land, such occupier may apply to the Council of the District within which such land is situated, or, if such land is not situated within any district, to the Minister, for relief.

Where private land affected by sand drift, occupier may apply to Council or Minister for relief.

(2) Such application shall be made in writing in the prescribed form, setting out the facts and the grounds of the application and the relief applied for, and notice of such application shall be given to the occupier of the land from which the sand is alleged to be drifting, or to be likely to drift, and such occupier shall be entitled to be heard on the application.

(3) Upon the making of any such application the Council or the Minister shall have and may exercise the same rights, powers, discretions, and authorities under this Act as if the land on to which the sand is alleged in the application to be drifting or to be likely to drift were a public road, and all the provisions of Division I. of Part III. of this Act, *mutatis mutandis*, shall apply to and in respect of such land and any notice given under this section with respect to such land as if such land were a public road.

(4) The rights, powers, discretions or authorities conferred on the Council or the Minister by this section shall not be exercised in any case where the Council or the Minister is of opinion that the cost of complying with any notice under this section would be out of proportion to the benefit achieved thereby, or would impose an unreasonable burden upon the defendant occupier.

31. If any of the requisitions of any notice given under section 30 is not complied with to the satisfaction of the Council or the Minister, the applicant occupier may, notwithstanding the taking of any proceedings

On non-compliance with notice applicant owner may act.

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proceedings for or the infliction of any penalty under sections 8, 9, or 10—

- (a) enter upon the land mentioned in such notice ;
- (b) use all such means, and take all such measures, and do and perform all and every such acts and things, as to him appear proper and necessary to be done to comply with the requisitions of such notice or to remedy or mitigate the effects of any non-compliance with the requisitions of such notice ; and
- (c) remain upon, and shall have free right of ingress, egress, and regress into, from, over, and across such land for such period as may be necessary for the purposes aforesaid.

How cost of compliance with notice borne.

32. (1) Half the cost and expense incurred by the defendant occupier in complying with the requisitions of any notice given under section 30, and half the damage suffered by the defendant occupier by reason of his complying with any of the requisitions of any notice given under section 30, shall be a debt due to him by the applicant occupier, payable on demand, and may be recovered by the defendant occupier by action in his own name in any Court of competent jurisdiction.

(2) Half the cost and expense incurred by the applicant occupier in acting under section 31 shall be a debt due to him by the defendant occupier, payable on demand, and may be recovered by the applicant occupier by action in his own name in any Court of competent jurisdiction.

On non-compliance with notice, applicant owner to have action as for nuisance.

33. If the defendant occupier neglects or fails to comply with any of the requisitions of any notice given under section 30, to the satisfaction of the Council or of the Minister the applicant occupier, in addition to any other remedy which he might have under this Act or otherwise in respect of the drifting of any sand from the land of the defendant occupier on to his land, shall have a right of action against such defendant occupier in respect of such drifting as for nuisance.

Occupier to notify owner of notice.

34. (1) The occupier of any land who is not the owner thereof on whom any notice is served under this Part shall inform the owner of the fact as soon as practicable after service thereof.

(2) If any such occupier does not inform the owner of the land of the fact as soon as practicable after service thereof, he shall be liable to a penalty not exceeding Twenty Pounds.

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MISCELLANEOUS PROVISIONS.

35. Notwithstanding the provisions of any lease or agreement to the contrary, any owner or occupier shall have full right and power to do all things that are necessary to be done in order to comply with the requisitions of any notice given to him under this Act, and no owner or occupier shall be liable, by reason of the doing of any such thing, to any penalty or forfeiture.

Owner or occupier to comply with notice notwithstanding contract to contrary.

36. (1) If any occupier of any land prevents any owner from obeying or carrying into effect any requisition of any notice given to him under this Act, any Justice to whom application is made in that behalf may, by order in writing, require such occupier to permit the doing of anything that is necessary to be done in order to comply with such requisition. Any occupier who fails, neglects, or refuses to comply with any such order in any respect shall be liable to a penalty not exceeding Twenty Pounds.

