

WESTERN AUSTRALIA

ANNO QUINQUAGESIMO TERTIO

VICTORIÆ REGINÆ

No. 5

An Act to deal with Sand Drifts and other Nuisances.

[Assented to 29th November, 1889.]

WHEREAS it is expedient further to amend 'The Municipal Preamble
Institutions Act, 1876': Be it enacted by His Excellency
the Governor of Western Australia and its Dependencies, by and with

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The Sand Drift Act, 1889

the advice and consent of the Legislative Council thereof, as follows :—

Short title

1. This Act may be cited as 'The Sand Drift Act, 1889.'

What considered
a nuisance

2. That whenever it shall appear to any Municipal Council that a sand-drift, or any material, matter, or substance, exists within any part of a Municipality, on any land alienated from the Crown, to an injurious extent or in any way detrimental to any adjoining property whatsoever, it shall be lawful for the Council of such Municipality to declare such sand-drift, material, matter, or substance a nuisance under this Act, and to declare and define by metes and bounds the land to which in respect of such nuisance the provisions of this Act shall apply, and thereupon such Council may, by notice in writing to the owner, occupier, or agent of such lands upon which such nuisance exists, require him, within a reasonable time to be specified in such notice, to bush, erect a fence, paling or wall, and do and cause all such things to be done as shall in the opinion of the Council be sufficient to abate such nuisance. And if such person shall fail to comply with the requirements of such notice within the time specified, or whenever it appears that the person by whose act, default, permission, or sufferance such nuisance arises, or that the owner, occupier, or agent of the premises or lands upon which the nuisance exists is not known or cannot be found, then the Council, within the jurisdiction of which such premises are situate may remove, abate, or discontinue the nuisance, and any cost so incurred by such Council shall be defrayed out of the rates or moneys raised under 'The Municipal Institutions Act, 1876,' but shall be recoverable with interest and expenses thereon from any of the owners, occupiers, or agents of the said premises, either by action at law, by summary proceedings before any two Justices in the same way as any fine or penalty is now recoverable, or by distress and sale; and if any moneys expended under this Act shall remain due and unpaid for the term of eighteen months in respect of any premises or lands whatsoever, whether the owner thereof be resident in the Colony or not, and if no sufficient distress can be found on the premises or lands applicable thereto, it shall be lawful for the Council to cause a notice according to the form of the Schedule G in the said Act, but omitting in such notice the words 'rates made and assessed' and substituting in place thereof 'work done with interest and expenses thereon,' to be signed by the Chairman, and a copy thereof to be published in three successive numbers of the 'Government Gazette,' or of two local newspapers, stating the amount due and unpaid as aforesaid in respect of such premises or lands; and such amount shall be in every way recoverable in, by, and through the Supreme Court in the same manner as rates are recoverable under the provisions of the ninety-second, ninety-third, and ninety-fourth sections of the said Act.

What required
of owners to
perform

How moneys
expended by
Council to be
recovered

Limitation of
liability of owner
to value of his
property

3. No owner, occupier, or agent, whether he receive or not such notice as is provided for in the next preceding section of this Act, and whether he does or does not comply with such notice, shall be liable to pay under the provisions of the next preceding section or of 'The Municipal Institutions Act, 1876,' any sum exceeding the value of the

The Sand Drift Act, 1889

property on which is the nuisance aforesaid; such value to be ascertained by arbitration in the usual way, under the Common Law Procedure Acts.

4. The words 'paved, macadamised, or otherwise artificially formed,' in section 60 of the said Act, shall not apply to any land alienated from the Crown whereon a nuisance under this Act has been declared to exist.

Amendment of
sec. 60 of 40 Vic.,
No. 13

5. (1) When it shall appear to the Governor in Council that at any part of the coast outside any Municipality sand drifts from the sea on to the land to an injurious extent, it shall be lawful for the Governor, with the advice of the said Council, by proclamation to declare the existence of a sand-drift at such part of the coast, on so much of the land thereto adjacent as shall by metes and bounds be in such proclamation set forth. Such proclamation shall come into force on the thirtieth day after its publication in the 'Government Gazette' of Western Australia; and any Road Board upon which any such sand-drift shall exist shall deal with the same as if it were a nuisance, and shall have the same powers as a Municipality under this Act.

Roads Boards
to have the same
power as a Muni-
cipality to deal
with a nuisance

(2) If such Roads Board do not within six months after the coming into force of such proclamation elect to Act under the above-mentioned provisions of this section, then in that case it shall be lawful for the Governor in Council to order that the proclaimed sand-drift be fenced and bushed, and notice boards be placed and put up under the superintendence of the Director of Public Works or such person as he, the said Director, may appoint for that purpose; and such Director shall have the same powers as a Municipality under this Act.

6. The Municipal Council, the Roads Board, or the Director of Public Works, as the case may be, may prosecute, with or without the consent of the owner, occupier, or agent, any person for trespassing on any land on which a nuisance has been declared under this Act, or on any lands required to be walled, fenced, or bushed, under this Act, or for breaking or injuring the fence thereof, or pulling up, cutting, or taking away bushes or other vegetation from any land coming under the operation of this Act, and such person shall, on conviction thereof before any two Justices of the Peace, be fined any sum not exceeding Five pounds, and may be imprisoned for any period not exceeding three months.

Trespass by
persons

7. In the case of cattle trespassing on any lands declared and defined under this Act as aforesaid, the provisions of 'The Cattle Trespass, Fencing, and Impounding Act, 1882,' shall apply, and the definition of 'Cattle' as given in the Second Schedule thereto, and the trespass scale for trespass on unenclosed country land, are hereby adopted for the purposes of this Act.

Trespass by
cattle

F. NAPIER BROOME,
GOVERNOR.