

**IRRIGATION (AMENDMENT) ACT.**

**New South Wales**



ANNO VICESIMO TERTIO

**ELIZABETHÆ II REGINÆ**

\*\*\*\*\*

**Act No. 82, 1974.**

An Act to reconstitute The Water Conservation and Irrigation Commission as a corporation sole; to authorise that Commission to fix the prices for water rights in respect of certain lands within irrigation areas; for these and other purposes to amend the Irrigation Act, 1912; and for purposes connected therewith. [Assented to, 3rd December, 1974.]

**BE**

*Irrigation (Amendment).*

**B**E it enacted by the Queen's Most Excellent Majesty, by No. 82, 1974  
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.** This Act may be cited as the "Irrigation (Amendment) Short title.  
Act, 1974".

**2.** (1) This Part shall commence on the date of assent Commence-  
to this Act. ment.

(2) Part II shall commence on such day as may be  
appointed by the Governor in respect thereof and as may be  
notified by proclamation published in the Gazette.

(3) Part III shall commence on 1st July, 1975.

**3.** The Irrigation Act, 1912, is in this Act referred to as Principal  
the Principal Act. Act.

**4.** This Act is divided as follows :— Division

**PART I.—PRELIMINARY—ss. 1–4.**

**PART II.—RECONSTITUTION OF THE COMMISSION—ss.**  
**5, 6.**

**PART III.—PRICES OF WATER RIGHTS—ss. 7, 8.**

---

**PART**

No. 82, 1974

## PART II.

## RECONSTITUTION OF THE COMMISSION.

Amendment  
of Act No.  
73, 1912.Sec. 3.  
(Defini-  
tions.)

## 5. The Principal Act is amended—

- (a) (i) by inserting after the definition of “Bank” in section 3 the following definition :—

“Chief Commissioner” means the person appointed under this Act as the Chief Commissioner.

- (ii) by omitting the definition of “Commissioner” in section 3 and by inserting instead the following definition :—

“Commissioner” means a person appointed under this Act as a Commissioner.

Sec. 4.  
(The Chief  
Commissioner  
and Com-  
missioners.)

- (b) (i) by omitting section 4 (1) and (2) and by inserting instead the following subsections :—

(1) The Governor may, subject to this Act, appoint a Chief Commissioner.

(2) The Governor may, subject to this Act, appoint two Commissioners to assist the Chief Commissioner in the exercise and performance of his powers, authorities, duties and functions under this or any other Act.

(2A) The Public Service Act, 1902, does not apply to or in respect of the appointment of the Chief Commissioner or a Commissioner, and neither of them is, except as provided in subsection (8), subject to that Act during his term of office.

(2B) A Commissioner may exercise and shall perform such powers, authorities, duties or functions as the Minister, after consulting the Chief Commissioner, may from time to time determine.

(ii)

*Irrigation (Amendment).*

- 
- (ii) by omitting from section 4 (3) the words "Each commissioner" and by inserting instead the words "The Chief Commissioner and each Commissioner";
- (iii) by omitting from section 4 (4) (a) the words "The commissioners" and by inserting instead the words "The Chief Commissioner and the Commissioners";
- (iv) by inserting in section 4 (4) (a) after the word "salaries" the words "and allowances";
- (v) by omitting from section 4 (4) (b) the words "Each commissioner" and by inserting instead the words "The Chief Commissioner and each Commissioner";
- (vi) by omitting section 4 (5) and by inserting instead the following subsection :—

(5) In the event of a vacancy in the office of Chief Commissioner or Commissioner caused otherwise than by the expiration of the term of office for which he was appointed, the Governor may, subject to this Act, appoint a Chief Commissioner or Commissioner, as the case may require, to fill the vacancy and the person appointed to fill the vacant office shall, subject to this Act, hold office for the unexpired balance of his predecessor's term.

