

First print



New South Wales

Irrigation Corporations Amendment Bill 1998

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The object of this Bill is to amend the *Irrigation Corporations Act 1994* to provide for the conversion of Coleambally Irrigation Corporation and Murrumbidgee Irrigation Corporation, currently statutory State owned corporations and class 1 irrigation corporations, to company State owned corporations and then to class 2 irrigation corporations.

Class 1 irrigation corporations may be either statutory State owned corporations or company State owned corporations. Those that are company State owned corporations may be converted by proclamation under the *Irrigation Corporations Act 1994* to class 2 irrigation corporations which are companies whose shares are held by private irrigators.

The Bill also contains consequential amendments to the *State Owned Corporations Act 1989*.

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

Clause 3 is a formal provision giving effect to the amendments to the *Irrigation Corporations Act 1994* set out in Schedule 1.

Clause 4 is a formal provision giving effect to the amendments to the *State Owned Corporations Act 1989*.

Clause 5 enables a proclamation to be made under section 27 of the *Irrigation Corporations Act 1994* converting Coleambally Irrigation Limited and Murrumbidgee Irrigation Limited into class 2 irrigation corporations (that is, companies that are not State owned corporations and the shares of which are held by existing irrigators) by proclamation.

Schedule 1 Amendment of Irrigation Corporations Act 1994

Schedule 1 [5] and [14] dissolve Coleambally Irrigation Corporation and Murrumbidgee Irrigation Corporation, currently statutory State owned corporations and class 1 irrigation corporations, and provides for their assets and liabilities to be transferred to company State owned corporations with the names of Coleambally Irrigation Limited and Murrumbidgee Irrigation Limited.

Schedule 1 [1]–[4], [6]–[8] and [11]–[13] contain consequential amendments.

Schedule 1 [9] and [10] specify arrangements that the Minister must be satisfied have been made before approving an application by Coleambally Irrigation Limited or Murrumbidgee Irrigation Limited to become a class 2 irrigation corporation.

Schedule 2 Amendment of State Owned Corporations Act 1989

Schedule 2 amends the *State Owned Corporations Act 1989* to remove Coleambally Irrigation Corporation and Murrumbidgee Irrigation Corporation from the list of statutory State owned corporations.



New South Wales

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New South Wales

Irrigation Corporations Amendment Bill 1998

No , 1998

A Bill for

An Act to amend the *Irrigation Corporations Act 1994* to provide for the conversion of certain class 1 irrigation corporations to class 2 irrigation corporations; to amend the *State Owned Corporations Act 1989* consequentially; and for other purposes.

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Irrigation Corporations Amendment Act 1998*.

2 Commencement

This Act commences on a day or days to be appointed by proclamation. 5

3 Amendment of Irrigation Corporations Act 1994 No 41

The *Irrigation Corporations Act 1994* is amended as set out in Schedule 1.

4 Amendment of State Owned Corporations Act 1989 No 134 10

The *State Owned Corporations Act 1989* is amended as set out in Schedule 2.

5 Proclamation of class 1 irrigation corporations as class 2 irrigation corporations

This Act authorises a proclamation to be made under section 27 of the *Irrigation Corporations Act 1994* designating Coleambally Irrigation Limited as a class 2 irrigation corporation and Murrumbidgee Irrigation Limited as a class 2 irrigation corporation. 15

Schedule 1 Amendment of Irrigation Corporations Act 1994

(Section 3)

[1] Section 6 Establishment of corporations as SOCs

Omit section 6 (1). Insert instead:

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- (1) The SOC Act is amended by inserting in Schedule 1 to that Act in alphabetical order the name of the corporation referred to in Schedule 1 [1] to this Act (Coleambally Irrigation Limited).

[2] Section 6 (5)

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Omit the subsection. Insert instead:

- (5) The SOC Act is amended by inserting in Schedule 1 to that Act in alphabetical order the name of the corporation referred to in Schedule 1 [5] to this Act (Murrumbidgee Irrigation Limited).

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[3] Section 19 Amendment of SOC Act

Insert before section 19 (2):

- (1) The SOC Act is amended by omitting from Schedule 1 to that Act the words "Coleambally Irrigation Limited", if and when the name of the company is inserted in Schedule 2 to this Act.

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[4] Section 19 (5)

Insert after section 19 (4):

- (5) The SOC Act is amended by omitting from Schedule 1 to that Act the words "Murrumbidgee Irrigation Limited", if and when the name of the company is inserted in Schedule 2 to this Act.

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Insert after Division 3 of Part 2:

26A Creation of company SOCS

Schedule 4 has effect.

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Omit the heading.

Omit the section.

Omit the section.

