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**[CONFIDENTIAL]**  
**(Rough Draft for Consideration Only.)**

No.      , 1937.

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**A B I L L**

To make further provision with respect to the term of office and rate of salary of the Commissioners appointed under the Irrigation Act, 1912; to make provision for subsoil drainage and surface drainage in certain areas; to define the liability of the Water Conservation and Irrigation Commission for injury, loss or damage caused by certain of its operations, and to provide for the determination of claims for compensation arising out of such liability; for these and other purposes to amend the Irrigation Act, 1912-1931, the Water Act, 1912-1936, and certain other Acts; to validate certain matters; and for purposes connected therewith.

**B**E 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.

1. (1) This Act may be cited as the "Irrigation and Water (Amendment) Act, 1937." Short title.

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

PART I.—PRELIMINARY—s. 1.

PART II.—AMENDMENT OF IRRIGATION ACT, 1912-1931, AS AMENDED BY SUBSEQUENT ACTS—ss. 2, 3.

PART III.—AMENDMENT OF WENTWORTH IRRIGATION ACT, AS AMENDED BY SUBSEQUENT ACTS—ss. 4, 5.

PART IV.—AMENDMENT OF HAY IRRIGATION ACT, 1902, AS AMENDED BY SUBSEQUENT ACTS—s. 6.

PART V.—AMENDMENT OF CROWN LANDS CONSOLIDATION ACT, 1913, AS AMENDED BY SUBSEQUENT ACTS—ss. 7, 8.

PART VI.—AMENDMENT OF WATER ACT, 1912-1936, ss. 9, 10.

PART VII.—CLAIMS FOR COMPENSATION—ss. 11-27.

(3) The Irrigation Act, 1912-1931, as amended by subsequent Acts and by this Act, may be cited as the Irrigation Act, 1912-1937.

(4) The Water Act, 1912-1936, as amended by this Act, may be cited as the Water Act, 1912-1937.

PART II.

AMENDMENT OF IRRIGATION ACT, 1912-1931, AS AMENDED  
BY SUBSEQUENT ACTS.

2. (1) The Irrigation Act, 1912-1931, as amended by  
subsequent Acts, is amended—

Amendment of  
Act No. 73,  
1912.

(a) by omitting from subsection two of section four  
the words "five years" and by inserting in lieu  
thereof the words "seven years";

Sec. 4.  
(Appointment  
of Commission.)

(b) by omitting from subsection three of the same  
section the words "one thousand two hundred  
and fifty pounds" and by inserting in lieu there-  
of the words "one thousand five hundred  
pounds";

(c) by inserting at the end of the same section the  
following new subsection:—

(8) (a) Notwithstanding anything contained  
in any Act, nothing contained in this Act shall  
affect the rights accrued or accruing under this  
Act, or the Public Service Act, 1902, or the  
Superannuation Act, 1916, or any Act amending  
such Acts to any person appointed a commis-  
sioner under this Act who is, at the time of his  
appointment, an officer of the Public Service or  
an officer within the meaning of this Act or of  
the Government Savings Bank Act, 1906, or any  
Act amending those Acts, or an employee within  
the meaning of the Superannuation Act, 1916, or  
any amendment thereof.

Saving of  
rights.

(b) Any officer of the Public Service or  
any officer within the meaning of this Act or of  
the Government Savings Bank Act, 1906, or any  
Act amending those Acts, or any employee within  
the meaning of the Superannuation Act, 1916,  
or any amendment thereof appointed a commis-  
sioner under this Act shall continue to contribute  
to any fund or account and shall be entitled to  
receive any deferred or extended leave and any  
payment, pension or gratuity as if he were an  
officer or employee as the case may be within the  
meaning of this Act, the Public Service Act,

1902,

1902, the Government Savings Bank Act, 1906, or the Superannuation Act, 1916, or any Act amending those Acts, and for such purpose his service as a commissioner shall be deemed to be service for the purposes of such Acts.

(2) Section four of the Irrigation Act, 1912-1937, shall apply to and in respect of the commissioners appointed under the Irrigation Act, 1912, as amended by subsequent Acts and holding office immediately before the commencement of this Act, subject to the following special provisions, namely:—

- (a) such commissioners shall be deemed to have been appointed for a term of seven years from the date of their appointment or last reappointment as the case may be;
- (b) each such commissioner shall be paid a salary at the rate of one thousand five hundred pounds as from the commencement of this Act;
- (c) each such commissioner shall have and be subject to all the rights, privileges and obligations conferred or imposed by subsection eight of that section in all respects as if that subsection had been in force at the date of his appointment.

**3.** (1) The Irrigation Act, 1912-1931, as amended by subsequent Acts, is further amended—

- (a) by inserting at the end of subsection one of section seven the following new paragraphs:—

Any notification under this subsection may specify the year (not being later than the fifth year after the date of the granting of the application for the purchase or lease) during and after which the water rights shall respectively attach to and be a fixed charge on the lease or purchase or part of the lease or purchase as the case may be, and in such case shall also specify what proportion of such water rights or what number of water rights shall attach to and be a fixed charge on the lease or purchase, or part of the lease or purchase, as the case may be, during each year of the period between the date of the granting

Further amendment of Act No. 73, 1912.

Sec. 7.

(Setting land apart as irrigation farms.)

granting of the application for the lease or purchase 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 lease or purchase or part of the lease or purchase, as the case may be, as from the date of the granting of the application.

- (b) by inserting next after section seventeen the following new section:—

17A. (1) Any person who, except under the authority of this Act or with the permission of the Commission,—

New s. 17A.  
Offences relating to the taking of water.

