

1991—No. 360

**WATER SUPPLY AUTHORITIES ACT 1987—REGULATION**

(Water Supply Authorities (Benerembah Irrigation District Environment Protection Trust) Finance Regulation 1991)

NEW SOUTH WALES



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HIS Excellency the Governor, with the advice of the Executive Council, and in pursuance of the Water Supply Authorities Act 1987, has been pleased to make the Regulation set forth hereunder.

I. R. CAUSLEY  
Minister for Natural Resources.

**PART 1—PRELIMINARY**

**Citation**

1. This Regulation may be cited as the Water Supply Authorities (Benerembah Irrigation District Environment Protection Trust) Finance Regulation 1991.

**Definitions**

2. In this Regulation:

“**appeal**” means an objection from a decision referred to in section 66 (5) (i) of the Act;

“**District**” means Benerembah Domestic and Stock Water Supply and Irrigation District constituted under Part 6 of the Water Act 1912;

“**land**” includes any estate or interest in land;

“**owner**”, in relation to land, includes the holder of an estate or interest in the land;

“**the Act**” means the Water Supply Authorities Act 1987;

“**the Trust**” means the Benerembah Irrigation District Environment Protection Trust.

**PART 2—SERVICE CHARGES AND OTHER CHARGES****Classification of land**

3. For the purposes of section 32 of the Act, the Trust may classify land for the purpose of levying service charges according to one or more of the following factors:

- (a) the nature and extent of water supply to the land;
- (b) the purpose for which the land is actually being used;
- (c) the intensity with which the land is being used for that purpose.

**Basis of levying service charges**

4. For the purposes of section 33 of the Act, the Trust may levy service charges according to one or more of the following bases:

- (a) the assessment by the Trust of the cost of providing the service;
- (b) the Ministerial Corporation's water allocation to the land from District works;
- (c) the classification of the land on a basis determined by the Trust.

**Fees and charges other than service charges**

5. For the purposes of section 30 (2) of the Act, the Trust may impose such fee or charge (other than a service charge) for goods supplied, or for services provided, as the Trust determines.

**Payment by instalments**

6. (1) The Trust is to notify a person liable to pay service charges levied, or other charges imposed, that payment of the service or other charges may be made to the Trust by a stated number of instalments of specified amounts.

(2) If there is a failure to make a payment in accordance with the notification, the total unpaid balance may be treated by the Trust as an overdue amount of service charges or other charges even if payment by instalments had commenced.

**Payment to the Trust**

7. (1) Payment to the Trust of a service charge or other charge:

- (a) is due within the time; and
- (b) may be made in any manner,

notified by the Trust when giving notice of the service or other charge.

(2) If a person has not paid to the Trust a fee, service charge or other charge due for payment under the Act by the person to the Trust and the Trust incurs any expenses in its recovery, the Trust may levy the person for the expenses.

#### **Payment of interest on unpaid amounts**

8. (1) The Trust may require the payment of interest on an unpaid amount (other than unpaid interest) due to the Trust.

(2) The rate of interest payable, and the rate of interest for the purposes of section 38 of the Act, is a rate determined by the Trust that does not exceed the rate for the time being applicable under section 85 of the District Court Act 1973 to a judgment debt.

(3) The Trust may determine different rates of interest for different unpaid amounts.

(4) Interest may not be charged in respect of a period commencing earlier than 7 days after the debtor is notified that interest may be charged.

#### **Adjustment of service charge**

9. (1) If a service charge has been levied on land that has been classified according to the purpose for which the land is actually being used and the Trust later decides that the classification was incorrect, the Trust is to adjust the service charge according to the correct classification.

(2) If a service charge has been levied, or has been adjusted under subclause (1), on land that has been classified according to the purpose for which the land is actually being used and the land later ceases to be used for that purpose, the Trust is to adjust the service charge according to the new classification and on and from the date of change of classification.