Insert “(other than Coleambally Irrigation Limited and Murrumbidgee Irrigation Limited)” after “corporation” where firstly occurring in section 34 (1). 15

Insert after section 34 (1):

(1A) The Minister may not approve an application under section 28 by Coleambally Irrigation Limited or Murrumbidgee Irrigation Limited unless the Minister is satisfied that satisfactory arrangements or provisions have been made:

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- (a) for every existing irrigator within the irrigation scheme area to which that corporation is connected to have the opportunity to hold shares of a class of shares in the corporation on the date the proclamation designating it as a class 2 irrigation corporation takes effect, so that the number of shares of that class held by the irrigator as a proportion of the total number of shares of that class issued by the corporation is equal to or greater than the irrigator's existing water entitlement as a proportion of the total existing water entitlements of the same type within the irrigation scheme area, and 5 10
- (b) for every existing irrigator within the area to have the opportunity to enter into a contract with the corporation, having effect from the date the proclamation takes effect and for the term of the irrigation corporation licence and any subsequent irrigation corporation licence, providing for the supply to the irrigator of water, so that the water entitlement of each existing irrigator as a proportion of the total water entitlements allocated by the corporation is equal to or greater than that irrigator's existing water entitlement as a proportion of the total existing water entitlements of the same type within the irrigation scheme area, and 15 20 25
- (c) in the proposed constitution of the corporation, for every existing irrigator within the area to be entitled to surrender or transfer any such share, at any time after the proclamation takes effect, if the irrigator so chooses, and 30
- (d) for every existing irrigator to be entitled to withdraw from any such contract in accordance with the terms of the contract, at any time after the proclamation takes effect, if the irrigator so chooses, and 35
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- (e) for the allocation by the irrigation corporation, on the date the proclamation designating it as a class 2 irrigation corporation takes effect, of water entitlements with respect to the total volume of water to which it is entitled under its irrigation corporation licence (not including any water that is lost or is likely to be lost in transmission). 5

[11] Section 98A

Insert after section 98:

98A Savings, transitional and other provisions 10

Schedule 5 has effect.

[12] Schedule 1 List of class 1 irrigation corporations

Omit "Coleambally Irrigation Corporation".
Insert instead "Coleambally Irrigation Limited".

[13] Schedule 1 15

Omit "Murrumbidgee Irrigation Corporation".
Insert instead "Murrumbidgee Irrigation Limited".

[14] Schedules 4 and 5

Insert after Schedule 3:

Schedule 4 Provisions consequent on enactment of Irrigation Corporations Amendment Act 1998 20

(Section 26A)

Part 1 Creation of company SOCs

1 Definitions 25

In this Schedule:

amending Act means the *Irrigation Corporations Amendment Act 1998*.

assets means any legal or equitable estate or interest (whether present or future and whether vested or contingent) in real or personal property of any description (including money), and includes securities, choses in action and documents.

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Coleambally Irrigation Corporation means the Coleambally Irrigation Corporation as constituted by section 26A immediately before the repeal of that section by the amending Act.

former irrigation corporation means:

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- (a) Coleambally Irrigation Corporation, and
- (b) Murrumbidgee Irrigation Corporation.

instrument means an instrument (other than this Act) that creates, modifies or extinguishes rights or liabilities (or would do so if lodged, filed or registered in accordance with any law), and includes any judgment, order or process of a court.

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liabilities means any liabilities, debts or obligations (whether present or future and whether vested or contingent).

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Ministerial Holding Corporation means the Ministerial Holding Corporation constituted under section 37B of the SOC Act.

Murrumbidgee Irrigation Corporation means the Murrumbidgee Irrigation Corporation as constituted by section 26B immediately before the repeal of that section by the amending Act.

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new irrigation corporation means:

- (a) in respect of Coleambally Irrigation Corporation—Coleambally Irrigation Limited, and
- (b) in respect of Murrumbidgee Irrigation Corporation—Murrumbidgee Irrigation Limited.

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rights means any rights, powers, privileges or immunities (whether present or future and whether vested or contingent).

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2 Dissolution of Coleambally Irrigation Corporation and Murrumbidgee Irrigation Corporation

- (1) Coleambally Irrigation Corporation is dissolved.
- (2) Murrumbidgee Irrigation Corporation is dissolved.
- (3) The assets, rights and liabilities (if any) of each former irrigation corporation immediately before its dissolution are transferred to the Ministerial Holding Corporation, if any such assets, rights or liabilities remain after the operation of any order under clause 4 or 5 that takes effect on or before its dissolution. 5
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- (4) Part 2 of this Schedule applies to any transfer under this clause in the same way as it applies to a transfer by an order under clause 5.

3 Coleambally Irrigation Limited and Murrumbidgee Irrigation Limited to be same legal entities as former Corporations

- (1) On the dissolution of a former irrigation corporation, the new irrigation corporation is taken for all purposes, including the rules of private international law, to be a continuation of, and the same legal entity as, the former irrigation corporation. 15
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- (2) This clause does not affect any transfer of assets, rights and liabilities under clause 2, 4 or 5.

4 Transfer of assets, rights and liabilities of former irrigation corporations

- (1) The Minister may, by order in writing, direct that such assets, rights and liabilities of a former irrigation corporation as are specified or referred to in the order be transferred to the new irrigation corporation, on the date and for the consideration specified in the order. 25
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- (2) Assets, rights or liabilities of a former irrigation corporation may not be transferred under subclause (1) unless the new irrigation corporation is a company State owned corporation.
- (3) An order under this clause may be made on such other terms and conditions as are specified in the order. 35

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- (4) For the purposes of this clause, the assets, rights and liabilities of a former irrigation corporation include any assets, rights or liabilities used by or attaching to the former irrigation corporation and belonging to the State or an authority of the State.

