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ANNO QUINQUAGESIMO TERTIO ET QUINQUAGESIMO QUARTO

VICTORIÆ REGINÆ.

A.D. 1890.

No. 478.

An Act to Supply Vermin-proof Fencing to District Councils and others, and for other purposes.

[*Assented to, October 24th, 1890.*]

BE it Enacted by the Governor of the Province of South Australia, with the advice and consent of the Legislative Council and House of Assembly of the said province, in this present Parliament assembled, as follows:

1. This Act may be cited for all purposes as “The Vermin-proof Fencing Act, 1890.” Short title.

2. Part III. of “The Crown Lands Amendment Act, 1889,” is hereby repealed. Repeal.

3. In the construction of this Act the term—

Interpretation.

“Council” shall mean any District Council by or under any District Councils Act established or continued:

“Commissioner” shall mean the Commissioner of Crown Lands:

“Property” or “properties” shall mean the land of any occupier:

“Occupier” shall include the owner or tenant of any land, or any person holding land from the Crown as scrub lessee, credit selector, or miscellaneous lessee, or holding land from the Crown on lease with a right of purchase or on perpetual lease:

“Special area” shall mean any land comprising the whole or part of any district under any District Councils Act, and for the

The Vermin-proof Fencing Act.—1890.

the benefit of which a loan is intended to be applied, or which may be described by any order of the Governor granting any such loan :

“Unoccupied Crown lands” shall mean Crown lands not leased or otherwise disposed of.

Governor may authorise enclosure of unoccupied Crown lands with rabbit-proof fence.

4. The Governor may, out of any money voted by Parliament for the purpose, from time to time authorise and direct the expenditure of such sums as he may think fit for the purposes of erecting and maintaining or contributing to the erection or maintenance of any wire netting or other rabbit-proof or vermin-proof fencing, to enclose or divide any portion of any Crown lands within hundreds, or for the purpose of dividing such Crown lands from any other lands, and may, subject to regulation, to be made as hereinafter provided, out of such money supply wire netting or vermin-proof fencing to occupiers holding land within hundreds abutting on any Government reserve or unoccupied Crown lands or road dividing any reserve or unoccupied Crown lands from land so held (but not in the case of a road only) for the purpose of fencing in such land, and half the value of such netting or vermin-proof fencing abutting on unoccupied Crown lands, or roads adjoining such Crown lands; and the entire cost of all wire netting or rabbit or vermin-proof fencing supplied for fencing any other portion of such land shall be repaid without interest in ten equal yearly instalments, and in the meantime shall be a first charge on the land for the fencing of which it is supplied: Provided that no wire netting shall be supplied to any applicant until after report by a Government inspector.

Limitation of time.

5. No wire netting shall be supplied by the Governor to any owner or occupier of land within hundreds, pursuant to section 4 of this Act, at any time after the first day of January, one thousand eight hundred and ninety-one.

Repayment of expenditure to be secured from subsequent grantees.

6. Where any expenditure shall have been made under section 4 of this Act, in respect of fencing any portion of such Crown lands, and the same shall afterwards be sold, the Commissioner shall cause to be made and provided such terms or conditions as on such sale shall secure the repayment to the Crown by the person taking such lands under such sale of such expenditure; and in case any part of such Crown lands shall afterwards be leased, the lessee thereof shall covenant to keep any rabbit or other vermin-proof fencing enclosing any such lands or dividing such lands from any other lands in a good and efficient state of repair.

Loan for rabbit-proof fencing may be made by Governor.

7. Out of any money voted by Parliament for the purpose, the Governor may on the application of the Council from time to time grant a loan to any such Council, and such Council shall thereupon have power to borrow the amount of such loan accordingly for the purpose of enabling such Council to obtain materials for wire netting or other rabbit-proof or vermin-proof fencing

The Vermin-proof Fencing Act.—1890.

fencing, and to supply such materials to owners of land in any special area for which such loan is granted.

8. No application shall be made by any Council for a loan until after the receipt by the Council of a petition from the occupier or occupiers of land forming the special area in such Council.

Application to be preceded by a petition.

9. Every such petition from the occupier or occupiers of land shall—

Requisites of petitions.