(a) takes or uses water from—

- (i) any reservoir, aqueduct, channel, or pipe used in or in connection with any irrigation area constituted under this Act or under the Wentworth Irrigation Act, the Hay Irrigation Act, 1902, or the Murrumbidgee Irrigation Act, 1910, and belonging to or under the control and management of the Commission; or
  - (ii) any pipe leading to or from any such reservoir, aqueduct, channel, or pipe; or
  - (iii) any cistern or place used in or in connection with any irrigation area constituted under this Act or under the Wentworth Irrigation Act, the Hay Irrigation Act, 1902, or the Murrumbidgee Irrigation Act, 1910, and belonging to or under the control and management of the Commission or supplied by it with water for the use of any consumer; or
- (b) interferes with the flow of the water in any supply channel used in or in connection with any irrigation area constituted under

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under this Act or under the Wentworth Irrigation Act, the Hay Irrigation Act, 1902, or the Murrumbidgee Irrigation Act, 1910, by opening or closing either in whole or in part any valve, sluice, gate, meter or other like regulator or by removing or placing in position any drop-bar or like appliance,

shall be guilty of an offence and shall be liable to a penalty not exceeding *twenty* pounds.

(2) Any person who, except under the authority of this Act or with the permission of the Commission—

- (a) diverts or takes water supplying or flowing into any waterworks, watercourse or reservoir used in or in connection with any irrigation area constituted under this Act or under the Wentworth Irrigation Act, the Hay Irrigation Act, 1902, or the Murrumbidgee Irrigation Act, 1910, and belonging to or under the control and management of the Commission; or
- (b) does any act whereby the water from any such waterworks, watercourse, or reservoir may be drawn off or diminished in quantity,

shall be guilty of an offence and shall be liable to a penalty of not more than *five* pounds for every day during the whole or any part of which the said supply of water is diverted or diminished by reason of any act done by or by the direction of such person.

(3) Any person who destroys, damages or interferes with any reservoir, dam, weir, tank, channel, conduit pipe, bridge, culvert, box, structure or other part whatever of the works used in or in connection with any irrigation area constituted under this Act or under the Wentworth Irrigation Act, the Hay Irrigation Act, 1902, or the

the Murrumbidgee Irrigation Act, 1910, and belonging to or under the control of the Commission shall be guilty of an offence and shall be liable to a penalty not exceeding *twenty* pounds.

(4) Where, in any prosecution for an offence against this section, it is established that as a result of the acts complained of a benefit is conferred upon or derived by any occupier it shall be presumed, in the absence of proof to the contrary that such occupier was guilty of the offence.

(2) Any notification setting land apart for disposal as an irrigation farm purchase or an irrigation farm lease under the provisions of the Crown Lands Consolidation Act, 1913, and published on or after the twenty-eighth day of December, one thousand nine hundred and thirty-four, and before the commencement of this Act which would have been valid if the amendment made by paragraph (a) of subsection one of this section had been in force at the date of such publication is hereby validated.

(3) No notification setting land apart for disposal as irrigation farm purchases or irrigation farm leases under the provisions of the Crown Lands Consolidation Act, 1913, and published before the twenty-eighth day of December, one thousand nine hundred and thirty-four, shall be deemed or held to be invalid merely by reason of the fact that such notification specified a year during and after which the stated number of water rights which were a fixed charge on each farm and the price fixed for such water rights were to be granted and payable respectively, and specified a proportion of such stated number of water rights or a different number of water rights, and a proportion of such price which would be granted and payable respectively during each year in the period between the date of the granting of the application for the irrigation farm and the commencement of such stated year.

PART III.

AMENDMENT OF WENTWORTH IRRIGATION ACT.

4. The Wentworth Irrigation Act, as amended by subsequent Acts, is amended—

Amendment of Act 54 Vict., No. 7.

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

Substituted s. 31.

31. Subject to the sanction of the Minister the Water Conservation and Irrigation Commission shall have power to fix charges for water supplied by the works carried out pursuant to this Act. Such charges shall be fixed in the manner prescribed and shall be paid in the prescribed manner to the bank by the owner of the land to which the water is supplied.

Power to fix rates.

(b) by omitting paragraph (d) of section thirty-two and by inserting in lieu thereof the following:—

Sec. 32. (By-laws.)

(d) To prescribe the manner of fixing the charges for water supplied and the conditions on which water shall be supplied.

5. The rates fixed or purporting to have been fixed by the Commission under section thirty-one of the Wentworth Irrigation Act before the commencement of this Act shall be deemed to have been duly fixed under the provisions of that section and shall be deemed to have been duly levied by the service of the accounts served by the Commission and/or by the Rural Bank of New South Wales and the person upon whom such accounts were served shall be liable for payment of the rates unpaid immediately before the commencement of this Act.

Validation.

PART IV.

AMENDMENT OF HAY IRRIGATION ACT, 1902.

6. The Hay Irrigation Act, 1902, as amended by subsequent Acts, is amended by inserting at the end of section twenty-six the following new subsections:—

Amendment  
of Act No.  
57, 1902.  
Sec. 26.  
(Rent of lots.)

(4) Notwithstanding anything contained in subsection one or subsection two of this section where, in the opinion of the Minister, the circumstances warrant such action, the rent of any lot leased may be reduced by the Water Conservation and Irrigation Commission as from the first day of January, one thousand nine hundred and thirty-six, to such sum as the Minister may determine.

The power conferred by this subsection shall be deemed to have become exercisable on the first day of May, one thousand nine hundred and thirty-six, and shall be exercisable for a period of one year after the commencement of the Irrigation and Water (Amendment) Act, 1937.

(5) Where the rent of any lot leased is reduced under the provisions of subsection four of this section, such of the provisions of the Crown Lands (Amendment) Act, 1932, as amended by the Crown Lands (Amendment) Act, 1935, as relate to the reduction of rents shall cease to apply to and in respect of the lot leased, and shall be deemed to have so ceased to apply as from the date upon which the reduction made under subsection four of this section takes effect.

