

No. , 1921.

A BILL

To ratify an agreement for the variation of the agreement entered into between the Prime Minister of the Commonwealth and the Premiers of the States of New South Wales, Victoria, and South Australia, respecting the River Murray and Lake Victoria and other waters; to amend the River Murray Waters Act, 1915, the River Murray Waters (Amendment) Act, 1916, and the Public Service Act, 1902; to repeal the River Murray Waters (Amendment) Act, 1921; and for purposes connected therewith.

[MR. ESTELL;—1 *December*, 1921.]

WHEREAS on the ninth day of September, one Preamble.
thousand nine hundred and fourteen, the Prime
Minister of the Commonwealth of Australia, acting for
and

and on behalf of the Commonwealth, and the Premiers of the States of New South Wales, Victoria, and South Australia, acting for and on behalf of those States respectively, entered into an agreement (in this Act referred to as "the said agreement") respecting the River Murray and Lake Victoria and other waters subject to ratification by the Parliament of the Commonwealth and the Parliaments of the said States: And whereas the Parliament of the Commonwealth and the Parliaments of the said States have ratified and approved the said agreement: And whereas the Prime Minister of the Commonwealth of Australia, acting for and on behalf of the Commonwealth, and responsible Ministers of the said States, acting for and on behalf of those States respectively, have entered into an agreement (in this Act referred to as "the amending agreement") to vary the said agreement, subject to ratification by the Parliament of the Commonwealth and the Parliaments of the said States: And whereas it is desirable to ratify and approve the amending agreement: Be it therefore enacted by the King's most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

Short title
and citation.

1. (1) This Act may be cited as the "River Murray Waters Act, 1921."

(2) The River Murray Waters Act, 1915, is in this Act referred to as the Principal Act.

(3) The Principal Act, as amended by the River Murray Waters (Amendment) Act, 1916, and by this Act, may be cited as the "River Murray Waters Act, 1915-1921."

Repeal.

2. The River Murray Waters (Amendment) Act, 1921, is hereby repealed.

Crown bound.

3. This Act shall bind the Crown.

Commence-
ment.

4. This Act shall commence on a day to be fixed by proclamation of the Governor in the Gazette.

Ratification
of amending
agreement.

5. The amending agreement, a copy of which is set out in section fourteen of this Act, is by this Act ratified and approved.

6.

6. The preamble to the Principal Act is amended by omitting the word "Schedule" and inserting in its stead the words "First Schedule." Amendment of preamble of Principal Act.

7. Section four of the Principal Act is amended— Amendment of s. 4 of Principal Act.

(a) by omitting the definition of "constructing authority"; and

(b) by omitting from the definition of "the agreement" the word "Schedule" and inserting in its stead the words "First Schedule, as amended by the agreement, a copy of which is set out in the Second Schedule."

8. (1) Section five of the Principal Act is amended by inserting after the word "agreement" the words "a copy of which is set out in the 'First Schedule.'" Amendment of s. 5 of Principal Act.

(2) The River Murray Waters (Amendment) Act, 1916, is amended by omitting section two.

9. After section five of the Principal Act the following new section is inserted:— New section after s. 5, *Ibid.*

5A. (1) The Commission shall be a body corporate by the name of "The River Murray Commission," with perpetual succession and a common seal, and be capable of suing and being sued, and shall have power to acquire, sell, lease, and hold property, real and personal, for the purposes of and subject to this Act. Incorporation of Commission.

(2) All courts, judges, and persons acting judicially shall take judicial notice of the seal of the Commission affixed to any document or notice, and shall deem that it was duly affixed.

10. After section thirteen of the Principal Act the following new sections are inserted:— New sections after s. 13, *Ibid.*

13A. All works and property transferred to the Commission under the agreement shall be held by it for the purposes of and subject to this Act. Land and works to be held for purposes of Act.

13B. The Commission, in addition to all other powers and authorities vested in it, is authorised and empowered, for the purposes and subject to the provisions of this Act and the agreement— Powers of Commission.

(a) to enter upon and occupy any lands adjoining or in the neighbourhood of any work constructed or to be constructed under this Act;

(b)

River Murray Waters.