(3) An adjustment may take into account more than one change of class occurring or made during the period to which the adjustment relates.

(4) If the Trust has not acted under subclause (1) or (2) and application for it so to act is made to the Trust in writing stating the grounds of the application, the Trust:

- (a) may act under subclause (1) or (2) or may refuse to do so; and
- (b) is to give the applicant written notice of its decision.

(5) If a service charge is adjusted under this clause, the Trust:

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- (a) is, unless notice has been given under subclause (4), to give written notice of the adjustment to the person liable to pay the service charge; and
- (b) may recover any increase as if it were part of the service charge even if an objection or appeal has been lodged but not determined; and
- (c) is to refund any amount by which a service charge already paid has been decreased or credit the amount towards payment of any amount then payable by the applicant to the Trust.

**Objection to certain service charges**

**10. (1)** If a service charge is levied on land that is classified according to the purpose for which the land is actually being used, the person liable to pay the service charge may, within 1 month after being served with notice of the levying of the service charge, object to the service charge.

**(2)** If an adjustment made under clause 9 results in a service charge being increased, the person liable to pay the amount of the increase may, within 1 month after being given notice of the increase, object to the adjustment.

**(3)** If application is made to the Trust under clause 9 to adjust a service charge and the Trust:

- (a) refuses to adjust the service charge; or
- (b) refuses to adjust the service charge in accordance with the application,

the applicant may, within 1 month after being notified of the refusal, object to the refusal.

**(4)** An objection:

- (a) under subclause (1) may be made only on the ground that the classification of the land according to which the service charge was levied was incorrect; and
- (b) under subclause (2) may be made only on the ground that the classification of the land according to which the service charge was adjusted was incorrect.

**(5)** An objection is made by lodging with the Trust, or by serving on the Trust by post, a written statement of the ground for the objection and the reasons why the objector believes the ground exists.

**(6)** The Trust:

- (a) may allow, or disallow, an objection; and
- (b) is to give the objector written notice of its decision on the objection.

(7) A service charge may be recovered even if an objection is made under subclause (1) but, if the service charge is altered as a result of the objection or an appeal against the disallowance of the objection, any excess payment is to be refunded by the Trust or credited towards payment of any amount then payable by the objector to the Trust.

#### **Appeal relating to objection to service charge**

11. (1) An objector under clause 10 who is dissatisfied with the decision of the Trust on the objection may appeal to the Land and Environment Court against the decision not later than 1 month after being notified of the decision.

(2) The only ground for an appeal under subclause (1) against a decision on an objection is the ground on which the objection was made.

(3) The Land and Environment Court may allow or dismiss an appeal under this clause.

#### **General power to defer or waive payment**

12. (1) The Trust may:

- (a) defer payment of a service charge, or any other charge or fee, on such conditions as it thinks fit; or
- (b) waive such a payment or any part of it,

if the Trust is of the opinion that reasonable cause has been shown for the deferral or waiver.

(2) The Trust may establish an account from which to fund any such deferral or waiver.

### **PART 2—DRAINAGE AREAS**

#### **Notice of drainage area**

13. (1) On the declaration under section 28 of the Act of the drainage area for the Trust, the Trust is to deposit a map of the drainage area in its office.

(2) The Trust is to make the map available for inspection at reasonable times during its ordinary office hours.

(3) The Trust is to serve on each owner of land in the drainage area, personally or by post at the address of the owner last known to the Trust, a notice to the effect that:

