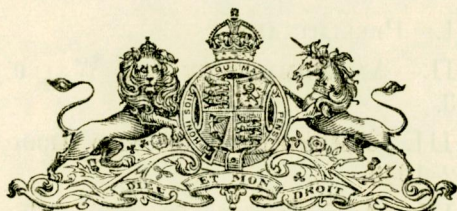


New South Wales.



ANNO OCTAVO

GEORGII VI REGIS.

Act No. 26, 1944.

An Act to make provision for subsoil drainage and surface drainage in certain areas; to amend the Water Act, 1912-1943, the Irrigation Act, 1912-1943, the Crown Lands Consolidation Act, 1913, the Crown Lands (Amendment) Act, 1932, the Irrigation (Amendment) Act, 1916, the War Service Land Settlement Act, 1941, the Wentworth Irrigation Act, and certain other Acts in certain respects; to validate certain matters; and for purposes connected therewith. [Assented to, 22nd November, 1944.]

Irrigation and Water (Amendment).

BE it 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 :—

PART I.

PRELIMINARY.

Short title,
division
into Parts
and citation.

1. (1) This Act may be cited as the "Irrigation and Water (Amendment) Act, 1944."

(2) This Act is divided into Parts as follows:—

PART I.—PRELIMINARY.

PART II.—AMENDMENT OF THE WATER ACT, 1912–1943.

PART III.—AMENDMENT OF THE IRRIGATION ACT, 1912–1943.

PART IV.—AMENDMENT OF THE CROWN LANDS CONSOLIDATION ACT, 1913.

PART V.—AMENDMENT OF THE CROWN LANDS (AMENDMENT) ACT, 1932.

PART VI.—AMENDMENT OF THE WENTWORTH IRRIGATION ACT.

PART VII.—MISCELLANEOUS.

SCHEDULE.

(3) The Irrigation Act, 1912, as amended by subsequent Acts and by this Act, may be cited as the Irrigation Act, 1912–1944.

(4) The Water Act, 1912, as amended by subsequent Acts and by this Act, may be cited as the Water Act, 1912–1944.

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PART II.

AMENDMENT OF THE WATER ACT, 1912-1943.

2. The Water Act, 1912-1943, is amended—

- (a) by inserting at the end of section forty-four the following proviso:—

Amendment of
Act No. 44,
1912.
Sec. 44.
(Rolls for
first
election.)

Provided that any person so liable to pay rates may by instrument in writing authorise the Commission to place on the roll of voters the name of some other person in lieu of his own name and in such case the name of such other person shall be placed on the roll in lieu of the name of the person so liable to pay rates.

- (b) by inserting at the end of section forty-five the following proviso:—

Sec. 45.
(Rolls for
subsequent
elections.)

Provided that any person so liable to pay rates may by instrument in writing authorise the trustees to place on the roll of voters the name of some other person in lieu of his own name and in such case the name of such other person shall be placed on the roll in lieu of the name of the person so liable to pay rates.

- (c) by inserting at the end of section forty-six the following new subsection:—

Sec. 46.
(Plural
voting.)

(3) For the purposes of this section a person whose name is on the roll pursuant to an authority of the owner of a property shall be deemed to be the owner of the area of land included in such property.

- (d) by inserting at the end of paragraph (d) of subsection one of section fifty-five the following words:—

Sec. 55.
(Rates.)

Where land is liable for rates under this paragraph the trustees may, in fixing the rate, fix different amounts for different parts of the land, having regard to the fact that any such part is or is not actually used for production under irrigation or having regard to the type of production

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production under irrigation for which any such part is used.

Sec. 147.

(Supply of
water.)

- (e) (i) by inserting in paragraph (a) of subsection (9A) of section one hundred and forty-seven after the word "section" where firstly occurring the words "or where before the commencement of the Irrigation and Water (Amendment) Act, 1943, the owner of a holding to which water rights are attached had disposed of a part or parts of such holding and the water rights have not been apportioned to the several parts of the holding";
- (ii) by omitting from paragraph (a) of subsection ten of the same section the words "when called upon by the Commission so to do";
- (iii) by inserting in paragraph (f) of the same subsection after the word "subsection" the words "or where the owner of a holding has failed to provide the works referred to in the paragraph which that paragraph replaces";

Sec. 154.

(Constitu-
tion of
districts.)

- (f) (i) by omitting from paragraph (b) of subsection one of section one hundred and fifty-four the words "benefited and";
- (ii) by omitting subsection four of the same section;
- (g) by inserting next after Part VII the following new Part:—

PART VIII.

SUBSOIL DRAINAGE DISTRICTS AND SURFACE DRAINAGE DISTRICTS.

Definitions.

165. In this Part, unless the context or subject matter otherwise indicates or requires—

"Bank" means the Rural Bank of New South Wales.

"Board" means the Board constituted under the provisions of section thirty of this Act.

"District"

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“District” and “provisional district” mean district and provisional district respectively constituted under this Part.

“Owner”, in relation to land, includes every person who, jointly or severally, whether at law or in equity—

- (a) is entitled to the land for any estate of freehold in possession; or
- (b) is a person to whom the Crown has lawfully contracted to grant the fee-simple under the Crown Lands Acts or any other Act relating to the alienation of lands of the Crown; or
- (c) is entitled to receive, or is in receipt of, or if the land were let to a tenant would be entitled to receive, the rents and profits thereof, whether as beneficial owner, trustee, mortgagee in possession, or otherwise; or
- (d) is the holder of a lease from the Crown or any statutory body representing the Crown.

“Work” includes any dam, levee, bank, weir, flume, race, channel (whether an artificial channel or natural channel artificially improved), cutting, drain, well, excavation, tunnel, pipe, pumping plant, machinery and any appliance.

166. (1) (a) In respect of any existing or proposed works of subsoil drainage the Commission may notify in the Gazette a proposal for the constitution of any lands within any irrigation area constituted under the Murrumbidgee Irrigation Act, 1910, the Irrigation Act, 1912, the Wentworth Irrigation Act, or the Hay Irrigation Act, 1902, or under any of those Acts as amended

Proposal
for consti-
tution of
districts.

by

Irrigation and Water (Amendment).

by subsequent Acts, or within any domestic and stock water supply and irrigation district constituted under Part VI of this Act or within the district of any trust constituted under Part III of this Act in respect of any works of irrigation as a subsoil drainage district.

(b) In respect of any existing or proposed works of surface drainage the Commission may notify in the Gazette a proposal for the constitution of any lands other than lands within the defined boundaries of any city, town or village as a surface drainage district.

(2) Any such proposal shall embody—

- (a) a plan and description of the holdings proposed to be included in the district;
- (b) a schedule of the lands within the district which it is estimated will be benefited by the works (in this Part referred to as “benefited lands”);
- (c) the purposes in connection with which it is proposed to constitute the district;
- (d) the contribution, if any, per acre of the benefited lands which the owners of holdings within the proposed district will be required to make towards the capital cost of the works and the times, terms and conditions under which such contribution will be required to be paid;
- (e) the maximum annual rate, if any, per acre of the benefited lands to be paid for the service in drainage during the period from the date of the constitution of the provisional district to the thirtieth day of June next following the fifth anniversary of the constitution of the district;
- (f) the nature or class of the works;
- (g) any further particulars the Commission may deem fit.

The

Irrigation and Water (Amendment).

The Commission shall also publish in a newspaper circulating in the proposed district a brief reference to the notification in the Gazette.

(3) If within eight weeks of such notification a petition objecting to the proposal upon the grounds stated in the petition and signed by at least one-third in number of the owners of the holdings within the proposed district is presented to the Commission it shall refer the proposal to the Board for inquiry and report.

167. (1) If within the said period no such petition is received or if the Board reports in favour of the proposal, with or without amendment, the Governor, by proclamation in the Gazette, may constitute as a provisional subsoil drainage district or a provisional surface drainage district, as the case may be, the holdings or any of them described in the proposal, with such amendment, if any, of the proposal as the Commission may recommend: Provided that the maximum annual rate, if any, per acre of the benefited lands specified in the proclamation, to be paid for the service in drainage during the period from the date of the constitution of the provisional district to the thirtieth day of June next following the fifth anniversary of the constitution of the district shall not exceed but may be less than the maximum annual rate notified in the proposal.

Constitution of provisional districts.

(2) Upon such proclamation the Commission may in respect of the provisional district construct, acquire, or utilise, or partly construct, acquire, or utilise the works.

168. (1) Upon completion of the works in connection with a provisional subsoil drainage district or a provisional surface drainage district the Commission shall notify in the Gazette—

Constitution of districts.

- (a) the completion of the works;
- (b) a plan and description of the holdings proposed to be included in the district;
- (c)

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- (c) a schedule of the lands within the district which are benefited by the works (in this Part referred to as "benefited lands");
- (d) the maximum annual rate, if any, per acre of the benefited lands to be paid for the service in drainage from the date of the constitution of the district up to the thirtieth day of June next following the fifth anniversary of such constitution. Such maximum annual rate shall not exceed but may be less than the maximum annual rate notified in the Gazette under the provisions of section one hundred and sixty-six, or where that maximum annual rate has been amended by a proclamation under the provisions of section one hundred and sixty-seven of this Act, the maximum annual rate as so amended.

The Commission shall also publish in a newspaper circulating in the district a brief reference to the notification in the Gazette.

(2) If within eight weeks of such notification a petition is presented to the Commission signed by any owner of a holding within the proposed district objecting, upon the grounds stated in the petition, to the inclusion of his land in the district, or by the owner of any holding who is of the opinion that the area of lands within his holding stated to have benefited by the works is in excess of the area actually benefited, the Commission shall refer the petition to the Board for inquiry and report.

(3) If within the said period no such petition is received or when the Board has reported upon any petitions referred to it, the Governor, by proclamation in the Gazette, may constitute as a district the holdings described in the notification by the Commission pursuant

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to subsection one of this section, or such of them as the Commission may recommend, with or without amendment of the schedule of benefited lands, as the Commission may recommend.

(4) Any holding included in the provisional district and in respect of which means of drainage have not been provided shall not be included within the district.

169. Where an error has been made in the proclamation constituting a district or provisional district, the Governor may, by a further proclamation in the Gazette, correct such error. Correction of errors in constitution of districts and provisional districts.

Such proclamation shall take effect from the date of publication or from such other date (whether before or after the date of publication) as may be specified in the proclamation.

170. (1) The Governor may, by proclamation in the Gazette, alter a district or provisional district by— Alteration of boundaries.

- (a) including additional holdings or parts of holdings; or
- (b) excising holdings or parts of holdings; or
- (c) transferring holdings, or parts of holdings, from one district or provisional district to another.

(2) In connection with any proposal for any such alteration of a district or provisional district unless the owners of the holdings or parts of holdings have notified in writing their willingness to have such holdings or parts of holdings included in the district or provisional district or excised therefrom, or transferred to another district or provisional district, as the case may be, the Commission shall notify in the Gazette—

- (a) a plan and description of the holdings or parts of holdings proposed to be added, excised, or transferred, as the case may be;

(b)

Irrigation and Water (Amendment).

- (b) a schedule of the lands which it is estimated will be benefited lands;
- (c) the maximum annual rate, if any, per acre of benefited lands applicable within the district or provisional district within which it is proposed to include the additional or transferred holdings or parts of holdings and which will apply for a period of which the extent shall be stated;
- (d) the contribution, if any, per acre of benefited lands which the owners of the said lands will be required to make towards the capital cost of the works of the district or provisional district, and the times, terms and conditions under which such contribution will be required to be paid.

The Commission shall also publish in a newspaper circulating in the district a brief reference to the notification in the Gazette.

(3) If within eight weeks of such notification a petition objecting to the proposal, upon the grounds stated in the petition, signed by at least one-third in number of the owners of the holdings or parts of holdings proposed to be added to the district or provisional district or to be transferred from one district or provisional district to another, or by any owner of a holding or part of a holding proposed to be excised from the district or provisional district or by any owner who is of the opinion that the area of land within his holding or part of a holding estimated to be benefited lands is in excess of the area which will be benefited lands, as the case may be, is presented to the Commission it shall refer the proposal to the Board for inquiry and report.

(4)

Irrigation and Water (Amendment).

(4) If within the said period no such petition is received or when the Board has reported upon any petition referred to it, the Governor, by proclamation in the Gazette, may alter the district or provisional district or districts, as the Commission may recommend.

(5) Any benefited lands being portion of a holding or part of a holding which has been excised from a district or provisional district shall, as from the date of such proclamation in the Gazette, be exempt from rates under this Part for drainage within such district or provisional district. All rates due in respect of such lands to the date of the proclamation shall be paid.

(6) Any benefited lands being portion of a holding or part of a holding transferred from one district or provisional district to another shall, as from the date of the proclamation in the Gazette, be exempt from rates for drainage within the district or provisional district from which such holding or part of a holding was transferred and shall thereafter be subject to such rates as apply within the district or provisional district to which the holding or part of the holding has been transferred. All rates due in respect of such lands within the district or provisional district from which such holding or part was transferred, to the date of such proclamation shall be paid.

(7) For the purposes of subsections five and six of this section rates shall be considered as accruing from day to day and shall be apportionable in respect of time accordingly.

(8) Where additional holdings or parts of holdings have been included in a district or provisional district under this section the Commission may in respect of those holdings or parts of holdings assess the rates under and in accordance with this Part for the year current at the date of such inclusion.

The

Irrigation and Water (Amendment).

The rates so assessed shall be levied and paid as prescribed.

Construc-
tion of
works for
additional
lands.