- (b) to bore, dig, cut, trench, embank and sough, remove or lay, search for, carry away and use any earth, stone, timber, gravel or sand, or any other materials proper or necessary for constructing, reconstructing, altering or extending any such works, or which may hinder, prevent or obstruct their construction, reconstruction, maintenance, alteration, extension, operation or control ;
- (c) to enter upon and occupy any lands, streets or roads for the purpose of constructing, reconstructing, altering or extending any such work ;
- (d) to erect or make on any of such lands, streets or roads, workshops, sheds and buildings of a temporary character, and roads and railways ;
- (e) in so far only as may be necessary for the purposes of the construction of work provided for in the agreement, to impound, dam, conserve, store, set back, divert, obstruct or drain the waters of, or alter the course or level of, or embank, narrow, widen, deepen, cleanse, clear, scour, open, straighten and remove obstructions from the River Murray and its tributaries ;
- (f) to alter the course, width or level of, or close any roads, streets or ways ;
- (g) to alter or reconstruct any such works or discontinue them and substitute others in their stead ;
- (h) to institute and maintain proceedings in any court in respect of or in relation to works or lands or other property constructed by or held by it for the purposes of this Act, and for any tolls prescribed under this Act ; and
- (i) generally to do all other acts for constructing, reconstructing, altering, extending or protecting from trespass or injury any works constructed

constructed or being constructed under this Act, or works or lands or property held by it, or for effectually exercising its powers and discharging its duties under this Act.

13c. (1) Except as provided in this section no action, claim or proceeding whatsoever shall be maintainable for or in respect of any damage occasioned by the construction, maintenance, operation or control of any works under this Act. Claims for compensation.

(2) The Commission or the State contracting Government to which any works have been transferred, as the case may be, shall subject to this section be liable to make compensation to the person suffering the damage.

(3) No such compensation shall be made unless—

- (a) notice in writing, stating the nature and extent of the damage complained of, has been furnished within six months after the alleged damage has occurred, to the Commission or the State contracting Government, as the case may be; and
- (b) after giving the notice, the person claiming compensation proceeds without unreasonable delay to obtain the compensation.

13d. (1) In the absence of agreement, all claims for compensation shall be determined by arbitration in accordance with the laws of the State in which the alleged damage occurred. Determination of compensation.

(2) No compensation shall be made in respect of any item not set forth in the notice furnished under the last preceding section.

(3) In any case when the amount of compensation determined by arbitration is less, by one-fourth of the amount claimed, than the amount claimed, the person claiming compensation shall pay to the Commission or the State contracting Government, as the case may be, its costs of the matter.

Sec. 13 of Principal Act omitted and new section inserted. Saving of rights of Government officers.

11. Section thirteen of the Principal Act is omitted and the following section inserted in its stead :—

13. (1) Any officer employed by any statutory body representing the Crown, or in the Public Service, who becomes an officer of the Commission shall retain all his existing and accruing rights.

(2) Any such officer who becomes an officer of the Commission shall not thereby be required to resign his former position, but shall be granted leave of absence for the period of his service with the Commission, and the period of leave so granted shall for all purposes be included as part of the officer's period of service.

(3) Upon the termination of the service with the Commission of any such officer, who has not been dismissed for misconduct, he shall be entitled to be re-employed by his former employer with such advancement in status and salary, beyond the status held and the salary received by him in that service, immediately prior to his becoming an officer of the Commission, as the Public Service Board or such other body or person under whom such officer is employed thinks just.

(4) In determining the status and salary to which the officer shall be advanced, the Public Service Board or such other body or person under whom such officer is employed shall take into consideration the period of the officer's service with the Commission.

(5) In this section "officer of the Commission" means a Commissioner or Deputy Commissioner, or an officer or servant of the Commission.

Amendment of s. 31, *Ibid.*

12. Section thirty-one of the Principal Act is amended—

(a) by inserting after the word "by" the words "the Commission or"; and

(b) by omitting the words "or constructing authority."

Amendment of Schedule, *Ibid.*

13. The Schedule to the Principal Act is amended by omitting the heading "The Schedule" and inserting in its stead the heading "The First Schedule."

14.

14. The Principal Act is amended by adding at the end thereof the following Schedule :—

New Schedule
added to
Principal Act.

THE SECOND SCHEDULE.

Second
Schedule.

THE AMENDING AGREEMENT.

