

**IRRIGATION, WATER, CROWN LANDS AND
HUNTER VALLEY FLOOD MITIGATION
(AMENDMENT) ACT.**

Act No. 14, 1966.

An Act to make further provisions with respect to sub-surface water and the licensing of bore drillers; to extend the circumstances in which lands may be added to purchases in certain irrigation areas; for these and other purposes to amend the Water Act, 1912, the Crown Lands Consolidation Act, 1913, and certain other Acts in certain respects; and for purposes connected therewith. [Assented to, 30th March, 1966.]

**Elizabeth II,
No. 14, 1966**

BE

**Irrigation, Water, Crown Lands and Hunter Valley Flood
Mitigation (Amendment) Act.**

No. 14, 1966

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

PART I.

PRELIMINARY.

Short title,
division into
Parts and
citation.

1. (1) This Act may be cited as the "Irrigation, Water, Crown Lands and Hunter Valley Flood Mitigation (Amendment) Act, 1966".

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

PART I.—PRELIMINARY.

PART II.—AMENDMENT OF THE IRRIGATION ACT, 1912, AS AMENDED BY SUBSEQUENT ACTS.

PART III.—AMENDMENTS OF THE WATER ACT, 1912, AS AMENDED BY SUBSEQUENT ACTS.

PART IV.—AMENDMENTS OF THE CROWN LANDS CONSOLIDATION ACT, 1913, AS AMENDED BY SUBSEQUENT ACTS.

PART V.—AMENDMENT OF THE HUNTER VALLEY FLOOD MITIGATION ACT, 1956.

(3) The Irrigation Act, 1912, as amended by subsequent Acts and by this Act, may be cited as the Irrigation Act, 1912-1966.

(4) The Water Act, 1912, as amended by subsequent Acts and by this Act, may be cited as the Water Act, 1912-1966.

(5) The Hunter Valley Flood Mitigation Act, 1956, as amended by this Act, may be cited as the Hunter Valley Flood Mitigation Act, 1956-1966.

PART

**Irrigation, Water, Crown Lands and Hunter Valley Flood
Mitigation (Amendment) Act.**

115

PART II.

No. 14, 1966

**AMENDMENT OF THE IRRIGATION ACT, 1912, AS AMENDED
BY SUBSEQUENT ACTS.**

2. The Irrigation Act, 1912, as amended by subsequent Acts, is amended by inserting at the end of paragraph (e) of subsection two of section 8C the following new paragraph :—

Amendment
of Act No.
73, 1912.
Sec. 8c.
(Further
functions
and powers
of Com-
mission.)

- (f) to enable the formation, co-ordination and implementation of plans for the assessment, conservation, protection, replenishment, utilisation and distribution of the ground water resources of the State to the best advantage in the public interest.

PART III.

**AMENDMENTS OF THE WATER ACT, 1912, AS AMENDED BY
SUBSEQUENT ACTS.**

3. The Water Act, 1912, as amended by subsequent Acts, is amended—

Amendment
of Act No.
44, 1912.

- (a) by omitting from the matter relating to Part I in section one the expression "4A" and by inserting in lieu thereof the expression "4F";
- (b) by inserting next after subsection (2B) of section 4A the following new subsection :—

Sec. 1.
(Short title
and
division.)

Sec. 4A.
(Right to
flow of
water.)

(2C) Except where otherwise expressly provided in this Act, no claim shall lie or shall be deemed ever to have lain against the Commission for compensation or damages under any Act for any loss or damage suffered in consequence of the exercise of the said right whether or not the right is exercised pursuant to the powers of the Commission to use works for the impounding and control of water therein or the release of water therefrom.

(c)

**Irrigation, Water, Crown Lands and Hunter Valley Flood
Mitigation (Amendment) Act.**

No. 14, 1966

New secs.
4B-4F.

Right to
flow of sub-
surface
water.

(c) by inserting next after the same section the following new sections :—

4B. (1) The right to the use and flow and to the control of all sub-surface water shall vest in the Commission for the benefit of the Crown and in the exercise of that right the Commission, by its officers, servants and agents, may enter any land and take such measures as may be thought fit or as may be prescribed for the conservation and supply of such water, its more equal distribution and beneficial use, its protection from pollution and for preventing, removing or rendering ineffective any unlawful interference with or obstruction to such flow.

(2) The said right shall be subject to the restrictions referred to in paragraph (a) of sub-section two of section 4A of this Act.

(3) The said right may be used to regulate the exercise in relation to sub-surface water of the powers conferred on a trust by Part III of this Act.

(4) The said right shall, subject to this section, prevail over any authority conferred by or arising under any Act (whether passed before or after the commencement of the Irrigation, Water, Crown Lands and Hunter Valley Flood Mitigation (Amendment) Act, 1966), to interfere with or obstruct the flow of sub-surface water in any way.

Offences.

4c. (1) No person shall, except in accordance with the provisions of this Act or, where no provision is otherwise made, with the permission in writing of the Commission, interfere in any way with sub-surface water or obstruct its flow.

