

IRRIGATION AND WATER (AMENDMENT) ACT.

Act No. 35, 1946.

An Act to make further provision for priority of right to the appropriation of water in times of shortage; to enable non-riparian occupiers of land to acquire the right to appropriate water from rivers and lakes; for these and other purposes to amend the Water Act, 1912-1944, the Irrigation Act, 1912-1944, the Crown Lands Consolidation Act, 1913, the Wentworth Irrigation Act, and certain other Acts in certain respects; to validate certain matters; and for purposes connected therewith. [Assented to, 21st May, 1946.]

George VI.
No. 35, 1946.

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

PART I.

PRELIMINARY.

1. (1) This Act may be cited as the "Irrigation and Water (Amendment) Act, 1946."

Short title,
division into
Parts,
citation and
commencement.

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

PART I.—PRELIMINARY.

PART II.—AMENDMENT OF THE WATER ACT, 1912-1944.

PART III.—AMENDMENT OF THE IRRIGATION ACT, 1912-1944.

PART IV.—AMENDMENT OF THE CROWN LANDS CONSOLIDATION ACT, 1913.

PART V.—AMENDMENT OF THE WENTWORTH IRRIGATION ACT.

(3)

Irrigation and Water (Amendment) Act.

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(3) The Water Act, 1912, as amended by subsequent Acts and by this Act, may be cited as the Water Act, 1912-1946.

(4) The Irrigation Act, 1912, as amended by subsequent Acts and by this Act, may be cited as the Irrigation Act, 1912-1946.

(5) This Act shall commence upon a day to be appointed by the Governor and notified by proclamation published in the Gazette.

PART II.**AMENDMENT OF THE WATER ACT, 1912-1944.**Amendment
of Act No. 44,
1912.Sec. 5.
(Interpreta-
tion.)

2. (1) The Water Act, 1912-1944, is amended—

(a) (i) by inserting in section five next after the definition of “Drainage” the following new definition:—

“Joint water supply scheme” means any work to which this Part extends which is used or proposed to be used for the purpose of supplying water to the lands of two or more occupiers who are jointly utilising such work or propose to do so for the said purpose, and one or more but not all of whom have occupation of the site of the work.

(ii) by omitting from the same section the definition of “Private irrigation scheme”;

Sec. 10.
(Application
for
licenses.)

(b) (i) by omitting from subsection one of section ten the words “private irrigation scheme” and by inserting in lieu thereof the words “joint water supply scheme”;

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

(3) An application for a license for a work constructed or used or proposed to be constructed or used for the purpose of

of irrigation or water supply shall be No. 35, 1946.
 accompanied by—

- (a) particulars as to the means (by gravitation pumping or otherwise) by which water is to be taken from the river or lake;
 - (b) particulars of the maximum rate at which water may be taken from the river or lake;
 - (c) particulars of the estimated quantity of water proposed to be taken annually;
 - (d) particulars of the purpose or purposes for which the water is to be used; and
 - (e) if the work is for the purpose of irrigation, particulars of the area and location of the land proposed to be irrigated, the class or classes of crops proposed to be grown thereon, the works proposed to be provided for the distribution of the water to the land to be irrigated and the work proposed to be undertaken in the preparation of such land for irrigation.
- (c) by omitting section eleven and by inserting in lieu thereof the following section:—
- Subst.
sec. 11.
11. (1) On application being made for a license under section ten of this Act, the Commission shall cause to be advertised once in the Gazette and once in a newspaper published and circulating in the district where the work is or is proposed to be situated, a notice containing particulars of the application.
- Notification
of
application
for
license.
- (2) Any person whose interests may be affected by the granting of the application may, within twenty-eight days after the date of the publication of the later of such advertisements, lodge with the Commission an objection thereto. Every such objection shall be in writing and shall specify the grounds of objection.
- (3)

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(3) (a) After the expiry of a period of twenty-eight days after the date of the publication of the later of such advertisements, the Commission shall decide whether the application should be granted or refused.

(b) Where the decision of the Commission is that the application should be granted the Commission shall give the applicant notice of the period, terms, limitations and conditions proposed to be applied to the license.

(4) In any case where the decision of the Commission is that the application should be refused, the applicant shall be notified in writing of such decision and may, within ninety days from the date of such notification, appeal to the Land and Valuation Court against such decision.

The appeal shall be made as prescribed by rules of court of the Land and Valuation Court and be accompanied by a fee of five pounds as security for the costs of the appeal. Notice of appeal in the prescribed form shall be given by the appellant to the Commission upon the lodging of the appeal in the Land and Valuation Court.

Where the appeal is upheld the Land and Valuation Court shall specify the period, terms, limitations and conditions (if any) to be applied to the license.

The decision of the Land and Valuation Court upon any such appeal shall be final.

(5) In any case where the decision of the Commission is that the application should be granted but an objection has been lodged pursuant to subsection two of this section, or the applicant is dissatisfied with the decision of the Commission as to the period, terms, limitations and conditions proposed to be applied to the license and has lodged with the Commission an objection thereto in writing within twenty-eight days after notice has been given to him in accordance with subsection three of this section, the Commission shall direct the local land

land board or a police magistrate to hold a public inquiry as to the desirability of granting the application or as to the period, terms, limitations and conditions proposed to be applied to the license, as the case may be. No. 35, 1946.

The holding of the inquiry shall be notified once in the Gazette and once in a newspaper published and circulating in the district where the work is or is proposed to be situated.

The Commission and all persons whose interests appear to be affected by any matter the subject of the inquiry by the local land board or police magistrate shall be permitted to attend at the inquiry and be heard in support of, or in opposition to, the matter.

The local land board or police magistrate, as the case may be, holding any inquiry under this subsection shall announce its or his decision in open court, and shall thereupon report in writing upon the inquiry to the Commission.

Where the inquiry is as to the desirability of granting the application and the report of the local land board or police magistrate as the case may be is in favour of the granting of the application the report shall embody the period, terms, limitations and conditions to be applied to the license.

Where the inquiry is as to the period, terms, limitations and conditions proposed to be applied to the license the report shall specify the period, terms, limitations and conditions to be applied to the license.

(6) Where an inquiry is held under subsection five of this section, the Commission or the applicant or any person so interested as aforesaid may, within twenty-eight days from the announcement of the decision as provided for in the said subsection, appeal to the Land and Valuation Court against the decision

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decision of the local land board or police magistrate. The decision of the said Court shall be final.

The appeal shall be made as prescribed by rules of court of the Land and Valuation Court and be accompanied by a fee of five pounds as security for the costs of the appeal. Notice of appeal in the prescribed form shall be given by the appellant to the Commission upon the lodging of the appeal in the Land and Valuation Court.

Sec. 12.
(License.)

(d) by omitting subsections one and two of section twelve and by inserting in lieu thereof the following subsections—

(1) (a) The Commission shall, where its decision is that an application for a license should be granted and no objection has been lodged under section eleven of this Act, issue a license to the applicant in the prescribed form for such period and subject to such terms, limitations and conditions (if any) as may be determined by the Commission.

(b) The Commission shall, in compliance with any decision of the local land board or police magistrate upon an inquiry held under subsection five of section eleven of this Act or of the Land and Valuation Court upon appeal favouring the granting of an application for a license or as to the period, terms, limitations and conditions to be applied to a license, issue a license to the applicant in the prescribed form for the period and subject to the terms, limitations and conditions set out in the decision of the local land board or police magistrate or the Land and Valuation Court, as the case may be.

(2) Notwithstanding the provisions of subsection one of this section—

(a) no license shall be issued pending any appeal; and

(b)

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(b) a license shall be issued only upon No. 35, 1946.
payment of a fee calculated in the
manner and according to the scale
prescribed by regulations under this
Act; and

(c) the Commission may, before granting
a license, require such alterations to
be made to or in connection with the
work, or to the plans and specifications
of the work, as may be decided by the
Commission where no inquiry is held
by the local land board or police
magistrate, or as may be set out in
the decision of the local land board or
police magistrate or the Land and
Valuation Court as the case may be.