171. Upon the alteration of any district or provisional district to include additional holdings or parts of holdings, the Commission may in respect of such additional holdings or parts of holdings construct, acquire, or utilise, works for purposes in connection with the district or provisional district.

Contribu-
tions.

172. (1) The Commission may require owners of holdings within a district, including a provisional district, to contribute the whole or part of the capital cost of the works.

(2) The amount of the contribution, if any, so required to be paid and the terms, times and conditions of payment shall be in accordance with the proposal notified in the Gazette under the provisions of section one hundred and sixty-six or section one hundred and seventy of this Act, or where those proposals have been amended by a proclamation under this Part, then in accordance with the proposals as so amended.

(3) The contribution, if any, shall be in respect of benefited lands and shall be at an equal rate per acre.

(4) The contribution may be required to be paid in one payment or by instalments to be paid at intervals.

(5) The contribution shall be payable to the Bank on the due dates and shall be—

- (a) a charge upon the land; and
- (b) payable by the owner thereof.

(6) Any person liable to pay the contribution under this Part who transfers his estate or interest in or who abandons any benefited lands in respect of which the contribution is to be paid shall, within thirty days of such transfer or abandonment, give notice thereof to the Commission, and he shall nevertheless remain liable for

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for the contribution, or, where the contribution is required to be paid by instalments, for all instalments which became due for payment either—

- (a) before he transferred his estate or interest in or abandoned the benefited lands; or
- (b) before the said notice was given to the Commission.

(7) Where the contribution is required to be paid by instalments the following provisions shall have effect:—

- (a) If any person who transfers his estate or interest in any benefited lands pays to the Bank any instalment which becomes due for payment after he transfers his estate or interest, and before the notice of transfer is given to the Commission, he may recover the amount from the person to whom he transfers his estate or interest.
- (b) As between a person and any other person from or to whom he derives or transfers his estate or interest in benefited lands every instalment shall be considered as accruing from day to day and shall be apportionable in respect of time accordingly.

173. (1) The Commission shall fix in respect of the benefited lands within provisional districts and districts the rates for drainage as hereinafter provided. Fixing of rates.

(2) The Commission shall, in respect of each year commencing on the first day of July, fix during that year in accordance with the provisions of this Part the rates for drainage within a district or provisional district to be paid in respect of benefited lands and shall, in respect of each holding, assess the total amount of such rate. The rates so fixed and assessed shall be levied and paid as prescribed.

Irrigation and Water (Amendment).

Rates.

174. (1) The rates shall—

- (a) be levied as prescribed and payable only in respect of benefited lands;
- (b) in respect of each parcel of benefited lands commence to be payable from the date when the means of drainage of such parcel have been completed;
- (c) where the means of drainage benefit the benefited lands for portion only of the year in which the benefited lands become ratable be proportionate to the part of the year during which the means of drainage benefit such lands;
- (d) for the period from the date of the constitution of the provisional district to the date of the constitution of the district be not greater but may be less than the maximum annual rate notified in the Gazette under the provisions of section one hundred and sixty-six, or where that maximum annual rate has been amended by proclamation under the provisions of section one hundred and sixty-seven of this Act, the maximum annual rate as so amended;
- (e) for the period from the date of the constitution of the district to the thirtieth day of June next following the fifth anniversary of such constitution be not greater but may be less than the maximum annual rate notified in the Gazette under the provisions of section one hundred and sixty-eight of this Act;
- (f) after the thirtieth day of June next following the fifth anniversary of the constitution of the district be each year as fixed by the Commission.

(2)

Irrigation and Water (Amendment).

(2) Any person liable to pay rates under this Part who transfers his estate or interest in or abandons any benefited lands ratable under this Part, shall, within thirty days of such transfer or abandonment, give notice thereof to the Commission, and he shall nevertheless remain liable for the rate to the same extent as if he had not transferred his estate or interest in or abandoned the benefited land, provided that the rate was levied either—

(a) before he transferred his estate or interest in or abandoned the benefited lands; or

(b) before the said notice was given to the Commission.

(3) If any person who transfers his estate or interest in benefited lands pays to the Bank any rate in respect thereof which is levied after he transfers his estate or interest and before the notice of transfer is given to the Commission, he may recover the amount from the person to whom he transfers his estate or interest.

(4) As between a ratable person and any other person from or to whom he derives or transfers his estate or interest in the land every rate shall be considered as accruing from day to day and shall be apportionable in respect of time accordingly.

175. (1) (a) Overdue contributions and instalments of contribution and overdue rates payable under this Part shall be increased in accordance with this subsection.

Rates and
contribu-
tions.

(b) If any contribution or instalment of contribution or any rate so payable is unpaid at the expiration of three months after the due date of payment thereof the amount due shall be increased by a sum calculated at the rate of five per centum per annum.

Any

Irrigation and Water (Amendment).

Any increase under this paragraph shall be deemed to be part of the contribution or instalment of contribution or rate, as the case may be.

(c) The calculation under paragraph (b) of this subsection shall be in respect only of as many complete months as have expired between the date on which the payment became due and the date of payment, excluding any remaining portion of a month.

(d) If in any case the increase is less than threepence the increase shall be threepence.

(e) The increase in the contributions or instalments of contribution or in the rates under this subsection shall continue to apply to all unpaid contributions, instalments of contribution or rates notwithstanding that judgment for same may have been obtained in any court, including the District Court.

(2) In any case where more than one person is an owner within the meaning of this Part of benefited lands, any contribution or instalment of contribution payable or rate assessed in respect of such benefited lands may be demanded from or levied upon any one or more of such persons and the Bank may recover the contribution, instalment of contribution or rate as against any person from whom the contribution or instalment of contribution is so demanded or upon whom the rate is so levied:

Provided that nothing in this subsection shall entitle the Bank to recover more than the full amount of the contribution or instalment of contribution or the rate, as the case may be.

(3) (a) Where the benefited lands are owned jointly by two or more owners, such owners shall be jointly and severally liable to the Bank for the contribution, instalment of contribution or rate, but, as between themselves, each shall be liable only for such part of the contribution,

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contribution, instalment of contribution or rate as is proportionate to his interest in the benefited lands and in the improvements thereon.

(b) If any such owner pays to the Bank more than his proportionate part, he may recover the excess from the others.

(4) Where during any year any benefited lands revert to the Crown and in respect of that year and in respect of those lands an instalment of contribution is payable or rates are or are to be fixed or assessed, the owner of such lands shall, as regards such lands, be liable only for that part of the instalment of contribution or of the rates, as the case may be, which accrues due in respect of the period of the year during which such lands are held by him.

For the purposes of this subsection the instalment of contribution or the rates shall be considered as accruing from day to day and shall be apportionable in respect of time accordingly.

Any excess payment by such owner shall be refunded to him.

This subsection shall not apply in any case where the contribution is required to be paid in one payment.

(5) In the event of the Commission at any time finding it has made an error in requiring payment of a contribution or instalment of contribution or in the assessment of a rate in respect of any benefited lands or owner through lack of knowledge of the name of the owner, or the area or extent of the benefited lands, or miscalculation, the Commission, upon such error being brought under its notice, may at any time amend the requirement or re-assess the rate in respect of any benefited lands or owner affected.

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Liability
for rates.

176. (1) All rates due and payable or to become due and payable under this Part shall be payable to the Bank.

(2) Rates under this Part shall be—

(a) a charge upon the land; and

(b) payable by the owner thereof.

Surveys and
works.

177. (1) For the purposes of this Part the Commission or any person authorised by it may enter any land and take levels and make surveys and marks and fix pegs and stakes and inspect any works.

(2) Any person hindering the Commission or any such authorised person in the exercise of such power shall be liable to a penalty not exceeding twenty pounds.

(3) Any person who removes, injures or interferes with any marks made or pegs or stakes fixed as aforesaid shall be liable to a penalty not exceeding fifty pounds.

(4) The Commission for the purposes of this Part may construct, maintain and repair any work on any land, street, road or reserve.

(5) Every work which the Commission is authorised by this Part to construct or acquire shall be respectively constructed or acquired under the Public Works Act, 1912, as amended by subsequent Acts, and all the powers and the provisions of the said Act relating to authorised works shall be applicable to such work and for all purposes of the said Act such work shall be deemed an "authorised work" and the Commission a "constructing authority" within the meaning of the said Act and the provisions of sections thirty-four, thirty-five, thirty-six and thirty-seven of that Act shall not apply to any such work.

(6) Without prejudice to the generality of subsection five of this section the provisions of section thirty-eight of the Public Works Act, 1912, as amended by subsequent Acts, shall,
mutatis

Irrigation and Water (Amendment).

mutatis mutandis, apply to any contracts for carrying out any such work.

(7) Notwithstanding the provisions of section ninety-one of the Public Works Act, 1912, as amended by subsequent Acts, the Commission shall not be compelled nor shall it be the duty of the Commission to make or maintain any fence in connection with any such work for the accommodation of any person or for any purpose whatsoever, but the Commission may, in its discretion, make and maintain such fences in connection with any such work as it may deem fit.

(8) For the purpose of the construction or the maintenance or the repair of any work proposed to be constructed, or constructed, utilised or acquired under the authority of this Part, or to which this Part applies, the Commission shall be deemed to have had and shall have power at any time—

(a) to enter any lands being—

- (i) the site of a work constructed or the proposed site of a work to be constructed under this Part; and
- (ii) within a distance of not more than sixty-six feet from the nearest boundary of such site or proposed site; and

(b) to use such lands or sites for the said purpose of construction or maintenance or repair,

notwithstanding an easement or right so to enter or use such lands or sites may not have been granted or acquired.

(9) Where any claim is made for compensation by reason of the exercise by the Commission of any power conferred by subsection one, subsection four, or subsection eight of this section there shall be taken into consideration and given effect to by way of set-off or abatement the enhanced

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enhanced value of the land of the claimant on account of the provision under this Part of a subsoil drainage scheme or surface drainage scheme, but in no case shall this subsection operate so as to require any payment to be made by the claimant to the Commission in consideration of such enhancement of value:

Provided that—

- (a) where the land entered upon or used by the Commission is the site of a work or the proposed site of a work and is of a width in excess of one and one-half chains; or
- (b) where in the opinion of the Commission—
 - (i) the area of the land of the claimant entered upon or used as compared with the total area of his holding is such as to place an undue burden upon him if the said set-off or abatement were applied either wholly or partially; or
 - (ii) the location of the land of the claimant entered upon or used is such as to cause undue loss or expense to him on account of severance,

the set-off or abatement may be waived by the Commission either wholly or in part.

Provision
of works
by owners.

178. (1) Every owner of benefited lands within a subsoil drainage district, including a provisional district, shall provide such silt boxes and other works as may be prescribed at or adjacent to all points of junction of drainage from the benefited lands with the works of the district or provisional district and shall adopt such means for the protection of the works of the district or provisional district from siltation or blockage as may be prescribed.

(2).

Irrigation and Water (Amendment).

(2) The Commission may require owners from time to time to remove silt and other material from and repair and renew the said silt boxes and other works.

(3) Every owner of benefited lands within a surface drainage district, including a provisional district, shall provide such works as may be prescribed at or adjacent to all points of entry of water from the benefited lands into the works of the district or provisional district and shall adopt such means of protection of the works of the district or provisional district from siltation and erosion as may be prescribed.

(4) The Commission may, in any special case, direct any owner of benefited lands to provide such additional works as the Commission may specify at or adjacent to all points of junction of drainage from such benefited lands with the works of the district or provisional district or at or adjacent to all points of entry of water from such benefited lands into the works of the district or provisional district.

(5) The Commission may, in any special case, direct any owner of benefited lands to adopt such special means for the protection of the works of the district or provisional district from siltation, blockage or erosion as the Commission may specify.

(6) Where any owner of benefited lands neglects or fails to comply with any direction given under subsection four or subsection five of this section within the time limited in the direction the Commission may provide such specified additional works or adopt such specified means and may recover the costs and expenses incurred in so doing from such owner as a debt.

179. (1) The Commission may from time to time at the request or with the consent of the owners of lands affected provide additional works.

Irrigation and Water (Amendment).

works in a district, including a provisional district, and if by reason of such works the area of benefited lands within a holding is increased such increased area shall be notified to the owner, and as from the date of such notification or the date of the completion of such additional works, whichever is the later, the additional area shall be subject to rates as benefited lands.

(2) The Commission, in respect of additional works so provided, may call upon the owners of benefited lands to contribute towards the capital cost of such additional works, provided that such contribution shall not, without the consent of such owners, be at a greater rate per acre of benefited lands than that notified under the provisions of section one hundred and sixty-six of this Act, or any amended rate per acre fixed by proclamation under the provisions of section one hundred and sixty-seven of this Act in respect of the district in which such benefited lands are located.

180. (1) Prior to the disposal of any part or parts of a holding within a district or provisional district by the owner of the holding the said owner shall construct at his own cost such drainage works as are deemed by the Commission to be necessary to carry drainage water from such part or parts of the holding to be disposed of or from the part or parts to be retained, to the works of the district or provisional district.

All such drainage works shall be to the approval of the Commission in respect of location, design, form, dimensions and construction.

(2) Where the owner of a holding fails to construct the drainage works referred to in subsection one of this section the Commission may construct such works and may recover the costs and expenses (including the cost of acquisition of any land or easement deemed by the Commission to be required for such works) incurred in so doing from such owner as a debt.

(3).

Provision
of works
where lands
subdivided.

Irrigation and Water (Amendment).