- (a) the drainage area has been declared; and

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- (b) a map of the drainage area may be inspected at a specified place or specified places; and
  - (c) drainage service charges are to be levied on land in the drainage area within a specified time; and
  - (d) an objection to inclusion of the owner's land in the drainage area may be lodged with the Trust but only on the ground that surface or run-off water could not drain from the objector's land into the drainage area; and
  - (e) an objection must be in writing and must be lodged with the Trust before a specified date (being a date that is not earlier than 14 days after service of the notice); and
  - (f) an objection will be referred by the Trust to an adjudicator for determination; and
  - (g) an objector is not entitled to appear, or be represented, before the adjudicator without being required by the adjudicator to do so; and
  - (h) an appeal against the decision of the adjudicator may be made in accordance with clause 14 to a specified Local Court (being the Local Court that, in the opinion of the Trust, is most conveniently situated in relation to the drainage area).
- (4)** The Trust is:
- (a) to appoint a person (other than a person subject to the direction and control of the Trust) as an adjudicator on objections relating to a particular drainage area; and
  - (b) to refer all duly lodged objections to the adjudicator; and
  - (c) to serve personally or by post on each objector at the address of the objector last known to the Trust notice of the decision of the adjudicator on the objection.

**Appeal against declaration of drainage area**

**14. (1)** An owner of land in the drainage area may appeal to the Local Court specified in the notice served on the owner under clause 13 against the decision of the adjudicator on an objection lodged under that clause by the owner.

**(2)** If a notice of appeal is lodged with the Trust and the Clerk of the Local Court at least 7 days before the day fixed for hearing appeals, the Local Court constituted by a Magistrate is to hear and determine the appeal.

**(3)** In determining an appeal, the Local Court is to have regard to:

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- (a) the actual flow of surface or run-off water in the drainage area; and
  - (b) any benefit accruing to the appellant from declaration of the drainage area.
- (4) A notice of appeal is to be in a form approved by the Ministerial Corporation by order published in the Gazette.
- (5) The Trust is, on request, to provide notices of appeal for lodging with the Trust and the Clerk of the Local Court.
- (6) The Trust is to publish in the Gazette, and in at least 1 newspaper circulating in the drainage area, a notice stating the date and place for the hearing of appeals.
- (7) The Magistrate sitting as a Local Court to hear an appeal is:
- (a) to note on a map of the drainage area provided by the Trust any alteration of boundaries upheld on the appeal; and
  - (b) to confirm the final form of the map (including an unaltered map) by signing it.
- (8) The Minister is to give effect to any alteration of boundaries of a drainage area resulting from an appeal.
- (9) Clause 13 and subclause (1) do not apply to a declaration under section 28 of the Act of the boundaries of a drainage area altered on appeal.

**PART 4—MISCELLANEOUS****Interest payable by owner on expense incurred by occupier**

**15.** The prescribed rate of interest for the purposes of section 29 (5) of the Act is the rate for the time being applicable under section 85 of the District Court Act 1973 to a judgment debt.

**Certificate of amounts owing**

**16. (1)** For the purposes of section 41 (1) (a) of the Act, the prescribed particulars are:

- (a) a short description of the land to which the certificate relates; and
- (b) each amount due and payable in respect of the land; and
- (c) a description of the category to which each amount belongs; and
- (d) if applicable, the period in respect of which each amount is payable.

(2) For the purposes of section 41 (1) of the Act, the prescribed fee is \$50.

### **Cutting off access to Trust works**

17. The Trust may cut off access from land to Trust works:

- (a) if any service charges or other charges relating to the land are unpaid; or
- (b) in order to repair, maintain or renew the works; or
- (c) if the Trust is of the opinion that it is unavoidably necessary to do so or because of an accident; or
- (d) if the owner or occupier of the land fails to do anything that, under a provision of the Act or of any regulation made under the Act, ought to be done to prevent pollution or contamination of the water in the Trust's works; or
- (e) if the owner or occupier obstructs an officer of the Trust in the exercise of his or her functions.

### **Service of notices**

18. (1) A notice under the Act to a Department of the Government may be served:

- (a) in the case of a notice of valuation or of a service charge or other charge—on the Treasurer; or
- (b) in any other case—on the Department Head.