PART V.

AMENDMENT OF CROWN LANDS CONSOLIDATION ACT, 1913.

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

Amendment of Act No. 7, 1913.

(a) (i) by omitting paragraph (b) of subsection six of section one hundred and forty-two and by inserting in lieu thereof the following paragraphs:—

Sec. 142. (Conditions, &c., of irrigation farm purchases.)

(b) Land (other than land described in the Gazette notifying it as available for disposal, as suitable for residential purposes, or for horticulture, or for both horticulture and any other purpose) shall not be used to plant any area of orchard or vineyard to a greater extent than one acre, unless such land comprises an irrigation farm purchase to which is attached a condition that, or to the effect that, a greater area of orchard or vineyard may be planted.

This paragraph shall be deemed to have been in force from the date of the commencement of the Irrigation Holdings (Freehold) Act, 1924.

(b1) The restrictions specified in paragraphs (a) and (b) of this subsection shall be and shall be deemed always to have been conditions attaching to the purchase.

(ii) by omitting from paragraph (c) of the same subsection the words "either of the conditions mentioned in paragraph (a) or (b) hereof (or either)" and by inserting in lieu thereof the words "any of the conditions mentioned in subsection seven, subsection eight or subsection nine of section 142D of this Act (or any)";

(iii) by omitting from the same paragraph the words "paragraph (a) or paragraph (b) as the case may require" and by inserting in lieu thereof the words "the condition which attached to the lease";

(iv)

(iv) by omitting paragraphs (d) (e) and (f) of the same subsection and by inserting in lieu thereof the following paragraphs:—

(d) With respect to any irrigation farm purchase to which at the commencement of the Irrigation and Water (Amendment) Act, 1937, is attached a condition that, or to the effect that—

- (i) it shall not be used to depasture any stock in excess of that required for purely domestic and horticultural purposes; or
- (ii) it shall not be used to plant any area of orchard or vineyard to a greater extent than that specified in the condition,

such condition shall continue to attach to such purchase.

(e) A condition mentioned in paragraph (d) of this subsection or a condition to the like effect may be attached to any irrigation farm purchase:—

- (i) by the Minister when notifying it as available for disposal, or
- (ii) by the Commission when notifying the addition of land thereto.

(f) A condition mentioned in paragraph (a), paragraph (b), paragraph (c), paragraph (d) or paragraph (e) of this subsection attaching to an irrigation farm purchase shall not cease and shall be deemed never to have ceased to apply after the grant in fee-simple has issued.

Any breach of such a condition shall render the land liable to forfeiture.

(g) The Minister may, at any time, with the consent of the holder, by instrument under his hand in the prescribed form cancel or vary any condition mentioned in paragraph

paragraph (a), paragraph (b), paragraph (c), paragraph (d) or paragraph (e) of this subsection on such terms and conditions as he thinks fit and the condition as so varied shall, whether or not the grant has issued, be the condition attaching to the irrigation farm purchase.

(h) The Registrar-General may register any such instrument and may cause appropriate entries to be made in the register book.

- (b) (i) by omitting paragraph (b) of subsection seven of section 142D and by inserting in lieu thereof the following paragraphs:—

Sec. 142D.  
(Conditions  
&c., of leases  
within  
irrigation  
areas.)

(b) Land (other than land which after the passing of the Irrigation Holdings (Freehold) Act, 1924, is described in the Gazette notifying it as available for disposal as an irrigation farm lease, as suitable for residential purposes, or for horticulture or for both horticulture and any other purpose) shall not be used to plant any area of orchard or vineyard to a greater extent than one acre unless such land comprises a lease to which is attached a condition that, or to the effect that, a greater area of orchard or vineyard may be planted.

This paragraph shall be deemed to have been in force from the date of the commencement of the Irrigation Holdings (Freehold) Act, 1924.

(c) The restrictions specified in paragraphs (a) and (b) of this subsection shall be and shall be deemed always to have been conditions attaching to the lease.

- (ii) by omitting from subsection eight of the same section the words "the passing of the Irrigation Holdings (Freehold) Act, 1924," and by inserting in lieu thereof the words "the commencement of the Irrigation and Water (Amendment) Act, 1937";

(iii)

- (iii) by omitting from paragraph (b) of the same subsection the words "one acre" and by inserting in lieu thereof the words "that specified in the condition";
- (iv) by inserting next after the same subsection the following new subsections:—

(9) A condition mentioned in subsection eight of this section or a condition to the like effect may be attached to any lease—

- (a) by the Minister when notifying it as available for disposal; or
- (b) by the Commission when notifying the addition of land thereto.

(10) Land notified in the Gazette as available for disposal for the purpose of residence shall not, except with the written consent of the Commission, be used as a place of amusement or meeting, or for any business which involves the manufacturing, repairing, selling, buying or cleansing of any article or commodity, or for any other business purpose. This provision shall be deemed to have been in force from the date of the commencement of the Irrigation Holdings (Freehold) Act, 1924.

(11) The provisions of subsections seven and ten of this section shall not cease to apply after the perpetual lease grant has issued.

- (c) (i) by omitting paragraph (b) of subsection two of section one hundred and forty-four and by inserting in lieu thereof the following paragraph:—

Sec. 144.  
(Perpetual  
lease  
grants.)

- (b) conditions securing upon the land so much of any rate or charge for water made and levied under the provisions of the Irrigation Act, 1912, and any Act amending the same as is due in respect of water rights which are a  
fixed

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fixed charge or for water supplied in respect of water rights attached to the land which are not a fixed charge.

- (ii) by inserting at the end of the same section the following new subsection:—

(3) The grant shall also be made subject to such other reservations and exceptions as may, by the Governor, be deemed expedient in the public interest.