(3) Where the owner of a holding desires to dispose of any part of the holding prior to the construction by the Commission in the vicinity of the holding of any of the works of the provisional district the Commission may if it deems fit relieve the owner from the obligation to construct the drainage works referred to in subsection one of this section.

(4) All drainage works constructed in pursuance of this section shall, upon their completion, be handed over by the said owner to and become the property of the Commission without charge.

(5) At the request of the owner of a holding who desires to dispose of any part of it the Commission may, by agreement with him, undertake the construction at his cost of drainage works required under this section.

(6) All land deemed by the Commission to be required for the drainage works constructed in pursuance of this section shall be provided by the owner and be transferred to the Commission without charge: Provided that where the Commission is satisfied that an easement over such land is sufficient, the owner shall, before disposing of any part of the holding affected, grant such easement to the Commission without charge.

(7) The Commission may, for the purposes of this section, authorise the construction of works on any street, road, or reserve.

181. (1) The water drained from subsoils and surfaces of lands within a district, including a provisional district, and conveyed in drains, channels, pipes, or other works may be discharged into any river or lake as defined in Part II of this Act.

Water may
be drained
into rivers.

(2) The Commission may, if it deems fit, divert water from any work of a district, including a provisional district, into any channel and
may

Irrigation and Water (Amendment).

may sell any water so diverted and may authorise any person similarly to divert any such water and may impose such terms and conditions and make such charges in respect of such diversion as it may deem fit in each case.

(3) Any works provided by the Commission in connection with such diversions as aforesaid shall be works of the district or provisional district.

Provisions
relating to
the Bank.

182. (1) The powers, authorities, duties and functions conferred or imposed upon the Bank by this Part shall be exercised and performed by the Bank through its Irrigation Agency.

(2) Moneys which by virtue of this Part become payable to or recoverable by or which may be received by the Bank shall be treated in account by the Bank and disposed of by it when received as if such moneys were revenue moneys as defined in Division 1 of Part VI B of the Government Savings Bank Act, 1906, as amended by subsequent Acts.

(3) To the extent that the same are applicable and are not inconsistent with this Part, the provisions of Division 1 of Part VI B of the Government Savings Bank Act, 1906, as amended by subsequent Acts, shall apply to all moneys which become payable to or recoverable by or which are received by the Bank in pursuance of this Part.

Regulations.

183. (1) The Commission may, with the approval of the Governor, make regulations not inconsistent with this Part prescribing all matters which by this Part are required or permitted to be prescribed, or which are necessary or convenient to be prescribed for carrying this Part into effect.

(2)

Irrigation and Water (Amendment).

(2) Without prejudice to the generality of the powers conferred by subsection one of this section the Commission, with the approval of the Governor, may make regulations—

- (a) for the prevention of injury to works constructed or used under this Part or any works used in connection therewith;
- (b) with respect to the fixing, assessing, levying and collection of rates;
- (c) prescribing the forms of notices required under this Part and the manner of and periods for giving same;
- (d) prescribing the forms, dimensions, levels, location and materials for works to be provided by owners of benefited lands within subsoil drainage districts, including provisional districts, at or adjacent to points of junction of drainage from benefited lands with the works of the district or provisional district and the means of protection of the works of the district or provisional district from siltation and blockage;
- (e) prescribing the forms, dimensions, levels and materials for works to be provided by owners of benefited lands within surface drainage districts, including provisional districts, at points of entry of water from the benefited lands into the works of the district or provisional district, and the means of protection of the works of the district or provisional district from siltation and erosion;
- (f) generally for carrying out the provisions of this Part.

(3)

Irrigation and Water (Amendment).

(3) The regulations may prescribe a penalty not exceeding twenty pounds for any breach thereof or where the breach continues not exceeding five pounds for every day during which such breach continues.

(4) The regulations shall—

- (a) be submitted to the Governor for his approval;
- (b) after approval by the Governor be published in the Gazette;
- (c) take effect from the date of publication thereof, or from a later date to be specified in the regulations; and
- (d) be laid before both Houses of Parliament within fourteen sitting days after publication if Parliament is then in session, and, if not, then within fourteen sitting days after the commencement of the next session.

(5) If either House of Parliament passes a resolution of which notice has been given at any time within fifteen sitting days after the regulations have been laid before such House disallowing any regulation or part thereof, the regulation or part shall thereupon cease to have effect.

(6) The production of a copy of the Gazette containing any regulation purporting to have been made under this Part shall be evidence, until the contrary is proved, of the due making of such regulation and that all preliminary steps have been duly taken necessary to give full force and effect to the same.

(7) Whenever by any section of this Part or any regulations made thereunder any person is liable to a penalty or to pay any sum of money, whether as compensation or in any other way, such penalty or sum may be recovered before any stipendiary magistrate or police
magistrate

Irrigation and Water (Amendment).

magistrate or two or more justices of the peace in petty sessions, in accordance with the Acts in force for the time being regulating summary proceedings before justices.

- (h) by inserting in section one next after the matter relating to Part VII the following words:—
- Sec. 1.
(Consequential.)

PART VIII.—SUBSOIL DRAINAGE DISTRICTS
AND SURFACE DRAINAGE DISTRICTS—SS.
165-183.

PART III.

AMENDMENT OF THE IRRIGATION ACT, 1912-1943.

3. The Irrigation Act, 1912-1943, is amended—

Amendment of
Act No. 73,
1912.

- (a) by omitting from section four the words “Minister for Agriculture” wherever occurring and by inserting in lieu thereof the word “Minister”;
- Sec. 4.
(Commission.)
- (b) by omitting from section 5b the words “Minister for Agriculture” and by inserting in lieu thereof the word “Minister.”
- Sec. 5b.
(Dependent relative to receive money value of leave not taken or completed.)

4. The Irrigation Act, 1912-1943, is further amended—

Further amendment of
Act No. 73,
1912.

- (a) by omitting section 7A and by inserting in lieu thereof the following section:—
- Subst.
sec. 7A.

7A. (1) Where any holding being an irrigation farm lease or an irrigation farm purchase or land formerly held as an irrigation farm purchase in respect of which a Crown Grant in fee simple has been issued, is subdivided into two or more parts or is altered by the surrender or resumption of part thereof or by the addition of land thereto or where the irrigable area of any such

Number and price of water rights where farm subdivided, etc.

Irrigation and Water (Amendment).

such holding is increased, or additional facilities for watering any such holding are provided by the Commission, the Minister may by notification in the Gazette—

(a) determine the number of water rights (if any) which shall attach to—

- (i) each separate holding constituted by the subdivision; or
- (ii) the holding as altered; or
- (iii) the holding with increased irrigable area; or
- (iv) the holding with additional facilities for watering,

or to any part of any such holding;

(b) fix the prices for the water rights attached to the whole or any part or fix different prices for the water rights attached to different parts of any such holding as is referred to in paragraph (a) of this subsection;

(c) specify the number of the said water rights which are to be a fixed charge on any such holding as is referred to in paragraph (a) of this subsection or any part of any such holding;

(d) specify such provisions and conditions not inconsistent with this Act as according to the facts and circumstances the Minister thinks fit.

(2) Any notification under this section which relates to land within the Coomealla Irrigation Area may specify the year (not being later than the fifth year after the date of the subdivision or of the alteration of the holding by the surrender or resumption of part thereof or by the addition of land thereto, or the increase of

Irrigation and Water (Amendment).

of the irrigable area, or the provision by the Commission of additional facilities for watering the holding, as the case may be) during and after which the water rights shall respectively attach to and be a fixed charge on—

- (i) each separate holding constituted by the subdivision; or
- (ii) the holding as altered; or
- (iii) the holding with increased irrigable area; or
- (iv) the holding with additional facilities for watering,

or on any part of any such holding, as the case may be.

Where a year is so specified, the notification shall also specify what proportion of such water rights or what number of water rights shall respectively attach to and be a fixed charge on the holding or part thereof, as the case may be, during each year of the period between the date of subdivision, or alteration of the holding, or the date upon which the irrigable area was increased, or the date upon which additional facilities for watering were provided by the Commission, as the case may be, and the commencement of the year so specified.

Where no year is so specified, the water rights shall respectively attach to and be a fixed charge on the holding or part thereof, as the case may be, as from the date of subdivision, or alteration of the holding, or the date upon which the irrigable area was increased, or the date upon which additional facilities for watering were provided by the Commission, as the case may be.

- (b) by omitting subsection three of section 7B;

Sec. 7B.
(Conse-
quential.)

(c)

Irrigation and Water (Amendment).

New
sec. 11L.

Special
provisions
relating to
portions of
irrigation
areas
included in
municipali-
ties and
shires.

(c) by inserting next after section 11H the following new section:—

11L. (1) In this section—

“Coomealla Irrigation Area” means the Coomealla Irrigation Area constituted under this Act.

“Curlwaa Irrigation Area” means the irrigation area constituted under the provisions of the Wentworth Irrigation Act, as amended by subsequent Acts.

(2) The provisions of this section, unless the context or subject-matter otherwise indicates or requires, shall apply only to and in respect of those portions of the Coomealla Irrigation Area and the Curlwaa Irrigation Area which have been or which may hereafter be included in a municipality or shire.

(3) Any land in the Wentworth Municipality within the Coomealla Irrigation Area or the Curlwaa Irrigation Area at the commencement of the Irrigation and Water (Amendment) Act, 1944, which has before such commencement been defined, reserved or left as a road within any subdivision of Crown lands or lands vested in the Commission as indicated on the official plans of the same, shall be deemed to be a public road for the purposes of sections two hundred and forty to two hundred and seventy-five (both inclusive) and section two hundred and seventy-seven of the Local Government Act, 1919, as amended by subsequent Acts, but any portion of such land occupied by a canal, channel or drain under the control of the Commission shall be deemed not to be a part of the road.

(4) The Commission for the purposes of this Act and the Wentworth Irrigation Act, as amended by subsequent Acts, may construct, maintain and repair any work on any land, street, road or reserve.

(5)

Irrigation and Water (Amendment).

(5) The Commission shall have power at all times to enter any land, street, road or reserve vested in or under the control of the council of a municipality or shire and to carry out therein all such works as it may deem necessary for the purpose of exercising any of the powers conferred on the Commission by this Act or the Wentworth Irrigation Act, as amended by subsequent Acts: Provided that if in the carrying out of any such works damage is caused to any land, street, road or reserve vested in or under the control of the council of any municipality or shire, the Commission shall make all such damage good to the satisfaction of the council.

(6) Before commencing any work which may in any way affect any land, street, road or reserve vested in or under the control of the council of a municipality or shire, the Commission shall supply such council with information showing the nature of the proposed work.

(7) (a) Where any bridge, culvert, canal, channel, drain, or other work is constructed across a public road (whether so constructed before or after the commencement of the Irrigation and Water (Amendment) Act, 1944) in the exercise of the powers conferred on the Commission under this Act or the Wentworth Irrigation Act, as amended by subsequent Acts, it shall be the duty of the Commission to maintain the same and the immediate approaches to any such bridge or culvert in good and serviceable condition.

(b) Where any canal, channel, drain or other work is constructed for the purpose of carrying water across a public road it shall be the duty of the Commission to provide a bridge or culvert or other means of crossing which, having regard to the nature of the work and the

Irrigation and Water (Amendment).

the nature and extent of the traffic on such public road, is sufficient to permit the passage of traffic along such public road.

(c) Any difference arising between the Commission and the council of the municipality or shire within which a public road is situated which arises out of the proper performance by the Commission of any duty imposed upon it by this subsection, shall be deemed to be a difference within the meaning of section six hundred and fifty-four of the Local Government Act, 1919, and shall be settled in the manner provided by that section for the settlement of differences between a council and any department of the Government.

(d) In this subsection "public road", "municipality" and "shire" have the meanings respectively given to those expressions in the Local Government Act, 1919.

Sec. 1.
(Consequential.)

(d) by omitting from section one the symbols "11H" and by inserting in lieu thereof the symbols "11I."

PART IV.

AMENDMENT OF THE CROWN LANDS CONSOLIDATION
Act, 1913.

Amendment
of Act
No. 7, 1913.
Sec. 5.
(Definitions.)

5. (1) The Crown Lands Consolidation Act, 1913, as amended by subsequent Acts, is amended by inserting at the end of section five the following new subsection:—

(2) A reference in any provision of this Act to "the Minister" shall, in the application of that provision to or in respect of an irrigation area, be read as a reference to the Minister for the time being charged with the administration of the Irrigation Act, 1912-1944.

(2)

Irrigation and Water (Amendment).

(2) The Irrigation (Amendment) Act, 1916, as amended by subsequent Acts, is amended by omitting section three.

Amendment
of Act No. 22,
1916.
(Conse-
quential.)

(3) The War Service Land Settlement Act, 1941, is amended by omitting from subsection one of section three the words "Minister for Agriculture for the time being" and by inserting in lieu thereof the words "Minister for the time being charged with the administration of the Irrigation Act, 1912."

Amendment
of Act No.
43, 1941.
(Conse-
quential.)

6. The Crown Lands Consolidation Act, 1913, as amended by subsequent Acts, is further amended—

Further
amendment of
Act No. 7,
1913.

- (a) by omitting from subsection one of section one hundred and forty-six the words "in respect of which the conditions of improvements and residence, if any, have been fulfilled";
- (b) by omitting from the same subsection the words "in respect of which the certificate of conformity has issued";
- (c) by omitting from subsection three of the same section the words "so as to conform to any regulations made or to be made in that behalf";
- (d) by inserting in subsection four of the same section after the figures and symbol "142D" the words "of this Act";
- (e) by omitting from subsection seven of the same section the words "After subdivision the" and by inserting in lieu thereof the words "Upon subdivision any existing";
- (f) by inserting in subsection nine of the same section after the word "conditions" the words "and to such other terms and conditions as may be imposed under and by virtue of the provisions of this section."

