



New South Wales

# **Water Supply Authorities (Benerembah Irrigation District Environment Protection Trust) Regulation 1996**

under the

Water Supply Authorities Act 1987

His Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under *Water Supply Authorities Act 1987*.

KIM YEADON, M.P.  
Minister for Land and Water Conservation

## **Explanatory note**

The object of this Regulation is to repeal the *Water Supply Authorities (Benerembah Irrigation District Environment Protection Trust) Finance Regulation 1991* and to replace it with this Regulation.

This Regulation deals with the following:

- the Trust's functions and area of operations,
- the assessment, levying and payment of drainage service charges and other charges,
- miscellaneous matters, including the service of notices, the recording of drainage service charges and the liability for payment of drainage service charges on land leased from the Crown and following the disposition of land.

This Regulation covers substantially the same matters as the repealed Regulation with the exception that:

## 1996 No 431

Water Supply Authorities (Benerembah Irrigation District Environment Protection Trust) Regulation 1996

### Explanatory note

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- it omits certain clauses that are spent (such as those concerning a future declaration of drainage areas) or not relevant to the land with which the Regulation is concerned (such as those dealing with the classification of land according to the purpose for which it is actually being used—all the land concerned is used for rural purposes),
- it no longer prescribes the content of, and fee for, a certificate of amounts owing because the *Water Supply Authorities Act 1987* now provides that the content and fee are to be determined by the Trust.

This Regulation is made under the *Water Supply Authorities Act 1987*, including sections 13 (Area of operations), 29 (Connections), 30 (Authority may levy service charges and impose fees and other charges), 32 (Classification of lands), 33 (Basis of levying service charges), 34 (Determinations by Authority), 38 (Interest on overdue service charges etc.) and 66 (the general regulation making power).

This Regulation is made in connection with the staged repeal of legislation under the *Subordinate Legislation Act 1989*.

## Contents

	Page
<b>Part 1      Preliminary</b>	
1    Name of Regulation	5
2    Commencement	5
3    Definitions	5
4    Notes	5
5    Area of operations of Trust	5
6    Functions of Trust	6
<b>Part 2      Fees, drainage service charges and other charges</b>	
7    Fees and charges other than drainage service charges	7
8    Classification of land for purpose of levying drainage service charges	7
9    Basis of levying drainage service charges	7
10   Determinations by Trust	7
11   Payment to Trust	8
12   Payment by instalments	8
13   Payment of interest on overdue amounts	8
14   General power to defer or waive payment	8
<b>Part 3      Miscellaneous</b>	
15   Interest payable by owner on expense incurred by occupier	10
16   Cutting off access to drainage works	10
17   Service of notices	10
18   Recording of drainage service charges	11
19   Expenses of tracing persons	12
20   Crown land held on lease	12
21   Successive Crown lessees in the same charging year	13
22   Liability of joint owners	13

## 1996 No 431

Water Supply Authorities (Benerembah Irrigation District Environment Protection Trust) Regulation 1996

### Contents

---

	Page
23 Liability on disposing of land	13
24 Daily basis of apportionment of drainage service charges	14
25 Liability of new owner	14
26 Liability of occupier	15
27 Proportionate liability for drainage service charges	15
28 Repeal	16

## **Water Supply Authorities (Benerembah Irrigation District Environment Protection Trust) Regulation 1996**

### **Part 1      Preliminary**

#### **1    Name of Regulation**

This Regulation is the *Water Supply Authorities (Benerembah Irrigation District Environment Protection Trust) Regulation 1996*.

#### **2    Commencement**

This Regulation commences on 1 September 1996.

#### **3    Definitions**

In this Regulation:

*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*.

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

#### **4    Notes**

The explanatory note and table of contents do not form part of this Regulation.

#### **5    Area of operations of Trust**

For the purposes of section 13 (1) of the Act, the area of operations of the Trust is the area shown bounded by a red line on the map numbered 123–630 and deposited in the Parramatta office of the Department of Land and Water Conservation (being land declared by the Minister under section 28 of the Act to be a drainage area).