This subsection shall be deemed to have been in force from the date of the commencement of the Irrigation Holdings (Freehold) Act, 1924.

- (d) (i) by omitting from subsection one of section 144A the words “including any land reserved in pursuance of section two hundred and six of this Act”;

Sec. 144A.  
(Additions to holdings.)

- (ii) by omitting subsection three of the same section and by inserting in lieu thereof the following subsections:—

(3) Notwithstanding anything to the contrary in this Act, or the Mining Act, 1906, or the Forestry Act, 1916, any notification under this section shall have the effect of revoking any reserves or parts of reserves or population areas within the boundaries of the land which is the subject of the notification, unless the contrary is expressly declared by the terms of the notification. Such revocation shall take immediate effect on the expiration of the day next preceding the day upon which the addition takes effect: Provided that the revocation of any reserve for mining or mining purposes or any timber reserve shall not be so effected unless in the case of a reserve for mining or mining purposes the consent thereto of the Secretary for Mines, or in the case of a timber reserve of the Forestry Commission, has been obtained.

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This subsection shall be deemed to have been in force from the date of the commencement of the Irrigation (Amendment) Act, 1918.

(3A) The revocation of a reserve from sale for the purpose of a catchment area shall not be effected under subsection three of this section unless the revocation has been recommended by the board constituted under section 34A of this Act.

(iii) by inserting in subsection four of the same section after the word "grant" where secondly occurring the words "or any certificate of title under the Real Property Act, 1900, as amended by subsequent Acts, for the land comprising such holding";

(iv) by inserting next after the same subsection the following new subsection:—

(5) The Commission may permit withdrawal of any application under this section at any time before publication of the notification referred to in subsection one of this section.

(e) by inserting next after subsection one of section 144B the following new subsection:—

Sec. 144B.  
(Alteration  
of area.)

(1A) The annual rental of a holding shall not be determined as provided in subsection one of this section if the irrigable area thereof is increased by the construction of additional works wholly provided by the holder or if the additional facilities for watering are so provided.

This subsection shall be deemed to have been in force from the date of the commencement of the Irrigation (Amendment) Act, 1931;

(f) by inserting next after subsection seven of section 144E the following new subsections:—

Sec. 144E.  
(Sale by  
auction or  
tender.)

(8) Notwithstanding anything to the contrary in this Act, or the Mining Act, 1906, or the Forestry Act, 1916, any notification under this section offering land for sale by auction

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or tender shall have the effect of revoking any reserves, or parts of reserves, or population areas within the boundaries of the land which is the subject of the notification, unless the contrary is expressly declared by the terms of the notification. Such revocation shall take immediate effect on the expiration of the day next preceding the day upon which the notification is published in the Gazette: Provided that the revocation of any reserve for mining or mining purposes or any timber reserve shall not be so effected unless in the case of a reserve for mining or mining purposes the consent thereto of the Secretary for Mines, or in the case of a timber reserve of the Forestry Commission, has been obtained.

Such notification as aforesaid shall also have the effect of revoking any previous notification of the like nature affecting the same land unless the contrary is expressly declared by the terms of the notification.

This subsection shall be deemed to have been in force from the date of the commencement of the Irrigation Holdings (Freehold) Act, 1924.

(9) The revocation of a reserve from sale for the purpose of a catchment area shall not be effected under subsection eight of this section unless the revocation has been recommended by the board constituted under section 34A of this Act.

8. The acceptance before the commencement of this Act by the Commission of any surrender under section two hundred and thirty-one of the Crown Lands Consolidation Act, 1913, whether as originally enacted or as amended of any lease or part thereof within an irrigation area is hereby validated, and any such acceptance shall be deemed to have and to have had full force and effect. Validation.

PART VI.

AMENDMENT OF WATER ACT, 1912-1936.

9. The Water Act, 1912-1936, is amended—

(a) by inserting in subsection one of section thirty-three after the word "proposal" the words "upon the grounds stated in the petition";

Amendment of Act No. 44, 1912.

Sec. 33.  
(Petition, objection and inquiry.)

(b) by inserting at the end of section seventy-three the following new subsections:—

Sec. 73.  
(Application of Public Works Act.)

(2) Without prejudice to the generality of subsection one of this section the provisions of section thirty-eight of the Public Works Act, 1912, shall, mutatis mutandis, apply to any contracts for carrying out any such work.

(3) Notwithstanding the provisions of section ninety-one of the Public Works Act, 1912, the Minister shall not be compelled nor shall it be the duty of the Minister 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 Minister may in his discretion make and maintain such fences in connection with any such work as he may deem fit.

(c) by inserting in the definition of "owner" in section one hundred and thirty after the words "an owner" the words "whether jointly or severally and whether at law or in equity";

Sec. 130.  
(Definitions.)

(d) by inserting in subsection three of section one hundred and thirty-one after the words "to the proposal" the words "upon the grounds stated in the petition";

Sec. 131.  
(Proposal for constitution of districts.)

(e) by inserting in subsection two of section one hundred and thirty-three after the word "objecting" the words "upon the grounds stated in the petition";

Sec. 133.  
(Constitution of districts.)

(f) by inserting in subsection three of section one hundred and thirty-four after the words "to the proposal" the words "upon the grounds stated in the petition";

Sec. 134.  
(Alteration of boundaries of districts.)

(g)

- (g) by omitting section one hundred and thirty-seven and by inserting in lieu thereof the following section:—
- Substituted s. 137.

137. The Commission shall fix in respect of the lands within provisional districts and districts the rates and charges for water as hereinafter provided.

Rates and charges for water.

- (h) by omitting paragraph (a) of subsection one of section one hundred and thirty-eight and by inserting in lieu thereof the following paragraph:—
- Sec. 138.  
(Rates and charges for various purposes.)