Sec. 146.
(Sub-
division of
holdings.)

Irrigation and Water (Amendment).

PART V.

AMENDMENT OF THE CROWN LANDS (AMENDMENT) ACT,
1932.

Amendment
of Act No.
69, 1932.

7. The Crown Lands (Amendment) Act, 1932, as amended by subsequent Acts, is amended—

Sec. 19.
(Waiver or
remission of
interest
or rent.)

- (a) by inserting in section nineteen after the words “special land board” wherever occurring the words “or local land board, as the case may be”;
- (b) by inserting in subsection two of the same section after the word “recommends” the words “may postpone payment of the whole or part of any instalment payable in respect of any purchase of land or Crown improvements made under or by the operation of any of the Acts referred to in subsection one of this section, or”;
- (c) by omitting from paragraph (a) of the same subsection the words “to the Commission”;
- (d) by inserting at the end of the same section the following new subsection:—

(8) Any application under the provisions of this section by a holder of land of any tenure under the Wentworth Irrigation Act, as amended by subsequent Acts, shall be referred to the special land board constituted for the land district of Coomealla.

Irrigation and Water (Amendment).

PART VI.

AMENDMENT OF THE WENTWORTH IRRIGATION ACT.

8. The Wentworth Irrigation Act, as amended by subsequent Acts, is amended by inserting next after section twenty-two the following new section:—

22A. (1) Except with the consent of the Water Conservation and Irrigation Commission (hereinafter in this section referred to as the Commission)—

- (a) a lease from the Commission of land within the irrigation area shall not be transferred or assigned or subleased either in whole or in part or otherwise dealt with;
- (b) a sublease of the whole or part of a lease from the Commission within the irrigation area shall not be assigned or subleased either in whole or in part or otherwise dealt with;
- (c) land within the irrigation area in course of purchase in fee-simple from the Commission shall not be transferred or assigned or leased either in whole or in part or otherwise dealt with;
- (d) a lease of the whole or part of land within the irrigation area in course of purchase in fee-simple from the Commission shall not be assigned or subleased either in whole or in part or otherwise dealt with;
- (e) land within the irrigation area, the fee simple of which has been transferred from the Commission, shall not be transferred or leased either in whole or in part or otherwise dealt with;
- (f) a lease of the whole or part of land within the irrigation area, the fee simple of which has been transferred from the Commission, shall not be assigned or subleased either in whole or in part or otherwise dealt with.

Application for the consent of the Commission shall be made in the prescribed form.

c

The

Amendment
of Act 54
Vict. No. 7.
New sec.
22A.
Restrictions
as to
assigns of
holdings.

Irrigation and Water (Amendment).

The granting or refusing of any such application shall be entirely in the discretion of the Commission.

Any transfer, lease, assignment, sublease, or other dealing whatsoever, which would contravene, or have the effect of contravening the provisions of this subsection, shall not be valid for any purpose whatsoever.

This subsection shall not apply to a mortgage or release of mortgage or a transfer of mortgage, and any such mortgage or release of mortgage or transfer of mortgage may be effected without the consent of the Commission having been obtained.

(2) The consent of the Commission to a transfer or other dealing of any of the classes referred to in subsection one of this section shall be refused unless and until the Commission is satisfied that—

(a) the whole of any moneys due to the Bank or the Commission in respect of the lease or land the subject of the dealing, or such portion thereof as may be required to be paid by the Bank or the Commission, has been paid; and

(b) (i) the proposed transferee or assignee has signed an agreement that all moneys (if any) remaining owing to the Commission or the Bank in respect of the lease or land the subject of the dealing shall be paid by him and that he will execute such security for the payment of all moneys owing as aforesaid to the Commission as the Commission may require or to the Bank as the Bank may require; and

(ii) the proposed transferee or assignee has executed such security.

(3) No person shall, except by way of mortgage, acquire by transfer, assignment, lease, sublease or otherwise any land within the irrigation area, which either by itself, or together with such land already held by him, would substantially exceed,

in

Irrigation and Water (Amendment).

in the opinion of the Commission, an area which, when used for any purpose for which it is reasonably fitted, would be sufficient for the maintenance in average seasons and in average circumstances of an average family.

No transfer, assignment, lease or sublease or other dealing whatsoever in contravention of the provisions of this subsection shall be valid for any purpose whatsoever.

(4) In the event of the Commission refusing to consent to a transfer, assignment, lease or sublease to any person on the grounds referred to in subsection three of this section, either party may, on payment of the prescribed fee and in the prescribed manner, cause the matter to be referred to the special land board constituted under the provisions of the Crown Lands Consolidation Act, 1913, as amended by subsequent Acts, for the land district of Coomealla, for inquiry and report to the Minister.

The Minister shall, upon consideration of the report of the special land board, give his decision on the matter and such decision shall be final and shall be carried into effect by the Commission.

(5) Where under the provisions of this section it becomes a matter for determination by the Commission, the special land board or the Minister as to what area, when added to the area of land already held by any person, will constitute an area which, when used for any purpose for which it is reasonably fitted, would be sufficient for the maintenance in average seasons and in average circumstances of an average family, the Commission, the special land board or the Minister shall take into account in addition to lands already held by such person, lands already held by such person's wife or husband, as the case may be, as if the said lands were lands held by such person:

Provided that nothing herein contained shall apply to a case where husband and wife are living apart under a decree for judicial separation made by any court of competent jurisdiction.

(6)

Irrigation and Water (Amendment).

(6) If a holding within the irrigation area devolves under a will or intestacy upon a person who is not qualified under subsection three of this section to hold the same, such person may nevertheless hold such holding for a period of three years after the death of the testator or intestate, or for such further period as the Commission may permit or where the holding is a lease from the Commission for the unexpired period of the lease, whichever is the shorter period. Within such period or further period such person may, upon application to the Commission, and on showing that he is then qualified under that subsection to hold the same, receive from the Commission a certificate to that effect, which shall entitle him to hold the holding; or such person may, subject to this section, sell and transfer the holding.

If by the provisions of the will or by law such person has power to sell the holding, the sale may be effected under such power; in any other case the sale may be effected with the consent of all persons beneficially entitled to the holding, or by order of the Supreme Court in its equitable jurisdiction, which may be obtained in the manner prescribed by rules of court, or until such rules are made, by summons in chambers.

If such person does not within such period or further period obtain the certificate of the Commission as aforesaid nor transfer the holding as aforesaid, the same shall be liable to be forfeited.

(7) Any execution creditor who has seized under process of any court any holding within the irrigation area and has offered the same for sale by public auction, if the debtor's interest in the land is not then sold to a bona fide purchaser who must be a person qualified to hold the holding under subsection three of this section, may, in the manner prescribed by regulations made under this Act, go into possession of the holding.

The

Irrigation and Water (Amendment).

The said execution creditor shall, within two years after the commencement of such possession, or within such further period as shall be approved by the Commission or, where the holding is a lease from the Commission, before the expiration of the period of the lease, whichever is the shorter period, sell the said debtor's interest in the holding to a bona fide purchaser. Such purchaser must be a person qualified to hold a holding under subsection three of this section, and shall be subject to all conditions affecting the debtor.

In default of sale within such period or further period the holding shall be liable to be forfeited.

(8) If any holding within the irrigation area is mortgaged and the mortgagee enters into possession of the same under his mortgage, he may hold the same for a period of three years after the date of his entering into possession as aforesaid, or for such further period as the Commission may permit or, where the holding is a lease from the Commission, for the unexpired period of the lease, whichever is the shorter period.

Every mortgagee who enters into possession of a holding shall, within a period of twenty-eight days after the date of entering into possession, notify the Commission of such entry, and in default of notice within such period the holding shall be liable to be forfeited, but the mortgagee shall not, notwithstanding the terms of his mortgage, so enter into possession of the mortgaged holding more than once, except by permission of the Commission.

Such mortgagee shall not foreclose the mortgage except with the consent of the Commission. Such consent shall be applied for and may be given or refused, as in the case of a transfer, and the provisions of subsection one of this section shall apply thereto.

Such mortgagee shall not transfer the holding except in accordance with this section or by way of discharge of mortgage.

If

Irrigation and Water (Amendment).

If within such period of three years or such further period the mortgagee does not obtain the consent of the Commission to a foreclosure or does not transfer the holding in accordance with this section, the same shall be liable to be forfeited.

A foreclosure or transfer in contravention of this subsection shall be void and any agreement or contract for the sale of any holding made without the permission of the Commission shall render such holding liable to be forfeited if such agreement or contract is not submitted for the approval of the Commission within three months from date of execution thereof.

The fact that the mortgagee or some person by his authority occupies or uses any part of the mortgaged holding shall be prima facie evidence that the mortgagee has entered into possession of the holding under the mortgage.

(9) Where any holding within the irrigation area becomes liable to forfeiture under this section such forfeiture may be declared by the Commission by notification published in the Gazette. Upon publication of such notification the holding shall vest in the Commission.

(10) In subsections six, seven, eight and nine of this section the expression "holding" means—

- (a) any lease from the Commission of land within the irrigation area;
- (b) any land within the irrigation area which is in course of purchase from the Commission;
- (c) any land within the irrigation area which has been transferred from the Commission.

(11) The provisions of this section shall apply to and in respect of all leases of land within the irrigation area, all lands within the irrigation area which are in course of purchase from the Commission and all lands within the irrigation area which have been transferred from the Commission whether

the

Irrigation and Water (Amendment).

the lease, purchase or transfer was made before or is made after the commencement of the Irrigation and Water (Amendment) Act, 1944.

PART VII.

MISCELLANEOUS.

9. (1) The minute of the Executive Council dated the twenty-first day of June, one thousand nine hundred and forty-four, and confirmed on the same day, whereby the Minister for Conservation for the time being was authorised to exercise the powers and perform the official duties and be responsible for the obligations appertaining or annexed to the Minister for Agriculture under the Irrigation Act, 1912-1943, the Crown Lands Consolidation Act, 1913, as amended by subsequent Acts (and read with the Irrigation (Amendment) Act, 1916) and the War Service Land Settlement Act, 1941, shall be and shall be deemed always to have been effective to vest in the Minister for Conservation the powers, authorities, duties and functions of the Minister for Agriculture as chairman of the Water Conservation and Irrigation Commission. Validations.

(2) The Water Conservation and Irrigation Commission shall, for all purposes, be deemed to have been duly constituted by the Minister for Conservation and by the two other Commissioners appointed pursuant to section four of the Irrigation Act, 1912-1943, during the period commencing on the twenty-first day of June, one thousand nine hundred and forty-four, and terminating upon the commencement of this Act.

10. (1) The notification published in the Gazette number one hundred and seventy-five of the eleventh day of December, one thousand nine hundred and twelve, of the appropriation and resumption of the land described in the Schedule to this Act shall be and shall be deemed always to have been valid and effectual as an appropriation of so much of the said land as was Crown land Validation of resumption.

Irrigation and Water (Amendment).

land and a resumption of so much of the said land as was private property pursuant to provisions of the Public Works Act, 1912.

(2) The notification referred to in subsection one of this section shall have and take effect for all purposes as if the words "Public Works Act, 1900," were omitted therefrom and the words "Public Works Act, 1912," were inserted in lieu thereof.

(3) The provisions of section 31A of the Real Property Act, 1900, shall apply to and in respect of the said notification and the land thereby appropriated and resumed.

SCHEDULE.

Sec. 10.

ALL that piece or parcel of land situate in the parish of Bundidgerry, county of Cooper, and State of New South Wales: Commencing on the right bank of Murrumbidgee River, at the south-eastern corner of portion 1 of 640 acres, in the said parish of Bundidgerry; and bounded thence on the west by a line partly forming the eastern boundaries of portions 1 and 11 bearing north to the north-western side of a road 2 chains wide bounding the said portion 11; thence on the south-east and south-west by north-western and north-eastern boundaries of the said road bounding portions 11, 12, and 13 to an angle in the eastern boundary of 13 acres 15 perches, appropriated by Gazette of the 3rd June, 1908; thence again on the west by an eastern boundary of the said appropriation bearing northerly to the south-eastern corner of portion 6 of 163 acres; thence again on the west by part of the eastern boundary of the said portion 6 bearing north to a point west of the south-western corner of portion 14; thence on the north by a line partly forming the southern boundary of the said portion 14 bearing east to the right bank of Bundidgerry Creek; thence generally on the north by the right bank of the said Bundidgerry Creek upwards to the south-western corner of portion 32, parish of Grong Grong; thence on the east by a line partly forming the western boundary of portion 31 and part of the western boundary of portion 29 bearing south to the north-eastern corner of 15 acres, resumed by Gazette of the 12th June, 1907; thence by the northern, the western, and the southern boundaries of the said resumption being lines bearing west, south, and east, respectively to the right bank of the Murrumbidgee River aforesaid; and thence generally on the south by that river downwards, to the point of commencement,—having an area of about 1,960 acres, and said to be in the possession of the Crown and occupation of F. E. Sides.

By Authority:

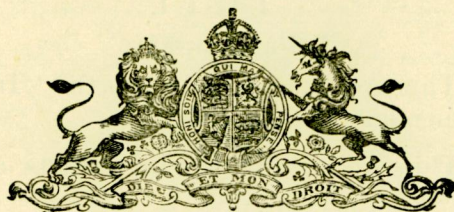
THOMAS HENRY TENNANT, Government Printer, Sydney, 1944.

