

[CONFIDENTIAL.]

(Rough Draft for Consideration Only.)

No. , 1918.

A BILL

To amend the Irrigation Act, 1912, the Irrigation (Amendment) Act, 1916, the Crown Lands Consolidation Act, 1913, and certain other Acts; to declare the meaning of section eighteen of the Irrigation Act, 1912; to validate the constitution of certain irrigation areas; and for purposes consequent thereon or incidental thereto.

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:—

Preliminary.

1. This Act, hereinafter referred to as the Amendment Act, may be cited as the "Irrigation and Crown Lands (Amendment) Act, 1918." Short title.

Amendment of Irrigation Act, 1912.

2. The Irrigation Act, 1912, is amended as follows:—

Section three: Insert in their appropriate alphabetical order the following definitions:—

The "Amendment Act" means the Irrigation (Amendment) Act, 1917.

"Noxious animal" means any animal which the Commission may from time to time notify in the Gazette to be noxious.

"Noxious weed" or "noxious plant" means any weed, plant, grass, or growth, which the Commission may from time to time notify in the Gazette to be noxious, and includes any part and seeds of any such weed, plant, grass, or growth.

Section four, paragraph (a): At end of section add the words:—"and may in that name sue and be sued in any court. It shall be lawful for the Commission to bring under that name and also as nominal plaintiff on behalf of the Crown any action or suit for the recovery of any moneys due or owing or to become due or owing to the Commission or to the Crown in respect of rent, charges for water, survey fees, or for improvements effected on any holding within an irrigation area, or goods and chattels sold, provided, or supplied, including any interest on such moneys, provided that costs may be given for or against such nominal plaintiff in the same way as in any ordinary action

action or suit, and it shall be lawful for the Commission for the purpose of recovering the said moneys to exercise by any duly authorised agent such powers of distress and other powers as are given by law to any landlord."

Section four, paragraph (c) : Add new paragraphs (d) and (e) as follows :—

- (d) All moneys owing by or to or on account of the Murrumbidgee Irrigation Trust or the Commissioner for Water Conservation and Irrigation constituted respectively in pursuance of the Murrumbidgee Irrigation Act, 1910, or the Irrigation Act, 1912, are hereby made recoverable from or by the Commission, and all contracts agreements leases mortgages bonds covenants or securities made and entered into with or in favour of or by or for any such Trust or Commissioner or any person on its or his behalf shall take effect and may be proceeded on and enforced by and against and with reference to and in the name of the Commission as fully in all respects as they might have been enforced by against and with reference to such Trust or Commissioner if this Amendment Act had not been passed.
- (e) All property, whether real or personal, and all powers, rights, remedies, and capacities in respect thereof which now are, or as at the twentieth day of April, one thousand nine hundred and sixteen, were, in pursuance of this Act or any other Acts, or by virtue of the office of "Commissioner" constituted by the Irrigation Act, 1912, vested in him or his executors or administrators, or in any other persons on behalf of such Commissioner, are hereby vested in the Commission, and shall be deemed to have been so vested as from that date.

Section

Section six: After section six, add new section 6A as follows:—

6A. The irrigation areas known as Yanco Number One, Yanco Number Two, Yanco Number Three, and Mirrool Number One, and any variations of the boundaries of any of such areas, shall be deemed to have been validly constituted and made for the purposes of the Murrumbidgee Irrigation Act, 1910, the Irrigation Act, 1912, the Crown Lands (Amendment) Act, 1912, the Crown Lands Amendment and Declaratory Act, 1912, and the Crown Lands Consolidation Act, 1913, and any Acts amending the same, and all procedure and action relating to the setting apart and disposal of lands in the said irrigation areas which has or should have been taken under any of the said Acts shall be deemed to have been validly carried out:

Provided that this section shall not prejudice, waive, or abate any cause of action or plea or ground of defence thereto which has arisen prior to the passing of this Act in respect of the Supreme Court actions, Christopher Byrne v. Constable Nelson, No. 2,159, A.D. 1917, and Christopher Byrne v. H. R. Alexander, No. 2,160, A.D. 1917, now pending in that court.

Section seven: Omit section seven and substitute the following sections 7 and 7A:—

7. (1) The Minister shall in every notification setting land apart for disposal as irrigation farms—

- (a) state the number of water rights which are a fixed charge on each farm specified in such notification;
- (b) fix the price for such water rights;
- (c) specify such provisions and conditions not inconsistent with this Act as, according to the facts and circumstances of each case, the Minister thinks fit.