(e) by inserting next after section thirteen the New secs.
13A-13F.
following new sections—

13A. (1) Any occupier of land who desires Application
for license
by person
who does
not occupy
land on
which works
are to be
constructed.
to construct and use a work to which this Part
extends (hereinafter in this section referred to as
the “supply work”) for the purpose of domestic
water supply, stock water supply or irrigation
but does not occupy—

(a) the land on which he desires to
construct the supply work; or

(b) the whole of the land on which he
desires to construct works (hereinafter
in this section referred to as the “con-
veying works”) to convey the water
from the supply work to the land on
which he desires to use the water,

and who cannot obtain occupation of the land
required for the supply work or conveying works
may apply to the Commission in the form
prescribed for a license to construct the supply
work and to take and use for the purpose or
purposes specified in the application the water,
if any, obtained thereby.

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(2) The application shall be accompanied by—

- (a) the prescribed deposit as security for the cost of investigation and inquiry in connection with the application, and such deposit may be applied by the Commission in payment or part payment of the license fee payable by the applicant. In the event of the applicant withdrawing or abandoning the application, such deposit or any part thereof may in the discretion of the Commission be retained by it;
- (b) the particulars set out in subsection three of section ten of this Act;
- (c) plans showing—
 - (i) the location of the lands to be supplied with water in relation to the river or lake from which the water supply is to be obtained; and
 - (ii) the lands on which the supply work is proposed to be constructed, including the location of that work and the lands on which the conveying works are proposed to be constructed, including the location of those works;
- (d) particulars of the supply work and the conveying works including all pipes, channels, regulators, flumes and other structures proposed to be constructed and used; and
- (e) particulars of the extent of the areas of lands, not occupied by the applicant, which are proposed to be used for the construction of the supply work and the conveying works (hereinafter in this section referred to as the “intervening lands”)

lands") and the names and addresses of the owners and occupiers of those lands. No. 35, 1946.

(3) The provisions of subsections one and two, paragraph (a) of subsection three and subsection four of section eleven of this Act shall mutatis mutandis apply to an application under this section and to any appeal against the decision of the Commission that the application should be refused.

Upon any such appeal the owners and occupiers of the intervening lands shall be permitted to attend and be heard in support of, or in opposition to, the granting of the application.

(4) In any case where the decision of the Commission is that the application should be granted the Commission shall direct the local land board or a police magistrate to hold a public inquiry as to the desirability of granting the application.

The Commission shall notify the owners and occupiers of the intervening lands of the application and of the reference thereof to the local land board or the police magistrate.

The holding of the inquiry shall be notified once in the Gazette and once in a newspaper published and circulating in the district where the supply work is or is proposed to be situated.

The Commission and all persons whose interests appear to be affected by the granting of the application shall be permitted to attend at the inquiry and be heard in support of, or in opposition to, the granting of the application.

The local land board or police magistrate, as the case may be, holding the inquiry shall announce its or his decision in open court and shall thereupon report in writing upon the inquiry to the Commission.

Where

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Where the decision of the local land board or police magistrate is in favour of the granting of the application the local land board or police magistrate, as the case may be, shall also make recommendations to the Commission with respect to the terms, limitations and conditions which should be applied to the license including the occupancy and use by the licensee of the intervening lands, the payments (if any) to be made in respect of such occupancy and use, and the construction, use and maintenance of the supply work and conveying works.

On receipt of the report of the local land board or police magistrate the Commission, shall determine the terms, limitations and conditions to be applied to the license.

The decision of the local land board or police magistrate as to the desirability or otherwise of granting the application shall be notified by the Commission to the applicant and to the owners and occupiers of the intervening lands and to any person who attended at the inquiry by the local land board or police magistrate in support of or in opposition to the granting of the application. Where such decision is in favour of the granting of the application the Commission shall in such notification include the terms, limitations and conditions to be applied to the license.

The applicant or any owner or occupier of the intervening lands or any person who attended at the inquiry as aforesaid may, within twenty-eight days after the posting to him of the Commission's notification, appeal to the Land and Valuation Court against the decision of the local land board or police magistrate or the determination of the Commission of the terms, limitations and conditions to be applied to the license.

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The decision of the said Court shall be final. No. 35, 1946.

The appeal shall be made as prescribed by rules of court of the Land and Valuation Court and be accompanied by a fee of five pounds as security for the costs of the appeal. Notice of appeal in the prescribed form shall be given by the appellant to the Commission upon the lodging of the appeal in the Land and Valuation Court.

(5) An application for a license under this section shall not be granted unless the local land board, police magistrate, Land and Valuation Court or Commission, as the case may be, is satisfied that—

- (a) it is not reasonably practicable for the applicant to obtain or make provision for a supply of water on the land on which he desires to use the water adequate for the purpose or purposes specified in such application otherwise than in pursuance of a license granted under this section; and
- (b) the land on which it is desired to use the water is reasonably fitted for such purpose or purposes; and
- (c) the interests of riparian occupiers will not be unreasonably affected by the granting of such application.

(6) The Commission shall in compliance with any decision of the local land board or police magistrate upon an inquiry held under subsection four of this section or of the Land and Valuation Court upon appeal favouring the granting of an application for a license issue a license to the applicant in the prescribed form for the period set out in the decision of the local land board or police magistrate or the Land and Valuation Court, as the case may be, and subject to the terms, limitations and conditions determined by the Commission or set out in the decision of the Land and Valuation Court, as the case may be.

No

No. 35, 1948.

No license shall be issued under this subsection pending any appeal.

A license under this section shall be issued only upon payment of a fee calculated in the manner and according to the scale prescribed by regulations under this Act.

If the applicant fails to pay to the Commission within the time prescribed the fee payable upon the issue of the license, the Commission may at any time thereafter reject the application.

Where an application is rejected under this subsection the deposit accompanying such application or any part of such deposit may, in the discretion of the Commission, be retained by it.

(7) Upon the issue of a license under this section the licensee may, during the currency of the license, enter, occupy and use, subject to the terms, limitations and conditions applied to the license, the intervening lands set out in the license for the purpose of constructing, using and maintaining the supply work and the conveying works.

In the event of the license lapsing or being cancelled, the licensee's right thereunder to enter, occupy and use the intervening lands shall, subject to the provisions of subsection nine of this section, terminate.

(8) In the event of the licensee failing to comply with any of the terms, limitations or conditions of the license relating to his entry upon, occupancy or use of the intervening lands, the Commission shall, on being satisfied as to such failure, cancel the license.

(9) For the purposes of sections 17B and 17c of this Act any person who was, immediately before the lapse or cancellation of the license, the holder of a license issued under this section shall be deemed to be the occupier of the intervening lands set out in such license.

13B. (1) In respect of any river, including tributaries thereto and effluents therefrom, or any section of a river, including tributaries thereto and effluents therefrom, or any lake, the Commission may from time to time prescribe—

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Commission
may
prescribe
maximum
areas, etc.,
for which
water may
be appro-
priated for
irrigation.

- (a) the maximum area of land within the holding of any occupier for the irrigation of which water may be taken under a license or authority for a joint water supply scheme;
- (b) the maximum area of any class of crops or plantings within the holding of any occupier for which water may be taken under any such license or authority;
- (c) the maximum quantity of water per acre of any class of crops or plantings which may be taken for irrigation under any such license or authority during any period of twelve months commencing on the first day of July.

(2) Where a prescription has been made under the provisions of subsection one of this section a license or authority for a joint water supply scheme shall not be granted in respect of any work, for the taking of water from the river, or section of the river, or lake covered by the prescription, for—

- (a) the irrigation of a greater area of land or a greater area of any class of crops or plantings; or
- (b) the taking of a greater quantity of water,

than that prescribed.

(3) The Commission may, when renewing a license or authority for a joint water supply scheme, under which an area of land or of any class of crops or plantings could be irrigated in excess of the maximum area prescribed under the

the

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the provisions of subsection one of this section, or under which a quantity of water per acre of any class of crops or plantings may be taken in excess of the maximum quantity prescribed under the provisions of subsection one of this section, renew the license or authority for the irrigation of that maximum area or quantity of water only, or renew the license or authority subject to a condition that the area of land or of any class of crops or plantings which could be irrigated under the license or authority shall be progressively reduced to the said maximum area within a period not exceeding five years.