(2) Every person who—

(a) unlawfully interferes in any way with sub-surface water or obstructs its flow; or

(b)

**Irrigation, Water, Crown Lands and Hunter Valley Flood
Mitigation (Amendment) Act.**

117

(b) is guilty of failing to comply to the satisfaction of the Commission with any direction given to him by the Commission—

No. 14, 1966

- (i) to remove wholly or in part or render ineffective any unlawful artificial obstruction, situated on or under the surface of land occupied or owned by him, to the flow of sub-surface water; or
- (ii) to carry out any work which the Commission considers necessary to permit the flow of sub-surface water through or past any unlawful artificial obstruction situated on or under the surface of land occupied or owned by him or to render ineffective any bore, as defined in Part V of this Act, which is unlicensed,

shall, upon conviction, be liable for the first offence to a penalty not exceeding forty dollars, and for a subsequent offence to a penalty not exceeding two hundred dollars, and a further penalty of ten dollars for each day during which the offence continues after such conviction.

4D. (1) The Commission may by any of its officers, servants or agents enter upon any land and remove or render ineffective any unlawful artificial obstruction to the flow of sub-surface water or render ineffective any bore, as defined in Part V of this Act, which is unlicensed.

Power to
enter and
remove
obstructions.

(2) The Commission may recover in any court of competent jurisdiction as a debt due to it from the occupier of land whereon the Commission by its officers, servants or agents has entered and acted pursuant to subsection one of this section, the costs and expenses incurred by it in so doing.

4E.

**Irrigation, Water, Crown Lands and Hunter Valley Flood
Mitigation (Amendment) Act.**

No. 14, 1966

Apportion-
ment of
expenses.

4E. Where a direction has been given to an occupier, not being the owner, or a judgment has been obtained against such occupier under the provisions of section 4C or 4D of this Act, as the case may be, such occupier shall have the right to apply to the land board for the district in which the land or part thereof is situated to apportion the expenses incurred in complying with such direction, or to apportion such judgment and costs between himself and the owner in such manner as the land board in its absolute discretion may deem fit.

Definition.

4F. For the purpose of sections 4B, 4C and 4D of this Act "sub-surface water" means water occurring naturally under the surface of the ground whatever may be the geological structure in which it is standing or moving.

Sec. 17A.
(Revocation
or suspen-
sion of
license or
authority.)

- (d) by inserting next after paragraph (a) of subsection one of section 17A the following new paragraph :—
- (a1) the licensee or the holder of the authority has used the licensed or authorised work for any purpose other than that expressly authorised by his license or authority; or.

Further
amendment
of Act No.
44, 1912.

4. The Water Act, 1912, as amended by subsequent Acts, is further amended—

Sec. 105.
(Definition.)

- (a) by inserting at the end of section one hundred and five the following new definition :—
- "Sub-surface water" means water occurring naturally under the surface of the ground whatever may be the geological structure in which it is standing or moving.

New sec.
117A.

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

Declaration
of restricted
sub-surface
water area.

117A. (1) The Governor may, by proclamation published in the Gazette, declare any sub-surface water basin, or any part thereof, to be a restricted sub-surface water area.

(2)

**Irrigation, Water, Crown Lands and Hunter Valley Flood
Mitigation (Amendment) Act.**

119

No. 14, 1966

(2) The Governor may, by a like proclamation, at any time—

- (a) vary, whether as to the whole or any part, or revoke the proclamation of any restricted sub-surface water area; or
- (b) amend the boundaries of any restricted sub-surface water area.

(3) In respect of any restricted sub-surface water area—

- (a) the Commission may by notice in writing direct the licensee of any bore, whether sunk or commenced to be sunk before or after the proclamation of the restricted sub-surface water area—
 - (i) to restrict or control the rate of flow or pumping or the manner of extraction of water from the bore, or the quantity of water which may be allowed to flow or be pumped therefrom in any stated period of time or its usage;
 - (ii) to take such measures or precautions as may be specified in the notice for the protection of the quality and prevention of pollution or contamination of any sub-surface water wherever pollution or contamination, in the opinion of the Commission, is or may be caused by abandoned, defective or improperly constructed bores through the interconnection of strata or the introduction of unsuitable surface water into the sub-surface water;
 - (iii) to furnish to the Commission at such intervals as may be specified in the notice a report of static water level in the bore from a point

point of measurement predetermined by the Commission and of the quantities of water pumped from the bore;

- (iv) to provide, fit and maintain a metering or measuring device acceptable to the Commission which will adequately and continuously record the quantity of water flowing or pumped from a bore from which water is used for any industrial or manufacturing purpose whatsoever or for irrigation,

and may, in any such notice, set forth such requirements as it deems necessary for proper compliance with a direction contained therein;

- (b) the Commission may by notice in writing to the licensee of any bore referred to in paragraph (a) of this subsection—

- (i) specify the minimum distance or distances at which any bore may be sunk from any other bore or bores wheresoever situate;
- (ii) direct the licensee of any bore the sinking of which is completed after the proclamation of the restricted sub-surface water area and from which water is to be used for other than stock, domestic or home garden purposes to furnish to the Commission within ninety days of completion of equipping the bore such detailed particulars of the equipment installed, including the capacity of any pump, as the Commission may require.