- (vii) by omitting section 4 (6) (a), (b) and (c) and by inserting instead the following paragraph :—

(a) In the event of the Chief Commissioner or a Commissioner being absent from Australia, absent from duty or for any other reason unable to exercise or perform the powers, authorities, duties and functions of his office, the Governor may appoint a Commissioner a

**deputy**

*Irrigation (Amendment).*

No. 82, 1974

- deputy to act in the place of the Chief Commissioner or a deputy to act in the place of a Commissioner, as the case may require.
- (viii) by omitting from section 4 (6) (d) the word "commissioner" and by inserting instead the words "Chief Commissioner or Commissioner";
  - (ix) by omitting from section 4 (6) (f) the word "commissioner" where firstly occurring and by inserting instead the word "deputy";
  - (x) by omitting from section 4 (6) (f) the words "chairman, or a deputy to act in the place of a commissioner" and by inserting instead the words "Chief Commissioner or a Commissioner";
  - (xi) by omitting from section 4 (6) (f) the words "a commissioner or";
  - (xii) by omitting from section 4 (6) (f) the words "chairman or the commissioner" and by inserting instead the words "Chief Commissioner or the Commissioner";
  - (xiii) by omitting from section 4 (7) the words "A commissioner" wherever occurring and by inserting instead the words "The Chief Commissioner";
  - (xiv) by omitting section 4 (7) (a) (ii) and by inserting instead the following subparagraph :—
    - (ii) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his creditors or makes an assignment of his remuneration for their benefit;

(xv)

*Irrigation (Amendment).*

---

(xv) by omitting section 4 (7) (a) (iv) No. 82, 1974 and by inserting instead the following subparagraph :—

(iv) becomes a temporary patient, a continued treatment patient, a protected person or an incapable person within the meaning of the Mental Health Act, 1958, or a person under detention under Part VII of that Act;

(xvi) by inserting after section 4 (7) (b) the following paragraph :—

(c) Paragraphs (a) and (b) apply to and in respect of a Commissioner in the same way as they apply to and in respect of the Chief Commissioner.

(xvii) by omitting from section 4 (8) (a) the words “a commissioner” where firstly occurring and by inserting instead the words “Chief Commissioner or a Commissioner”;

(xviii) by omitting from section 4 (8) (a) the word “under” where thirdly occurring and by inserting instead the words “before the commencement of Part II of the Irrigation (Amendment) Act, 1974, under this section or”;

(xix) by omitting from section 4 (8) (b) the word “under” where firstly occurring and by inserting instead the words “before the commencement of Part II of the Irrigation (Amendment) Act, 1974, under this section or”;

(xx) by omitting from section 4 (8) (b) the words “appointed a commissioner” and by inserting instead the words “appointed Chief Commissioner or a Commissioner”;

(xxi)

*Irrigation (Amendment).***No. 82, 1974**

- (xxi) by omitting from section 4 (8) (b) the words "as a commissioner" and by inserting instead the words "as Chief Commissioner or a Commissioner";
- (xxii) by omitting from section 4 (8) (c) the words "a commissioner" and by inserting instead the words "Chief Commissioner or a Commissioner";
- (xxiii) by omitting section 4 (9), (10) and (11);
- (xxiv) by omitting from section 4 (12) the words "any commissioner" wherever occurring and by inserting instead the words "the Chief Commissioner or a Commissioner";
- (xxv) by inserting in section 4 (12) (a) after the words "the Commission" where secondly occurring the words ", the Chief Commissioner or a Commissioner";
- (xxvi) by omitting from section 4 (12) (b) the words "such commissioner" and by inserting instead the words "the Chief Commissioner or Commissioner, as the case may be,";
- (xxvii) by omitting section 4 (13) and (14);

Sec. 4A.  
(Incorporation  
of Commission.)