Commission may refuse to grant certain applications for licenses and authorities.

13c. (1) The Commission may refuse to grant any application for a license or authority for a joint water supply scheme for the purpose of irrigating grasses or pastures other than sown grasses or improved pastures.

(2) The Commission may refuse to grant any application for a license or authority for a joint water supply scheme if it is not satisfied with the proposals for the construction of the works in regard to nature, class or form, or with the work proposed to be undertaken by any applicant in the preparation of the land for irrigation.

(3) Notwithstanding any provision contained in this Part a decision of the Commission to refuse an application under the provisions of subsection one or subsection two of this section shall be final and shall not be subject to appeal.

(4) The Commission may when renewing a license or authority for a joint water supply scheme, under which water has been used for the purpose of irrigating grasses or pastures other than sown grasses or improved pastures, renew the license or authority subject to a condition that the irrigation of such grasses or pastures shall be discontinued either forthwith

or

or progressively within a specified period not No. 35, 1946- exceeding five years.

(5) The Commission may, when renewing a license or authority for a joint water supply scheme in respect of a work used for the purpose of irrigation and such work is, in the opinion of the Commission, of such nature, class or form, as to cause undue wastage of water by the filling of depressions, lakes or swamps, or the design of the work, or the failure of the holder of the license or authority to maintain the work or any part of it in good order and condition warrants the Commission so doing, renew the license or authority subject to a condition that the work shall be altered in design or form or repaired to the satisfaction of the Commission, or that additional works shall be provided within a specified period not exceeding two years.

In any case where the alterations, repairs or additions are, in the opinion of the Commission, so extensive as to warrant such action, the Commission may grant an extension of time for completion of such alterations, repairs or additions not exceeding three years.

13D. The holder of a license or authority for a joint water supply scheme granted for the purpose of irrigation or water supply shall not, except with the permission in writing of the Commission, take water from a river or lake by means of any work covered by the license or authority until the whole of the works covered by the license or authority have been constructed or provided.

Water not to be taken until works have been completed.

13E. The whole of the works covered by a license or authority for a joint water supply scheme shall be constructed or provided within a period of twelve months after the granting of the license or authority or such further period, or periods not exceeding twelve months in any one instance, as the Commission

License or authority shall lapse if works not constructed.

may

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may have approved and notified in writing to the holder of the license or authority, and if the whole of the works have not been completed within the said period of twelve months or such further period or periods as the Commission may have approved and notified as aforesaid the license or authority shall lapse.

Commission may cancel license or authority if work not used for three years.

13F. In any case where the work covered by a license or authority for a joint water supply scheme has not been used for a period of three years or more the Commission may give the holder of the license or authority notice by registered letter addressed to the holder at his address last known to the Commission that after the expiration of a period specified in the notice it is the intention of the Commission to cancel the license or authority. At the expiration of the period mentioned in the notice, the license or authority shall be cancelled unless the Commission shall have annulled or withdrawn the notice in the meantime.

Sec. 14.
(Renewal.)

(f) (i) by inserting next after subsection one of section fourteen the following new subsection:—

(1A) An application for renewal of a license for a work constructed or used for the purpose of irrigation or water supply shall be accompanied by—

- (a) particulars of the maximum rate at which water may be taken from the river or lake by means of the licensed work;
- (b) particulars of the estimated quantity of water proposed to be taken annually;
- (c) particulars of the purpose or purposes for which the water is to be used; and
- (d) if the work is for the purpose of irrigation, particulars of the area and

and location of the land being irrigated and the class or classes of crops to be grown thereon. No. 35, 1946.

- (ii) by inserting next after subsection two of the same section the following new subsection:—

(2A) Where the Commission decides that the application for the renewal of a license issued under section 13A of this Act shall be granted the Commission shall notify the owners and occupiers of the intervening lands set out in the license of such decision and of the period, terms, limitations and conditions to be attached to the renewal of the license, and any such owner or occupier may, within twenty-eight days after the posting to him of such notification, lodge with the Commission an objection to the Commission's decision to grant the application or to the said period, terms, limitations and conditions. Every such objection shall be in writing and shall specify the grounds of objection.

Where an objection has been lodged under the provisions of this subsection the application shall be dealt with in the manner provided in subsection four of section 13A of this Act for an application for a license.

- (iii) by inserting next after subsection three of the same section the following new subsection:—

(3A) Notwithstanding the provisions of subsections two and three of this section an applicant shall have no right of appeal—

- (a) where the reduction of the area of land or of any class of crops or plantings which may be irrigated by water obtained by the licensed work or the reduction of the quantity of water which may be taken by the

licensed

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licensed work is imposed by the operation of subsection three of section 13B of this Act; or

- (b) against the decision of the Commission whereby conditions are applied to the renewal of a license under the provisions of subsections four and five of section 13C of this Act.

Sec. 14A.
(Fees.)

- (g) by inserting in section 14A after the word "twelve" the figures and letter "13A";

Sec. 14B.
(Flow assured by a work of the Crown.)

- (h) (i) by omitting from subsection two of section 14B the words "private irrigation scheme" and by inserting in lieu thereof the words "joint water supply scheme";

- (ii) by omitting paragraphs (a) and (b) of the same subsection and by inserting in lieu thereof the following paragraphs:—

(a) fixed by the Commission—

- (i) in respect of a license, authority or permit in existence on the first day of July next following the date of the said proclamation, as soon as practicable and notified to the holder of the license, authority or permit, and paid in respect of the year commencing on the said first day of July and in respect of each year thereafter commencing on the first day of July;
- (ii) in respect of a license, authority or permit issued or renewed after the said first day of July, when issuing or renewing the license, authority or permit,
- and

and paid at a proportionate rate for the portion of the year from the date of the issuing or renewing of the license, authority or permit to the thirtieth day of June next following and thereafter paid in respect of each year commencing on the first day of July; No. 35, 1946.

(b) not greater than maximum amounts which shall be prescribed by regulations made under this Act according to the purpose or purposes for which the water is to be taken and used, the nature of the work, and the method of obtaining the water;

(b1) paid at the times and in the manner prescribed by regulations made under this Act;

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

(6) If the holder of a license, authority or permit does not pay the charge under this section within the prescribed time, the license, authority or permit may be suspended by the Commission until such charge be paid.

(7) The Minister may, on the recommendation of the Commission, remit or waive the payment in any year of any amount paid or payable in respect of charges under this section. The amount so remitted or waived shall not exceed the charges paid or payable by the holder of the license, authority or permit in respect of water used by him, as assessed by the Commission, for the irrigation of any crop which has been conserved and held by him as fodder

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fodder for a period of not less than eighteen months and is in good condition and is protected to the satisfaction of the Minister.

Sec. 16.
(Benefit of license.)

- (i) (i) by inserting in section sixteen next after the word "license" the words "other than a license under section 13A of this Act";
- (ii) by inserting at the end of the same section the words:—

"A license under section 13A of this Act shall be deemed to be held by and shall operate and enure for the benefit of the lawful occupier for the time being of the land supplied or to be supplied with water by means of the licensed work."

Sec. 17A.
(Revocation or suspension of license or authority.)

- (j) (i) by omitting from section 17A the words "private irrigation scheme" wherever occurring and by inserting in lieu thereof the words "joint water supply scheme";
- (ii) by inserting at the end of the same section the following new subsection:—

(3) If the Commission is satisfied that a licensee or the holder of an authority for a joint water supply scheme has failed to comply with the terms of any notice given by the Commission whereby the license or authority is modified or the quantity of water authorised by the license or authority to be taken thereunder has been reduced, the Commission may give the licensee or such holder, as the case may be, notice by registered letter addressed to the licensee or such holder respectively at his address last known to the Commission, that after the expiration of the period specified in the notice it is the intention of the Commission to suspend the license or authority.

At the expiration of the period mentioned in the notice the license or authority shall

be

be suspended as stated in the notice unless the Commission shall have annulled or withdrawn the notice in the meantime. No. 35, 1946.

- (k) by omitting Division 3A of Part II and by inserting in lieu thereof the following Division:— Subst.
Div. 3A of
Part II.