(a) be levied as prescribed and payable only in respect of holdings to which a supply of water has been made available from the works of the provisional district.

- (i) by inserting at the end of section one hundred and thirty-nine the following new subsection:—
- Sec. 139.  
(Assessment of rates and charges.)

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

- (j) by inserting at the end of section one hundred and forty-three the following new subsections:—
- Sec. 143.  
(Liability for rates and charges for water.)

(3) In any case where more than one person is an owner of the land within the meaning of this Part the rate or charge may be levied upon any one or more of such persons and the bank may recover the rate or charge as against any person upon whom the rate or charge is so levied:

Provided that nothing in this subsection shall entitle the bank to recover more than the full amount of the rate or charge.

(4) (a) Where the land is owned jointly by two or more owners, such owners shall be jointly and severally liable to the bank for the rate or charge,

charge, but as between themselves each shall only be liable for such part of the rate or charge as is proportionate to his interest in the land 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.

(5) Where an owner acquires land from the Crown during any year within which rates and charges are payable under this Part rates and charges proportionate to the portion of the year during which the land is held by such owner shall be payable by him to the bank as and when prescribed and notwithstanding the provisions of subsection one of section one hundred and thirty-nine the Commission may assess the said owner accordingly at a date subsequent to that on which he acquired the land.

(6) Where during any year any land, being the whole or part of a holding within a district or provisional district, reverts to the Crown, and, in respect of that year and in respect of each holding within the district or provisional district, rates and charges are or are to be assessed, the owner of such land shall, as regards such land, be liable only for that part of the rates (not being rates of the class referred to in paragraph (a) of section one hundred and forty-one of this Act) which accrues due in respect of the period of the year during which such land is held by him, and in addition shall, as regards such land, be liable for the greater of the following amounts—

(a) the amount of the rate or charge fixed and levied as provided in section one hundred and forty-one of this Act which accrues due in respect of the period of the year during which such land is held by him;

(b)

- (b) the amount due and payable in respect of charges for water or for additional water or for water supplied or delivered during the period of the year during which such land is held by him.

For the purposes of this subsection charges for water rights and 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.

- (k) by inserting next after subsection nine of section one hundred and forty-seven the following new subsection:—

Sec. 147.  
(Supply of water.)

(9A) Where part of any holding to which water rights are attached reverts to the Crown, the Governor may, on the recommendation of the Commission, determine the number of water rights, if any, which shall attach to the balance of such holding.

- (l) (i) by inserting next after subsection five of section one hundred and forty-eight the following new subsections:—

Sec. 148.  
(Surveys and works.)

(5A) Without prejudice to the generality of subsection five of this section the provisions of section thirty-eight of the Public Works Act, 1912, shall, *mutatis mutandis*, apply to any contracts for carrying out any such work.

(5B) Notwithstanding the provisions of section ninety-one of the Public Works Act, 1912, 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.

(ii)

- (ii) by omitting paragraph one of subsection six of the same section and by inserting in lieu thereof the following paragraph:—

“(1) to enter any lands being—

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

- (iii) by inserting at the end of the same section the following new subsections:—

(7) 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 six of this section there shall be taken into consideration and given effect to by way of set-off or abatement the enhanced value of the land of the claimant on account of the provision under this Part of a water supply or the attachment of water rights to the said land, 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:

cf. Act No.  
45, 1912,  
s. 124.

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

- 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.

(8) In ascertaining the purchase money or compensation to be paid by the Commission for any land taken or acquired by it for the purposes of this Part there shall be taken into consideration and given effect to by way of set-off or abatement any enhancement in the value of the interest of any claimant in any land adjoining the land taken or acquired by the Commission but in no case shall this subsection operate so as to require any payment to be made by such claimant to the Commission in consideration of such enhancement of value as aforesaid.

Nothing in this subsection shall prejudice the generality of subsection five of this section.

**10.** The Water Act, 1912-1936, is further amended—

Further amendment of Act No. 44, 1912.

- (a) by inserting in section one next after the matter relating to Part VI the following words and symbols:—

Sec. 1.  
(Division into Parts.)

PART VII.—SUBSOIL DRAINAGE DISTRICTS AND SURFACE DRAINAGE DISTRICTS—SS. 150-169.

(b).

(b) by inserting next after Part VI the following new Part:—

New Part VII.

PART VII.

SUBSOIL DRAINAGE DISTRICTS AND SURFACE DRAINAGE DISTRICTS.

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

Definitions.

“Bank” means the Rural Bank of New South Wales.

“Board” means the Board constituted under the provisions of subsection two of section thirty of this Act.

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

“Owner” means an occupier of Crown land and an owner whether jointly or severally and whether at law or in equity of any estate of freehold in land and includes a mortgagee in possession.

“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.

151. (1) (a) In respect of any 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 by subsequent Acts as a subsoil drainage district.

Proposal for constitution of districts.

(b) In respect of any proposed works of surface drainage the Commission may notify in the Gazette a proposal for the constitution of

of any lands within any domestic and stock water supply and irrigation district constituted under Part VI of this Act 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 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 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

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.

152. (1) If within the said period no such petition is received or 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.

Constitution  
of  
provisional  
districts.

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

153. (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) a schedule of the lands within the district which are benefited by the works (in this Part referred to as "benefited lands");
- (d) the 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.

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

(2)

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(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 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 for which upon survey and investigation by the Commission it is found to be impracticable to provide works for drainage and in respect of which means of drainage have not been provided shall not be included within the district.

154. (1) The Governor may, by proclamation in the Gazette, alter a district by—

Alteration  
of  
boundaries  
of districts.