## **1996 No 431**

Clause 6                    Water Supply Authorities (Benerembah Irrigation District Environment Protection Trust) Regulation 1996

Part 1                    Preliminary

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### **6 Functions of Trust**

For the purposes of section 13 (2) of the Act, the Trust has, and may exercise in its area, only the following functions:

- (a) the function of assessing, levying and recovering drainage service charges in connection with the provision of drainage services within the area,
- (b) such functions as are conferred on the Trust by the Ministerial Corporation with respect to the operation and maintenance within the area of the Ministerial Corporation's drainage works.

## **Part 2      Fees, drainage service charges and other charges**

### **7   Fees and charges other than drainage service charges**

The fees and charges (other than drainage service charges) that the Trust may, under section 30 (2) of the Act, impose for goods supplied, or for services provided, are to be determined by resolution of the Trust's Board.

### **8   Classification of land for purpose of levying drainage service charges**

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

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

### **9   Basis of levying drainage service charges**

For the purposes of section 33 of the Act, the Trust may levy drainage service charges on land according to either or both of the following bases:

- (a) the assessment by the Trust of the cost of providing the land with the service,
- (b) the Ministerial Corporation's water allocation to the land from such of its works as are situated within the Benerembah Domestic and Stock Water Supply and Irrigation District constituted under Part 6 of the *Water Act 1912*.

### **10   Determinations by Trust**

For the purposes of section 34 (1) of the Act, a determination of the Trust referred to in that subsection is to be made by resolution of the Trust's Board.

## **1996 No 431**

Clause 11 Water Supply Authorities (Benerembah Irrigation District Environment Protection Trust) Regulation 1996

Part 2 Fees, drainage service charges and other charges

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### **11 Payment to Trust**

- (1) Payment to the Trust of a drainage service charge or other charge:
  - (a) is due within the time notified by the Trust when giving notice of the charge, and
  - (b) may be made in any manner so notified.
- (2) If a person does not pay a fee, drainage service charge or other charge due under the Act, the Trust may levy the person for any expenses incurred in its recovery.

### **12 Payment by instalments**

- (1) The Trust is to notify a person liable to pay drainage service charges levied, or other charges imposed, that payment of the 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 drainage service charges or other charges even if payment by instalments has commenced.

### **13 Payment of interest on overdue amounts**

- (1) For the purposes of section 38 of the Act, the rate of interest that may be charged by the Trust on overdue fees, drainage service charges or other charges must not exceed the rate for the time being applicable under section 95 of the *Supreme Court Act 1970* to a judgment debt.
- (2) Different rates of interest may be charged for different unpaid amounts.
- (3) 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.

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

- (1) The Trust:
  - (a) may defer payment of a drainage service charge or any other charge or fee on such conditions as it thinks fit, or

**1996 No 431**

Water Supply Authorities (Benerembah Irrigation District Environment Protection Trust) Regulation 1996      Clause 14

Fees, drainage service charges and other charges      Part 2

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(b) may 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.

## **1996 No 431**

Clause 15 Water Supply Authorities (Benerembah Irrigation District Environment Protection Trust) Regulation 1996

Part 3 Miscellaneous

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### **Part 3      Miscellaneous**

#### **15 Interest payable by owner on expense incurred by occupier**

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 95 of the *Supreme Court Act 1970* to a judgment debt.

#### **16 Cutting off access to drainage works**

The Trust may cut off access from land to drainage works:

- (a) if any drainage service charges or other charges relating to the land are overdue (but only if at least 7 days' notice of the intention to cut off access has been given to the person liable for payment of the charges concerned), or
- (b) if the Trust is of the opinion that it is unavoidably necessary to do so or because of an accident, or
- (c) 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 drainage works, or
- (d) if the owner or occupier obstructs an officer of the Trust in the exercise of his or her functions.

#### **17 Service of notices**

- (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 drainage 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 drainage 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 drainage service charge—states its amount, the period for which it is owing and that a detailed notice of the charge may be obtained at the office of the Trust, and
  - (cl) 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.