DIVISION 3A.—Priority of right to the appropriation of water during periods of shortage.

18A. The Governor may, by proclamation in the Gazette, declare that the provisions of this Division shall apply to any river or lake or section of a river from a date specified in such proclamation and thereupon such provisions shall apply according to the tenor of the proclamation. Classifica-
tion
of river
and lake
systems.

18B. (1) Within twelve months after the date of any proclamation made under the provisions of section 18A of this Act the Commission shall classify all licenses and authorities for joint water supply schemes (hereinafter in this Division referred to as authorities) existing at the date of the proclamation and which were granted under the provisions of this Part for the purpose of irrigation with water to be appropriated from the river or lake or section of a river to which the said proclamation applies, placing each of such licenses and authorities under either Class A or Class B or Class C. Classifica-
tion
of existing
licenses
and
authorities.

(2) All such licenses and authorities which were granted five years or more prior to the date of the proclamation shall be classified as Class A, if—

- (a) any grasses or pastures which are under irrigation pursuant to any such license or authority at the date of the classification are sown grasses or improved pastures; and
- (b) the holder of the license or authority has made beneficial use of the rights held

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held under the license or authority for the irrigation of lands during the period of five years immediately preceding the date of the proclamation.

(3) All such licenses and authorities which were granted three years or more prior to the date of the proclamation and which have not been classified by the Commission as Class A shall be classified as Class B, if—

- (a) of the total area of land under irrigation pursuant to any such license or authority at the date of the classification not more than twenty-five per centum is under grasses or pastures other than sown grasses or improved pastures; and
- (b) the holder of the license or authority has made beneficial use of the rights held under the license or authority for the irrigation of lands during the period of three years immediately preceding the date of the proclamation.

(4) All licenses and authorities which are not classified by the Commission as Class A or Class B licenses or authorities shall be classified as Class C.

(5) In deciding whether such beneficial use has been made of the rights held under the license or authority the following matters shall be taken into account, viz.:—

- (a) the regularity or otherwise of the use of the rights to appropriate the water having regard to the quantities available from time to time;
- (b) the restrictions on the appropriation of water, if any, which have been imposed by the Commission during the period of three years or five years, as the case may be;

(c)

- (c) the seasonal conditions and the quantity of water appropriated or the proportion which was irrigated of the total area which might have been irrigated under the terms of the license or authority during each year of the said periods; No. 35, 1946.
- (d) the use to which the appropriated water has been put and the classes of crops grown;
- (e) the standards of preparation for irrigation by works of channelling, banking, grading, cultivation and otherwise and of maintenance of such works; and
- (f) such other matters as may be deemed appropriate.

(6) The Commission shall notify the holder of a license or authority by registered letter addressed to the holder thereof at his address last known to the Commission of the classification of the license or authority.

(7) The holder of a license or authority which has been classified by the Commission under Class B or Class C shall have the right to object to such classification, subject to such objection, with the grounds of objection set out therein, being lodged with the Commission within ninety days of the date of notification of such classification.

(8) Any such objection shall be referred by the Commission to the local land board or a police magistrate for inquiry and report.

The holding of the inquiry shall be notified once in the Gazette and once in a newspaper published and circulating in the district where the work covered by the license or authority is situated.

The

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The Commission and all persons whose interests appear to be affected by the classification of the license or authority shall be permitted to attend at the inquiry and be heard in support of or in opposition to the objection.

The local land board or police magistrate, as the case may be, holding the inquiry shall announce its or his decision in open court and shall thereupon report in writing upon the inquiry to the Commission.

(9) Where an inquiry is held under this section the Commission or the holder of the license or authority, or any person so interested as aforesaid may, within twenty-eight days from the announcement of the decision as provided for in subsection eight of this section, appeal to the Land and Valuation Court against the decision of the local land board or police magistrate. The decision of the said Court shall be final.

The appeal shall be made as prescribed by rules of court of the Land and Valuation Court and be accompanied by a fee of five pounds as security for the costs of the appeal. Notice of appeal in the prescribed form shall be given by the appellant to the Commission upon the lodging of the appeal in the Land and Valuation Court.

(10) Where the decision of the police magistrate or the local land board upon an inquiry into an objection lodged under subsection seven of this section is in favour of the alteration of a classification and no appeal has been lodged under subsection nine of this section or where the decision of the Land and Valuation Court is in favour of the alteration of a classification, the Commission shall alter the classification in accordance with such decision.

18c. Any license or authority to appropriate water for the purpose of irrigation from a river or lake or section of a river in respect of which a proclamation has been made under the provisions of section 18A of this Act which is granted after the date of such proclamation shall be classified by the Commission as a Class C license or authority.

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Classifica-
tion of new
licenses
and
authorities.

18d. (1) (a) The holder of any Class B license or authority may at any time after the license or authority has been in force for a period of more than five years apply to the Commission for reclassification of such license or authority as a Class A license or authority.

Reclassifica-
tion of
licenses
and
authorities.

(b) The holder of any Class C license or authority may at any time after the license or authority has been in force—

(i) for a period of more than three years apply to the Commission for reclassification of such license or authority as a Class B license or authority, or

(ii) for a period of more than five years apply to the Commission for reclassification of such license or authority as a Class A license or authority.

(2) An application for reclassification of a license or authority of Class B or Class C as a license or authority of Class A shall be granted, if—

(a) the holder of the license or authority has not within the period of two years immediately preceding the lodging of the application with the Commission, used water obtained by means of the work covered by the license or authority for the purpose of irrigating grasses or pastures other than sown grasses or improved pastures; and

(b)

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- (b) the holder of the license or authority has made beneficial use of the rights held under the license or authority for the irrigation of lands during the period of five years immediately preceding the lodging of the application.

(3) An application for reclassification of a license or authority of Class C as a license or authority of Class B shall be granted, if—

- (a) of the total area irrigated with water obtained by means of the work covered by the license or authority during the period of two years immediately preceding the lodging of the application with the Commission not more than twenty-five per centum has been under grasses or pastures other than sown grasses or improved pastures; and
- (b) the holder of the license or authority has made beneficial use of the rights held under the license or authority for the irrigation of lands during the period of three years immediately preceding the lodging of the application.

(4) In deciding whether such beneficial use has been made of the rights held under the license or authority, the matters set out in subsection five of section 18B of this Act shall be taken into account.

(5) The Commission shall notify the holder of a license or authority by registered letter addressed to the holder of the license or authority, as the case may require, of the decision given by it in respect of any application for reclassification made pursuant to subsection one of this section.

(6) The holder of a license or authority whose application for reclassification has been refused by the Commission shall have the right to object to the Commission's decision to refuse

the

the application, subject to such objection, with the grounds of objection set out therein, being lodged with the Commission within ninety days of the date of the notification of the Commission's decision. No. 35, 1946.

(7) The provisions of subsections eight, nine and ten of section 18B of this Act shall apply, mutatis mutandis, to and in respect of any objection under subsection six of this section.

(8) (a) If the holder of any license or authority which has been classified or reclassified by the Commission as a Class A or a Class B license or authority has after the license or authority has been so classified or reclassified—

(i) failed to make beneficial use of the rights held under the license or authority for the irrigation of lands for a period of three years; or

(ii) in the case of a Class A license or authority used water obtained by means of the work covered by such license or authority for the purpose of irrigating grasses or pastures other than sown grasses or improved pastures; or

(iii) in the case of a Class B license or authority used water obtained by means of the work covered by such license or authority for the irrigation of grasses or pastures other than sown grasses or improved pastures of a greater area than twenty-five per centum of the total area irrigated with water obtained by means of the work;

the Commission may notify such holder, by registered letter addressed to the holder at his address last known to the Commission, of its intention to reclassify the license or authority as a Class B or a Class C (as the case may be)

license

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license or authority as from a specified date, such date being not less than sixty days from the date of such notification.

(b) The holder of a license or authority shall have the right to object to the Commission's intention to reclassify the license or authority under this subsection, subject to such objection with the grounds of objection set out therein being lodged with the Commission within sixty days of the date of the notification referred to in paragraph (a) of this subsection. The provisions of subsections eight, nine and ten of section 18B of this Act shall apply, mutatis mutandis, to and in respect of any objection under this subsection.