(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 to another, or

(2) In connection with any proposal for any such alteration of a district, unless the owners of the holdings or parts of holdings have

have notified in writing their willingness to have such holdings or parts of holdings included in the district, or excised therefrom, or transferred to another 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) a schedule of the lands which it is estimated will be benefited lands;
- (c) the rate, if any, per acre of lands benefited applicable to the district within which it is proposed to include the additional or transferred holdings or parts of holdings and which will apply to such lands;
- (d) the contribution, if any, per acre of lands benefited which the owners of the said lands will be required to make towards the capital cost of the works of the 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 to be transferred from one district to another, or by any owner of a holding or part of a holding proposed to be excised from the district, or by any owner who is of the opinion that the area of lands within his holding or part of a holding estimated to be benefited lands is in excess of the area which will

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) 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 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 shall, as from the date of such proclamation in the Gazette, be exempt from rates under this Part for drainage within such 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 to another shall, as from the date of the proclamation in the Gazette, be exempt from rates for drainage within the 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 to which the holding or part of the holding has been transferred. All rates due in respect of such lands for drainage within the 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.

155. Upon the alteration of any 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. Additional holdings.

156. (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.

Contribution towards capital cost.

(2) Particulars of the amount of the contribution, if any, proposed to be required and the terms, times and conditions of payment shall be set out in the proposals notified in accordance with the provisions of subsection one of section one hundred and fifty-one and subsection two of section one hundred and fifty-four of this Act.

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

(4) The contributions may be required to be paid in one payment or may be spread over several payments to be made at intervals.

(5) The contributions 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 contributions under this Part who transfers his estate or interest in or who abandons any land in respect of which contributions are to be paid shall, within thirty days of such transfer or abandonment, give notice thereof to the Commission, and until such notice is given he shall remain liable for all contributions which become payable in respect of such land prior to the giving of such notice.

157. The Commission shall fix in respect of the benefited lands within provisional districts and districts the rates for drainage as hereinafter provided.

Fixation of rates.

158. (1) The rates for drainage within a provisional district shall—

Rates within provisional districts.

- (a) be levied as prescribed and payable only in respect of benefited lands;

(b)

- (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.

(2) The rates shall not exceed but may be less than the rates set out in the notification made in pursuance of subsection one of section one hundred and fifty-one of this Act, or any amended rate fixed by proclamation under the provisions of section one hundred and fifty-two of this Act.

159. (1) The Commission shall, in respect of each year commencing on the first day of July, and in respect of each parcel of benefited lands, assess during that year in accordance with the provisions of this Part the rates for drainage within a district or provisional district. The rates so assessed shall be notified and paid as prescribed.

Assessment  
of rates.

(2) During the year that any holding or part of a holding has been included in a district under the provisions of section one hundred and fifty-four of this Act, the Commission may in respect of benefited lands within that holding assess a rate for that year at a date subsequent to such inclusion and the rate shall be proportionate to the portion of the year during which the means of drainage benefit the benefited lands.

(3) 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**

Commission, and until such notice is given he shall remain liable for all rates which become payable in respect of such lands prior to the giving of such notice.

160. (1) (a) Overdue contributions under section one hundred and fifty-six and overdue rates assessed under section one hundred and fifty-nine of this Act shall be increased in accordance with this subsection.

Provisions relating to contributions and rates.

(b) If the contributions or rates so assessed are unpaid at the expiration of three months after the due date of payment the amount due shall be increased by a sum calculated at the rate of five per centum per annum.

Any increase under this paragraph shall be deemed to be part of the contributions or rates 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 percentage is less than threepence the increase shall be threepence.

(e) The increase in the contributions or rates under this subsection shall continue to apply to all unpaid contributions 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 payable or rate assessed in respect of such benefited land may be demanded from or levied upon any one or more of such persons and the bank may recover the contribution or rate as against any person from whom the contribution is so demanded or upon whom the rate is so levied:

Provided

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

(3) (a) Where the benefited land is owned jointly by two or more owners, such owners shall be jointly and severally liable to the bank for the contribution or rate, but, as between themselves, each shall only be liable for such part of the contribution or rate as is proportionate to his interest in the benefited land 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 an owner acquires benefited lands from the Crown during any year within which contributions or rates are payable under this Part, contributions or rates proportionate to the portion of the year during which the benefited lands is held by such owner shall be payable by him to the bank as and when prescribed and notwithstanding the provisions of section one hundred and fifty-nine of this Act the Commission may assess the said owner accordingly at a date subsequent to that on which he acquired the benefited lands.

(5) Where any area being the whole or part of any benefited lands held by an owner reverts to the Crown during any year within which contributions or rates are payable under this Part, he shall as regards such area be liable for payment of only that part of the contributions or rates proportionate to the portion of the year for which such area was held by him and any excess payment by him in that behalf shall be refunded to him.

(6) In the event of the Commission at any time finding it has made an error in the assessment of a contribution or rate in respect of  
of

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 reassess the contribution or rate in respect of any benefited lands or owner affected.

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

Rates payable to bank.

(2) Rates under this Part shall be—

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

162. The rates within a district shall, for a 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 rates notified under the provisions of section one hundred and fifty-one of this Act or any amended rates fixed by a proclamation under the provisions of section one hundred and fifty-two of this Act.

Rates for district when first constituted.

163. After the thirtieth day of June next following the fifth anniversary of the constitution of a district, the rates in respect of the district shall each year be as fixed by the Commission and be notified by it in the Gazette.

Annual fixation of rates.

164. (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.

Surveyors and 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)

(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, 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, shall, *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, 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 drain or any works incidental thereto proposed to be constructed, or constructed, utilised or acquired under the authority of this Part, or to which  
this

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 made for compensation by reason of the exercise by the Commission of any of the powers conferred upon it by subsection one, subsection four, or subsection six of this section there shall be taken into consideration and given effect to by way of set-off or abatement the 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)

(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.