(2)

(2) Any notification as aforesaid setting land apart for disposal as irrigation farms shall have the effect of revoking any previous notification or any proclamation by the Governor, regarding such land in respect of the particulars referred to in paragraphs (a) and (b).

(3) Any notification under this section may be corrected, amended, modified, or revoked, whether as to the whole or any part thereof, by notification in the Gazette.

(4) The number of water rights and the prices or rates therefor specified in the Gazette notifying lands for disposal as irrigation farms prior to the commencement of the Amendment Act shall be deemed to be and to have been the number and prices or rates of water rights constituting a fixed charge on each of such farms respectively.

(5) The Minister may at any time he may deem expedient alter by notification in the Gazette the price or rate fixed for any water rights in respect of any farm granted before or after the passing of the Amendment Act.

7A. Where—

- (i) an occupier lawfully subdivides his farm and disposes of part thereof; or
- (ii) an occupier surrenders part of his farm under the provisions of section two hundred and thirty-one of the Crown Lands Consolidation Act, 1913, as amended by the Crown Lands and Irrigation (Amendment) Act, 1914; or
- (iii) additional land has been included in a farm,

the Minister shall, by notification in the Gazette, fix the number of water rights and the price or rate therefor, which are to be a fixed charge—

- (a) on each part of the farm so subdivided;
- (b) the part of the farm not surrendered; or
- (c) the farm as added to, as the case may be.

Section

Section 8A : After the figures " 1912 " insert the words " or conferred by section eleven of this Act or any other of its powers or functions ".

Section nine : " After the word " improvements " in paragraph (e) add the words " and institute and carry on any trade, business, factory, service, or industry, and construct, establish, and maintain any works or buildings ".

Section nine : At end of section add new paragraphs (f) and (g), as follows :—

(f) Acquire, provide, sell, deal in, and dispose of goods and chattels of any kind and [or] make advances in money on such terms and conditions as the Commission may deem fit.

" The Trust " constituted under the Murrumbidgee Irrigation Act, 1910, the " Commissioner," appointed under the Irrigation Act, 1912, and the " Commission," incorporated under the Irrigation (Amendment) Act, 1916, shall respectively be deemed to have had the powers conferred by this section on and from the respective dates of the passing of those Acts.

(g) Establish and maintain sanitary sewerage and garbage systems, and regulate the same, and the disposal of garbage, nightsoil, and other refuse, and fix and recover fees and charges in respect thereof.

Section nine : At end of section add new section 9A as follows :—

9A. No person shall remove or cause to be removed without the consent in writing of the Commission being first obtained, or wilfully damage or destroy or wilfully cause to be damaged or destroyed any structure, building, fixture, fence, or other improvement on any lease within an irrigation area in respect of which

which any money is owing to the Commission, and any person committing a breach of this section shall be liable on conviction to a penalty not exceeding one hundred pounds in addition to payment of the value of any such property removed or compensation for such damage or destruction, and such value or compensation may be ordered on such conviction to be paid by such person, but if no such order be made this section shall not abate or waive any civil remedy for recovery of such value or compensation or damages in respect of such removal, damaging, or destruction.

Omit section fourteen, and substitute the following:—

14. (1) The Commission may provide a supply of water through pipes under pressure, and may—

- (a) on or in respect of all or any land wholly situate within a distance of two hundred and fifty yards from any of such pipes, irrespective of whether such land is or is not supplied with water from such pipes, make and levy a rate, and may prescribe a minimum amount of payment in regard to such rate, and may prescribe the maximum quantity of water to be supplied in consideration of such rate; or
- (b) make and levy charges by measure for all water supplied, and may make a minimum charge; or
- (c) both make and levy such rate, and for water in excess of the said maximum quantity make and levy charges by measure.

(2) The Commission may fix different charges according to the purposes for which the water is supplied.

Section

Section sixteen: At end of section insert the words: "References in this and the preceding section fifteen to the charge or charges for water shall be deemed to include a reference to the rate levied in respect of land benefited by the supply of water through pipes under pressure."

Section eighteen: At end of section insert the words "For the purposes of this section the word 'collect' shall be deemed to include and to have included from the date of the passing of the Crown Lands Amendment Act, 1912, in addition to its ordinary meaning a power to sue in any court of competent jurisdiction for the moneys mentioned in the said section, and the Commission shall be deemed to be the landlord of all lands within any irrigation area, and shall in respect thereof have all the powers given by law to any landlord."