(c) If no such objection be received or if the decision of the local land board or police magistrate or the Land and Valuation Court on any objection be in favour of the reclassification of the license or authority, the Commission may reclassify the license or authority as a Class B or a Class C (as the case may be) license or authority as at the date specified in the notification referred to in paragraph (a) of this subsection or such later date as may be recommended by the local land board or police magistrate, or directed by the Land and Valuation Court.

(d) In deciding whether the holder of a license or authority has failed to make beneficial use of the rights held under the license or authority the matters set out in subsection five of section 18B of this Act shall be taken into account.

Restrictions
and suspen-
sions of
rights in
times of
shortage of
water.

18E. (1) If at any time the Commission is of the opinion that the quantity of water available, or likely to be available, in a river or lake or section of a river, to which a proclamation under the provisions of section 18A of this Act has applied the provisions of this Division, is insufficient

insufficient to meet all requirements, the Commission may as hereinafter provided restrict or suspend the rights held under licenses, permits or authorities granted under this Part or held under the provisions of section seven of this Act for the appropriation of water for any purpose from such river or lake or section of a river or any part of such river or lake or section. No. 35, 1946.

(2) (a) Particulars of any restrictions or suspensions imposed by the Commission under the provisions of subsection one of this section shall be notified in the Gazette and in a newspaper published and circulating in the district in which the river or lake or section of a river is situated.

(b) Any such notification may be amended, altered, modified or cancelled at any time by the Commission and particulars of any amendment, alteration, modification or cancellation shall be notified in the Gazette and in a newspaper published and circulating in the district in which the river or lake or section of a river is situated.

(3) (a) The Commission may, in imposing restrictions or suspensions under the provisions of this section—

- (i) restrict or suspend the rights for the appropriation of water for any purpose;
- (ii) restrict or suspend the rights for the appropriation of water for specified purposes without restricting or suspending the rights for other purposes;
- (iii) restrict or suspend the rights for the appropriation of water under any specified Class of license or authority without restricting or suspending the rights under any higher Class.

(b) .

No. 35, 1946.

(b) The restriction or suspension of rights for the appropriation of water shall be imposed by the Commission only in accordance with the following order:

- (i) rights under permits for any purpose other than domestic and stock supply;
- (ii) rights under Class C licenses and authorities for the purpose of irrigation;
- (iii) rights under Class B licenses and authorities for the purpose of irrigation;
- (iv) rights under Class A licenses and authorities for the purpose of irrigation;
- (v) rights under licenses and authorities for purposes other than irrigation and domestic and town and village water supply, rights under permits for stock supply and rights held under section seven of this Act for the appropriation of water for stock supply;
- (vi) rights under licenses, authorities and permits for domestic purposes and town and village water supply and rights held under section seven of this Act for the appropriation of water for domestic purposes.

(c) Notwithstanding the provisions of paragraph (b) of this subsection the Commission may, in imposing restrictions or suspensions with respect to licenses and authorities classified under the provisions of this Division as Class A, Class B or Class C, restrict or suspend the rights for the appropriation of water for the purpose of irrigation held under such licenses and authorities without restricting or suspending the rights held under such licenses and authorities for the appropriation of water for purposes other than irrigation.

(4) In any case where the Commission, **No. 35, 1946.** in accordance with the provisions of this Division, has imposed restrictions on the rights to appropriate water no appropriations of water shall be made under section seven of this Act or under any license, authority or permit except in accordance with such rights as so restricted, and where the Commission under the provisions of this Division has suspended any rights to appropriate water held under section seven or held under any license, authority or permit no appropriations of water for any purpose in respect of which such suspension has been imposed shall be made, and any person failing to comply with the provisions of this subsection shall, upon conviction, be liable to a penalty not exceeding five hundred pounds and in addition the Commission may suspend, for any period not exceeding five years, the license, authority or permit in respect of any work by means of which any misappropriation of water has been made in contravention of this subsection, and, in any case of suspension of a Class A or a Class B license or authority, may on the renewal of such license or authority reclassify it as a license or authority of the next lower Class and may, following a second offence by a holder of a license or authority, cancel such license or authority.

(l) by omitting section 18P;

Sec. 18P.
(Permit not
to confer
priority.)

(m) by omitting Division 4 of Part II and by inserting in lieu thereof the following Division: Subst.
Div. 4
of Part II.

DIVISION 4.—JOINT WATER SUPPLY SCHEMES.

19. No water shall be taken from any river or lake for the purposes of any joint water supply scheme except under authority granted in pursuance of the provisions of this Division. Joint water supply scheme.

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Application
for
authority.

20. (1) The occupiers of the whole of the lands supplied or proposed to be supplied with water obtained by means of a joint water supply scheme may apply to the Commission in the form prescribed for an authority to construct and use the joint water supply scheme and to take and use, for the purposes specified in the application, the water, if any, conserved or obtained thereby.

(2) The application shall be accompanied by the prescribed deposit as security for the cost of investigation and inquiry in connection with the application, and such deposit may be applied by the Commission in payment or part payment of the fee payable by the applicants in respect of the authority.

In the event of the application being withdrawn or abandoned such deposit or any part thereof may in the discretion of the Commission be retained by it.

The application shall also be accompanied by—

- (a) particulars as to the means (by gravitation, pumping or otherwise) by which water is to be taken from the river or lake; and of any channel, flume, pipe, conduit or other work in which water is to be conveyed to the land of each occupier;
- (b) a plan showing the land occupied by each occupier, the location of the means by which water is to be taken from the river or lake, the location of any channel, flume, pipe, conduit or other work in which water is to be so conveyed, and the location of any bridge, culvert, syphon, check, regulator or other structure or work to be provided, and if the work is for the purpose of irrigation

irrigation the location of the areas proposed to be irrigated within the land of each occupier; No. 35, 1946.

- (c) particulars of the purpose or purposes for which the water is to be used;
- (d) if the work is for the purpose of irrigation particulars of the area proposed to be irrigated within the land of each occupier and of the total of such areas and particulars of the class or classes of crops proposed to be irrigated;
- (e) particulars of the maximum rate at which water may be taken from the river or lake;
- (f) particulars of the estimated quantity of water proposed to be taken annually;
- (g) particulars of the quantities of water proposed to be delivered annually to the land of each occupier, the rates and times of such deliveries, and of any other matters affecting the apportionment of the water between the several occupiers as may be appropriate;
- (h) a certified copy of any agreement between any of the occupiers or between any of the occupiers and any other person in respect of the joint water supply scheme;
- (i) particulars of any moneys paid or proposed to be paid to any person in respect of the supply of water and the occupancy or transfer of any land because of or in connection with the joint water supply scheme;
- (j) particulars of the proposals of the occupiers in respect of the arrangements to be entered into between them for the provision, construction, operation, maintenance and renewal of the works

No. 35, 1946.

works and the provision of moneys for same and the payments to be made by any of the occupiers in respect thereof.

Notification of application and reference to local land board or police magistrate.

20A. (1) On application being made for an authority under this Division the Commission shall cause to be published, once in the Gazette and once in a newspaper published and circulating in the district where the work is or is proposed to be situated, a notice giving particulars of the application.

Any person objecting to the granting of the application may, within twenty-eight days after the publication of the later of such advertisements, lodge with the Commission an objection thereto. Every such objection shall be in writing and shall specify the grounds of objection.

(2) The Commission shall, whether or not an objection has been lodged with it, direct the local land board or a police magistrate to hold a public inquiry as to the desirability of granting the application. Where the recommendation of the local land board or police magistrate is in favour of the granting of the application the local land board or police magistrate, as the case may be, shall embody in such recommendation the arrangements which should in its or his opinion be made by the occupiers in respect of the provision, construction, operation, maintenance and renewal of the works, the apportionment between them of the water taken by means of such works and any payments to be made by any of them in respect of the works or the water supply.

The holding of the inquiry shall be notified once in the Gazette and once in a newspaper published and circulating in the district where the work is or is proposed to be situated.

The

Irrigation and Water (Amendment) Act.