- (1) Describe the special area for which the petitioners desire a loan to be obtained by the Council, and state the acreage of the whole of such special area and the acreage held by each and every occupier of any part thereof:
- (2) Be signed by a majority in number of the occupiers of the land in the special area:
- (3) Be signed by petitioners occupying more than one-half of the land in such area:
- (4) Describe shortly the land occupied by each petitioner, and state the acreage thereof:
- (5) Give an estimate of the probable cost of the whole of the materials for wire netting or other rabbit-proof or vermin-proof fencing required for the land in such area, and ask that the Council will apply to the Governor for a loan of the amount of such estimate:
- (6) Give an estimate of the materials required for each petitioner's land and the probable cost of such material, and an estimate of the extent of fencing to be erected by each occupier; and state whether in such special area any two or more adjoining properties could advantageously be enclosed by one continuous wire netting or other rabbit-proof or vermin-proof fence instead of being separated by dividing fences; and, if so, state in each case the estimated cost of such continuous fence and the proportion thereof to be borne by every occupier of property to be enclosed by such fence:
- (7) State that each petitioner signing the petition undertakes to pay to the Council in each and every year one-tenth part of his proportion of the value of all materials for wire netting or other rabbit-proof or vermin-proof fencing which the Council may obtain by means of the loan proposed to be obtained from the Governor; and such undertaking shall, as between such petitioner or the occupier for the time being of the land of such petitioner or any part thereof and the Council, be deemed to be and may be enforced as a speciality contract:

(8) State

The Vermin-proof Fencing Act.—1890.

- (8) State that each petitioner undertakes to erect on his land, with the materials with which he may be furnished, wire netting or other rabbit-proof or vermin-proof fencing to the satisfaction of the Council, or that he will join with other occupiers in erecting all necessary fencing:
- (9) Where a petition is signed by one occupier only, the requirements of this Act shall be complied with as nearly as possible by such occupier; and the signature of such petitioner, instead of being verified as hereinafter provided, shall be verified by a Justice of the Peace.

Signatures to
petition.

10. Every signature to any petition shall be verified by the solemn declaration of some person signing such petition, and such declaration shall be in the form or to the effect following, that is to say—

I, A.B., do solemnly and sincerely declare that all the signatures [or if the case so require, such and such signatures, describing them as initialled or otherwise marked by each declarant] affixed to the above petition are the genuine signatures of the persons whose they purport to be, and that such persons are occupiers of land in the area therein referred to.

(Signed) A.B.

Declared at _____, before me,
_____, J.P., Commissioner or Notary.

No petition shall be received by any Council unless the same be accompanied by a declaration in accordance with the provisions of this section.

Presentation of
petition to Council.

11. Every petition which shall be left with the clerk of the Council shall be deemed to be duly presented.

Council to transmit
petition to the
Commissioner.

12. The Council shall consider the prayer of such petition, and if they determine to apply for a loan from the Governor in accordance therewith they shall transmit to the Commissioner such petition, as well as any information they desire to convey in reference thereto, or which the said Commissioner may at any time require.

Accompanying such petition, the Council shall send an application for a loan on the terms prayed in such petition, or on such other terms as they may think fit.

Such application shall contain an undertaking to repay such loan in accordance with the provisions of this Act.

Governor may grant
loan.

13. On the recommendation of the Commissioner the Governor may by order, subject to such terms and conditions as he may think fit, grant either the whole or any part of the loan applied for by any Council.

If part only of the desired loan is granted, such order shall state whether the loan is for the benefit of the whole of the land described in the petition or of any specified part of such land.

Every

The Vermin-proof Fencing Act.—1890.

Every loan shall be payable to the Council in such instalments as shall be specified in such order, or as may be determined by any regulations made under this Act.

All land in any special area, whether or not occupied or owned by any persons signing the petition as aforesaid, shall (unless certified by the Council when forwarding the petition to be already sufficiently fenced with wire netting or other rabbit-proof or vermin-proof fencing) be chargeable with the payment of all materials for wire netting or other rabbit-proof or vermin-proof fencing which the Council may furnish to the occupier of any such land, or which the Council may offer to furnish to the occupier of any such land, and whether the same be accepted by such occupier or not.

The proportion of the loan which each and every occupier of land in the special area shall pay to the Council shall be set out in such order.

Every such order shall be published in the *Government Gazette*, and shall be conclusive evidence of the statements in such order contained.