## **18 Recording of drainage service charges**

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

## 1996 No 431

Clause 18 Water Supply Authorities (Benerembah Irrigation District Environment Protection Trust) Regulation 1996

Part 3 Miscellaneous

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- (2) An amendment of the records kept under subclause (1) may be made:
  - (a) by inserting the name of a person who has become the owner or occupier of land within the Trust's area, or
  - (b) by inserting the name of a person to whom an account for a drainage service charge should have been rendered or who has, since the levying of a drainage service charge, become liable to pay it, or
  - (c) by omitting the name of a person whose name should not have been, or should no longer be, recorded, or
  - (d) by increasing or reducing the amount of a drainage service charge as a result of an error in recording or notifying it, or
  - (e) by inserting particulars of land that should have been the subject of a drainage 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 one month after notice of the amendment and of the resulting liability has been given to the person liable.

### 19 Expenses of tracing persons

- (1) The Trust may add to the amount of a drainage service charge or other charge any reasonable out-of-pocket expenses incurred in tracing the person liable to pay the charge.
- (2) Those expenses may be recovered as drainage service charges or other charges at the same time as any drainage service charges or other charges and without the need to give any notice concerning them.

### 20 Crown land held on lease

If land of the Crown is leased to a person for private purposes, any drainage 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.

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

- (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 drainage service charge for that year.
- (2) In relation to land to which this clause applies, the Trust:
  - (a) may make between the successive lessees such adjustment (if any) of the drainage service charge, whether paid or unpaid, as the Trust considers to be proper, and
  - (b) may recover from each lessee the proportion of the drainage service charge fixed for the lessee by the adjustment, and
  - (c) may make any refund resulting from the adjustment.

**22 Liability of joint owners**

- (1) If land is owned or held jointly by 2 or more persons liable to pay a drainage service charge in respect of the land:
  - (a) they are each jointly and severally liable for payment of the drainage service charge, and
  - (b) as between themselves, each is only liable for such part of the drainage service charge as is proportionate to the interest owned or held by the person in the land.
- (2) If one of those persons pays more than that person's proportionate part of a drainage service charge, he or she may recover the excess by way of contribution from the other persons.

**23 Liability on disposing of land**

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

## 1996 No 431

Clause 23 Water Supply Authorities (Benerembah irrigation District Environment Protection Trust) Regulation 1996

Part 3 Miscellaneous

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(2) If:

- (a) a person disposes of any land, and
- (b) pays a drainage 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 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.

(4) Approved notice of a disposal of land is taken to have been given to the Trust when a notice is lodged with the Registrar-General under section 39 (IB) of the *Real Property Act 1900* or section 184E (4A) of the *Conveyancing Act 1919*.

### 24 Daily basis of apportionment of drainage service charges

As between a person liable to pay a drainage 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 charge is to be apportioned on a daily basis.

### 25 Liability of new owner

(1) A person who, by becoming the owner of land, becomes liable to pay a drainage service charge or other charge levied on, or applicable to, the land is liable for payment of all current drainage service charges and other charges, and all arrears of drainage service charges and other charges, levied on, or applicable to, the land even if notice of them was not given to the person until after the person became the owner of the land.

(2) A person who:

- (a) becomes the owner of land, and
- (b) pays to the Trust a drainage 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 charge concerned from the person liable for its payment at the time notice of the 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 drainage service charge or other charge was levied or became applicable.

## 26 Liability of occupier

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

(2) An occupier who pays a drainage 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 occupier may:

- set off the amount paid, or the excess, against accruing rent, or
- recover the amount paid, or the excess, as a debt due from the owner to the occupier.

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

(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 occupier from payment of the rent.

(6) In this clause, *rent* includes money payable under a lease, licence or permit.

## 27 Proportionate liability for drainage service charges

(1) A drainage service charge is proportionate to the portion of the year for which the land is leivable and to the portion of the land that is leivable.

## 1996 No 431

Clause 27 Water Supply Authorities (Benerembah Irrigation District Environment Protection Trust) Regulation 1996

Pari 3 Miscellaneous

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- (2) If an amount of drainage service charge is paid in excess of the liability for a drainage service charge because of the operation of this clause, the Trust must 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.

## 28 Repeal

- (1) The *Water Supply Authorities (Benerembah Irrigation District Environment Protection Trust) Finance Regulation 1991* is repealed.
- (2) Any act, matter or thing that was done for the purposes of the *Water Supply Authorities (Benerembah Irrigation District Environment Protection Trust) Finance Regulation 1991* or, immediately before the repeal of that Regulation, had effect under it, is taken to have been done for the purposes of, or to have effect under, this Regulation.