WATER, CROWN LANDS AND OTHER ACTS (AMENDMENT) ACT.

New South Wales



ANNO UNDEVICESIMO

ELIZABETHÆ II REGINÆ

Act No. 5, 1970.

An Act to require owners to construct works necessitated by subdivisions in irrigation trust districts; to make further provisions with respect to certain unpaid rates, charges and contributions; to make provisions with respect to conditions of residence on certain holdings within irrigation areas; to provide that, in certain circumstances, residential town land holdings within those areas shall not be transferred without consent; to increase certain penalties for offences; to validate certain matters; for these and other purposes to amend the Water Act, 1912, the Crown Lands Consolidation Act, 1913, the Farm Water Supplies Act, 1946, the Rivers

Rivers and Foreshores Improvement Act, 1948, the Irrigation (Amendment) Act, 1941, the Hunter Valley Flood Mitigation Act, 1956, and certain other Acts; and for purposes connected therewith. [Assented to, 13th March, 1970.]

B^E it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

Short title.

1. This Act may be cited as the "Water, Crown Lands and Other Acts (Amendment) Act, 1970".

Amendment of Act No. 44, 1912.

Sec. 1. (Short title and division.)

2. The Water Act, 1912, is amended—

(a) by inserting in section one next after the matter relating to Division 3 of PART III the following new matter:—

DIVISION 3A.—Construction of works on disposal of part of lands—s. 41A.

Sec. 5. (Interpretation.)

(b) by omitting from the definition of "Joint water supply scheme" in section five the words "extends which is used or proposed to be used for the purpose of supplying water for irrigation by any occupier or occupiers other than the occupier or occupiers of the site of the work." and by inserting in lieu thereof the following words:—

extends, being a work that—

- (a) is used or proposed to be used for the purpose of supplying water for irrigation by any occupier or occupiers other than the occupier or occupiers of the site of the work to which this Part extends; or
- (b) is used or proposed to be used, otherwise than pursuant to a license granted under this Part before the commencement of

the

the Water, Crown Lands and Other Acts No. 5, 1970 (Amendment) Act, 1970, to supply water for the purpose of irrigating a holding that is not a riparian holding, or any part thereof, where that water is, or is to be, conveyed wholly or partly by a work that is used or proposed to be used by any occupier or occupiers (not being the occupier or occupiers of the site of the work to which this Part extends) for the conveyance of water for any purpose pursuant to a right conferred by this Part or pursuant to a license, authority or permit granted under this Part.

(c) by inserting next after Division 3 of Part III the New Division following new Division:—

Division 3A.—Construction of works on disposal of part of lands.

41A. (1) The provisions of subsection ten of Construction section one hundred and forty-seven of this Act of works on (paragraphs (b) and (h) excepted) shall, mutatis part of mutandis, apply to and in respect of a trust district holding. constituted for the purposes of irrigation, or for purposes that include irrigation, in the same manner as they apply to and in respect of a district and a provisional district constituted under Part VI of this Act and, for the purposes of that application, the reference in subparagrap¹ (iii) of paragraph (f) of that subsection to section one hundred and forty-eight of this Act shall be construed as a reference to sections sixty-three and seventy-three of this Act.

(2) Where a notification under subsection one of section thirty-seven of this Act has been published in the Gazette, whether before or after

the commencement of the Water, Crown Lands and Other Acts (Amendment) Act, 1970, this section shall, in respect of a trust district to which the notification relates, have effect as if the notification had not been so published.

- (3) All works constructed in pursuance of this section shall, upon their completion, be handed over to the trust by the owner or the Commission, as the case may be, without charge, and the trust shall take over, administer and manage the said works upon the terms and conditions prescribed in relation to works of the trust.
- (4) The rates for water in respect of part or parts of a holding disposed of and part or parts of a holding retained by an owner shall be payable notwithstanding that the means of supplying and conveying water from the works of the trust district in which the holding is situated, and of measuring that supply, have not been provided in respect of all those parts or any of them.

(Power of trustees to enter and

Sec. 54.

inspect.)

(d) by omitting from paragraph (e) of subsection three of section fifty-four the word "supply." and by inserting in lieu thereof the following words:---

supply; or

- (f) if any rates fixed and levied in respect of the land are, and have been for a period of not less than six months after the due date of payment, unpaid and—
 - (i) where the trust was constituted by three trustees, the chairman of the trust and all the elected trustees; or
 - (ii) where the trust was constituted by five trustees, the chairman of the trust and a majority of the elected trustees,

approve of the supply of water to the land being cut off or withheld.

3. The Water Act, 1912, is further amended—

No. 5, 1970

Further amendment 44, 1912.