14. Full particulars of such loan and the mode of repayment thereof, and of all lands affected by such loan and of all the moneys collected and received in respect thereof, and of the mode of application of such moneys and of all occupiers of land to whom materials have been furnished or offered to be furnished, and of the amounts payable by each occupier, shall be separately kept and recorded by the Council in a book kept by such Council.

Particulars of loan to be kept.

15. Every Council shall expend the whole amount or instalment of any loan, or such part thereof as shall be necessary for the purpose, in purchasing and obtaining materials for wire netting or other rabbit-proof or vermin-proof fencing, and shall furnish or offer to furnish such materials to the occupiers of the lands in the special area for the benefit of which such loan was granted, proportionately to the requirements of such land. Should the full amount of such loan not be expended by the Council the surplus shall be repaid by such Council, to the Commissioner; and such Council shall give credit in the book kept by such Council in the preceding section mentioned to each occupier of his proportion of the amount so repaid to the Commissioner, and the proportion of such loan which each occupier is liable to pay to the Council shall be reduced accordingly.

Loans to be used for purchase of materials for wire fencing, &c.

When furnishing or offering to furnish such materials to any occupier, the Council shall notify such occupier of the amount of value of such materials.

Thereupon such amount (whether the materials be accepted by such occupier or not) shall become a debt due to such Council by such occupier.

On the first day of February in each and every year one-tenth part of the amount of such debt shall be payable by the occupier of

The Vermin-proof Fencing Act.—1890.

of such land for the time being to the Council until the whole debt is paid, and every yearly payment shall bear interest at the rate of Eight Pounds per centum per annum from the date when the same is hereby declared payable until actual payment, and such interest shall be deemed a further debt due to the said Council by the occupier.

If default is made in respect to any such yearly payment, the amount of such payment may be enforced at any time by the Council in a summary way, or by action in any court of competent jurisdiction, from the occupier for the time being of such land or any part thereof.

The amount of every such yearly payment as it becomes due shall be, and until paid shall remain, a first charge on such land: Provided that any mortgagee or encumbrancee shall be at liberty, upon any default being made in the payment of such yearly payment by the occupier, pay the said yearly payment to the Council, and such payment when so made shall be deemed a part of the principal sum secured by the mortgage or encumbrance of such mortgagee or encumbrancee respectively, and be subject to the provisions, powers, and trusts thereof.

Notice to owners to erect fencing.

16. When furnishing or offering to furnish any occupier of land in any special area with materials for wire netting or other rabbit-proof or vermin-proof fencing the Council shall give such occupier written notice to erect such fencing on the land for which it is furnished within a time to be limited in such notice.

Penalties.

If any occupier shall fail to comply with such notice, or if any person shall use any of such materials except for the purpose for which they were furnished, he shall be guilty of an offence against this Act, and shall on conviction be liable to a penalty not exceeding Twenty Pounds, to be recovered in a summary manner under Act No. 6 of 1850.

If after the time limited in any such written notice any direction therein is not complied with by the occupier to the satisfaction of the Council, then such Council shall undertake and carry out such direction at the expense of such occupier, and may recover such expense from him in a summary way or by action in any court of competent jurisdiction; and until paid such expenses shall be a charge upon the land affected, and be recoverable at any time from the occupier for the time being of such land or any part thereof.

Adjoining owners may enclose with one continuous fence.

17. Any one or more occupiers of adjoining properties, with the sanction of the Council, if within a special area, instead of having dividing fences between such lands may enclose the whole of such adjoining lands with a continuous wire netting or other rabbit-proof or vermin-proof fence, having, when enclosing any road, swing gates covered with wire netting.

18. In

The Vermin-proof Fencing Act.—1890.

18. In enclosing any two or more adjoining properties with one continuous wire netting, or other rabbit-proof or vermin-proof fence, it shall be lawful, with the approval in writing of the Council, to erect such fence across any District road if a swing gate covered with wire netting be erected wherever the fence crosses such road: Provided that any gate erected across any road as in this and the preceding section mentioned shall be of the width of at least twelve feet: And provided, also, that the Council shall have power to remove any fence erected across any District road upon giving six months' notice of intention to remove such fence by notice published in the *Government Gazette*.

Power to fence across District roads.