- (c) (i) by omitting from section 4A the words "The Commission shall be a body corporate by" and by inserting instead the words "The person for the time being holding the office of Chief Commissioner is hereby constituted a corporation sole under";
- (ii) by omitting from section 4A the words "a common" and by inserting instead the words "an official";

(iii)

*Irrigation (Amendment)*

- (iii) by inserting at the end of section 4A the No. 82, 1974 following subsection :—

(2) The corporation constituted by subsection (1) is a continuation of, and the same legal entity as, the corporation constituted by this section immediately before the commencement of Part II of the Irrigation (Amendment) Act, 1974.

- (d) by omitting from section 4B the word “common” and by inserting instead the word “official”; Sec. 4B.  
(Judicial notice of incorporation.)
- (e) by omitting section 4c and by inserting instead the following section :— Sec. 4c.

4c. (1) A person who is a bankrupt, or who is applying to take the benefit of any law for the relief of bankrupt or insolvent debtors, or who has a composition with his creditors or an assignment of his remuneration for his creditors’ benefit in force, is not eligible to be appointed as Chief Commissioner or a Commissioner. Ineligibility for appointment.

(2) A person shall not be appointed as Chief Commissioner or a Commissioner if he is of or above the age of sixty-five years.

- (f) (i) by omitting from section 5D the words “a commissioner” wherever occurring and by inserting instead the words “the Chief Commissioner, a Commissioner”; Sec. 5D.  
(Payment of money value of leave not taken or completed.)

(ii)



*Irrigation (Amendment).*

No. 82, 1974

(ii) by omitting from section 5D the words "such commissioner" wherever occurring and by inserting instead the words "that Chief Commissioner, Commissioner";

Sec. 8A.  
(Dele-  
gation.)

(g) by omitting section 8A (1) and by inserting instead the following subsections :—

(1) The Commission may, by instrument in writing under seal, delegate to a Commissioner the exercise or performance of such of the powers (other than this power of delegation), authorities, duties or functions conferred or imposed on the Commission by or under this or any other Act as may be specified in the instrument of delegation, and may, by such an instrument, revoke wholly or in part any such delegation.

(1A) While the delegation remains unrevoked, a power, authority, duty or function, the exercise or performance of which has been delegated under subsection (1) may be exercised or shall be performed by the delegate from time to time in accordance with the terms of the delegation.

(1B) A delegation under subsection (1) may be made subject to such conditions or such limitations as to the exercise or performance of any of the powers, authorities, duties or functions delegated, or as to time or circumstance, as may be specified in the instrument of delegation.

(1C) Notwithstanding any delegation made under subsection (1), the Commission may continue to exercise or perform all or any of the powers, authorities, duties or functions delegated.

(1D)

*Irrigation (Amendment).*

(1D) Any act or thing done or suffered by a delegate while acting in the exercise of a delegation under subsection (1) shall have the same force and effect as if the act or thing done or suffered had been done or suffered by the Commission.

(h) by omitting from section 8BA (4) the words "one of the Commissioners constituting the Commission" and by inserting instead the words "the Chief Commissioner or a Commissioner";

Sec. 8BA.  
(Sinking of bores or wells, etc., on payment therefor being made in advance.)

(i) by omitting from section 22 the words "Chief Commissioner for Railways and Tramways" and by inserting instead the words "Public Transport Commission of New South Wales".

Sec. 22.  
(Vesting of railways or tramways in the Public Transport Commission.)

6. (1) Upon the commencement of this Part, the chairman of the Commission and any commissioner appointed under the Principal Act and holding office immediately before that commencement shall be deemed to have been appointed under the Principal Act, as amended by this Act, in the case of the chairman as Chief Commissioner and in the case of a commissioner as a Commissioner but in all respects upon the same terms and conditions (including terms and conditions relating to remuneration) as those upon which they held office immediately before that commencement.

(2) A person holding office pursuant to subsection (1) shall, subject to the Principal Act, as amended by this Act, hold that office for the unexpired balance of the term for which he was previously appointed and shall be eligible for re-appointment.