(a) by inserting in subsection two of section 55B after Sec. 55B. the word "thirty-six" where secondly occurring the (Interest words "and before the first day of July, one thou- on overdue rates and sand nine hundred and seventy, and at the rate of charges.) seven per centum per annum in respect of any period after the thirtieth day of June, one thousand nine hundred and seventy";

- (b) by inserting in paragraph (b) of subsection two of Sec. 139. section one hundred and thirty-nine after the word (Assessment "thirty-six" where secondly occurring the words of rates and charges.) "and before the first day of July, one thousand nine hundred and seventy, and at the rate of seven per centum per annum in respect of any period after the thirtieth day of June, one thousand nine hundred and seventy";
- (c) by inserting in paragraph (b) of subsection two of Sec. 159. section one hundred and fifty-nine after the word (Rates.) "annum" the words "in respect of any period before the first day of July, one thousand nine hundred and seventy, and at the rate of seven per centum per annum in respect of any period after the thirtieth day of June, one thousand nine hundred and seventy";
- (d) by inserting in paragraph (b) of subsection one of Sec. 175. section one hundred and seventy-five after the word (Rates and "annum" the words "in respect of any period before tions.) the first day of July, one thousand nine hundred and seventy, and at the rate of seven per centum per annum in respect of any period after the thirtieth day of June, one thousand nine hundred and seventy".

No. 5, 1970 4. (1) The Crown Lands Consolidation Act, 1913, is Amendment amended—

of Act No. 7, 1913.
Sec. 142.
(Conditions

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

- (a) by omitting subsection five of section one hundred and forty-two and by inserting in lieu thereof the following subsections:—
 - (5) Subject to this section and section 145B of this Act, a condition of residence, to be performed by the holder for the time being, shall attach, and shall be deemed always to have attached, to an irrigation farm purchase—
 - (a) where the irrigation farm purchase is not a conversion of a lease, for a period of five years after the granting of the application for the irrigation farm purchase; or
 - (b) where the irrigation farm purchase is a conversion of a lease, for the residue of the period of the condition of residence attached, or deemed to have been attached, to the lease by section 142p of this Act,

being residence commencing, in the case referred to in paragraph (a) of this subsection, within three months after the granting of the application for the purchase.

(5A) The provisions of subsection five of this section shall not apply to an irrigation farm purchase in respect of which a certificate of conformity has been issued under section 142c of this Act or in respect of which the Commission has certified as to improvements under subsection five of this section as in force immediately before the commencement of the Water, Crown Lands and Other Acts (Amendment) Act, 1970.

- (b) (i) by omitting subsection four of section 142D No. 5, 1970 and by inserting in lieu thereof the following Sec. 142D. subsections:—
 - Sec. 142D. (Conditions, &c., of leases within irrigation
 - (4) Subject to this section and section leases within 145B of this Act, a condition of residence, to areas.) be performed by the holder for the time being, shall attach, and shall be deemed always to have attached, for a period of five years after the granting of the application for the lease, to a lease other than a town land lease, being residence commencing within three months after the application for the holding is granted.
 - (4A) The provisions of subsection four of this section shall not apply to—
 - (a) a lease in respect of which a certificate
 has been issued under subsection four,
 five or six of this section as in force
 immediately before the commencement of the Water, Crown Lands and
 Other Acts (Amendment) Act, 1970;
 or
 - (b) a non-irrigable lease where the Gazette notification making the land available for disposal provides that a residence condition shall not attach thereto.
 - (ii) by omitting subsection five of the same section;
 - (iii) by omitting from subsection six of the same section the words "cease to have effect upon the issue by the Commission of a certificate in that behalf in the prescribed form" and by inserting in lieu thereof the words ", subject to subsection four of this section, cease to have effect on the commencement of the Water, Crown Lands and Other Acts (Amendment) Act, 1970":

New sec. 142E. (c) by inserting next after section 142p the following short heading and new section:—

Issue of certificates of conformity as regards leases.

Lease certificate of conformity.

142E. The Commission may at any time and on payment of the prescribed fee, if it is satisfied that all conditions of a lease have been duly complied with, issue a certificate of conformity in the prescribed form in respect of the lease and may, upon satisfactory proof being given of the loss or destruction of any such certificate, and upon payment of the prescribed fee, issue a replacement certificate to the person entitled thereto.