(4)

**Irrigation, Water, Crown Lands and Hunter Valley Flood
Mitigation (Amendment) Act.**

121

(4) For the purposes of this section **No. 14, 1966**
“sub-surface water basin” means land overlying,
as nearly as may be determined by known facts,
a distinct body of sub-surface water.

(c) by omitting from section one hundred and eighteen the words “Any person who contravenes the provisions of this section, or contravenes or fails to carry out any condition of the license, 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 such conviction; and in addition to the imposition of the said penalty, the license may, by notice in the Gazette, *he cancelled.” and by inserting in lieu thereof the words “Any person who contravenes the provisions of this section or contravenes or fails to comply with or carry out any term, limitation or condition of the license and any licensee who fails to comply with a direction given or a requirement contained in any notice under section 117A of this Act shall be liable to a penalty not exceeding one hundred dollars and a further penalty of ten dollars for each day during which the contravention or failure continues after such conviction, and in addition to the imposition of the said penalty, the license may, by notice in the Gazette, be cancelled.”

Sec. 118.
(Penalty for alterations of licensed bore or contravention of license.)

(d) (i) by omitting subsection three of section 118A and by inserting in lieu thereof the following subsections :—

Sec. 118A.
(Drillers to be licensed.)

(3) Upon the expiration of a period of six months after the commencement of the Irrigation, Water, Crown Lands and Hunter Valley Flood Mitigation (Amendment) Act, 1966, each driller's license issued by the Commission pursuant to the provisions of subsection three of this section as in force immediately before that commencement, shall lapse.

* Sic.

(3A)

**Irrigation, Water, Crown Lands and Hunter Valley Flood
Mitigation (Amendment) Act.**

No. 14, 1966

(3A) A driller's license in the prescribed form may be issued from time to time by the Commission to any competent and capable person for a period of three years upon application in the prescribed form being made therefor in writing accompanied by the prescribed fee and upon the Commission having been furnished with such information as to the competency and capability of the applicant as it may require.

(ii) by inserting in subsection six of the same section after the word "section" the words "as in force immediately before the commencement of the Irrigation, Water, Crown Lands and Hunter Valley Flood Mitigation (Amendment) Act, 1966, or pursuant to subsection (3A) of this section".

Sec. 129.
(Regulations.)

(e) by inserting at the end of paragraph (f) of subsection one of section one hundred and twenty-nine the following new paragraph :—

(g) prescribing the form of application for drillers' licenses, the form of those licenses and the fees payable in respect thereof.

Further amendment of Act No. 44, 1912.
Sec. 147.
(Supply of water.)

5. The Water Act, 1912, as amended by subsequent Acts, is further amended by inserting at the end of section one hundred and forty-seven the following new subsection :—

(11) Where a notification or proclamation under section one hundred and thirty-three of this Act has been published in the Gazette, whether before or after the commencement of the Irrigation, Water, Crown Lands and Hunter Valley Flood Mitigation (Amendment) Act, 1966, subsection ten of this section shall, in respect of a provisional district or a district to which the notification or proclamation relates, have effect and shall be deemed always to have had effect as if the notification or proclamation had not been so published.

PART

**Irrigation, Water, Crown Lands and Hunter Valley Flood
Mitigation (Amendment) Act.**

123

PART IV.

No. 14, 1966

**AMENDMENTS OF THE CROWN LANDS CONSOLIDATION ACT,
1913, AS AMENDED BY SUBSEQUENT ACTS.**

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

- (a) by inserting in subsection one of section 144c after the word "balance" the words "if any";
- (b) by inserting in subsection four of the same section after the word "amount" the words "if any";
- (c) by omitting from the same subsection the words "the balance" and by inserting in lieu thereof the words "such period as the Commission may determine being not less than the balance, if any."

Amendment
of Act No.
7, 1913.

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

PART V.

**AMENDMENT OF THE HUNTER VALLEY FLOOD MITIGATION
ACT, 1956.**

7. The Hunter Valley Flood Mitigation Act, 1956, is amended by inserting next after section 40 the following new section :—

Amendment
of Act No.
10, 1956.

New sec.
40A.

40A. (1) In this section "Commonwealth Act" means the New South Wales Grant (Flood Mitigation) Act 1964 of the Parliament of the Commonwealth of Australia.

Contribution
by Trust
where
financial
assistance
is payable
by Common-
wealth.

(2) Notwithstanding anything in this Part contained, where pursuant to the provisions of subsection one of section four of the Commonwealth Act an amount is payable to the State by way of financial assistance in respect of the cost of the carrying out by the Constructing Authority under this Act of any works and of the amount of any compensation payable by the Constructing Authority in accordance with the provisions of this Act

the

No. 14, 1966

the proportion of the cost of the carrying out of such works and of the amount of such compensation which the Trust shall be liable to contribute whether such works were carried out before or are carried out after the commencement of the Irrigation, Water, Crown Lands and Hunter Valley Flood Mitigation (Amendment) Act, 1966, shall be and be deemed always to have been one-sixth of the State expenditure within the meaning of that expression in the Commonwealth Act and the provisions of this Part shall be read and construed accordingly.