[1s. 6d.]

I certify that this PUBLIC BILL, which originated in the LEGISLATIVE ASSEMBLY, has finally passed the LEGISLATIVE COUNCIL and the LEGISLATIVE ASSEMBLY of NEW SOUTH WALES.

W. R. McCOURT,
Clerk of the Legislative Assembly.
Legislative Assembly Chamber,
Sydney, 14 November, 1944.

New South Wales.



ANNO OCTAVO

GEORGII VI REGIS.

Act No. 26, 1944.

An Act to make provision for subsoil drainage and surface drainage in certain areas; to amend the Water Act, 1912-1943, the Irrigation Act, 1912-1943, the Crown Lands Consolidation Act, 1913, the Crown Lands (Amendment) Act, 1932, the Irrigation (Amendment) Act, 1916, the War Service Land Settlement Act, 1941, the Wentworth Irrigation Act, and certain other Acts in certain respects; to validate certain matters; and for purposes connected therewith. [Assented to, 22nd November, 1944.]

BE

I have examined this Bill, and find it to correspond in all respects with the Bill as finally passed by both Houses.

G. BOOTH,
Chairman of Committees of the Legislative Assembly.

Irrigation and Water (Amendment).

BE it 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 :—

PART I.

PRELIMINARY.

Short title,
division
into Parts
and citation.

1. (1) This Act may be cited as the "Irrigation and Water (Amendment) Act, 1944."

(2) This Act is divided into Parts as follows:—

PART I.—PRELIMINARY.

PART II.—AMENDMENT OF THE WATER ACT, 1912-1943.

PART III.—AMENDMENT OF THE IRRIGATION ACT, 1912-1943.

PART IV.—AMENDMENT OF THE CROWN LANDS CONSOLIDATION ACT, 1913.

PART V.—AMENDMENT OF THE CROWN LANDS (AMENDMENT) ACT, 1932.

PART VI.—AMENDMENT OF THE WENTWORTH IRRIGATION ACT.

PART VII.—MISCELLANEOUS.

SCHEDULE.

(3) The Irrigation Act, 1912, as amended by subsequent Acts and by this Act, may be cited as the Irrigation Act, 1912-1944.

(4) The Water Act, 1912, as amended by subsequent Acts and by this Act, may be cited as the Water Act, 1912-1944.

PART

Irrigation and Water (Amendment).

PART II.

AMENDMENT OF THE WATER ACT, 1912-1943.

2. The Water Act, 1912-1943, is amended—

Amendment of
Act No. 44,
1912.

- (a) by inserting at the end of section forty-four the following proviso:—

Sec. 44.
(Rolls for
first
election.)

Provided that any person so liable to pay rates may by instrument in writing authorise the Commission to place on the roll of voters the name of some other person in lieu of his own name and in such case the name of such other person shall be placed on the roll in lieu of the name of the person so liable to pay rates.

- (b) by inserting at the end of section forty-five the following proviso:—

Sec. 45.
(Rolls for
subsequent
elections.)

Provided that any person so liable to pay rates may by instrument in writing authorise the trustees to place on the roll of voters the name of some other person in lieu of his own name and in such case the name of such other person shall be placed on the roll in lieu of the name of the person so liable to pay rates.

- (c) by inserting at the end of section forty-six the following new subsection:—

Sec. 46.
(Plural
voting.)

(3) For the purposes of this section a person whose name is on the roll pursuant to an authority of the owner of a property shall be deemed to be the owner of the area of land included in such property.

- (d) by inserting at the end of paragraph (d) of subsection one of section fifty-five the following words:—

Sec. 55.
(Rates.)

Where land is liable for rates under this paragraph the trustees may, in fixing the rate, fix different amounts for different parts of the land, having regard to the fact that any such part is or is not actually used for production under irrigation or having regard to the type of production

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production under irrigation for which any such part is used.

Sec. 147.
(Supply of
water.)

- (e) (i) by inserting in paragraph (a) of subsection (9A) of section one hundred and forty-seven after the word "section" where firstly occurring the words "or where before the commencement of the Irrigation and Water (Amendment) Act, 1943, the owner of a holding to which water rights are attached had disposed of a part or parts of such holding and the water rights have not been apportioned to the several parts of the holding";
- (ii) by omitting from paragraph (a) of subsection ten of the same section the words "when called upon by the Commission so to do";
- (iii) by inserting in paragraph (f) of the same subsection after the word "subsection" the words "or where the owner of a holding has failed to provide the works referred to in the paragraph which that paragraph replaces";

Sec. 154.
(Constitu-
tion of
districts.)

- (f) (i) by omitting from paragraph (b) of subsection one of section one hundred and fifty-four the words "benefited and";
- (ii) by omitting subsection four of the same section;
- (g) by inserting next after Part VII the following new Part:—

PART VIII.

SUBSOIL DRAINAGE DISTRICTS AND SURFACE
DRAINAGE DISTRICTS.

Definitions.

165. In this Part, unless the context or subject matter otherwise indicates or requires—

"Bank" means the Rural Bank of New South Wales.

"Board" means the Board constituted under the provisions of section thirty of this Act.

"District"

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“District” and “provisional district” mean district and provisional district respectively constituted under this Part.

“Owner”, in relation to land, includes every person who, jointly or severally, whether at law or in equity—

- (a) is entitled to the land for any estate of freehold in possession; or
- (b) is a person to whom the Crown has lawfully contracted to grant the fee-simple under the Crown Lands Acts or any other Act relating to the alienation of lands of the Crown; or
- (c) is entitled to receive, or is in receipt of, or if the land were let to a tenant would be entitled to receive, the rents and profits thereof, whether as beneficial owner, trustee, mortgagee in possession, or otherwise; or
- (d) is the holder of a lease from the Crown or any statutory body representing the Crown.

“Work” includes any dam, levee, bank, weir, flume, race, channel (whether an artificial channel or natural channel artificially improved), cutting, drain, well, excavation, tunnel, pipe, pumping plant, machinery and any appliance.

166. (1) (a) In respect of any existing or proposed works of subsoil drainage the Commission may notify in the Gazette a proposal for the constitution of any lands within any irrigation area constituted under the Murrumbidgee Irrigation Act, 1910, the Irrigation Act, 1912, the Wentworth Irrigation Act, or the Hay Irrigation Act, 1902, or under any of those Acts as amended

Proposal
for consti-
tution of
districts.

by

Irrigation and Water (Amendment).

by subsequent Acts, or within any domestic and stock water supply and irrigation district constituted under Part VI of this Act or within the district of any trust constituted under Part III of this Act in respect of any works of irrigation as a subsoil drainage district.

(b) In respect of any existing or proposed works of surface drainage the Commission may notify in the Gazette a proposal for the constitution of any lands other than lands within the defined boundaries of any city, town or village as a surface drainage district.

(2) Any such proposal shall embody—

- (a) a plan and description of the holdings proposed to be included in the district;
- (b) a schedule of the lands within the district which it is estimated will be benefited by the works (in this Part referred to as “benefited lands”);
- (c) the purposes in connection with which it is proposed to constitute the district;
- (d) the contribution, if any, per acre of the benefited lands which the owners of holdings within the proposed district will be required to make towards the capital cost of the works and the times, terms and conditions under which such contribution will be required to be paid;
- (e) the maximum annual rate, if any, per acre of the benefited lands to be paid for the service in drainage during the period from the date of the constitution of the provisional district to the thirtieth day of June next following the fifth anniversary of the constitution of the district;
- (f) the nature or class of the works;
- (g) any further particulars the Commission may deem fit.

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The Commission shall also publish in a newspaper circulating in the proposed district a brief reference to the notification in the Gazette.

(3) If within eight weeks of such notification a petition objecting to the proposal upon the grounds stated in the petition and signed by at least one-third in number of the owners of the holdings within the proposed district is presented to the Commission it shall refer the proposal to the Board for inquiry and report.

167. (1) If within the said period no such petition is received or if the Board reports in favour of the proposal, with or without amendment, the Governor, by proclamation in the Gazette, may constitute as a provisional subsoil drainage district or a provisional surface drainage district, as the case may be, the holdings or any of them described in the proposal, with such amendment, if any, of the proposal as the Commission may recommend: Provided that the maximum annual rate, if any, per acre of the benefited lands specified in the proclamation, to be paid for the service in drainage during the period from the date of the constitution of the provisional district to the thirtieth day of June next following the fifth anniversary of the constitution of the district shall not exceed but may be less than the maximum annual rate notified in the proposal.

Constitution of provisional districts.

(2) Upon such proclamation the Commission may in respect of the provisional district construct, acquire, or utilise, or partly construct, acquire, or utilise the works.

168. (1) Upon completion of the works in connection with a provisional subsoil drainage district or a provisional surface drainage district the Commission shall notify in the Gazette—

Constitution of districts.

- (a) the completion of the works;
- (b) a plan and description of the holdings proposed to be included in the district;
- (c)

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- (c) a schedule of the lands within the district which are benefited by the works (in this Part referred to as "benefited lands");
- (d) the maximum annual rate, if any, per acre of the benefited lands to be paid for the service in drainage from the date of the constitution of the district up to the thirtieth day of June next following the fifth anniversary of such constitution. Such maximum annual rate shall not exceed but may be less than the maximum annual rate notified in the Gazette under the provisions of section one hundred and sixty-six, or where that maximum annual rate has been amended by a proclamation under the provisions of section one hundred and sixty-seven of this Act, the maximum annual rate as so amended.

The Commission shall also publish in a newspaper circulating in the district a brief reference to the notification in the Gazette.

(2) If within eight weeks of such notification a petition is presented to the Commission signed by any owner of a holding within the proposed district objecting, upon the grounds stated in the petition, to the inclusion of his land in the district, or by the owner of any holding who is of the opinion that the area of lands within his holding stated to have benefited by the works is in excess of the area actually benefited, the Commission shall refer the petition to the Board for inquiry and report.

(3) If within the said period no such petition is received or when the Board has reported upon any petitions referred to it, the Governor, by proclamation in the Gazette, may constitute as a district the holdings described in the notification by the Commission pursuant to

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to subsection one of this section, or such of them as the Commission may recommend, with or without amendment of the schedule of benefited lands, as the Commission may recommend.

(4) Any holding included in the provisional district and in respect of which means of drainage have not been provided shall not be included within the district.

169. Where an error has been made in the proclamation constituting a district or provisional district, the Governor may, by a further proclamation in the Gazette, correct such error. Correction of errors in constitution of districts and provisional districts.

Such proclamation shall take effect from the date of publication or from such other date (whether before or after the date of publication) as may be specified in the proclamation.

170. (1) The Governor may, by proclamation in the Gazette, alter a district or provisional district by— Alteration of boundaries.

(a) including additional holdings or parts of holdings; or

(b) excising holdings or parts of holdings;

or

(c) transferring holdings, or parts of holdings, from one district or provisional district to another.

(2) In connection with any proposal for any such alteration of a district or provisional district unless the owners of the holdings or parts of holdings have notified in writing their willingness to have such holdings or parts of holdings included in the district or provisional district or excised therefrom, or transferred to another district or provisional district, as the case may be, the Commission shall notify in the Gazette—

(a) a plan and description of the holdings or parts of holdings proposed to be added, excised, or transferred, as the case may be;

(b)

Irrigation and Water (Amendment).

- (b) a schedule of the lands which it is estimated will be benefited lands;
- (c) the maximum annual rate, if any, per acre of benefited lands applicable within the district or provisional district within which it is proposed to include the additional or transferred holdings or parts of holdings and which will apply for a period of which the extent shall be stated;
- (d) the contribution, if any, per acre of benefited lands which the owners of the said lands will be required to make towards the capital cost of the works of the district or provisional district, and the times, terms and conditions under which such contribution will be required to be paid.

The Commission shall also publish in a newspaper circulating in the district a brief reference to the notification in the Gazette.

(3) If within eight weeks of such notification a petition objecting to the proposal, upon the grounds stated in the petition, signed by at least one-third in number of the owners of the holdings or parts of holdings proposed to be added to the district or provisional district or to be transferred from one district or provisional district to another, or by any owner of a holding or part of a holding proposed to be excised from the district or provisional district or by any owner who is of the opinion that the area of land within his holding or part of a holding estimated to be benefited lands is in excess of the area which will be benefited lands, as the case may be, is presented to the Commission it shall refer the proposal to the Board for inquiry and report.

(4)

Irrigation and Water (Amendment).

(4) If within the said period no such petition is received or when the Board has reported upon any petition referred to it, the Governor, by proclamation in the Gazette, may alter the district or provisional district or districts, as the Commission may recommend.

(5) Any benefited lands being portion of a holding or part of a holding which has been excised from a district or provisional district shall, as from the date of such proclamation in the Gazette, be exempt from rates under this Part for drainage within such district or provisional district. All rates due in respect of such lands to the date of the proclamation shall be paid.

(6) Any benefited lands being portion of a holding or part of a holding transferred from one district or provisional district to another shall, as from the date of the proclamation in the Gazette, be exempt from rates for drainage within the district or provisional district from which such holding or part of a holding was transferred and shall thereafter be subject to such rates as apply within the district or provisional district to which the holding or part of the holding has been transferred. All rates due in respect of such lands within the district or provisional district from which such holding or part was transferred, to the date of such proclamation shall be paid.

(7) For the purposes of subsections five and six of this section rates shall be considered as accruing from day to day and shall be apportionable in respect of time accordingly.

(8) Where additional holdings or parts of holdings have been included in a district or provisional district under this section the Commission may in respect of those holdings or parts of holdings assess the rates under and in accordance with this Part for the year current at the date of such inclusion.