Provision in case occupier hinders owner, or *vice versa*.
Cf. W.A. 51, 1919, s. 7.

(2) Every such owner of land who is prevented as aforesaid shall if he makes application for an order under subsection (1) hereof within a reasonable time, be discharged from any penalties or other liabilities under this Act to which he might otherwise have become liable by reason of or in consequence of his default in complying with any such requisition.

(3) If, in the performance or attempted performance of anything necessary to be done in order to comply with any of the requisitions of any notice under this Act or of anything incidental to the performance of any such thing, the occupier of any land is in any way obstructed or hindered by the owner, or if the occupier is so obstructed or hindered by the owner, the one who obstructs or hinders the other shall be liable to a penalty not exceeding Twenty Pounds.

37. It shall be sufficient in any notice required under this Act if such notice clearly and reasonably states the purpose thereof.

Notice sufficient if purpose clearly stated.

38. The following provisions shall apply as to every notice required by this Act to be given to the owner or occupier of any land :—

Notices and demands, how served.

- (1) Such notice shall be addressed to such owner or occupier :
- (2) Such notice shall be deemed duly served if the same has been—
 - (a) given to such owner or occupier personally ;
 - (b) left at his usual or last known place of abode ; or
 - (c) sent by post by registered letter :
- (3) In the case of the Crown or the Minister, all notices shall be sent by post to the Director of the Local Government Department :
- (4) Where there is more than one owner or occupier of the same land, service upon any one of them in manner aforesaid shall be deemed service upon all.

39. (1) In

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PART V.

Regulations.

39. (1) In addition to any power by any other section of this Act conferred on the Governor to make regulations (which power shall in every case be implied for the purpose of any section in which the word "prescribed" is used) the Governor may make regulations—

- (a) regulating, controlling, or prohibiting the use or occupation of breakwind reserves :
- (b) prescribing the measures to be taken for the prevention or abatement of any sand drift :
- (c) prescribing the forms and contents of memorials :
- (d) prescribe the time for the making of appeals under section 12, and generally for regulating the conduct of the proceedings on any such appeal :
- (e) prescribing the proceedings upon any application for relief under section 30, and generally for regulating the conduct of such proceedings :
- (f) prescribing all matters and things which by this Act are contemplated, required, or permitted to be prescribed, or which appear to him to be necessary or convenient to be prescribed, for the purpose of more effectually carrying out any of the provisions of this Act or for better effecting the objects of this Act.

(2) Any such regulation may fix penalties not exceeding in any case the sum of Ten Pounds for the breach of the same or any other regulation.

Penalty for personating inspectors.

40. Any person who falsely represents himself to be an inspector shall be guilty of a misdemeanor, and shall be liable to be imprisoned with or without hard labor, for any period not exceeding twelve months ; and shall, in addition to such imprisonment, be liable to a penalty not less than Twenty Pounds nor more than One Hundred Pounds.

Obstructing officers.
Cf. *ibid.*, ss. 232, 242.

41. (1) Any person who—

- (a) obstructs, hinders, or interrupts any inspector or any other person in the exercise of anything which such officer or person is by this Act empowered to do ;
- (b) obstructs, hinders, or interrupts any person employed by any Council or the Minister in the performance of anything which the Council or the Minister is by this Act empowered to do ; or
- (c) threatens, assaults, or uses improper language to an inspector whilst in the performance of his duty under this Act,

shall be liable to a penalty not exceeding Twenty Pounds.

(2) No proceeding for the recovery of any such penalty, nor the payment thereof, shall be a bar to an action at law by such inspector or person for or in respect of any such assault.

42. Where

Sand Drift Act.—1923.

PART V.

42. Where any matter or thing is by or under this Act, or by any notice published, given under the authority of this Act, directed or forbidden to be done, and the act so directed to be done remains undone, or the act so forbidden to be done is done, in every such case every person offending against such direction or prohibition shall be deemed to be guilty of an offence against this Act.