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The Commission and all persons whose ^{No. 35, 1946.} interests appear to be affected by the granting of the application shall be permitted to attend at the inquiry and be heard in support of, or in opposition to, the granting of the application.

The local land board or police magistrate, as the case may be, holding the inquiry, shall report in writing upon the inquiry to the Commission.

20B. (1) Upon receipt of the report of the ^{Authority.} local land board or police magistrate upon any such inquiry the Commission shall decide whether or not the application shall be granted provided that in respect of any application where the local land board or police magistrate, as the case may be, has recommended the granting of the application the Commission may only refuse to grant the application with the approval of the Minister.

(2) Where the Commission has decided to grant an application for an authority the Commission shall, on payment of the prescribed fee and on receipt by it of the certified copy of the agreement executed by the occupiers as hereinafter provided, issue to the applicants an authority for the joint water supply scheme for a period not exceeding ten years subject to such terms and conditions in respect of the taking of water as the Commission may deem fit and subject to such conditions in respect of the arrangements to be made between the occupiers for the provision, construction, operation, maintenance and renewal of the works, the apportionment between the occupiers of the water taken by means of such works and the payments to be made in respect of each and all parts of the operations for the water supply as shall be determined by the Commission.

(3) If the applicants fail to pay to the Commission within the time prescribed the fee payable upon the issue of the authority the
Commission

No. 35, 1946.

Commission may at any time thereafter reject the application.

When an application is rejected under this subsection the deposit accompanying such application or any part of such deposit may, in the discretion of the Commission, be retained by it.

(4) Within three months of being notified of the Commission's decision to grant the application for an authority and of the conditions determined by the Commission in respect of the arrangements to be made between the occupiers for the provision, construction, operation, maintenance and renewal of the works, the apportionment between the occupiers of the water taken by means of such works and the payments to be made in respect of each and all parts of the operations for the water supply, an agreement, satisfactory to the Commission, embodying such conditions and covering the full period for which the Commission has decided to grant the authority shall be executed by the occupiers of the whole of the lands to be supplied with water obtained by means of the joint water supply scheme.

A certified copy of such agreement shall be lodged with the Commission.

In the event of such certified copy not being lodged with the Commission within the said period of three months the Commission may at any time thereafter reject the application.

When an application has been rejected under this subsection the deposit accompanying such application or any part of such deposit may, in the discretion of the Commission, be retained by it.

Renewal of
authority.

20c. (1) Subject as hereinafter in this section provided an authority may be renewed from time to time by the Commission on the application of the occupiers of the lands
supplied

supplied with water obtained by means of a No. 35, 1946. joint water supply scheme and on payment of the prescribed fee.

Such application shall be made before the expiration of the period for which the authority was granted or last renewed, as the case may be.

No renewal shall be for a longer period than ten years.

Pending consideration of the application by the Commission the authority shall not lapse, but should the prescribed fee be not paid within the prescribed time or the certified copy of the agreement be not lodged with the Commission as hereinafter provided the authority shall lapse.

(2) An authority may be renewed by the Commission subject to such terms and conditions in respect of the taking of water as the Commission may deem fit and subject to such conditions in respect of the arrangements to be made between the occupiers for the provision, construction, operation, maintenance and renewal of the works, the apportionment between the occupiers of the water taken by means of such works and the payments to be made in respect of each and all parts of the operations for the water supply as shall be determined by the Commission.

(3) Within three months of being notified of the Commission's decision to renew an authority and of the conditions determined by the Commission in respect of the arrangements to be made between the occupiers for the provision, construction, operation, maintenance and renewal of the works, the apportionment between the occupiers of the water taken by means of such works and the payments to be made in respect of each and all

parts

No. 35, 1946.

parts of the operations for the water supply, an agreement, satisfactory to the Commission, embodying such conditions and covering the full period for which the Commission has decided to renew the authority shall be executed by the occupiers of the whole of the lands supplied with water obtained by means of the joint water supply scheme.

A certified copy of such agreement shall be lodged with the Commission within the said period of three months.

(4) The Commission may only refuse to grant a renewal of an authority with the approval of the Minister.

Penalty for certain alterations to work.

20D. If during the time that an authority under this Division is in force, alterations have been made in or in connection with the work which materially and prejudicially affect the quantity of water flowing into or from, or being in any river or lake, without the previous consent of the Commission, the person who made the alterations shall be liable to a penalty not exceeding one hundred pounds, and, in addition to the imposition of the said penalty, the authority may be cancelled by the Commission.

Amended authority to exclude lands.

20E. (1) If the occupiers of the whole of the lands supplied with water obtained by means of a joint water supply scheme apply to the Commission for an amended authority to exclude any part of the lands which may be supplied with water under the terms of the authority for the joint water supply scheme the Commission shall issue in respect of the remaining lands and in substitution for the existing authority an amended authority for the unexpired portion of the period for which the existing authority had been granted and subject to such terms and conditions as the Commission may deem fit.

Any such amended authority shall be issued without payment of a fee.

(2)

(2) (a) If it be desired that an authority be amended so that land additional to the land specified in the authority may be supplied with water obtained by means of the work covered by the authority, the occupiers of the whole of the lands supplied with water obtained by means of that work and the occupier of the additional land may apply to the Commission for an amended authority.

No. 35, 1946.
Amended
authority
to include
additional
lands.

(b) On application being made for an amended authority under this subsection the Commission shall cause to be published, once in the Gazette and once in a newspaper published and circulating in the district where the work is situated, a notice giving particulars of the application.

Any person objecting to the granting of the application may, within twenty-eight days after the publication of the later of such advertisements, lodge with the Commission an objection thereto. Every such objection shall be in writing and shall specify the grounds of objection.

(c) The Commission shall, whether or not an objection has been lodged with it, direct the local land board or a police magistrate to hold a public inquiry as to the desirability of granting the application.

Where the recommendation of the local land board or police magistrate is in favour of the granting of the application the local land board or police magistrate, as the case may be, shall report to the Commission as to whether any of the terms and conditions to which the authority is subject should be amended and if so in what respect.

(d) Upon the receipt of the report of the local land board or police magistrate upon any such inquiry the Commission shall decide whether or not the application shall be granted, provided that in respect of any application where the local land board or police magistrate,

No. 35, 1946.

magistrate, as the case may be, has recommended the granting of the application the Commission may only refuse to grant the application with the approval of the Minister.

(e) Where the Commission has decided to grant an application for an amended authority the Commission shall, on payment of such fee as it may determine, issue in respect of the lands which may be supplied with water under the terms of the existing authority and the additional land, and in substitution for the existing authority, an amended authority for the unexpired portion of the period for which the existing authority had been granted and subject to such terms and conditions as the Commission may deem fit.

(3) The Commission may before issuing an amended authority under subsection one or subsection two of this section require the occupiers of the whole of the lands to be supplied with water by means of the works covered by such amended authority—

- (a) to enter into an agreement, satisfactory to the Commission, embodying the arrangements to be made between such occupiers for the provision, construction, operation, maintenance and renewal of the works, the apportionment between the occupiers of the water taken by means of such works and the payments to be made in respect of each and all parts of the operations for the water supply; and
- (b) to lodge a certified copy of such agreement with the Commission.

Benefit of
authority.

20F. An authority shall be deemed to be held by and shall operate and enure for the benefit of the lawful occupiers for the time being of the lands specified in the authority which are supplied with water obtained by means of the work

work covered by the authority. Such occupiers shall be bound by the terms and conditions of the authority and upon breach of any such terms and conditions the authority may be cancelled by the Commission. No. 35, 1946.

20g. (1) Any work which immediately before the commencement of the Irrigation and Water (Amendment) Act, 1946, was the subject of a private irrigation authority, but which after such commencement is not a joint water supply scheme as defined in section five of this Act, shall be deemed to be a work duly licensed under the provisions of Division 3 of this Part. Existing
author-
ities.

The Commission shall, as soon as practicable after the said commencement, issue in respect of such work and in substitution for the private irrigation authority a license under Division 3 of this Part for the unexpired portion of the period for which the private irrigation authority had been granted and subject to similar terms, limitations and conditions to those to which the private irrigation authority was subject.