The

Irrigation and Water (Amendment).

The rates so assessed shall be levied and paid as prescribed.

Construc-
tion of
works for
additional
lands.

171. Upon the alteration of any district or provisional district to include additional holdings or parts of holdings, the Commission may in respect of such additional holdings or parts of holdings construct, acquire, or utilise, works for purposes in connection with the district or provisional district.

Contribu-
tions.

172. (1) The Commission may require owners of holdings within a district, including a provisional district, to contribute the whole or part of the capital cost of the works.

(2) The amount of the contribution, if any, so required to be paid and the terms, times and conditions of payment shall be in accordance with the proposal notified in the Gazette under the provisions of section one hundred and sixty-six or section one hundred and seventy of this Act, or where those proposals have been amended by a proclamation under this Part, then in accordance with the proposals as so amended.

(3) The contribution, if any, shall be in respect of benefited lands and shall be at an equal rate per acre.

(4) The contribution may be required to be paid in one payment or by instalments to be paid at intervals.

(5) The contribution shall be payable to the Bank on the due dates and shall be—

(a) a charge upon the land; and

(b) payable by the owner thereof.

(6) Any person liable to pay the contribution under this Part who transfers his estate or interest in or who abandons any benefited lands in respect of which the contribution is to be paid shall, within thirty days of such transfer or abandonment, give notice thereof to the Commission, and he shall nevertheless remain liable
for

Irrigation and Water (Amendment).

for the contribution, or, where the contribution is required to be paid by instalments, for all instalments which became due for payment either—

- (a) before he transferred his estate or interest in or abandoned the benefited lands; or
- (b) before the said notice was given to the Commission.

(7) Where the contribution is required to be paid by instalments the following provisions shall have effect:—

- (a) If any person who transfers his estate or interest in any benefited lands pays to the Bank any instalment which becomes due for payment after he transfers his estate or interest, and before the notice of transfer is given to the Commission, he may recover the amount from the person to whom he transfers his estate or interest.
- (b) As between a person and any other person from or to whom he derives or transfers his estate or interest in benefited lands every instalment shall be considered as accruing from day to day and shall be apportionable in respect of time accordingly.

173. (1) The Commission shall fix in respect of the benefited lands within provisional districts and districts the rates for drainage as hereinafter provided. Fixing of rates.

(2) The Commission shall, in respect of each year commencing on the first day of July, fix during that year in accordance with the provisions of this Part the rates for drainage within a district or provisional district to be paid in respect of benefited lands and shall, in respect of each holding, assess the total amount of such rate. The rates so fixed and assessed shall be levied and paid as prescribed.

174.

Irrigation and Water (Amendment).

Rates.

174. (1) The rates shall—

- (a) be levied as prescribed and payable only in respect of benefited lands;
- (b) in respect of each parcel of benefited lands commence to be payable from the date when the means of drainage of such parcel have been completed;
- (c) where the means of drainage benefit the benefited lands for portion only of the year in which the benefited lands become ratable be proportionate to the part of the year during which the means of drainage benefit such lands;
- (d) for the period from the date of the constitution of the provisional district to the date of the constitution of the district be not greater but may be less than the maximum annual rate notified in the Gazette under the provisions of section one hundred and sixty-six, or where that maximum annual rate has been amended by proclamation under the provisions of section one hundred and sixty-seven of this Act, the maximum annual rate as so amended;
- (e) for the period from the date of the constitution of the district to the thirtieth day of June next following the fifth anniversary of such constitution be not greater but may be less than the maximum annual rate notified in the Gazette under the provisions of section one hundred and sixty-eight of this Act;
- (f) after the thirtieth day of June next following the fifth anniversary of the constitution of the district be each year as fixed by the Commission.

(2)

Irrigation and Water (Amendment).

(2) Any person liable to pay rates under this Part who transfers his estate or interest in or abandons any benefited lands ratable under this Part, shall, within thirty days of such transfer or abandonment, give notice thereof to the Commission, and he shall nevertheless remain liable for the rate to the same extent as if he had not transferred his estate or interest in or abandoned the benefited land, provided that the rate was levied either—

- (a) before he transferred his estate or interest in or abandoned the benefited lands; or
- (b) before the said notice was given to the Commission.

(3) If any person who transfers his estate or interest in benefited lands pays to the Bank any rate in respect thereof which is levied after he transfers his estate or interest and before the notice of transfer is given to the Commission, he may recover the amount from the person to whom he transfers his estate or interest.

(4) As between a ratable person and any other person from or to whom he derives or transfers his estate or interest in the land every rate shall be considered as accruing from day to day and shall be apportionable in respect of time accordingly.

175. (1) (a) Overdue contributions and instalments of contribution and overdue rates payable under this Part shall be increased in accordance with this subsection.

Rates and
contribu-
tions.

(b) If any contribution or instalment of contribution or any rate so payable is unpaid at the expiration of three months after the due date of payment thereof the amount due shall be increased by a sum calculated at the rate of five per centum per annum.

Any

Irrigation and Water (Amendment).

Any increase under this paragraph shall be deemed to be part of the contribution or instalment of contribution or rate, as the case may be.

(c) The calculation under paragraph (b) of this subsection shall be in respect only of as many complete months as have expired between the date on which the payment became due and the date of payment, excluding any remaining portion of a month.

(d) If in any case the increase is less than threepence the increase shall be threepence.

(e) The increase in the contributions or instalments of contribution or in the rates under this subsection shall continue to apply to all unpaid contributions, instalments of contribution or rates notwithstanding that judgment for same may have been obtained in any court, including the District Court.

(2) In any case where more than one person is an owner within the meaning of this Part of benefited lands, any contribution or instalment of contribution payable or rate assessed in respect of such benefited lands may be demanded from or levied upon any one or more of such persons and the Bank may recover the contribution, instalment of contribution or rate as against any person from whom the contribution or instalment of contribution is so demanded or upon whom the rate is so levied:

Provided that nothing in this subsection shall entitle the Bank to recover more than the full amount of the contribution or instalment of contribution or the rate, as the case may be.

(3) (a) Where the benefited lands are owned jointly by two or more owners, such owners shall be jointly and severally liable to the Bank for the contribution, instalment of contribution or rate, but, as between themselves, each shall be liable only for such part of the contribution,

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contribution, instalment of contribution or rate as is proportionate to his interest in the benefited lands and in the improvements thereon.

(b) If any such owner pays to the Bank more than his proportionate part, he may recover the excess from the others.

(4) Where during any year any benefited lands revert to the Crown and in respect of that year and in respect of those lands an instalment of contribution is payable or rates are or are to be fixed or assessed, the owner of such lands shall, as regards such lands, be liable only for that part of the instalment of contribution or of the rates, as the case may be, which accrues due in respect of the period of the year during which such lands are held by him.

For the purposes of this subsection the instalment of contribution or the rates shall be considered as accruing from day to day and shall be apportionable in respect of time accordingly.

Any excess payment by such owner shall be refunded to him.

This subsection shall not apply in any case where the contribution is required to be paid in one payment.

(5) In the event of the Commission at any time finding it has made an error in requiring payment of a contribution or instalment of contribution or in the assessment of a rate in respect of any benefited lands or owner through lack of knowledge of the name of the owner, or the area or extent of the benefited lands, or miscalculation, the Commission, upon such error being brought under its notice, may at any time amend the requirement or re-assess the rate in respect of any benefited lands or owner affected.

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Liability
for rates.

176. (1) All rates due and payable or to become due and payable under this Part shall be payable to the Bank.

(2) Rates under this Part shall be—

(a) a charge upon the land; and

(b) payable by the owner thereof.

Surveys and
works.

177. (1) For the purposes of this Part the Commission or any person authorised by it may enter any land and take levels and make surveys and marks and fix pegs and stakes and inspect any works.

(2) Any person hindering the Commission or any such authorised person in the exercise of such power shall be liable to a penalty not exceeding twenty pounds.

(3) Any person who removes, injures or interferes with any marks made or pegs or stakes fixed as aforesaid shall be liable to a penalty not exceeding fifty pounds.

(4) The Commission for the purposes of this Part may construct, maintain and repair any work on any land, street, road or reserve.

(5) Every work which the Commission is authorised by this Part to construct or acquire shall be respectively constructed or acquired under the Public Works Act, 1912, as amended by subsequent Acts, and all the powers and the provisions of the said Act relating to authorised works shall be applicable to such work and for all purposes of the said Act such work shall be deemed an "authorised work" and the Commission a "constructing authority" within the meaning of the said Act and the provisions of sections thirty-four, thirty-five, thirty-six and thirty-seven of that Act shall not apply to any such work.

(6) Without prejudice to the generality of subsection five of this section the provisions of section thirty-eight of the Public Works Act, 1912, as amended by subsequent Acts, shall,
mutatis

Irrigation and Water (Amendment).

mutatis mutandis, apply to any contracts for carrying out any such work.

(7) Notwithstanding the provisions of section ninety-one of the Public Works Act, 1912, as amended by subsequent Acts, the Commission shall not be compelled nor shall it be the duty of the Commission to make or maintain any fence in connection with any such work for the accommodation of any person or for any purpose whatsoever, but the Commission may, in its discretion, make and maintain such fences in connection with any such work as it may deem fit.

(8) For the purpose of the construction or the maintenance or the repair of any work proposed to be constructed, or constructed, utilised or acquired under the authority of this Part, or to which this Part applies, the Commission shall be deemed to have had and shall have power at any time—

(a) to enter any lands being—

- (i) the site of a work constructed or the proposed site of a work to be constructed under this Part; and
- (ii) within a distance of not more than sixty-six feet from the nearest boundary of such site or proposed site; and

(b) to use such lands or sites for the said purpose of construction or maintenance or repair,

notwithstanding an easement or right so to enter or use such lands or sites may not have been granted or acquired.

(9) Where any claim is made for compensation by reason of the exercise by the Commission of any power conferred by subsection one, subsection four, or subsection eight of this section there shall be taken into consideration and given effect to by way of set-off or abatement the enhanced

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enhanced value of the land of the claimant on account of the provision under this Part of a subsoil drainage scheme or surface drainage scheme, but in no case shall this subsection operate so as to require any payment to be made by the claimant to the Commission in consideration of such enhancement of value:

Provided that—

- (a) where the land entered upon or used by the Commission is the site of a work or the proposed site of a work and is of a width in excess of one and one-half chains; or
- (b) where in the opinion of the Commission—
 - (i) the area of the land of the claimant entered upon or used as compared with the total area of his holding is such as to place an undue burden upon him if the said set-off or abatement were applied either wholly or partially; or
 - (ii) the location of the land of the claimant entered upon or used is such as to cause undue loss or expense to him on account of severance,

the set-off or abatement may be waived by the Commission either wholly or in part.

Provision
of works
by owners.

178. (1) Every owner of benefited lands within a subsoil drainage district, including a provisional district, shall provide such silt boxes and other works as may be prescribed at or adjacent to all points of junction of drainage from the benefited lands with the works of the district or provisional district and shall adopt such means for the protection of the works of the district or provisional district from siltation or blockage as may be prescribed.

(2)

Irrigation and Water (Amendment).

(2) The Commission may require owners from time to time to remove silt and other material from and repair and renew the said silt boxes and other works.

(3) Every owner of benefited lands within a surface drainage district, including a provisional district, shall provide such works as may be prescribed at or adjacent to all points of entry of water from the benefited lands into the works of the district or provisional district and shall adopt such means of protection of the works of the district or provisional district from siltation and erosion as may be prescribed.

(4) The Commission may, in any special case, direct any owner of benefited lands to provide such additional works as the Commission may specify at or adjacent to all points of junction of drainage from such benefited lands with the works of the district or provisional district or at or adjacent to all points of entry of water from such benefited lands into the works of the district or provisional district.

(5) The Commission may, in any special case, direct any owner of benefited lands to adopt such special means for the protection of the works of the district or provisional district from siltation, blockage or erosion as the Commission may specify.

(6) Where any owner of benefited lands neglects or fails to comply with any direction given under subsection four or subsection five of this section within the time limited in the direction the Commission may provide such specified additional works or adopt such specified means and may recover the costs and expenses incurred in so doing from such owner as a debt.

179. (1) The Commission may from time to time at the request or with the consent of the owners of lands affected provide additional works.

Irrigation and Water (Amendment).

works in a district, including a provisional district, and if by reason of such works the area of benefited lands within a holding is increased such increased area shall be notified to the owner, and as from the date of such notification or the date of the completion of such additional works, whichever is the later, the additional area shall be subject to rates as benefited lands.

(2) The Commission, in respect of additional works so provided, may call upon the owners of benefited lands to contribute towards the capital cost of such additional works, provided that such contribution shall not, without the consent of such owners, be at a greater rate per acre of benefited lands than that notified under the provisions of section one hundred and sixty-six of this Act, or any amended rate per acre fixed by proclamation under the provisions of section one hundred and sixty-seven of this Act in respect of the district in which such benefited lands are located.

Provision
of works
where lands
subdivided.

180. (1) Prior to the disposal of any part or parts of a holding within a district or provisional district by the owner of the holding the said owner shall construct at his own cost such drainage works as are deemed by the Commission to be necessary to carry drainage water from such part or parts of the holding to be disposed of or from the part or parts to be retained, to the works of the district or provisional district.

All such drainage works shall be to the approval of the Commission in respect of location, design, form, dimensions and construction.