Sec. 145A. (Restrictions on transfer of holdings.) (d) (i) by omitting from paragraph (d) of subsection one of section 145A the word "with." and by inserting in lieu thereof the following words:—

with:

- (e) a town land lease notified in the Gazette before or after the commencement of the Water, Crown Lands and Other Acts (Amendment) Act, 1970, as available for the purpose of residence or a town land purchase so notified or a town land purchase which is a conversion of such a lease shall not be transferred either wholly or in part unless the special conditions applicable thereto relating to improvements have been complied with to the satisfaction of the Commission.
- (ii) by inserting in subsection four of the same section after the words "town land purchase" the words "(not being a town land lease or a town land purchase to which the provisions of paragraph (e) of subsection one of this section apply)";

- (e) by omitting subsections one and two of section N_0 . 5, 1970 145B and by inserting in lieu thereof the following $\frac{1}{\text{Sec. }145B}$. subsections:-
 - (Suspension, condition.)
 - (1) Subject to subsection (1A) of this section, &c., of the Commission in the case of any lease or purchase may—
 - (a) for such periods as it may determine, suspend or remit wholly or partly the condition of residence attached to a holding, or permit the condition to be carried out anywhere within a reasonable working distance of the holding, or permit the condition to be carried out upon any one of two or more holdings to which a residence condition is attached, being holdings held by one person or members of one family; or
 - (b) grant exemption either wholly or partly from compliance with, or grant an extension of the time for performance of, any special or other condition not being a condition relating to the payment of money;
 - (c) alter, modify or cancel any special or other condition not being a condition relating to the payment of money,

subject to such terms, stipulations and conditions as it may deem fit.

- (1A) Where the whole or any part of the land held under lease is within an area of erosion hazard notified under the Soil Conservation Act, 1938, or within a catchment area notified or constituted under that Act, the alteration, modification or cancellation of any condition of the lease shall not be made except upon the recommendation of and subject to any further conditions recommended by the Catchment Areas Protection Board.
- (1B) The non-performance or breach of any term, stipulation or condition imposed under subsection one of this section, or by the Special Land

Board

Board or the Land and Valuation Court upon a reference, or an appeal, under this section, or of any term or stipulation lawfully imposed by the Commission or the Minister under this Act shall render a holding in respect of which it is imposed liable to be forfeited.

- (2) Where the decision of the Commission upon an application made pursuant to paragraph (a) of subsection one of this section is that the application be refused or where the applicant is dissatisfied with any terms, stipulations and conditions imposed by the Commission in granting an application made pursuant to that paragraph, the applicant may, by notice in writing lodged with the Commission within twenty-eight days after notice of that decision has been given to him by the Commission, require that the application be referred to the Special Land Board for inquiry and determination whereupon the application shall be referred by the Commission accordingly.
- (2A) The provisions of subsections three, four and five of section 147A of this Act shall apply, mutatis mutandis, where a determination is made by the Special Land Board upon a reference under subsection two of this section.
- (2) The amendment made by paragraph (c) of subsection one of this section shall commence upon a day to be appointed by the Governor and notified by proclamation published in the Gazette.

Amendment of Act No. 22, 1946.

Sec. 8.
(Payment of advance where works not carried out by Commission.)

- 5. The Farm Water Supplies Act, 1946, is amended—
 - (a) by omitting from section eight the words "certifying that the works have been carried out or are being carried out in a satisfactory manner and in accordance with the approval of the Commission.

For

For the purposes of this section, the Commission No. 5, 1970 may by its officers and servants enter the lands of the owner and inspect the works" and by inserting in lieu thereof the words "notifying the Bank that the works have been completed, or are partly completed, as the case may be";

- (b) by inserting at the end of the same section the following new subsection:—
 - (2) The Commission may, by its officers and servants, enter any land for the purpose of inspecting works referred to in subsection one of this section.
- 6. The Rivers and Foreshores Improvement Act, 1948, is Amendment amended by inserting in paragraph (b) of subsection one of of Act No. section nineteen after the words "five per centum per annum" the words "in respect of any period before the first day of July, one thousand nine hundred and seventy and at the contribute of seven per centum per annum in respect of any period tions.) after the thirtieth day of June, one thousand nine hundred and seventy".
- 7. The Irrigation (Amendment) Act, 1941, is amended Amendment by omitting subsection one of section thirteen and by inserting of Act No. in lieu thereof the following subsections:—
 - (1) Overdue rates payable under this Part shall be Sec. 13. increased in accordance with this section. (Overdue rates, extra
 - (1A) If the rates 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 in respect of any period before the first day of July, one thousand nine hundred and seventy and at the rate of seven per centum per annum in respect of any period after the thirtieth day of June, one thousand nine hundred and seventy, and the increase shall be deemed to be part of the rates.

(1B) The calculation under subsection (1A) of this section shall be made only in respect 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.

Amendment of Act No. 10, 1956.