(2) A notice under the Act to a corporation constituted by or under an Act may be served:

- (a) by leaving it at the principal or other office of the corporation with a person apparently employed there who seems to be at least 16 years old; or
- (b) in any manner authorised by or under the Act by which the corporation is constituted.

(3) A notice under the Act to a person liable for payment of a service charge or other charge, or to a person who is owner or occupier of land or a building, may be served:

- (a) personally; or
- (b) by leaving it, at the place where the person to be served lives or carries on business, with a person apparently employed or residing there who seems to be at least 16 years old; or
- (c) by post to the residence or place of business of the person to be served last known to the Trust; or



(d) by affixing it to a conspicuous part of the land or building.

(4) A notice under the Act may be served on a person who appears to be absent from the State, and who has authorised service on an agent, by serving it on the agent of the person as if the agent were the person to be served.

(5) If a notice relates to unoccupied land or premises and the address of the owner is not known to the Trust it may be served by an advertisement that:

- (a) is published in a newspaper circulating in the Trust's area; and
- (b) states the name of the owner of the land or premises if known to the Trust; and
- (c) if the notice is notice of a service charge—states its amount, the period for which it is owing and that a detailed notice of the service charge may be obtained at the office of the Trust; and
- (d) states that the advertisement operates as service of the notice.

(6) It is a sufficient description of the addressee of a notice to be served if the notice specifies "the owner", "the occupier" or any other apt description.

### **Recording of service charge**

**19. (1)** The Trust is to keep such records relating to each service charge as are required by the Ministerial Corporation and is to keep the records in a manner approved by the Ministerial Corporation.

(2) An amendment of the records kept under subclause (1) may be made by:

- (a) inserting the name of a person who claims to be, and is, entitled to be recorded as owner or occupier; or
- (b) inserting the name of a person to whom an account for a service charge should have been rendered or who had, since the levying of a service charge, become liable to pay it; or
- (c) omitting the name of a person whose name should not have been recorded; or
- (d) increasing or reducing the amount of a service charge, whether as a result of an error in recording or notifying it or as a result of an appeal; or
- (e) inserting particulars of land that should have been the subject of a service charge; or
- (f) by making such other amendments as will ensure conformity of the records with the Act.

(3) A liability to make a payment as a result of an amendment accrues on the making of the amendment but the payment is not overdue if made within 1 month after notice of the amendment and of the resulting liability has been given to the person liable.

#### **Crown land held on lease**

20. If land of the Crown is leased to a person for private purposes, any service charge in respect of the land is payable:

- (a) if the land has been transferred by way of mortgage—by the mortgagor or, if the Trust fails to recover it from the mortgagor—by the mortgagee; or
- (b) in any other case—by the lessee.

#### **Crown undertakings**

21. If land of the Crown is occupied and used by the Crown in connection with a commercial or industrial undertaking, any service charge in respect of the land is payable from the funds of the undertaking.

#### **Successive Crown lessees in the same charging year**

22. (1) This clause applies to land:

- (a) that, in the same charging year for the Trust, is held successively by 2 or more lessees under a lease from the Crown (whether or not with an interval between them); and
- (b) in respect of which the Trust has levied a service charge for that year.

(2) In relation to land to which this clause applies, the Trust may:

- (a) make between the successive lessees such adjustment (if any) of the service charge, whether paid or unpaid, as the Trust considers to be proper; and
- (b) recover from each lessee the proportion of the service charge fixed for the lessee by the adjustment; and
- (c) make any refund resulting from the adjustment.

#### **Liability of joint owners**

23. (1) If land is owned or held jointly by 2 or more persons liable to pay a service charge in respect of the land:

- (a) they are each jointly and severally liable for payment of the service charge; and

(b) as between themselves, each is only liable for such part of the service charge as is proportionate to the interest owned or held by the person in the land.

(2) If one person referred to in subclause (1) pays more than the proportionate part of a service charge the person is required by that subclause to pay, the excess may be recovered by way of contribution from the others jointly liable.