(2) Where the owner of a holding fails to construct the drainage works referred to in subsection one of this section the Commission may construct such works and may recover the costs and expenses (including the cost of acquisition of any land or easement deemed by the Commission to be required for such works) incurred in so doing from such owner as a debt.

(3).

Irrigation and Water (Amendment).

(3) Where the owner of a holding desires to dispose of any part of the holding prior to the construction by the Commission in the vicinity of the holding of any of the works of the provisional district the Commission may if it deems fit relieve the owner from the obligation to construct the drainage works referred to in subsection one of this section.

(4) All drainage works constructed in pursuance of this section shall, upon their completion, be handed over by the said owner to and become the property of the Commission without charge.

(5) At the request of the owner of a holding who desires to dispose of any part of it the Commission may, by agreement with him, undertake the construction at his cost of drainage works required under this section.

(6) All land deemed by the Commission to be required for the drainage works constructed in pursuance of this section shall be provided by the owner and be transferred to the Commission without charge: Provided that where the Commission is satisfied that an easement over such land is sufficient, the owner shall, before disposing of any part of the holding affected, grant such easement to the Commission without charge.

(7) The Commission may, for the purposes of this section, authorise the construction of works on any street, road, or reserve.

181. (1) The water drained from subsoils and surfaces of lands within a district, including a provisional district, and conveyed in drains, channels, pipes, or other works may be discharged into any river or lake as defined in Part II of this Act.

Water may
be drained
into rivers.

(2) The Commission may, if it deems fit, divert water from any work of a district, including a provisional district, into any channel and

may

Irrigation and Water (Amendment).

may sell any water so diverted and may authorise any person similarly to divert any such water and may impose such terms and conditions and make such charges in respect of such diversion as it may deem fit in each case.

(3) Any works provided by the Commission in connection with such diversions as aforesaid shall be works of the district or provisional district.

Provisions
relating to
the Bank.

182. (1) The powers, authorities, duties and functions conferred or imposed upon the Bank by this Part shall be exercised and performed by the Bank through its Irrigation Agency.

(2) Moneys which by virtue of this Part become payable to or recoverable by or which may be received by the Bank shall be treated in account by the Bank and disposed of by it when received as if such moneys were revenue moneys as defined in Division 1 of Part VI_B of the Government Savings Bank Act, 1906, as amended by subsequent Acts.

(3) To the extent that the same are applicable and are not inconsistent with this Part, the provisions of Division 1 of Part VI_B of the Government Savings Bank Act, 1906, as amended by subsequent Acts, shall apply to all moneys which become payable to or recoverable by or which are received by the Bank in pursuance of this Part.

Regulations.

183. (1) The Commission may, with the approval of the Governor, make regulations not inconsistent with this Part prescribing all matters which by this Part are required or permitted to be prescribed, or which are necessary or convenient to be prescribed for carrying this Part into effect.

(2)

Irrigation and Water (Amendment).

(2) Without prejudice to the generality of the powers conferred by subsection one of this section the Commission, with the approval of the Governor, may make regulations—

- (a) for the prevention of injury to works constructed or used under this Part or any works used in connection therewith;
- (b) with respect to the fixing, assessing, levying and collection of rates;
- (c) prescribing the forms of notices required under this Part and the manner of and periods for giving same;
- (d) prescribing the forms, dimensions, levels, location and materials for works to be provided by owners of benefited lands within subsoil drainage districts, including provisional districts, at or adjacent to points of junction of drainage from benefited lands with the works of the district or provisional district and the means of protection of the works of the district or provisional district from siltation and blockage;
- (e) prescribing the forms, dimensions, levels and materials for works to be provided by owners of benefited lands within surface drainage districts, including provisional districts, at points of entry of water from the benefited lands into the works of the district or provisional district, and the means of protection of the works of the district or provisional district from siltation and erosion;
- (f) generally for carrying out the provisions of this Part.

(3)

Irrigation and Water (Amendment).

(3) The regulations may prescribe a penalty not exceeding twenty pounds for any breach thereof or where the breach continues not exceeding five pounds for every day during which such breach continues.

(4) The regulations shall—

- (a) be submitted to the Governor for his approval;
- (b) after approval by the Governor be published in the Gazette;
- (c) take effect from the date of publication thereof, or from a later date to be specified in the regulations; and
- (d) be laid before both Houses of Parliament within fourteen sitting days after publication if Parliament is then in session, and, if not, then within fourteen sitting days after the commencement of the next session.

(5) If either House of Parliament passes a resolution of which notice has been given at any time within fifteen sitting days after the regulations have been laid before such House disallowing any regulation or part thereof, the regulation or part shall thereupon cease to have effect.

(6) The production of a copy of the Gazette containing any regulation purporting to have been made under this Part shall be evidence, until the contrary is proved, of the due making of such regulation and that all preliminary steps have been duly taken necessary to give full force and effect to the same.

(7) Whenever by any section of this Part or any regulations made thereunder any person is liable to a penalty or to pay any sum of money, whether as compensation or in any other way, such penalty or sum may be recovered before any stipendiary magistrate or police magistrate

Irrigation and Water (Amendment).

magistrate or two or more justices of the peace in petty sessions, in accordance with the Acts in force for the time being regulating summary proceedings before justices.

- (h) by inserting in section one next after the matter relating to Part VII the following words:—

PART VIII.—SUBSOIL DRAINAGE DISTRICTS
AND SURFACE DRAINAGE DISTRICTS—ss.
165-183.

Sec. 1.
(Consequential.)

PART III.

AMENDMENT OF THE IRRIGATION ACT, 1912-1943.

3. The Irrigation Act, 1912-1943, is amended—

Amendment of
Act No. 73,
1912.

- (a) by omitting from section four the words “Minister for Agriculture” wherever occurring and by inserting in lieu thereof the word “Minister”;
- (b) by omitting from section 5D the words “Minister for Agriculture” and by inserting in lieu thereof the word “Minister.”

Sec. 4.
(Commission.)

Sec. 5D.
(Dependent
relative to
receive money
value of leave
not taken or
completed.)

4. The Irrigation Act, 1912-1943, is further amended—

Further
amendment of
Act No. 73,
1912.

- (a) by omitting section 7A and by inserting in lieu thereof the following section:—

Subst.
sec. 7A.

7A. (1) Where any holding being an irrigation farm lease or an irrigation farm purchase or land formerly held as an irrigation farm purchase in respect of which a Crown Grant in fee simple has been issued, is subdivided into two or more parts or is altered by the surrender or resumption of part thereof or by the addition of land thereto or where the irrigable area of any such

Number and
price of
water rights
where farm
subdivided,
etc.

Irrigation and Water (Amendment).

such holding is increased, or additional facilities for watering any such holding are provided by the Commission, the Minister may by notification in the Gazette—

- (a) determine the number of water rights (if any) which shall attach to—
 - (i) each separate holding constituted by the subdivision; or
 - (ii) the holding as altered; or
 - (iii) the holding with increased irrigable area; or
 - (iv) the holding with additional facilities for watering,or to any part of any such holding;
- (b) fix the prices for the water rights attached to the whole or any part or fix different prices for the water rights attached to different parts of any such holding as is referred to in paragraph (a) of this subsection;
- (c) specify the number of the said water rights which are to be a fixed charge on any such holding as is referred to in paragraph (a) of this subsection or any part of any such holding;
- (d) specify such provisions and conditions not inconsistent with this Act as according to the facts and circumstances the Minister thinks fit.

(2) Any notification under this section which relates to land within the Coomealla Irrigation Area may specify the year (not being later than the fifth year after the date of the subdivision or of the alteration of the holding by the surrender or resumption of part thereof or by the addition of land thereto, or the increase of

Irrigation and Water (Amendment).

of the irrigable area, or the provision by the Commission of additional facilities for watering the holding, as the case may be) during and after which the water rights shall respectively attach to and be a fixed charge on—

- (i) each separate holding constituted by the subdivision; or
- (ii) the holding as altered; or
- (iii) the holding with increased irrigable area; or
- (iv) the holding with additional facilities for watering,

or on any part of any such holding, as the case may be.

Where a year is so specified, the notification shall also specify what proportion of such water rights or what number of water rights shall respectively attach to and be a fixed charge on the holding or part thereof, as the case may be, during each year of the period between the date of subdivision, or alteration of the holding, or the date upon which the irrigable area was increased, or the date upon which additional facilities for watering were provided by the Commission, as the case may be, and the commencement of the year so specified.

Where no year is so specified, the water rights shall respectively attach to and be a fixed charge on the holding or part thereof, as the case may be, as from the date of subdivision, or alteration of the holding, or the date upon which the irrigable area was increased, or the date upon which additional facilities for watering were provided by the Commission, as the case may be.

(b) by omitting subsection three of section 7B;

Sec. 7B.
(Conse-
quential.)

(c)

Irrigation and Water (Amendment).

New
sec. 11I.

(c) by inserting next after section 11H the following new section:—

Special
provisions
relating to
portions of
irrigation
areas
included in
municipali-
ties and
shires.

11I. (1) In this section—

“Coomealla Irrigation Area” means the Coomealla Irrigation Area constituted under this Act.

“Curlwaa Irrigation Area” means the irrigation area constituted under the provisions of the Wentworth Irrigation Act, as amended by subsequent Acts.

(2) The provisions of this section, unless the context or subject-matter otherwise indicates or requires, shall apply only to and in respect of those portions of the Coomealla Irrigation Area and the Curlwaa Irrigation Area which have been or which may hereafter be included in a municipality or shire.

(3) Any land in the Wentworth Municipality within the Coomealla Irrigation Area or the Curlwaa Irrigation Area at the commencement of the Irrigation and Water (Amendment) Act, 1944, which has before such commencement been defined, reserved or left as a road within any subdivision of Crown lands or lands vested in the Commission as indicated on the official plans of the same, shall be deemed to be a public road for the purposes of sections two hundred and forty to two hundred and seventy-five (both inclusive) and section two hundred and seventy-seven of the Local Government Act, 1919, as amended by subsequent Acts, but any portion of such land occupied by a canal, channel or drain under the control of the Commission shall be deemed not to be a part of the road.

(4) The Commission for the purposes of this Act and the Wentworth Irrigation Act, as amended by subsequent Acts, may construct, maintain and repair any work on any land, street, road or reserve,

(5)

Irrigation and Water (Amendment).

(5) The Commission shall have power at all times to enter any land, street, road or reserve vested in or under the control of the council of a municipality or shire and to carry out therein all such works as it may deem necessary for the purpose of exercising any of the powers conferred on the Commission by this Act or the Wentworth Irrigation Act, as amended by subsequent Acts: Provided that if in the carrying out of any such works damage is caused to any land, street, road or reserve vested in or under the control of the council of any municipality or shire, the Commission shall make all such damage good to the satisfaction of the council.

(6) Before commencing any work which may in any way affect any land, street, road or reserve vested in or under the control of the council of a municipality or shire, the Commission shall supply such council with information showing the nature of the proposed work.

(7) (a) Where any bridge, culvert, canal, channel, drain, or other work is constructed across a public road (whether so constructed before or after the commencement of the Irrigation and Water (Amendment) Act, 1944) in the exercise of the powers conferred on the Commission under this Act or the Wentworth Irrigation Act, as amended by subsequent Acts, it shall be the duty of the Commission to maintain the same and the immediate approaches to any such bridge or culvert in good and serviceable condition.

(b) Where any canal, channel, drain or other work is constructed for the purpose of carrying water across a public road it shall be the duty of the Commission to provide a bridge or culvert or other means of crossing which, having regard to the nature of the work and the

Irrigation and Water (Amendment).

the nature and extent of the traffic on such public road, is sufficient to permit the passage of traffic along such public road.

(c) Any difference arising between the Commission and the council of the municipality or shire within which a public road is situated which arises out of the proper performance by the Commission of any duty imposed upon it by this subsection, shall be deemed to be a difference within the meaning of section six hundred and fifty-four of the Local Government Act, 1919, and shall be settled in the manner provided by that section for the settlement of differences between a council and any department of the Government.

(d) In this subsection "public road", "municipality" and "shire" have the meanings respectively given to those expressions in the Local Government Act, 1919.

Sec. 1.
(Consequential.)

(d) by omitting from section one the symbols "11H" and by inserting in lieu thereof the symbols "11I."

PART IV.

AMENDMENT OF THE CROWN LANDS CONSOLIDATION Act, 1913.

Amendment
of Act
No. 7, 1913.
Sec. 5.
(Definitions.)

5. (1) The Crown Lands Consolidation Act, 1913, as amended by subsequent Acts, is amended by inserting at the end of section five the following new subsection:—

(2) A reference in any provision of this Act to "the Minister" shall, in the application of that provision to or in respect of an irrigation area, be read as a reference to the Minister for the time being charged with the administration of the Irrigation Act, 1912-1944.

(2)

Irrigation and Water (Amendment).

(2) The Irrigation (Amendment) Act, 1916, as amended by subsequent Acts, is amended by omitting section three.

Amendment
of Act No. 22,
1916.
(Conse-
quential.)

(3) The War Service Land Settlement Act, 1941, is amended by omitting from subsection one of section three the words "Minister for Agriculture for the time being" and by inserting in lieu thereof the words "Minister for the time being charged with the administration of the Irrigation Act, 1912."

Amendment
of Act No.
43, 1941.
(Conse-
quential.)

6. The Crown Lands Consolidation Act, 1913, as amended by subsequent Acts, is further amended—

Further
amendment of
Act No. 7,
1913.