- Sec. 31.
 (Works of river diversion causing deprivation of riparian rights.)
- **8.** (1) The Hunter Valley Flood Mitigation Act, 1956. is amended—
 - (a) by omitting from subsection one of section thirtyone the words "on any land" and by inserting in lieu thereof the words "before or after the commencement of the Water, Crown Lands and Other Acts (Amendment) Act, 1970";
 - (b) by inserting in the same subsection after the words "pumping plant" the words "installed on any land was or";
 - (c) by inserting in subsection two of the same section after the words "diversion of the River" the words "or the carrying out of other work referred to in subsection one of this section";
 - (d) by inserting in paragraph (a) of the same subsection after the words "on the new course of" the words "or elsewhere on";
 - (e) by omitting from subsection four of the same section the words "deprivation of" and by inserting in lieu thereof the words "deprivation, total or partial, of or adverse effect on".
- (2) Any act, matter or thing done or commenced before the commencement of this Act that could only have been validly done or commenced had the Hunter Valley Flood Mitigation Act, 1956, as amended by subsection one of this section, been in force at the time the act, matter or thing was done or commenced shall be deemed to have been done or commenced pursuant to that Act, as so amended.

- 9. (1) The Hunter Valley Flood Mitigation Act, 1956, No. 5, 1970 is in this section referred to as the Principal Act.

 Payment of
- (2) This section shall be read and construed with compensation in certain cases.
- (3) In such cases and, in any particular case, to such extent, as the Minister with the concurrence of the Treasurer directs, the Constructing Authority may pay compensation to a riparian owner who, before the commencement of this Act, provided alternative works rendered necessary by the carrying out by the Constructing Authority before that commencement of "other work" as defined in subsection (1A) of section thirty-one of the Principal Act, being alternative works having the like objects to those the Constructing Authority would have been required by subsection two of that section to carry out had the Principal Act, as amended by this Act, been in force when that other work was carried out.
- (4) For the purposes of section thirty-one of the Principal Act, as amended by this Act, alternative works in respect of which compensation is paid under this section shall be deemed to have been provided by the Constructing Authority in conformity with subsection two of that section, and for the purposes of section thirty-seven of that Act, as so amended, compensation paid under this section shall be deemed to have been compensation payable by the Constructing Authority in accordance with the provisions of that Act, as so amended.
- (5) Nothing in this section shall be construed as conferring on any person a right to compensation.
- (6) Any payment made by the Constructing Authority before the commencement of this Act that would only have been valid had this section and the Principal Act, as amended by this Act, been in force at the time the payment was made shall be deemed to have been a payment made pursuant to subsection three of this section.
- 10. An Act specified in the First Column of the Schedule Amendment to this Act is amended to the extent and in the manner speci- of certain fied opposite that Act in the Second Column of that Schedule. Acts.

Sec. 10.

THE SCHEDULE.

First Column.		Second Column.	
Reference to Act.	Subject.	Section, etc., to be amended.	Amendment.
		Section 47 Section 48 Section 49	Omit "forty dollars"; insert "one hundred dollars". Omit "two hundred dollars"; insert "five hundred dollars"; insert "fifty dollars"; insert "one hundred dollars"; insert "one hundred dollars"; insert "one hundred dollars"; insert "one hundred dollars". Omit "forty dollars"; insert "one hundred dollars". Omit "two hundred dollars"; insert "five hundred dollars". Omit "two hundred dollars"; omit "forty dollars"; insert "one hundred dollars". Omit "forty dollars"; insert "one hundred dollars". Omit "two hundred dollars". Omit "ten dollars"; insert "one hundred dollars". Omit "two hundred dollars". Omit "one thousand dollars"; insert "five hundred dollars"; insert "five hundred dollars"; insert "two thousand five hundred dollars"; insert "two hundred dollars"; insert "five hundred dollars".
		section 20H. Subsection (1) of section 21A.	insert "two hundred and fifty dollars". Omit "ten dollars"; insert "twenty-five dollars".

THE SCHEDULE—continued.