### **Liability on disposing of land**

**24. (1)** The liability of a person to pay a service charge levied by the Trust in respect of any land does not cease on disposal of the land if notice of the service charge:

- (a) was given before disposal of the land; or
- (b) is given after disposal of the land and before the approved notice of the disposal is given to the Trust.

(2) If:

- (a) a person disposes of any land; and
- (b) pays a service charge levied on the land that became payable to the Trust after disposal of the land and before the approved notice of the disposal is given to the Trust,

the person may recover the amount of the service charge from the person who acquired the land.

(3) In this clause:

“**approved notice**” means written notice in a form approved by the Ministerial Corporation.

### **Daily basis of apportionment of service charge**

**25.** As between a person liable to pay a service charge in respect of land and:

- (a) a person who acquires the land; or
- (b) the person from whom the land was acquired,

the service charge is to be apportioned on a daily basis.

### **Liability of new owner**

**26. (1)** A person who, by becoming the owner of land, becomes liable to pay a service charge or other charge levied on, or applicable to, the land is liable for payment of all current service charges and other charges, and all arrears of service charges or other charges, levied on, or

applicable to, the land even if notice of them was not given to the person until after becoming the owner of the land.

(2) A person who:

(a) becomes the owner of land; and

(b) pays to the Trust a service charge or other charge in respect of the land that was payable before the person became the owner,

may recover the whole or a proper proportion of the service charge or other charge from the person liable for its payment at the time notice of the service charge was served.

(3) Subclauses (1) and (2) do not apply to a person who holds land under a lease from the Crown or the Trust (whether or not the land was previously held under such a lease) that was granted after the service charge or other charge was levied or became applicable.

### **Liability of tenant**

**27. (1)** A tenant of land in respect of which a service charge has remained unpaid for at least 1 month after becoming due is liable for payment of the service charge if the Trust serves on the tenant a notice requiring the payment to be made.

(2) A tenant who pays a service charge in accordance with a notice served under subclause (1) may set off the amount paid against rent due.

(3) If no rent is due, or if the amount paid to the Trust exceeds the rent due, the tenant may:

(a) set off the amount paid, or the excess, against accruing rent; or

(b) recover the amount paid, or the excess, as a debt due from the owner to the tenant.

(4) A tenant who pays rates for a period extending beyond the term of the tenancy may recover the amount paid as a debt due from the owner to the tenant.

(5) The receipt of the Trust for an amount paid under this clause is to the extent of the amount shown in the receipt, a discharge of the tenant from payment of the rent.

(6) In this clause:

“**rent**” includes money payable under a lease, licence or permit;

“**tenant**” includes occupier.

**Proportionate liability for service charge**

**28. (1)** If a service charge becomes leviable on land on which it was not previously leviable, liability for the service charge extends only to so much of the service charge as bears to the whole of the service charge the same proportion as is borne to the charging year at the time the liability arises by the part of the year that is unexpired at the time.

**(2)** If land on which a service charge is leviable ceases to be leviable for the service charge, liability for the service charge extends only to so much of the service charge as bears to the whole of the service charge the same proportion as is borne to the charging year at the time the liability ceases by the part of the year that has expired at the time.

**(3)** If an amount of service charge has been paid in excess of the liability arising under subclause (2), the Trust is to refund the amount of the excess or credit it towards payment of any amount then payable to the Trust by the person who would otherwise be entitled to a refund.

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**EXPLANATORY NOTE**

The object of this Regulation is to make provision, in accordance with the Water Supply Authorities Act 1987, for the levying of service charges by the Benerembah Irrigation District Environment Protection Trust in respect of the drainage area declared within the area of operations of the Trust.

The Regulation provides for the classification of land according to certain factors, the levying of service charges on certain bases and the making of objections against the levying of service charges, enables the Trust to defer or waive payment of service charges and generally deals with other matters relating to such service charges.

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