Section nineteen: Omit section nineteen, as inserted by the Irrigation (Amendment) Act, 1916, and substitute the following:—

19. (1) The Commission may at any time or from time to time, subject to such conditions as may be thought fit to impose—

- (a) make advances to occupiers;
- (b) suspend for any period or periods not exceeding in the whole four years the payment by any occupier of any money due or owing, or to become due or owing, to the Crown and [or] the Commission on any account whatsoever, together with any interest on such money due or owing, or to become due or owing;
- (c) allow any money or debts due or owing, or to become due or owing, to the Crown and [or] the Commission by any occupier, to be repaid, with interest thereon, by instalments within a period to be fixed not exceeding sixteen years, which period

period may, where suspension has been granted, commence on the day next following the date of expiry of the term of suspension.

- (d) consolidate all or any money debts due or owing, or to become due or owing, to the Crown and [or] the Commission, by any occupier and allow the money or debts so consolidated, with interest thereon, to be repaid by instalments within a period to be fixed not exceeding sixteen years, which period may, where suspension has been granted, commence on the day next following the date of expiry of the term of suspension.
- (e) allow either before, or after suspension, consolidation, or other action pursuant to this section, the whole or any portion of any advances, moneys, debts, or instalments mentioned in this section to be paid before the due date thereof and to waive interest thereon from such date as the Commission may determine or to place amounts so paid to the credit of the occupier in its books and allow him interest thereon from such date and at such rates as it may determine, provided that where portion only is paid no such payment or credit shall affect the obligation of the occupier to continue paying the instalments arranged prior to such prepayment: Provided further that the Commission may at its discretion apply the whole or any part of moneys so prepaid and standing to the credit of any such occupier in or towards satisfaction of any moneys or debts due or owing to the Crown and for the Commission or to become due or owing to the Crown, and [or] the Commission on any account whatsoever, and thereupon interest on any money so applied shall cease and determine. (2)

(2) Where any of the powers conferred under this section have been exercised, or shall be exercised, subject to any conditions imposed by the Commission, such conditions shall attach to the holding and the non-performance or breach of any of such conditions shall render the holding liable to be forfeited under the provisions of the Crown Lands Consolidation Act, 1913, or any Act amending or consolidating the same.

(3) The provisions of this section shall take effect as from the date of the passing of the Irrigation (Amendment) Act, 1916, and the powers conferred by such provisions may be exercised independently of each other, and in such order as the Commission may deem fit.

(4) The powers conferred by subsection (b) of this section may be exercised with or without regard to any suspensions of payment of rent granted prior to the twentieth day of April, one thousand nine hundred and sixteen.

Section twenty-three: Insert new section 23A as follows:—

23A. No occupier, or person who has been an occupier, shall have any claim against the Commission by reason of any alleged misrepresentation or warranty in regard to the quality or productiveness of the holding occupied at any time by him, nor shall he plead any such misrepresentation or warranty in any action or suit in any court whatsoever, either directly or indirectly, or by way of action, cross action, set off, or otherwise howsoever.

Any such occupier who deems himself to have any claim against the Commission in respect of any alleged misrepresentation or warranty as aforesaid may within one month from the passing of the Amendment Act, but
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not otherwise, submit his claim to the Commission, and the Commission may in its absolute discretion deal with such claim in any way it thinks fit.

If any such claim be not submitted to the Commission within the said period of one month it shall be barred absolutely.

Section twenty-six, paragraph (d): At end of paragraph add the words "and licensing vehicles and conveyances and the owners, drivers, and persons in charge of the same to ply for hire on or otherwise use such roads, and for preventing the use thereof without such licenses, and for charging and recovering fees for such licenses."

Section twenty-six, paragraph (g): After the word "supply" insert the words "and for determining, making, and levying the rate mentioned in section fourteen of this Act, and for carrying out the provisions of that section".

Section twenty-six, paragraph (l): After the word "of" where first occurring insert the words "and in relation to".

Section twenty-six, paragraph (m): After the word "roads" insert "avenues, streets, reserves, lands designed or reserved or used for drainage channels or supply channels or comprised within any irrigation area and not under lease in pursuance of the provisions of the Crown Lands Consolidation Act, 1913, or of this Act.