19. On the application of any two or more occupiers of adjoining properties in any special area who have been furnished by the Council with materials for wire netting or other rabbit-proof or vermin-proof fencing, the Council may, at the cost and on behalf of the occupiers, undertake to erect all wire netting or other rabbit-proof or vermin-proof fencing necessary to enclose such properties, so as to make the same secure against the intrusion of vermin, and also if the Council thinks fit any properties any two sides of which adjoin the same.

Council may erect fencing on request of owners.

In the first instance, the cost of such erection may be defrayed out of the revenue of the Council, but such cost shall be repaid to the Council by the occupiers of any land so fenced in such proportions as they may agree upon among themselves, or, failing agreement, as the Council shall finally determine.

No Council shall undertake to erect any such fence on any land until the occupiers thereof shall have entered into bonds conditioned to repay the actual cost of erecting such fencing in the manner aforesaid.

Every such payment shall become a charge upon the land of such occupier, or the owners thereof, in the proportion agreed upon as aforesaid, and may at any time be recovered in a summary way, or by action in any court of competent jurisdiction, from the occupier for the time being, of such land, or any part thereof.

20. The amount of the loan granted under this Act by the Governor to any Council shall, within ten years, and without interest, be repaid to the Commissioner by the Council by yearly payments received from occupiers or owners of land, or out of the revenue of the Council.

Repayment of loan.

It shall be the duty of such Council to take all proper steps to recover all moneys due from any occupier or owner.

All such moneys received by the Council shall be paid to the Commissioner within fourteen days after the receipt of the same.

21. In default of payment being made to the Commissioner by any Council of any moneys so recovered, or in the event of one-tenth part of any loan made to such Council not being fully repaid

Procedure on default by Council.

to

The Vermin-proof Fencing Act.—1890.

to the Commissioner either by means of the moneys received from occupiers, or out of the revenue of the Council, before the first day of May in each and every year, it shall become the duty of the said Commissioner to make and sign a certificate to that effect, which certificate shall be *primâ facie* evidence that the sums therein mentioned are due and unpaid, and the amount mentioned in such certificate, or any part thereof, remaining unpaid may be deducted by the Commissioner from any subsidy granted to the Council.

The Commissioner may thereupon apply to the Supreme Court, or any Local Court, to appoint, and the Supreme Court, or any Local Court, shall thereupon appoint, some person or persons (not exceeding three) to be a receiver or receivers to collect all yearly payments due in respect of materials for fencing, as the Court may direct.

Such person or persons shall act under the directions of, and may from time to time be removed by, the Court by whom such appointment was made.

Powers.

22. The person or persons so appointed may exercise all the powers of the Council for the purpose of collecting such payments.

Receivers' commission.

23. Every such person shall be entitled to such remuneration for his services as the court making this appointment shall direct.

Application of moneys recovered by receivers.

24. Such person or persons shall apply all moneys received by him or them in payment of all proper costs and expenses, including his or their commission, and in payment and discharge of the whole amount due for principal in respect of any loan made under this Act of which he or they have been appointed, and the surplus, if any, shall be paid to such Council.

Powers of recovery.

25. For the more effectual recovery of moneys due to any Council under this Act, such Council, in addition to any powers in this Act contained, shall also have the like powers of enforcement and recovery as are conferred on Councils with regard to unpaid rates under any District Councils Act.

Evidence of moneys owing on land.

26. In any proceeding whatever where it may be desired to prove the amount of any payments then due or hereafter payable under this Act, in respect of any land, a certificate as to such amount, signed by the Commissioner or Clerk of the Council, shall be *primâ facie* evidence as to such amount.

Additional power to make by-laws.

27. The Council shall have power to make by-laws pursuant to the provisions of the "District Councils Act, 1887," or any Act amending the same, for—

(1). Apportioning the liability of every occupier of land in any special area :

(2). Facilitating

The Vermin-proof Fencing Act.—1890.