AGREEMENT made the twenty-third day of November, one thousand nine hundred and twenty, between the Right Honorable William Morris Hughes, Prime Minister of the Commonwealth of Australia, for and on behalf of the Commonwealth of the first part, the Honorable John Estell, Minister for Public Works of the State of New South Wales, for and on behalf of that State of the second part, the Honorable Harry Sutherland Wightman Lawson, Premier of the State of Victoria, for and on behalf of that State of the third part, and the Honorable John George Bice, Chief Secretary of the State of South Australia, for and on behalf of that State of the fourth part.

Whereas on the ninth day of September, one thousand nine hundred and fourteen, an Agreement was entered into by the Prime Minister of the Commonwealth of Australia and the Premiers of the States of New South Wales, Victoria, and South Australia, with regard to the economical use of the waters of the River Murray and its tributaries for irrigation and navigation, and to the reconciling of the interests of the Commonwealth and the said States, which agreement was ratified by the Parliament of the Commonwealth of Australia and the Parliaments of the said States, and which agreement is hereinafter referred to as the Principal Agreement :

And whereas at conferences between the Prime Minister of the Commonwealth of Australia and the Premiers of the said States held on the twenty-fifth day of May and the twentieth day of July, one thousand nine hundred and twenty, certain resolutions were agreed to with a view to expediting the construction of the works provided for under the Principal Agreement :

And whereas in order to carry into effect the lastmentioned resolutions it is deemed desirable to enter into this Agreement :

Now it is hereby further agreed as follows :—

I. RATIFICATION AND ENFORCEMENT.

1. This Agreement is subject to ratification by the Parliaments of the Commonwealth and of the States of New South Wales, Victoria, and South Australia, and shall come into effect when so ratified.

Ratification.

2. The Contracting Governments hereby agree to submit this Agreement for ratification to the respective Parliaments of the Commonwealth and of the said States during the present session of any such Parliament, or if any such Parliament is not in session at the date of this Agreement then at the first session of such Parliament held after the date of this Agreement.

Submission to
Parliament.

Each

Contracting Governments to provide for enforcement of Agreement and Acts.

Each of the Contracting Governments so far as its jurisdiction extends and so far as it may be necessary shall provide for or secure the execution and enforcement of the provisions of this Agreement and any Acts ratifying the same.

Incorporation in Principal Agreement.

3. On and after the date of ratification of this Agreement the Principal Agreement shall be read and construed as if the amendments made therein by this Agreement were incorporated therein.

II. AMENDMENT OF PRINCIPAL AGREEMENT.

Incorporation of Commission.

4. Clause four of the Principal Agreement is amended by adding at the end thereof the following words:—"The members of the Commission and their successors shall be constituted a body corporate, by the name of the 'The River Murray Commission,' for the purposes of, and subject to, this Agreement and any Acts ratifying the same."

Quorum.

5. Clause six of the Principal Agreement is amended—

- (a) by omitting the word "all" and inserting in its stead the words "at least three-fourths"; and
- (b) by inserting after the word "dissimilar" the words "or any business relating to the appointment of officers by the Commission."

6. Clauses twelve, thirteen, and fourteen of the Principal Agreement are omitted and the following clauses inserted in their stead:—

Officers and servants.

12. The Commission may from time to time appoint or employ such and so many officers and servants as it thinks fit and remove or dismiss them, and all such officers and servants shall be subject to the sole control of the Commission, and the rates of payment and conditions of employment of such officers and servants shall be determined by the Commission:

Provided that, with a view to preventing duplication of the machinery necessary for carrying out this Agreement, the Commission—

- (a) shall, as far as possible, appoint, as its officers persons who are officers in the service of a State Contracting Government, and who are suitable for the work to be performed, and who, at the date on which this clause comes into effect, are mainly engaged on works provided for in this Agreement; and
- (b) may, with due regard to economy and the expeditious and satisfactory performance of the work of the Commission, arrange with any State Contracting Government for the preparation, by officers of that Government, of designs of works to be constructed under this Agreement, and for the performance by such officers of any work or services other than such preparation of designs of works.

A

A Contracting Government shall place at the disposal of the Commission the services of any person employed on its professional or clerical staffs, if the services of such person are required for, and in the opinion of the Contracting Government, are available for the construction of the works provided for in this Agreement :

Provided that a State Contracting Government shall not be required to place at the disposal of the Commission the services of any such person who was not, at the date on which this clause comes into effect, mainly engaged on the construction of such works.