No. 5, 1970

First Column.		Second Column.	
Reference to Act.	Subject.	Section, etc., to be amended.	Amendment.
No. 44, 1912—cont.	to be amended.	insert "two hundred and fifty dollars". Omit "one hundred dollars"; insert "two hundred and fifty dollars". Omit "one hundred dollars"; insert "two hundred and fifty dollars". Omit "ten dollars"; insert "twenty-five dollars".	
		Paragraph (m) of subsection (1) of section 74. Subsection (1) of section 75. Section 100 Subsection (2) of section 112. Subsection (4) of section 115A. Section 118	"twenty-five dollars"; insert "one hundred dollars"; insert "fifty dollars"; insert "fifty dollars"; insert "fifty dollars"; Omit "two hundred dollars"; insert "five hundred dollars"; Omit "forty dollars"; insert "one hundred dollars"; omit "two hundred dollars"; insert "five hundred dollars"; insert "five hundred dollars"; Omit "ten dollars"; insert "twenty-five dollars"; Omit "two hundred dollars"; insert "five hundred dollars"; Omit "ten dollars"; omit "ten dollars"; Omit "one hundred dollars"; insert "two hundred and fifty dollars." Omit "ten dollars"; insert "twenty-five dollars"; insert "two hundred and fifty dollars."

THE SCHEDULE—continued.

First Column.		Second Column.	
Reference to Act.	Subject.	Section, etc., to be amended.	Amendment.
No. 44, 1912 —cont.	Water—cont.	Subsection (2) of section 118A.	Omit "forty dollars"; insert "one hundred dollars". Omit "four dollars"; insert "ten dollars".
	¥	Subsection (5) of section 118A.	
		Subsection (1) of section 120.	Omit "one hundred dollars"; insert "two hundred and fifty dollars".
• •		Section 121	Omit "two hundred dollars"; insert "five hundred dollars".
		Section 122	Omit "one hundred dollars"; insert "two hundred and fifty dollars".
		Subsection (2) of section 123. Subsection (2) of	
		section 124. Subsection (3) of section 124.	hundred dollars". Omit "one hundred dollars"; insert "two hundred and fifty dollars".
		Subsection (1) of section 129.	
		Subsection (2) of section 148. Subsection (3) of section 148.	Omit "forty dollars"; insert "one hundred dollars". Omit "one hundred dollars";
		Subsection (1) of section 148A.	insert "two hundred and fifty dollars". Omit "forty dollars"; insert "one hundred dollars".
		Subsection (2) of section 148A. Subsection (3) of	Omit "ten dollars"; insert "twenty-five dollars". Omit "forty dollars"; insert
		section 148A. Subsection (2) of section 149.	"one hundred dollars". Omit "forty dollars"; insert "one hundred dollars".
·		Subsection (2) of	Omit "ten dollars"; insert "twenty-five dollars". Omit "forty dollars": insert
		section 163. Subsection (3) of section 163.	"one hundred dollars". Omit "one hundred dollars"; insert "two hundred and fifty dollars".

THE SCHEDULE—continued.

No. 5, 1970

First Column.		Second Column.	
Reference to Act.	Subject.	Section, etc., to be amended.	Amendment.
No. 44, 1912 —cont.	Water—cont.	Subsection (2) of section 177. Subsection (3) of section 177. Subsection (3) of section 183.	hundred dollars". Omit "one hundred dollars"; insert "two hundred and fifty dollars".
No. 73, 1912	Irrigation	Subsection (3) of section 9A. Subsection (1) of section 17A. Subsection (2) of section 17A. Subsection (3) of section 17A. Section 17A. Section 17AA. Section 17AA. Section 17AA.	insert "five hundred dollars". Omit "forty dollars"; insert "one hundred dollars"; insert "twenty-five dollars"; insert "twenty-five dollars". Omit "forty dollars"; insert "one hundred dollars". Omit "one hundred dollars"; insert "two hundred and fifty dollars". Omit "forty dollars"; insert "one hundred dollars"; omit "forty dollars"; insert "one hundred dollars". Omit "two hundred dollars"; insert "five hundred dollars".
No. 22, 1946	Farm Water Supplies.	Subsection (1) of section 28. Section 17 Section 18	"fifty dollars". Omit "one hundred dollars"; insert "two hundred and fifty dollars".
No. 20, 1948	Rivers and Foreshores Improve- ment.	Subsection (10) of section 4. Subsection (11) of section 4. Subsection (3) of section 25.	"one hundred dollars". Omit "one hundred dollars"; insert "two hundred and fifty dollars".

Water, Crown Lands and Other Acts (Amendment).

No. 5, 1970

THE SCHEDULE—continued.

First Column.		Second Column.	
Reference to Act.	Subject.	Section, etc., to be amended.	Amendment.
No. 10, 1956	Hunter Valley Flood Miti- gation.		Omit "two hundred dollars"; insert "five hundred dollars". Omit "one hundred dollars"; insert "two hundred and fifty dollars". Omit "two hundred dollars"; insert "five hundred dollars". Omit "one hundred dollars"; insert "two hundred and fifty dollars". Omit "two hundred and fifty dollars". Omit "two hundred dollars"; insert "five hundred dollars". Omit "ten dollars"; insert "twenty-five dollars".