- (2). Facilitating and regulating the collection and recovery of all moneys due and payable to such Council pursuant to this Act: and
- (3). Generally carrying out the provisions of this Act.
- 28.** For the purposes of this Act any receiver shall have recourse to all books and documents under the control of the Council, and may make extracts therefrom at all reasonable times without fee. Receiver to have recourse to books, &c., of the Council.
- 29.** The power conferred by this Act on any Council of obtaining loans shall be by way of addition to any power to borrow conferred on any such Council by "The District Councils Act, 1887." Power to obtain loans to be in addition to power to borrow under District Councils Act.
- 30.** All loans so granted as aforesaid shall be expended by the Council, to the satisfaction of the Commissioner. Loans to be expended to Commissioner's satisfaction.
- 31.** From and after the coming into operation of this Act, the provisions of the "Fencing Act, 1865," shall apply to all fences erected under this Act, and in the application of the said "Fencing Act, 1865," the word "fence" shall mean any vermin-proof fence erected under the provisions hereof. Application of "Fencing Act, 1865."
- 32.** The Governor may from time to time make regulations for providing for the nature of the rabbit-proof or other vermin-proof fences to be erected in pursuance of this Act, and generally for carrying the purposes of this Act into effect. Regulations.
- 33.** For the purposes of "The Rabbit Suppression Act, 1879," the expression "authorised person," in addition to the meaning assigned to it by the said Act, as regards anything to be done within the boundaries of any District under any District Councils Act, shall mean "any person authorised in writing by the Council, and all persons acting under him." Interpretation of "authorised person."
- 34.** A general notice resolved upon by any District Council for the simultaneous destruction of rabbits, and advertised for four successive weeks in the *Gazette*, shall, for the purposes of this Act, be deemed personal service of notice to all ratepayers. Gazette notice deemed personal service.
- 35.** If, within twenty-eight days after the service of notice from any authorised person on any owner or occupier of any land, whether freehold or leasehold, given pursuant to section 10 of "The Rabbit Suppression Act, 1879," such owner or occupier shall not commence to do everything required by such notice for the purpose of destroying the rabbits on the land mentioned in such notice, or, having so commenced, shall not continue to do everything required as aforesaid until all such rabbits are destroyed, such owner or occupier shall, for a first offence under this section, be liable to a penalty of not less than Two Pounds nor more than Ten Pounds and for the second and every subsequent offence under this section shall be liable to a penalty of not less than Ten Pounds nor more than Fifty Pounds. Penalty for non-compliance with notice.
- 36.** For

The Vermin-proof Fencing Act.—1890.

Vermin months
declared.

36. For further enforcing the simultaneous destruction of vermin on all infested lands, and subject to the powers, authorities, and penalties provided by this Act, the months of February and March are hereby declared to be vermin destruction months, and during such months, so long as vermin shall be known to exist on any such land, the destruction of vermin shall be proceeded with. This section, however, shall not be construed to imply that the destruction of vermin shall not be enforced and proceeded with during the remainder of the year.

Commissioner may
erect vermin-proof
fences across roads.

37. The Commissioner may erect a rabbit-proof or other vermin-proof fence across any road in the said province: Provided always that there shall be a gate of a width of at least twelve feet in any such fence. The Commissioner shall have power to remove such fence and shall have power to order the removal of any fence erected across any road, if, in his opinion, it shall be necessary for the public convenience: Provided always that six months' notice of such removal shall, by notice published in the *Government Gazette*, be given to occupiers affected by such fence, to enable them to erect the necessary fencing for the protection of their land.

Penalty for destroy-
ing or injuring fence;
Penalty for leaving
open gate.

38. Any person who shall wilfully and unlawfully destroy or injure any rabbit-proof or other vermin-proof fence or gate, or any part thereof, shall, on conviction thereof, be liable to a penalty not exceeding Twenty Pounds, or to be imprisoned for any term not exceeding six months. Any person wilfully leaving open any gate erected across any road under the provisions of this Act shall be liable to a fine not exceeding Five Pounds, to be recovered in a summary manner under the provisions of Act No. 6 of 1850.

Proof of existence of
rabbits.

39. Proof that there are on any land burrows showing signs of having been recently used by rabbits, or other signs of the presence of rabbits, shall be *primâ facie* evidence of the existence of rabbits on such land: And proof that such signs are not being diminished on any land shall be *primâ facie* evidence that the occupier is neglecting to do what is required by any notice which has been served pursuant to section 35 of this Act.

Penalty for destroying
natural enemy of
rabbit.

40. Any person who shall hereafter trap or destroy, or attempt to trap or destroy any animal, reptile, or bird which the Commissioner, by proclamation published in the *Government Gazette*, shall declare to be a natural enemy of the rabbit in any district which by similar proclamation may be declared to be a vermin-infested district, shall be guilty of an offence against this Act, punishable on summary conviction by a penalty not exceeding Twenty Pounds.

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

KINTORE, Governor.