The Commission may arrange with a Contracting Government for any matters which may require to be adjusted with regard to the payment for work done for, or services rendered to, the Commission by any person in the service of or employed by such Contracting Government.

The services of any person in the service of or employed by a Contracting Government may be made use of in part by the Commission and in part by the Contracting Government.

Where any arrangement is made in pursuance of this clause with a State Contracting Government for the preparation by officers of that Government of designs of works to be constructed under this Agreement, or for the performance of any other work or services, such State Contracting Government shall ensure that there shall be no delay in the execution of any work under such arrangement.

13. The Governments of New South Wales, Victoria, and South Australia shall take steps to have referred to the Parliament of the Commonwealth by the Parliaments of their respective States the following matters, namely :—

Special tribunal for settlement of industrial disputes.

- (a) the appointment of a special tribunal for the prevention and settlement of industrial disputes arising in connection with the construction of the works provided for under this Agreement ; and
- (b) the powers and functions of the special tribunal.

7. Clause twenty-one of the Principal Agreement is amended by inserting at the end thereof the following subclause :—

(2) Notwithstanding anything contained in the last preceding subclause, all the works provided for in this Agreement, in so far as they have not been constructed before this subclause comes into effect, shall be constructed by the Commission.

Responsibility for construction.

Any work which, at the date on which this subclause comes into effect, has been partly constructed, shall be transferred to the Commission.

8. After clause twenty-one of the Principal Agreement the following clause is inserted :—

21A. All plant which, at the date on which this clause comes into effect, a State Contracting Government is using exclusively, or has ordered for exclusive use, in connection with the construction of the works provided for in this Agreement, shall be handed over to the Commission.

Plant to be handed over to Commission.

The Commission shall pay to the State Contracting Government—

(a) in respect of any such plant so handed over which at the date on which this clause comes into effect is being used exclusively in connection with the construction of such works, the book value of such plant on the date on which it is handed over ; and

(b) in respect of any such plant so handed over which at the date on which this clause comes into effect is ordered but not delivered to the State Contracting Government, the actual cost to the State Contracting Government of such plant.

9. Clause twenty-three of the Principal Agreement is omitted and the following clause inserted in its stead :—

23. The Commission shall, before commencing the construction of any of the works to be constructed under this Agreement, prepare designs and estimates of such work. Copies of any such designs and estimates prepared by the Commission after this clause comes into effect shall be forwarded to the Contracting Governments for their information.

In determining the sites at which weirs and locks are to be constructed the Commission shall, so far as practicable, after consultation with the State Contracting Governments concerned, have regard to the suitability of the sites for the purpose also of affording convenient offtakes for irrigation requirements.

The construction of the work shall be carried out in accordance with designs prepared by the Commission.

Any designs, estimates, or sites which have been approved by the Commission before this clause comes into effect shall be deemed to have been prepared or determined by the Commission in accordance with this clause.

10. Clause twenty-four of the Principal Agreement is amended by omitting the first paragraph thereof and inserting in its stead the following paragraph :—

The construction of works which are provided for under this Agreement and the construction of which has not been commenced before this paragraph comes into effect shall be commenced by the Commission as soon as may be after this paragraph comes into effect ; and the construction of those works and of works the construction of which has been commenced before this paragraph comes into effect (and which are hereby declared to be specially urgent), shall be continued without cessation (other than as may be due to unavoidable causes) until all of such works are completed.

11. Clause twenty-five of the Principal Agreement is omitted and the following clause inserted in its stead :—

25. On completion of any work—

(a) constructed at points between the mouth of the River Murray and the inlet to Frenchman's Creek or at the inlet to Frenchman's Creek (including the Lake Victoria Works), the Commission shall hand such work over to the Government of South Australia ;

(b)

Preparation of designs and estimates by Commission.

Commencement of continuous works.

Handing over and maintenance of work.