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5 Transfer of other assets, rights and liabilities

- (1) The Minister may, by order in writing, direct that such other assets, rights or liabilities used by or attaching to a former irrigation corporation as are specified or referred to in the order be transferred to the Ministerial Holding Corporation or to any other person on behalf of the State.
- (2) An order under this clause may specify the date of and the consideration for the transfer.
- (3) An order under this clause may be made on such other terms and conditions as are specified in the order.

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6 Transfer of staff

- (1) On the dissolution of a former irrigation corporation, each member of staff of the former irrigation corporation is transferred to the employment of the new irrigation corporation.
- (2) After the transfer, each such member of staff becomes a member of staff of the new irrigation corporation and continues (until other provision is duly made) to be employed in accordance with the awards, agreements and determinations applying, immediately before the transfer, to members of the staff of the former irrigation corporation.
- (3) Neither the contract of employment nor the period of employment of each member of staff concerned is taken to have been broken by the operation of this Schedule for the purposes of any law, award or agreement relating to the employment of that member of staff.
- (4) Without limiting this section, this Act does not affect any accrued rights that the member of staff concerned had immediately before the transfer in relation to any kind of leave.

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- (5) A member of staff concerned is not entitled to receive any payment or other benefit merely because the member ceases to be an employee of the former irrigation corporation.
- (6) A member of staff concerned is not entitled to claim, both under this Act and under any other Act, dual benefits of the same kind for the same period of service. 5

7 Provisions of State Owned Corporations Act 1989

The provisions of the SOC Act relating to company SOCs (other than section 7) apply to or in respect of a new irrigation corporation while it remains a class 1 irrigation corporation. 10

Part 2 General provisions relating to transfer of assets, rights and liabilities of former irrigation corporations 15

8 Vesting of undertaking in transferee

When any assets, rights or liabilities are transferred by an order under clause 4 or 5, the following provisions have effect (subject to the order):

- (a) those assets of the transferor vest in the transferee by virtue of this Schedule and without the need for any conveyance, transfer, assignment or assurance, 20
- (b) those rights and liabilities of the transferor become by virtue of this Schedule the rights and liabilities of the transferee, 25
- (c) all proceedings relating to those assets, rights or liabilities commenced before the transfer by or against the transferor or a predecessor of the transferor and pending immediately before the transfer are taken to be proceedings pending by or against the transferee, 30

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- (d) any act, matter or thing done or omitted to be done in relation to those assets, rights or liabilities before the transfer by, to or in respect of the transferor is (to the extent that that act, matter or thing has any force or effect) taken to have been done or omitted by, to or in respect of the transferee. 5
- (e) a reference in any Act, in any instrument made under any Act or in any document of any kind to the transferor or a predecessor of the transferor is (to the extent that it relates to those assets, rights or liabilities but subject to the regulations or to other provisions under this Schedule), to be read as, or as including, a reference to the transferee. 10

9 Operation of Schedule

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- (1) The operation of this Schedule is not to be regarded:
- (a) as a breach of contract or confidence or otherwise as a civil wrong, or
- (b) as a breach of any contractual provision prohibiting, restricting or regulating the assignment or transfer of assets, rights or liabilities, or 20
- (c) as giving rise to any remedy by a party to an instrument, or as causing or permitting the termination of any instrument, because of a change in the beneficial or legal ownership of any asset, right or liability. 25
- (2) The operation of this Schedule is not to be regarded as an event of default under any contract or other instrument.
- (3) No attornment to the transferee by a lessee from the transferor is required. 30
- (4) The operation of this Schedule includes the making of an order to which this Schedule applies.

10 Duty

Duty is not chargeable in respect of:

- (a) the transfer of assets, rights and liabilities under clause 2 or by an order under clause 4 or 5, or
- (b) anything certified by the Minister as having been done in consequence of such a transfer (for example, the transfer or registration of an interest in land). 5

11 Determinations of Minister for purposes of orders

For the purposes of any order under clause 4 or 5, a determination by the Minister as to which entity to which any assets, rights or liabilities relate is conclusive. 10

12 Confirmation of vesting

- (1) The Minister may, by notice in writing, confirm a transfer of particular assets, rights and liabilities by operation of this Schedule. 15
- (2) Such a notice is conclusive evidence of that transfer.

Schedule 5 Savings, transitional and other provisions

(Section 98A) 20

1 Regulations

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:

Irrigation Corporations Amendment Act 1998 25

- (2) Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date.

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- (3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:
- (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication. or 5
 - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication. 10

**Schedule 2 Amendment of State Owned
Corporations Act 1989**

(Section 4)

[1] Schedule 5 Statutory SOCs

Omit "Coleambally Irrigation Corporation".

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[2] Schedule 5

Omit "Murrumbidgee Irrigation Corporation".