Notwithstanding the provisions of section twelve of this Act a license issued in accordance with this subsection shall be issued without payment of a fee.

(2) Any private irrigation authority in existence immediately before the commencement of the Irrigation and Water (Amendment) Act, 1946, for a work which after such commencement is a joint water supply scheme as defined in section five of this Act shall be deemed to be an authority for a joint water supply scheme for the unexpired portion of the period for which the private irrigation authority had been granted and subject to the same terms, conditions and limitations as those to which the private irrigation authority was subject.

20H. (1) Any person who contravenes the provisions of this Division, or contravenes or fails to carry out any term or condition of an authority, Penalties.

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authority, shall be liable to a penalty not exceeding fifty pounds, and a further penalty of five pounds for each day during which the contravention continues after conviction; and, in addition to the imposition of the said penalty, the authority may be cancelled by the Commission.

(2) An authority under this Division may be cancelled by the Commission by notification in the Gazette, which shall be conclusive evidence of such cancellation.

New sec.
21A.Pollution
of rivers
and lakes.

(u) by inserting next after section twenty-one the following new section:—

21A. (1) Any person who discharges or puts, or permits to be discharged, put, or carried, or to fall or flow into a river or lake—

(a) any noisome, noxious, poisonous or unwholesome matter; or

(b) any foul water, slop water or household waste water, refuse, rubbish, garbage, solid or liquid sewage, sludge, slime, cinders, ashes, or any solid refuse of any factory, manufacturing process, mine, quarry, trade works or business, or drainage from a privy, cess pit, slaughter house, stable, cowyard or pigsty; or

(c) any water or liquid proceeding from any mine (including sluicing and dredging operations), factory, manufacturing process, trade works or business, which water is so charged with chemicals, sludge, slime, silt, soil or other matter as to render the water of the river or lake unfit for human consumption, or domestic purposes, or for watering stock or for the irrigation of land,

shall

shall be guilty of an offence and shall be liable on summary conviction to a penalty not exceeding five hundred pounds and, in the case of a continuing offence, to a further penalty not exceeding twenty pounds for each day during which the offence continues after notice in writing by the Commission to abate or cease the offence has been given to the person offending.

No. 35, 1946.

(2) Notwithstanding the provisions of subsection one of this section where the Commission has served upon any person a notice requiring that person to abate any act matter or thing mentioned in that subsection and the person has failed to comply with the notice, the Commission by its officers or servants or any person authorised by it in that behalf may enter upon any land or premises and inspect the same and take such measures as it may consider necessary for such abatement and it shall not be necessary for the Commission to obtain an injunction or other order of a court to entitle it to make such entry or to take such measures. The Commission may recover the cost and expense incurred by it in making such entry and taking such measures from the person offending as a debt.

(3) Nothing contained in this section shall be construed to impair any power of abating nuisances at common law.

(o) by inserting next after section twenty-two the following new section:—

New sec.
22A.

22A. The Commission in any time of emergency or when there is an actual or threatened shortage of water may for such period and subject to such limitations and conditions as it may think fit authorise any public authority as prescribed to take such measures as may by the Commission be thought fit to conserve water in or obtain water from a river or

Public
autho-
rities may
construct
and use
works in
times of
shortage
of water.

lake

No 35, 1946.

lake for the purpose of supplying water or augmenting the supply of water for town or village water supply or other public purpose, and in the exercise of powers conferred by that authority the public authority may enter any land and construct and use any work to which this Part extends and it shall not be necessary for the public authority to obtain a license or permit for any work constructed or used solely in respect of the authority so conferred by the Commission.

Sec. 26B.
(Power to determine license.)

(p) by omitting from section 26B the words "private irrigation scheme" and by inserting in lieu thereof the words "joint water supply scheme";

New sec. 26D.

(q) by inserting next after section 26c the following new section:—

Destruction of trees in rivers and lakes.

26D. (1) The provisions of this section shall apply to any river or lake or section of a river which may be prescribed.

(2) No owner or occupier of land or other person whomsoever shall, except with the permission of the Forestry Commission of New South Wales, ringbark, cut down, fell, or destroy, or cause or allow to be ringbarked, cut down, felled, or destroyed, any tree situated within, or within one chain of, the bed or bank of any river or lake or section of a river to which this section applies.

(3) Application for a permit under this section shall be made in writing to the Forestry Commission of New South Wales and shall specify the land in respect of which the permit is desired.

The said Commission may, after inquiry, refuse any permit applied for under this section or may grant it subject to such conditions as the said Commission may think fit.

Any such permit may specify as a condition thereof the extent of trees to be left standing for

for shade, shelter, windbreak and/or other purposes on the land or on such part or parts of the land as may be defined in the permit. No. 35, 1946.

Any such permit may specify as a condition thereof the limit of time within which it shall be in force.

The said Commission may at any time revoke any permit issued under the provisions of this section.

(4) Any owner or occupier of land or any other person who ringbarks, cuts down, fells, or destroys, or causes to be ringbarked, cut down, felled or destroyed any tree contrary to this section shall be liable to a penalty not exceeding fifty pounds.

(5) For the purposes of this section the Forestry Commission of New South Wales, or any person authorised by it, may enter and inspect any land.

(6) In this section—

“Bank” means the limit of the bed of any river or lake.

“Bed” means the whole of the soil of the channel in which a river flows or the soil forming the bottom of a lake including that portion thereof which is alternately covered and left bare as there may be an increase or diminution in the supply of water and which is adequate to contain it at its average or mean stage without reference to extraordinary freshets in time of flood or to extreme droughts.

“Tree” includes sapling, shrub and scrub.

(r) by omitting from section twenty-seven the words “private irrigation schemes” wherever occurring and by inserting in lieu thereof the words “joint water supply schemes”; Sec. 27.
(Regulations.)

(s) (i) by inserting in subsection one of section thirty-four after the word “Governor” the words “by proclamation in the Gazette”; Sec. 34.
(Constitution of trust.)

(ii)

Irrigation and Water (Amendment) Act.

No. 35, 1946.

(ii) by omitting subsection two of the same section.

Further
amendment
of Act No.
44, 1912.
Sec. 1.
(Conse-
quential.)

(2) The Water Act, 1912-1944, is further amended—

- (a) by omitting from section one the words, figures and symbols “DIVISION 3A.—*Priority of right to the appropriation of water—ss. 18A-18E,*” and by inserting in lieu thereof the words, figures and symbols “DIVISION 3A.—*Priority of right to the appropriation of water during periods of shortage—ss. 18A-18E*”;
- (b) by omitting from the same section the words, figures and symbols “DIVISION 4.—*Private irrigation schemes—ss. 19, 20,*” and by inserting in lieu thereof the words, figures and symbols “DIVISION 4.—*Joint water supply schemes—ss. 19-20H.*”

Further
amendment
of Act No. 44,
1912.
Sec. 131.
(Proposal
for
constitution
of districts.)

3. The Water Act, 1912-1944, is further amended—

- (a) (i) by inserting in subparagraph (i) of paragraph (c) of subsection two of section one hundred and thirty-one after the word “acre” the words “or where the water is to be supplied in pipes under pressure the annual rate or charge per holding for specified quantities of water and the charges for water in excess of such quantities”;
- (ii) by inserting in subparagraph (i) of paragraph (d) of the same subsection after the word “acre” the words “or where the water is to be supplied in pipes under pressure the annual rate or charge per holding for specified quantities of water and the charges for water in excess of such quantities”;

Sec. 132.
(Constitu-
tion of
provisional
districts.)

(b) by inserting at the end of subsection one of section one hundred and thirty-two the following proviso:—

“Provided that the annual rates or charges to be paid during the period from the date of the
the

the constitution of the provisional district to the thirtieth day of June next following the fifth anniversary of the constitution of the district shall not exceed but may be less than the annual rates or charges notified in the proposal”;

No. 35, 1946.

(c) by inserting at the end of paragraph (d) of subsection one of section one hundred and thirty-three the words “Such rates and charges shall not exceed but may be less than the rates and charges notified in the Gazette under the provisions of section one hundred and thirty-one or where those rates and charges have been amended by a proclamation under the provisions of section one hundred and thirty-two of this Act, the rates and charges as so amended”;

Sec. 133.
(Constitution of districts.)