Non-observance of any direction or prohibition of or under the Act

43. Every person who is guilty of an offence against this Act for which no other penalty is expressly provided shall be liable to a penalty not exceeding Twenty Pounds.

General penalty.

PART VI.

PART VI.

EVIDENCE AND LEGAL PROCEDURE.

44. A copy of the *Gazette* containing a notice of the appointment of any person to be an inspector for the purposes of this Act for the whole State or for any specified portion of the State, or for any specified district shall be conclusive evidence of such appointment.

Gazette evidence of appointment.

Cf. *ibid.*, s. 248.

45. In any proceedings for the recovery of the cost and expense incurred by an inspector in acting under the provisions of section 15, a certificate purporting to be under the seal of the Council or under the hand of the Minister (as the case may require), and specifying the amount of such cost and expense, shall be received as *prima facie* evidence of the amount of such cost and expense.

Certificate *prima facie* evidence of cost of destruction.

Cf. *ibid.*, s. 254.

46. It shall be sufficient in any information under this Act if such information gives the accused a reasonably clear and intelligent statement of the offence with which he is charged; and no conviction shall be held void or invalid or be quashed for any defect in substance or form therein; and the Court shall amend or permit the amendment of every information which in its opinion is defective.

Informalities of notices and informations may be corrected.

Cf. *ibid.*, s. 260.

47. (1) An information for any offence under sections 8, 9, 10, 11, and 13 shall not be laid except by an inspector or some other person authorised by the Council of the District or by the Minister to lay such information or to lay such informations generally.

Informations, how laid.

(2) The authority of any person to lay any such information may be proved by the production of a document in the prescribed form purporting to be signed by the Mayor or Chairman of the Council or by the Minister.

48. All proceedings in respect of any offence against this Act (other than indictable offence) shall be disposed of summarily.

Summary proceedings for offences.

Cf. *ibid.*, s. 271.

49. There

PART VI.

Sand Drift Act.—1923.

Appeal.

49. There shall be an appeal in respect of proceedings in respect of offences against this Act.

Special case.

50. In the event of an appeal in respect of proceedings in respect of offences against this Act a special case may be stated.

Appropriation of penalties.

51. All moneys received for or on account of penalties imposed for offences against this Act shall be paid to the Treasurer for the public uses of the State; except moneys received in respect of an offence committed within the limits of a District which shall be paid over to, and for the use of the Council of such district.

In the name and on behalf of His Majesty, I hereby assent to this Bill.

TOM BRIDGES, Governor.

Sand Drift Act.—1923.

THE SCHEDULE.

The Sand Drift Act, 1923.

NOTICE OF MONEYS PAYABLE IN RESPECT OF ABATEMENT OR PREVENTION OF SAND DRIFT.

Notice is hereby given that there is now due and payable in respect of the cost and expense incurred by an inspector in acting under section 15 of the Sand Drift Act, 1923, on default by the owner or occupier, for the purpose of abating or preventing the sand drift from the land (*or lands as the case may be*) mentioned in the Schedule hereto, the sum set opposite to the description of such land (*or lands*), and the owner or owners of such land (*or lands*) are required to take notice that unless the amount (*or amounts*) so due, together with the cost of and attending this notice, are paid to the [*set out the name of Council or Minister (as the case may require)*] on or before the day of 19 [*one month from the third publication of this notice*] the said [Council or Minister (*as the case may be*)] will let such of the said land (*or lands*) in respect of which any money shall be then unpaid from year to year, in manner provided by the Sand Drift Act, 1923, or apply to the Supreme Court for an order for the sale of such land (*or lands*) or so much thereof as may be necessary to produce the amount or amounts remaining unpaid, and also the costs of and attending such application and sale.

Dated this day of 19 .

.....*

The Schedule Referred to.

Description of Land.	Name of Owner or Occupier (<i>if unknown state so</i>).	Amount due.
		£ s. d.

* Signature of Chairman of Council or Minister (*as the case may be*).