- (a) by omitting from subsection one of section one hundred and forty-six the words "in respect of which the conditions of improvements and residence, if any, have been fulfilled";
- (b) by omitting from the same subsection the words "in respect of which the certificate of conformity has issued";
- (c) by omitting from subsection three of the same section the words "so as to conform to any regulations made or to be made in that behalf";
- (d) by inserting in subsection four of the same section after the figures and symbol "142D" the words "of this Act";
- (e) by omitting from subsection seven of the same section the words "After subdivision the" and by inserting in lieu thereof the words "Upon subdivision any existing";
- (f) by inserting in subsection nine of the same section after the word "conditions" the words "and to such other terms and conditions as may be imposed under and by virtue of the provisions of this section."

Irrigation and Water (Amendment).

PART V.

AMENDMENT OF THE CROWN LANDS (AMENDMENT) ACT,
1932.

Amendment
of Act No.
69, 1932.

7. The Crown Lands (Amendment) Act, 1932, as amended by subsequent Acts, is amended—

Sec. 19.

(Waiver or
remission of
interest
or rent.)

- (a) by inserting in section nineteen after the words “special land board” wherever occurring the words “or local land board, as the case may be”;
- (b) by inserting in subsection two of the same section after the word “recommends” the words “may postpone payment of the whole or part of any instalment payable in respect of any purchase of land or Crown improvements made under or by the operation of any of the Acts referred to in subsection one of this section, or”;
- (c) by omitting from paragraph (a) of the same subsection the words “to the Commission”;
- (d) by inserting at the end of the same section the following new subsection:—

(8) Any application under the provisions of this section by a holder of land of any tenure under the Wentworth Irrigation Act, as amended by subsequent Acts, shall be referred to the special land board constituted for the land district of Coomealla.

PART

Irrigation and Water (Amendment).

PART VI.

AMENDMENT OF THE WENTWORTH IRRIGATION ACT.

8. The Wentworth Irrigation Act, as amended by subsequent Acts, is amended by inserting next after section twenty-two the following new section:—

22A. (1) Except with the consent of the Water Conservation and Irrigation Commission (hereinafter in this section referred to as the Commission)—

- (a) a lease from the Commission of land within the irrigation area shall not be transferred or assigned or subleased either in whole or in part or otherwise dealt with;
- (b) a sublease of the whole or part of a lease from the Commission within the irrigation area shall not be assigned or subleased either in whole or in part or otherwise dealt with;
- (c) land within the irrigation area in course of purchase in fee-simple from the Commission shall not be transferred or assigned or leased either in whole or in part or otherwise dealt with;
- (d) a lease of the whole or part of land within the irrigation area in course of purchase in fee-simple from the Commission shall not be assigned or subleased either in whole or in part or otherwise dealt with;
- (e) land within the irrigation area, the fee simple of which has been transferred from the Commission, shall not be transferred or leased either in whole or in part or otherwise dealt with;
- (f) a lease of the whole or part of land within the irrigation area, the fee simple of which has been transferred from the Commission, shall not be assigned or subleased either in whole or in part or otherwise dealt with.

Application for the consent of the Commission shall be made in the prescribed form.

The

Amendment
of Act 54
Vict. No. 7.
New sec.
22A.
Restrictions
as to
assigns of
holdings.

Irrigation and Water (Amendment).

The granting or refusing of any such application shall be entirely in the discretion of the Commission.

Any transfer, lease, assignment, sublease, or other dealing whatsoever, which would contravene, or have the effect of contravening the provisions of this subsection, shall not be valid for any purpose whatsoever.

This subsection shall not apply to a mortgage or release of mortgage or a transfer of mortgage, and any such mortgage or release of mortgage or transfer of mortgage may be effected without the consent of the Commission having been obtained.

(2) The consent of the Commission to a transfer or other dealing of any of the classes referred to in subsection one of this section shall be refused unless and until the Commission is satisfied that—

(a) the whole of any moneys due to the Bank or the Commission in respect of the lease or land the subject of the dealing, or such portion thereof as may be required to be paid by the Bank or the Commission, has been paid; and

(b) (i) the proposed transferee or assignee has signed an agreement that all moneys (if any) remaining owing to the Commission or the Bank in respect of the lease or land the subject of the dealing shall be paid by him and that he will execute such security for the payment of all moneys owing as aforesaid to the Commission as the Commission may require or to the Bank as the Bank may require; and

(ii) the proposed transferee or assignee has executed such security.

(3) No person shall, except by way of mortgage, acquire by transfer, assignment, lease, sublease or otherwise any land within the irrigation area, which either by itself, or together with such land already held by him, would substantially exceed,
in

Irrigation and Water (Amendment).

in the opinion of the Commission, an area which, when used for any purpose for which it is reasonably fitted, would be sufficient for the maintenance in average seasons and in average circumstances of an average family.

No transfer, assignment, lease or sublease or other dealing whatsoever in contravention of the provisions of this subsection shall be valid for any purpose whatsoever.

(4) In the event of the Commission refusing to consent to a transfer, assignment, lease or sublease to any person on the grounds referred to in subsection three of this section, either party may, on payment of the prescribed fee and in the prescribed manner, cause the matter to be referred to the special land board constituted under the provisions of the Crown Lands Consolidation Act, 1913, as amended by subsequent Acts, for the land district of Coomealla, for inquiry and report to the Minister.

The Minister shall, upon consideration of the report of the special land board, give his decision on the matter and such decision shall be final and shall be carried into effect by the Commission.

(5) Where under the provisions of this section it becomes a matter for determination by the Commission, the special land board or the Minister as to what area, when added to the area of land already held by any person, will constitute an area which, when used for any purpose for which it is reasonably fitted, would be sufficient for the maintenance in average seasons and in average circumstances of an average family, the Commission, the special land board or the Minister shall take into account in addition to lands already held by such person, lands already held by such person's wife or husband, as the case may be, as if the said lands were lands held by such person:

Provided that nothing herein contained shall apply to a case where husband and wife are living apart under a decree for judicial separation made by any court of competent jurisdiction.

(6)

Irrigation and Water (Amendment).

(6) If a holding within the irrigation area devolves under a will or intestacy upon a person who is not qualified under subsection three of this section to hold the same, such person may nevertheless hold such holding for a period of three years after the death of the testator or intestate, or for such further period as the Commission may permit or where the holding is a lease from the Commission for the unexpired period of the lease, whichever is the shorter period. Within such period or further period such person may, upon application to the Commission, and on showing that he is then qualified under that subsection to hold the same, receive from the Commission a certificate to that effect, which shall entitle him to hold the holding; or such person may, subject to this section, sell and transfer the holding.

If by the provisions of the will or by law such person has power to sell the holding, the sale may be effected under such power; in any other case the sale may be effected with the consent of all persons beneficially entitled to the holding, or by order of the Supreme Court in its equitable jurisdiction, which may be obtained in the manner prescribed by rules of court, or until such rules are made, by summons in chambers.

If such person does not within such period or further period obtain the certificate of the Commission as aforesaid nor transfer the holding as aforesaid, the same shall be liable to be forfeited.

(7) Any execution creditor who has seized under process of any court any holding within the irrigation area and has offered the same for sale by public auction, if the debtor's interest in the land is not then sold to a bona fide purchaser who must be a person qualified to hold the holding under subsection three of this section, may, in the manner prescribed by regulations made under this Act, go into possession of the holding.

The

Irrigation and Water (Amendment).

The said execution creditor shall, within two years after the commencement of such possession, or within such further period as shall be approved by the Commission or, where the holding is a lease from the Commission, before the expiration of the period of the lease, whichever is the shorter period, sell the said debtor's interest in the holding to a bona fide purchaser. Such purchaser must be a person qualified to hold a holding under subsection three of this section, and shall be subject to all conditions affecting the debtor.

In default of sale within such period or further period the holding shall be liable to be forfeited.

(8) If any holding within the irrigation area is mortgaged and the mortgagee enters into possession of the same under his mortgage, he may hold the same for a period of three years after the date of his entering into possession as aforesaid, or for such further period as the Commission may permit or, where the holding is a lease from the Commission, for the unexpired period of the lease, whichever is the shorter period.

Every mortgagee who enters into possession of a holding shall, within a period of twenty-eight days after the date of entering into possession, notify the Commission of such entry, and in default of notice within such period the holding shall be liable to be forfeited, but the mortgagee shall not, notwithstanding the terms of his mortgage, so enter into possession of the mortgaged holding more than once, except by permission of the Commission.

Such mortgagee shall not foreclose the mortgage except with the consent of the Commission. Such consent shall be applied for and may be given or refused, as in the case of a transfer, and the provisions of subsection one of this section shall apply thereto.

Such mortgagee shall not transfer the holding except in accordance with this section or by way of discharge of mortgage.

If

Irrigation and Water (Amendment).

If within such period of three years or such further period the mortgagee does not obtain the consent of the Commission to a foreclosure or does not transfer the holding in accordance with this section, the same shall be liable to be forfeited.

A foreclosure or transfer in contravention of this subsection shall be void and any agreement or contract for the sale of any holding made without the permission of the Commission shall render such holding liable to be forfeited if such agreement or contract is not submitted for the approval of the Commission within three months from date of execution thereof.

The fact that the mortgagee or some person by his authority occupies or uses any part of the mortgaged holding shall be prima facie evidence that the mortgagee has entered into possession of the holding under the mortgage.

(9) Where any holding within the irrigation area becomes liable to forfeiture under this section such forfeiture may be declared by the Commission by notification published in the Gazette. Upon publication of such notification the holding shall vest in the Commission.

(10) In subsections six, seven, eight and nine of this section the expression "holding" means—

- (a) any lease from the Commission of land within the irrigation area;
- (b) any land within the irrigation area which is in course of purchase from the Commission;
- (c) any land within the irrigation area which has been transferred from the Commission.

(11) The provisions of this section shall apply to and in respect of all leases of land within the irrigation area, all lands within the irrigation area which are in course of purchase from the Commission and all lands within the irrigation area which have been transferred from the Commission whether

the

Irrigation and Water (Amendment).

the lease, purchase or transfer was made before or is made after the commencement of the Irrigation and Water (Amendment) Act, 1944.

PART VII.

MISCELLANEOUS.

9. (1) The minute of the Executive Council dated the twenty-first day of June, one thousand nine hundred and forty-four, and confirmed on the same day, whereby the Minister for Conservation for the time being was authorised to exercise the powers and perform the official duties and be responsible for the obligations appertaining or annexed to the Minister for Agriculture under the Irrigation Act, 1912-1943, the Crown Lands Consolidation Act, 1913, as amended by subsequent Acts (and read with the Irrigation (Amendment) Act, 1916) and the War Service Land Settlement Act, 1941, shall be and shall be deemed always to have been effective to vest in the Minister for Conservation the powers, authorities, duties and functions of the Minister for Agriculture as chairman of the Water Conservation and Irrigation Commission. Validations.

(2) The Water Conservation and Irrigation Commission shall, for all purposes, be deemed to have been duly constituted by the Minister for Conservation and by the two other Commissioners appointed pursuant to section four of the Irrigation Act, 1912-1943, during the period commencing on the twenty-first day of June, one thousand nine hundred and forty-four, and terminating upon the commencement of this Act.

10. (1) The notification published in the Gazette number one hundred and seventy-five of the eleventh day of December, one thousand nine hundred and twelve, of the appropriation and resumption of the land described in the Schedule to this Act shall be and shall be deemed always to have been valid and effectual as an appropriation of so much of the said land as was Crown land Validation of resumption.

Irrigation and Water (Amendment).

land and a resumption of so much of the said land as was private property pursuant to provisions of the Public Works Act, 1912.

(2) The notification referred to in subsection one of this section shall have and take effect for all purposes as if the words "Public Works Act, 1900," were omitted therefrom and the words "Public Works Act, 1912," were inserted in lieu thereof.

(3) The provisions of section 31A of the Real Property Act, 1900, shall apply to and in respect of the said notification and the land thereby appropriated and resumed.

Sec. 10.

SCHEDULE.

ALL that piece or parcel of land situate in the parish of Bundidgerry, county of Cooper, and State of New South Wales: Commencing on the right bank of Murrumbidgee River, at the south-eastern corner of portion 1 of 640 acres, in the said parish of Bundidgerry; and bounded thence on the west by a line partly forming the eastern boundaries of portions 1 and 11 bearing north to the north-western side of a road 2 chains wide bounding the said portion 11; thence on the south-east and south-west by north-western and north-eastern boundaries of the said road bounding portions 11, 12, and 13 to an angle in the eastern boundary of 13 acres 15 perches, appropriated by Gazette of the 3rd June, 1908; thence again on the west by an eastern boundary of the said appropriation bearing northerly to the south-eastern corner of portion 6 of 163 acres; thence again on the west by part of the eastern boundary of the said portion 6 bearing north to a point west of the south-western corner of portion 14; thence on the north by a line partly forming the southern boundary of the said portion 14 bearing east to the right bank of Bundidgerry Creek; thence generally on the north by the right bank of the said Bundidgerry Creek upwards to the south-western corner of portion 32, parish of Grong Grong; thence on the east by a line partly forming the western boundary of portion 31 and part of the western boundary of portion 29 bearing south to the north-eastern corner of 15 acres, resumed by Gazette of the 12th June, 1907; thence by the northern, the western, and the southern boundaries of the said resumption being lines bearing west, south, and east, respectively to the right bank of the Murrumbidgee River aforesaid; and thence generally on the south by that river downwards, to the point of commencement,—having an area of about 1,960 acres, and said to be in the possession of the Crown and occupation of F. E. Sides.

In the name and on behalf of His Majesty I assent to this Act.

WAKEHURST,
Governor.

*Government House,
Sydney, 22nd November, 1944.*