Section twenty-six: Add at end of section—

(t) prescribing and regulating the destruction of noxious weeds on roads, streets, reserves, lands designed or reserved or used for drainage or supply channels, and enforcing such destruction by occupiers of land fronting such roads;

(u) prohibiting or regulating the introduction into an irrigation area of any plant, grass, or seed, or any part thereof, which the Commission considers to be injurious;

(v)

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- (v) prescribing and regulating the destruction and the removal from any such area of any such plant, grass, or seed, or part thereof;
 - (w) prohibiting the introduction into or retention in an irrigation area of any entire stock which, after report by an officer of the Department of Agriculture, or other person authorised by the Commission, the Commission deems to be inferior;
 - (x) prescribing and regulating the registration of entire stock in an irrigation area;
 - (y) prescribing and regulating the furnishing by occupiers of returns—
 - (i) in connection with the levels of sub-soil water planes;
 - (ii) specifying the numbers and description of their stock;
 - (iii) specifying the area of their land, and
 - (iv) specifying a description of the trees, vines, crops, and cultivation thereon, and the returns per acre from same;
 - (z) regulating street lighting, stormwater drainage, sewerage, the suppression of nuisances, the removal and disposal of garbage, night-soil, filth, and refuse, and the fixing, recovery, and the collection of charges for the rendering by the Commission of such services;
 - (aa) regulating the erection of buildings as to height, design, structure, building materials, building line, and sanitation;
 - (bb) regulating drainage.
 - (cc) for the regulation or prevention of the erection of any structure of calico or canvas or other inflammable material, and the removal and disposal of any structure used as a dwelling-place which, in the opinion of the Commission, is unfit for human habitation.
 - (dd) for the suppression and destruction of noxious animals and noxious weeds or plants.

(ee)

- (ee) for the Commission by any of its officers or servants to perform and observe at the costs and expense of any occupier, any contracts between it or the Crown and him under which he is in default in respect of the maintenance, care, reparation, or insurance against fire, of any improvements, goods, or chattels, and for the Commission to recover such costs and expenses and interest thereon from such occupier and make the payment of same a charge on such occupier's land.
- (ff) for the Commission by any of its officers or servants to enter upon any land within any irrigation area and at the costs and expense of the occupier thereof to swab, spray, prune, clean, or otherwise treat and if necessary destroy and dispose of any trees, plants, vines, fruit, fruit-cases, packages, weeds or growths or refuse therefrom, and for the Commission to recover such costs and expenses and interest thereon from the occupier of such land and make the payment of same a charge on such land.
- (gg) prohibiting or regulating the introduction or consignment into any irrigation area of meat or flesh of any animal, and the slaughtering on or within any such area of any animal.
- (hh) for the purpose of effecting and carrying out the provisions of section nineteen of this Act.

Section twenty-seven: At end of section insert new section 27A:—

27A. Whenever by any section of this Act or by any regulation 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 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.

Amendment

Amendment of Crown Lands Consolidation Act, 1913.

3. The following amendments are made in the Crown Lands Consolidation Act, 1913 :—

Section one hundred and forty: At end of section add “ but this disqualification shall not extend to any applicant under or in pursuance of section 144A of this Act ”.

Section one hundred and forty-four: At end of section add new sections 144A and 144B :—

144A. The Commission, subject to such conditions as it may deem fit to impose, may by notification in the Gazette in any case where it considers that an existing farm held under lease is less than a home maintenance area add to such farm after application by the lessee in that behalf in the form and manner prescribed any Crown lands within an irrigation area either adjoining or separated from the original farm, and such original and additional areas shall be deemed to be one holding under any or all of the provisions of the Crown Lands Acts and the Irrigation Acts.

The Commission shall disallow any application for the addition of an area not adjoining the original farm if in its opinion such areas are not within reasonable working distance.

144B. If the irrigable area of a farm or block is increased by the construction of additional works, with the consent of the lessee, or otherwise increased, or additional facilities for watering are provided by the Commission, or if the area of a farm or block is altered by addition thereto, or surrender of part thereof, or if the farm or block is subdivided, the Commission shall determine the capital value of the farm as added to, remaining, or of the subdivisions, as the case may be, due regard being had to the additional value given or to be given thereto by reason of the works constructed or
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to be constructed for irrigation or other purposes, and to the benefits derived or to be derived therefrom. The Commission shall also adjust the amount, if any, owing on account of survey fee, and the amount to be paid for Crown improvements, and improvements effected or provided by the Commission and shall fix the terms under which such payments are to be made; provided that the capital value so determined, the annual rental, and particulars of any adjustments made or terms fixed shall be notified in the Gazette, together with the date from which such payments shall be due and payable.

Section one hundred and fifty-seven: At end of section add the words: "Provided that nothing in this section shall necessitate any such certificate or approval in the case of any applicant for an added area under section 144A of this Act, or for non-irrigable land under section one hundred and forty-six hereof, or disqualify any person from applying for any such added area or non-irrigable land".