(10) In ascertaining the purchase money or compensation to be paid by the Commission for any land taken or acquired by it for the purposes of this Part there shall be taken into consideration and given effect to by way of set-off or abatement any enhancement in the value of the interest of any claimant in any land adjoining the land taken or acquired by the Commission but in no case shall this subsection operate so as to require any payment to be made by such claimant to the Commission in consideration of such enhancement of value as aforesaid.

Nothing in this subsection shall prejudice the generality of subsection five of this section.

165. (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 drains and works of the district or provisional district and shall adopt such means for the protection of the drains of the district or provisional district from siltation or blockage as may be prescribed.

Provision of silt boxes, etc.

(2)

(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 drainage works of the district or provisional district and shall adopt such means of protection of the drainage works of the 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.

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

Additional  
works and  
adjustment  
of additional  
benefited  
lands.

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 fifty-one of this Act, or any amended rate per acre fixed by proclamation under the provisions of section one hundred and fifty-two of this Act in respect of the district in which such benefited lands are located.

167. (1) Prior to the disposal of any part of a holding within a district or provisional district by the owner of the holding to any other person, the said owner shall provide at his own cost such drainage works as are stipulated by the Commission and deemed necessary to carry drainage water from such part to the works of the district or provisional district.

Necessary works to be provided before disposing of part of holding.

The location, design, form, dimensions and construction of all works so provided shall be as approved by the Commission.

(2) All 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.

(3) 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 works required under this section.

(4)

(4) All land deemed by the Commission to be required for the 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.

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

168. (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. Disposal of water from the works.

(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 sell any water so diverted and may authorise any person to similarly 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.

169. (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. Regulations.

(2)

(2) Without prejudice to the generality of the power 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 or levying of rates;
- (c) prescribing the forms of any notices 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 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 drainage works of the 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 at points of inlet to drains and the means of protection of the drainage works of the district from siltation and erosion.

(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)

- (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 regulations 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 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.

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PART VII.

CLAIMS FOR COMPENSATION.

11. This Part of this Act shall commence upon a day to be appointed by the Governor and notified by proclamation published in the Gazette.

Commencement of Part.

12. (1) This Part of this Act shall be read and construed with the Irrigation Act, 1912-1937.

Construction of Part.

(2) In this Part of this Act, unless the context or subject matter otherwise indicates or requires,—

Definitions.

“Arbitrator” means a judge of the district courts appointed to act as arbitrator under this Part.

“District” or “provisional district” means a district or provisional district as the case may be constituted under Part VI or Part VII of the Water Act, 1912-1937.

“Irrigation Area” means an 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 by subsequent Acts.

“Work” includes “work” as defined in Part VI and in Part VII of the Water Act, 1912-1937, and also includes any work constructed or used by the Commission in or in connection with any irrigation area.

13. This Part of this Act shall apply to and in respect of all irrigation areas and all districts and provisional districts.

Application of Part.

14. The drainage through any land whether private or Crown land and across or along any roadway of any surplus of waters artificially supplied to any irrigation area or district or provisional district (whether or not such drainage of surplus water is effected by the operation of the works of a district or provisional district constituted under Part VII of the Water Act, 1912-1937) shall not be a matter in respect of which any claim for compensation shall be maintainable against the Commission; but such waters shall have free passage as if they

Drainage of surplus water. cf. Act No. 3,801 (Vict.), 1928, s. 293.

had

had been deposited upon any such irrigation area, district or provisional district by natural rainfall provided that such waters shall first be conducted into some channel or drainage course and in either case whether natural or artificially constructed and capable of containing them.

**15.** Nothing in the Irrigation Act, 1912, or the Water Act, 1912, as respectively amended by subsequent Acts, shall render the Commission liable for injury happening through or by the breaking of any dam, bank, watercourse, channel, drain, sluice or other work for the conservation or control or conveyance of water unless such injury arises through neglect to keep such dam, bank, watercourse, channel, drain, sluice or other work in repair and unless the occupier of the land or property injured had given written notice to the Commission warning it of the probability of such injury, and the Commission neglected within a reasonable time thereafter to make any reasonable repair of such dam, bank, watercourse, channel, drain, sluice or other work.

No liability for damage for breaking of dams, etc., except in certain events.

cf. Act No. 1,989 (South Aust.), 1930, s. 121 (2).

**16.** No action, claim or proceeding whatsoever shall be commenced and maintained except as in this Part of this Act provided against the Commission or against any servant or agent of or contractor under the Commission for or in respect of any injury, loss or damage to property caused by flooding or by water in any way sent on to such property by any act of neglect of the Commission, its servants, agents or contractors in the exercise or discharge of its or their powers, authorities, duties and functions under the Irrigation Act, 1912-1937, or under Part VI or Part VII of the Water Act, 1912-1937.

No action against Commission for certain injuries except under this Part.

cf. Act No. 3,735 (Vict.), 1928, s. 124.

**17.** Notwithstanding anything in section sixteen of this Act the Commission shall be liable to make compensation subject to the conditions and limitations in this Part of this Act contained to any person for any injury, loss or damage caused by flooding or by water in any way sent on to property by any act or neglect of the Commission, its servants, agents or contractors in the exercise or discharge of its or their powers, authorities, duties and functions under the Irrigation Act, 1912-1937,

Commission liable to compensation.

cf. *Ibid.* s. 125.

or

or under Part VI or Part VII of the Water Act, 1912-1937, if such injury, loss or damage is such as would, but for this Part of this Act, have been a good cause of action to such person against the Commission or against any servant or agent of or contractor under the Commission.

**18.** The Commission shall not be liable to make any compensation under this Part of this Act in respect of any injury, loss or damage unless a notice in writing stating the nature and extent of the injury, loss or damage complained of has been given to the Commission within three months after such injury, loss or damage has been sustained, and unless within three months after giving such notice the person claiming compensation institutes proceedings to obtain such compensation in the manner in this Part of this Act provided, and thereafter continues such proceedings without undue delay.