- (b) constructed on the River Murrumbidgee or on the River Darling above Wentworth (as the case may be), the Commission shall hand such work over to the Government of New South Wales ;
- (c) constructed on the River Murray above the inlet to Frenchman's Creek, the Commission shall hand such work over to the Governments of New South Wales and Victoria severally or jointly as may be mutually agreed upon by those Governments, or, in default of such agreement, as may be determined by the Commission,

and the Government to which any such work is handed over shall thenceforth be responsible for the maintenance of such work, and for keeping the same effective for the purposes for which it was designed.

12. Clause twenty-six of the Principal Agreement is amended by omitting the words "by which it was constructed" and inserting in their stead the words "to which it is handed over." Dredging and snagging

13. Clause twenty-seven of the Principal Agreement is amended by omitting the words "constructed by" and inserting in their stead the words "handed over to." Operation and control of works and collection of tolls.

14. Clause twenty-eight of the Principal Agreement is omitted and the following clause inserted in its stead :—

28. The Commission shall have full power to determine—

- (i) the order in point of time of the construction of the works provided for in this Agreement, and, in so determining, shall have special regard to such works as will serve the dual purpose of irrigation and navigation ;
 - (ii) the rate of progress of works, whether of construction or maintenance ;
 - (iii) the method and extent of maintenance of works ; and
 - (iv) if necessary, what works shall be regarded as works of construction or of maintenance,
- Power of Commission in respect of carrying out of agreement.

and shall have full power to order and direct such acts and things as it considers necessary for carrying out this Agreement.

15. Clause twenty-nine of the Principal Agreement is omitted and the following clauses inserted in its stead :—

29. A Contracting Government within whose State any works for the purposes of this Agreement are to be or are being or have been constructed by the Commission, or, at the date on which this clause comes into effect, are being or have been constructed by another Contracting Government or any authority constituted or appointed for the purpose of such construction, shall grant, to the Commission, or to the Contracting Government to which the works are handed over in accordance with this Agreement, all such powers, licenses and permissions in and to the use of, or with respect to, its territory as may be necessary for the construction, maintenance, operation, and control of such works, and for carrying out any operations authorized by this Agreement State Government to facilitate construction and operations within their territories.

Notice to be given to Commission before water is released.

29A. A State Contracting Government, which is controlling or operating any work under this Agreement, shall ensure that, when so desired by the Commission during the period of the construction of the works provided for in this Agreement, reasonable notice shall be given to the Commission before any water stored in any such work is released.

Works for joint benefit of New South Wales and Victoria.

16. Clause thirty of the Principal Agreement is amended—
 (a) by inserting after "Agreement" (first occurring), the words "except clause forty-three hereof";
 (b) by inserting after the word "constructed" the words "by or on behalf of the said Governments jointly or severally."

Apportionment of cost of construction.

17. Clause thirty-two of the Principal Agreement is amended by omitting all words after the words "Governments in," and inserting in their stead the words "equal proportions."

Proposed expenditure in any year.

18. Clause thirty-four of the Principal Agreement is omitted and the following clause inserted in its stead:—

34. The Commission shall in the month of March of each year prepare and forward to each of the Contracting Governments a detailed estimate of the amount of money required during the twelve months from the first day of July then next ensuing for all expenditure pursuant to this Agreement (other than expenses of the Commission or salaries and expenses of Commissioners) showing the manner in which it is proposed to expend such money; and the Contracting Governments shall each provide one-fourth thereof and pay the same to the Commission as required during the said period of twelve months.

If in the opinion of the Commission it is necessary in any year to provide for any expenditure in excess of the amount set out in the estimate for that year the Commission shall prepare and forward to each of the Contracting Governments a detailed estimate of such excess expenditure; and the Contracting Governments shall each provide one-fourth thereof and pay the same to the Commission before the expiration of that year.

If in any one year the amount to be provided by each Contracting Government exceeds the sum of one hundred and twenty-five thousand pounds the Commonwealth shall advance, to each of the other Contracting Governments, by way of loan, the amount which each Contracting Government is required to pay in excess of that sum.

Any amount so advanced shall bear interest at the rate current at the date of the advance, and shall be repayable at a date, not less than ten years from the date of the advance, to be agreed upon.

Payment by Commission to State.

Excess expenditure in construction.