(d) by inserting at the end of section one hundred and forty-two the following new subsection:—
(2) The charges for water delivered for domestic and stock use in excess of the quantities in respect of which an annual rate or charge per holding is specified under the constitution of a district or provisional district in any year ending the thirtieth day of June shall be paid on or before the thirty-first day of July next following.

Sec. 142.
(Charges for additional water.)

(e) (i) by inserting at the end of subsection two of section one hundred and forty-seven the following proviso:—

Sec. 147.
(Supply of water.)

Provided that the Commission may, with the object of preventing the waste of water, refuse to deliver water to any holding on which the land to be irrigated is not in its opinion properly prepared for irrigation or on which the ditches or channels to be used for the distribution of the water within the holding are in the opinion of the Commission inadequate or in a bad state of repair, and the Commission may at any time refuse to deliver water to any holding for the irrigation of grasses or pastures which are

not

No. 35, 1946.

not sown grasses or improved pastures. Any such refusal to deliver water shall not in any way relieve the owner of the holding of liability for payment of any charge in respect of the water rights attached to the holding.

- (ii) by inserting at the end of subsection three of the same section the words "The Commission may deliver to any holding within a district or provisional district water for domestic and stock use in excess of the quantities for which an annual rate or charge has been specified under the constitution of that district or provisional district and may fix charges for such excess water and impose conditions in respect of the supply;"

Sec. 153.
(Constitution of provisional districts.)

- (f) by inserting at the end of subsection one of section one hundred and fifty-three the following proviso:—

Provided that the maximum annual rate to be paid 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 shall not exceed but may be less than the maximum annual rate notified in the proposal.

Sec. 154.
(Constitution of districts.)

- (g) by inserting at the end of paragraph (c) of subsection one of section one hundred and fifty-four the words "or where that maximum annual rate has been amended by a proclamation under the provisions of section one hundred and fifty-three of this Act, the maximum annual rate as so amended;"

Sec. 155.
(Alteration of boundaries.)

- (h) by inserting at the end of section one hundred and fifty-five the following new subsection:—

(8) Where additional lands have been included in a district or provisional district under this section the Commission may in respect of those lands assess the rates for the year current at the date of such inclusion.

Such

Such rates shall be proportionate to the portion of the year during which those lands are included in the district or provisional district. No. 35, 1946.

(i) by omitting paragraph (c) of subsection one of section one hundred and fifty-nine and by inserting in lieu thereof the following paragraphs:— Sec. 159.
(Rates.)

(c) for the period from the date of the constitution of the provisional district to the date of the constitution of the district be not greater but may be less than the maximum annual rate notified in the Gazette under the provisions of section one hundred and fifty-one, or where that maximum annual rate has been amended by a proclamation under the provisions of section one hundred and fifty-three of this Act, the maximum annual rate as so amended;

(cc) for the 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 maximum annual rate notified in the Gazette under the provisions of section one hundred and fifty-four of this Act.

PART III.

AMENDMENT OF THE IRRIGATION ACT, 1912-1944.

4. The Irrigation Act, 1912-1944, is amended by omitting section 11g and by inserting in lieu thereof the following section:

11g. (1) The Minister may from time to time by notification in the Gazette declare that any land within the irrigation area constituted under the provisions of the Wentworth Irrigation Act or within the irrigation area constituted under the provisions

Amendment
of Act No. 73,
1912.
Subst.
sec. 11g.

Reserves
for
public
purposes.

No. 35, 1946.

provisions of the Hay Irrigation Act, 1902, shall be withdrawn from the irrigation area, and the land so withdrawn shall thereupon be Crown lands within the meaning of the Crown Lands Consolidation Act, 1913, and may be reserved or dedicated for any public purpose under that Act, but shall not be available for disposal by way of any form of sale or lease.

(2) References in the Crown Lands Consolidation Act, 1913, or any Act amending the same to "the Minister" shall, in the case of any land withdrawn from an irrigation area under the provisions of subsection one of this section, be read as references to the Minister for the time being administering the Irrigation Act, 1912-1946.

(3) The Minister may from time to time by notification in the Gazette revoke the whole or any part of any notification under the provisions of subsection one of this section or the whole or any part of any notification that may have been made at any time under the provisions of the Wentworth Irrigation Act setting land apart for public purposes before the commencement of the Irrigation and Water (Amendment) Act, 1946.

(4) Upon the notification of any revocation under the provisions of subsection three of this section, or any revocation of any reserve or dedication under the provisions of the Crown Lands Consolidation Act, 1913, in respect of any land withdrawn under the provisions of subsection one of this section, or set apart for public purposes under the provisions of the Wentworth Irrigation Act prior to the commencement of the Irrigation and Water (Amendment) Act, 1946, the land shall thereupon vest in the Commission, and shall form part of the irrigation area constituted under the provisions of the Wentworth Irrigation Act or the Hay Irrigation Act, 1902, as the case may be, and shall be dealt with as land within any such irrigation area.

PART IV.

AMENDMENT OF THE CROWN LANDS CONSOLIDATION
ACT, 1913.

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

Amendment
of Act No. 7,
1913.

(a) (i) by inserting in subsection five of section one hundred and forty-two after the word “granted” the words “or, in the case of a conversion of a lease, shall commence on the date on which such conversion takes effect”;

Sec. 142.
(Condi-
tions, etc.,
of irriga-
tion farm
purchases.)

(ii) by inserting in the same subsection after the word “until” the words “a certificate of conformity in respect thereof has been issued or until”;

(iii) by omitting from the same subsection the words “to give such certificate” and by inserting in lieu thereof the words “so to certify”;

(b) (i) by omitting from subsection one of section 144A the words “available Crown lands, including any land reserved in pursuance of section two hundred and six of this Act” and by inserting in lieu thereof the word “lands”;

Sec. 144A.
(Additions
to hold-
ings.)

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

(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

No. 35, 1946.

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.

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

Sec. 144c.
(Purchase
money
where area
altered.)

(c) by omitting from subsection two of section 144c the words "and payment for the land";

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

(d) (i) by omitting from subsection two of section 144x the words and symbols "price (which shall include the value of Crown improvements, if any)" and by inserting in lieu thereof the words "purchase money";

(ii) by inserting in the same subsection after the word "and" where secondly occurring the words "in each case";

(iii) by omitting from the same subsection the word "price" where secondly occurring and by inserting in lieu thereof the words "purchase money";

(iv) by omitting from subsection four of the same section the words "upset price, and in the case of a lease" and by inserting in lieu thereof the words "the upset purchase money";

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

(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

sale by public auction 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.

- e) (i) by inserting in the short heading to section one hundred and forty-five after the words “non-irrigable lease” the words “the title to which is a lease in perpetuity”;
- (ii) by inserting in subsection one of the same section after the words “non-irrigable lease” wherever occurring the words “the title to which is a lease in perpetuity”;
- (iii) by omitting from paragraph (b) of subsection five of the same section the words “by similar notification”;
- (iv) by omitting from paragraph (c) of the same subsection the word “notified” and by inserting in lieu thereof the word “specified”;
- (v)

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Sec. 145.
(Conversion
of I.F.L.
to I.F.P.,
etc.)

Obscene and Indecent Publications (Amendment) Act.

No. 35, 1946.

(v) by omitting from paragraph (d) of the same subsection the words "and the Crown grant shall be delivered to the mortgagee or other person holding security or as he shall direct";

Sec. 210.
(Forfeiture
for false
statement,
etc.)

(f) by omitting from section two hundred and ten the words "lease within an irrigation area" and by inserting in lieu thereof the words "holding within an irrigation area."

PART V.
AMENDMENT OF THE WENTWORTH IRRIGATION ACT.

Amendment
of Act 54,
Vic. No. 7.
Sec. 4.
(Inter-
pretation.)

6. The Wentworth Irrigation Act, as amended by subsequent Acts, is amended by inserting at the end of the definition of "Owner" in section four the words "but does not include The Water Conservation and Irrigation Commission."