Notice of claim within three months.  
cf. Act No. 3,735 (Vict.), 1928, s. 126.

**19.** Where any claim is made by any person under this Part of this Act against the Commission, and such person and the Commission do not agree on the questions raised by such claim, the questions shall be determined by an arbitrator as in this Part of this Act provided.

Claims for compensation—how settled.  
cf. *Ibid.* s. 127.

**20.** (1) The questions raised by any claim for compensation under this Part of this Act shall be determined by a single arbitrator who shall be a judge of the district courts appointed to act as such arbitrator by the Governor.

Proceedings before arbitrator.  
cf. *Ibid.* s. 130.

(2) The Governor shall appoint as arbitrator the judge of the district courts exercising jurisdiction in the district within which is situated the land where the alleged injury, loss or damage has been sustained: Provided that if from any cause such judge is unable to act then the Governor may appoint as arbitrator any other judge of the district courts.

(3) Such appointment shall be deemed to be a submission to the arbitration of the arbitrator by both parties to such claim.

(4) The death of any claimant after such appointment shall not affect such appointment.

(5)

(5) The arbitrator shall proceed to hear and determine the questions in dispute.

(6) The order or determination of the arbitrator shall be absolutely final and conclusive upon all parties where the amount awarded as compensation does not exceed three hundred pounds.

**21.** If any arbitrator dies or becomes incapable to act before he has made his order or determination the questions referred to him shall be determined by another arbitrator appointed under this Part of this Act as though such first-mentioned arbitrator had not been appointed.

Death or incapacity of arbitrator.  
cf. Act No. 3,735 (Vict.), s. 131.

**22.** (1) The Arbitration Act, 1902, shall not apply to any arbitration under this Part of this Act.

Special provisions relating to the arbitrator.

(2) The arbitrator shall, for the purposes of any arbitration under this Part of this Act, have the same powers of procuring the attendance of witnesses and the production of documents as if the arbitration were an action in the district court.

(3) The costs of and incidental to any arbitration under this Part of this Act and proceedings connected therewith shall, subject to rules of court, be in the discretion of the arbitrator.

The costs shall not exceed the limit prescribed by such rules, and shall be taxed in manner prescribed by such rules, and such taxation may be reviewed by the arbitrator sitting as a judge of the district courts.

**23.** The duties of a judge of the district courts appointed as arbitrator under this Part of this Act shall, subject to rules of court, be part of the duties of the district court, and the officers of the court shall act accordingly.

Arbitration to be in the nature of proceeding in the district court.

Rules of court may be made for any purpose for which this Part of this Act authorises rules of court to be made and also generally for carrying into effect this Part of this Act so far as it affects the district court and proceedings in the district court.

Such rules of court may be made by the judges of the district courts under section one hundred and forty-nine of the District Courts Act, 1912.

**24.** No order made under the provisions of this Part of this Act by any arbitrator, where the amount awarded as compensation does not exceed three hundred pounds, shall be set aside, reversed, altered or varied by or questioned in any court of law or equity upon any ground whatsoever, but the same shall be absolutely binding and conclusive upon the parties thereto and all other persons in any way affected thereby.

Order of court of petty sessions or arbitrator to be final. cf. Act No. 3,735 (Vict.), 1928, s. 135.

**25.** (1) In the case of any order made by an arbitrator under the provisions of this Part of this Act where the sum awarded as compensation exceeds three hundred pounds any party who is dissatisfied with the order may, within twenty-eight days after the making of the order, appeal to the Land and Valuation Court. The appeal shall be in accordance with the rules of court of that court. The Land and Valuation Court shall have jurisdiction to hear and determine any such appeal.

Appeal to Land and Valuation Court where compensation awarded exceeds £300. cf. *Ibid.* s. 126.

(2) The decision of the Land and Valuation Court in every such case shall be final and conclusive, and shall not be subject to any appeal or review, and shall be enforced in the same manner as an order of that court for the payment of money may be enforced.

(3) The costs of and incidental to any such appeal and of and incidental to the arbitration and proceedings connected therewith shall be in the absolute discretion of the Land and Valuation Court.

**26.** In determining whether any and what compensation is to be made under this Part of this Act, the arbitrator or the Land and Valuation Court, as the case may be, shall in each case have regard to and is hereby authorised and directed to apply the following principles, that is to say—

Principles in awarding compensation. cf. *Ibid.* s. 139.

- (a) The measure of damages shall in all cases be the direct pecuniary injury to the claimant by the loss of something of substantial benefit accrued or accruing and shall not include remote, indirect or speculative damages.
- (b) In any case where the injury, loss or damage complained of appears to be of a permanent or continuing character or likely to be repeated

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a sum may be awarded which the arbitrator or the Land and Valuation Court may declare to be a compensation for all possible future repetitions of such injury as well as for the injury already done, and after such award no further compensation shall be made to any person whatsoever in respect of any future repetitions of such injury.

**27.** If compensation is sought to be recovered under this Part of this Act for any injury, loss or damage alleged to be the result of the execution of works which at the time of the alleged injury and of the claim to compensation in respect thereof are incomplete, the judge of the Land and Valuation Court, upon an application by the Commission made in accordance with rules of court of the Land and Valuation Court, may make an order directing that the proceedings upon the claim for compensation shall be stayed until the completion of such works or for such period to be stated in the order as the judge may consider sufficient for the completion of such works, and the proceedings to recover such compensation shall be stayed accordingly, but at the expiration of the stay limited in such order the claimant shall be at liberty to resume his proceedings for the recovery of such compensation without commencing any fresh proceedings.

Stay of proceedings.  
cf. Act No. 3,735 (Wict.), 1928, s. 140.

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