---

PART

## PRICES OF WATER RIGHTS.

Further amendment of Act No. 73, 1912.

## 7. The Principal Act is further amended—

Sec. 6A.  
(Constitution of certain irrigation areas, setting apart lands, and allotting of water rights, validated.)

- (a) (i) by omitting from section 6A (2) the words “and the prices or rates therefor”;
- (ii) by omitting from section 6A (2) the words “and prices or rates thereof”;

Sec. 7.  
(Setting land apart as irrigation farms.)

- (b) by omitting section 7 (1) (b);

Sec. 7A.  
(Number of water rights where farm subdivided, etc.)

- (c) by omitting section 7A (1) (b);

Sec. 7B.  
(Water rights, etc., upon conversion, grant or subdivision.)

- (d) (i) by omitting from section 7B (1) the word “Where” and by inserting instead the words “Subject to subsection (5), where”;
- (ii) by omitting from section 7B (1) the words “the prices” and by inserting instead the words “any prices”;
- (iii) by omitting from section 7B (2) the word “Upon” and by inserting instead the words “Subject to subsection (5), upon”;
- (iv) by omitting from section 7B (2) the words “the prices” and by inserting instead the words “any prices”;

(v)

*Irrigation (Amendment).*

(v) by omitting section 7B (4); No. 82, 1974

(vi) by inserting after section 7B (4) the following subsection :—

(5) Where any prices of water rights continue to apply pursuant to subsection (1) or (2), they do so only until the next thirtieth day of June after the date on which they first continue to apply under subsection (1) or (2), as the case may be.

- (e) (i) by omitting from section 7C (1) the words “, or with the like consent alter the price for all or any of the said water rights”; (Alteration of number of water rights.)
- (ii) by omitting from section 7C (2) the words “and the prices therefor have” and by inserting instead the word “has”;
- (iii) by omitting from section 7C (2) the words “or fixed”;
- (iv) by omitting from section 7C (2) (c) the words “or fixation”;
- (v) by omitting from section 7C (2) the words “and prices” wherever occurring;
- (vi) by omitting section 7C (2) (ii);
- (vii) by omitting from section 7C (2) the words “The power to determine the price for water rights shall include power to determine the different price for water rights to attach to different parts of the land.”;

(f)

*Irrigation (Amendment).*

No. 82, 1974

(f) by inserting after section 8A the following section :—

Sec. 8AA.  
Price of  
water  
rights.

8AA. (1) The Commission may, by order, in respect of and during the year commencing on 1st July, 1975, and in respect of and during each subsequent year, fix the prices for water rights attached to the whole or to any part, or fix different prices for water rights attached to different parts of—

- (a) an irrigation farm referred to in section 6A (2);
- (b) an irrigation farm purchase and an irrigation farm lease the subject of a notification referred to in section 7 (1);
- (c) any holding referred to in section 7A (1) (a);
- (d) an irrigation farm purchase referred to in section 7B (1); and
- (e) a grant in fee-simple referred to in section 7B (2).

(2) Subsection (1) applies to water rights whether attached before or after the commencement of Part III of the Irrigation (Amendment) Act, 1974.

Certain  
prices in-  
applicable.

8. Where, before 1st July, 1975, any prices or rates for water rights have been—

- (a) specified in the Gazette in relation to an irrigation farm;
- (b) fixed pursuant to section 7 (1) (b) or 7A (1) (b) of the Principal Act;

(c)

*Irrigation (Amendment).*

---

(c) applied pursuant to section 7B (1) or (2) of that No. 82, 1974 Act;

(d) fixed by an alteration pursuant to section 7c (1) of that Act; or

(e) determined pursuant to section 7c (2) of that Act,

then the prices or rates so specified, fixed, applied or determined shall not be the prices or rates of water rights in respect of the year commencing on 1st July, 1975, or any subsequent year, by reason only of their having been so specified, fixed, applied or determined.