19. Clause thirty-five of the Principal Agreement is omitted.

20. Clause thirty-six of the Principal Agreement is amended—
 (a) by omitting the words "the Commission may pay to the Government constructing such work an amount in excess of that so set out and"; and
 (b)

- (b) by omitting the words "the proportion set out in clause thirty-two of this Agreement" and inserting in their stead the words "equal proportions."
21. Clause thirty-seven of the Principal Agreement is amended— Compensation for damage by works.
- (a) by omitting the words "a Contracting Government or a Constructing Authority" and inserting in their stead the words "the Commission"; and
- (b) by omitting the words "the proportions set out in clause thirty-two of this Agreement" and inserting in their stead the words "equal proportions."
22. Clause forty-two of the Principal Agreement is amended by Tolls. omitting the words "the proportions set out in clause thirty-two of this Agreement" and inserting in their stead the words "equal proportions."
23. Clause 43 of the Principal Agreement is omitted and the following clause inserted in its stead:—
43. If any Contracting Government whose duty it is under this Agreement or under any direction issued in accordance with this Agreement to maintain, operate or control any works, or to carry on any operation or to provide its share of the cost of the maintenance, operation or control of any works or of carrying on any operation, refuses or neglects to do so after being thereunto required by the Commission, the other Contracting Governments (or any one or more of them) with the sanction of the Commission, may without prejudice to their or its other rights under this Agreement maintain, operate or control the whole of such works (or any portion thereof specified by the Commission) or carry on such operations (or any part thereof specified as aforesaid) and provide the cost thereof, and may in any Court of competent jurisdiction recover as a debt from the Contracting Government so refusing or neglecting the share of such cost to be provided by such Contracting Government in pursuance of this Agreement together with interest on any sums expended at a rate to be determined by the Commission. Failure to perform works or contribute cost.
- If any Contracting Government whose duty it is under this Agreement or under any direction issued in accordance with this Agreement to provide its share of the cost of the construction of any works, refuses or neglects to do so after being thereunto required by the Commission, the other Contracting Governments (or any one or more of them), with the sanction of the Commission, may, without prejudice to their or its other rights under this Agreement, provide the share of such cost to be provided by the Contracting Government so refusing or neglecting, and may in any Court of competent jurisdiction recover as a debt from such Contracting Government, the share of such cost to be provided by such Contracting Government together with interest on any sums expended at a rate to be determined by the Commission.
24. Clause 54 of the Principal Agreement is amended by Construction to be facilitated. omitting the words "construction and" and inserting in their stead the words "construction by the Commission and the."

Power to store
water in Lake
Victoria.

25. Clause 56 of the Principal Agreement is amended by omitting the words "After the commencement of the Lake Victoria Works" and inserting in their stead the words "Until the Lake Victoria Works have been constructed the Commission may, in order to meet the requirements of the State of South Australia, and thereafter."

Waters stored in
Lake Victoria.

26. Clause 57 of the Principal Agreement is amended—

(a) by omitting the words "which, subject to any directions of the Commission, may" and inserting in their stead the words "and the Commission, until the Lake Victoria Works have been constructed, and thereafter, the State of South Australia may"; and

(b) by inserting after the words "Provided also that" the words "until the Lake Victoria Works have been constructed, the Commission, and thereafter,";

Arbitration.
Difference to be
referred.

27. Clause fifty-eight of the Principal Agreement is amended—

(a) by omitting the words "If a difference of opinion arises among the Commissioners" and inserting in their stead the words "If the Commissioners are equally divided"; and

(b) by inserting after the word "unless" the words "at least three of."

Interpretation

28. Clause sixty-one of the Principal Agreement is amended by omitting the definition of "Constructing Authority."

In witness whereof the said parties to these presents have hereto set their hands and seals the day and year above written.

Signed, sealed, and delivered by the
abovenamed WILLIAM MORRIS
HUGHES, in the presence of—
R. R. GARRAN. } W. M. HUGHES.

Signed, sealed, and delivered by the
abovenamed JOHN ESTELL, in
the presence of—
R. G. ALLMAN. } JOHN ESTELL.

Signed, sealed, and delivered by the
abovenamed HARRY SUTHER-
LAND WIGHTMAN LAWSON, in
the presence of—
F. SHORT, J.P. } H. S. W. LAWSON.

Signed, sealed, and delivered by the
abovenamed JOHN GEORGE
BICE, in the presence of—
A. J. HANNAN. } JOHN G. BICE.