

HAY IRRIGATION ACT 1902—REGULATION

(Hay Irrigation (Leases) Regulation 1992)

NEW SOUTH WALES



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HIS Excellency the Governor, with the advice of the Executive Council, and in pursuance of the Hay Irrigation Act 1902, has been pleased to make the Regulation set forth hereunder.

I. R. CAUSLEY
Minister for Natural Resources.

PART 1—PRELIMINARY

Citation

1. This Regulation may be cited as the Hay Irrigation (Leases) Regulation 1992.

Definitions

2. In this Regulation:

“**approved**” means approved for the time being by the Ministerial Corporation;

“**Hay Lands Office**” means the lands office for the land district of Hay;

“**irrigation area**” means the lands and hereditaments (known as the “Hay Irrigation Area”) described in the Second Schedule to the Act;

“**Ministerial Corporation**” means the Water Administration Ministerial Corporation constituted by the Water Administration Act 1986;

“**the Act**” means the Hay Irrigation Act 1902.

PART 2—LEASES**Division 1—Advertisement of leases, applications for leases etc.****Advertising of land available for lease**

3. (1) The Ministerial Corporation may, by advertisement in a local newspaper circulating in the area in which the land is situated, notify from time to time what land within the irrigation area is available for lease.

(2) The advertisement must specify the date on and from which applications for leases will be accepted, that date to be not less than 14 days after the date of the advertisement.

(3) The rent, survey costs and terms and conditions applicable to a lease are to be as determined by the Ministerial Corporation and set out in a document available for inspection at the Hay Lands Office.

(4) The Ministerial Corporation may withdraw land from availability for lease without notice.

Applications for leases

4. (1) An application for a lease must be in the approved form and be lodged at the Hay Lands Office, together with a deposit equal to 6 months' rent.

(2) Conflicting applications lodged between Monday and Friday in any week are taken to have been lodged simultaneously on the Monday or, if the Monday is a public holiday, on the next day that is not a public holiday.

(3) Applications that are not conflicting are taken to have been lodged on the date on which they were actually lodged.

Withdrawal of applications

5. (1) An application may be withdrawn by the applicant, by request in writing lodged at the Hay Lands Office, at any time before the application is determined.

(2) The applicant under a withdrawn application is entitled to a refund of the deposit lodged in connection with the application.

Determination of applications

6. (1) If conflicting applications are lodged, the successful applicant is to be determined by ballot.

(2) The determination of an application is at the discretion of the Ministerial Corporation.

(3) The Ministerial Corporation must cause written notice of its determination to be given to the applicant.

(4) The applicant under an unsuccessful application is entitled to a refund of the deposit lodged in connection with the application.

Lease to be executed

7. (1) A successful applicant must execute a lease over the land concerned within 3 months after notice of the Ministerial Corporation's determination is given to the applicant, or within such further period as the Ministerial Corporation may allow.

(2) In the event that the applicant fails to do so, the Ministerial Corporation may revoke its determination and, if it does so, must cause written notice of that fact to be sent to the applicant.

(3) The deposit lodged with the application is to be applied towards the rent under the lease or, if the determination is revoked, is to be forfeited to the Crown.

Alteration of leases

8. (1) The Ministerial Corporation may alter the boundaries of a lease on application by the lessee in the approved form lodged at the Hay Lands Office.

(2) The Ministerial Corporation may fix the rent of an altered lease at such rate as it considers appropriate, but the terms and conditions of the lease prior to alteration are to apply to the lease as altered.

Renewal of leases

9. (1) A lessee may apply for a further lease at any time during the period of 12 months before the date of expiry of the lease.

(2) The Ministerial Corporation may grant a further lease subject to such terms and conditions (including rent) as it considers appropriate.

Division 2—Conditions, payment of rent etc.

Cutting etc. of timber

10. (1) Any standing indigenous timber growing naturally on leased land is reserved to the Ministerial Corporation.

(2) A lessee must provide reasonable access to the Ministerial Corporation to allow for the removal of any such timber by, or as authorised by, the Ministerial Corporation.

(3) A lessee must not, without the prior written consent of the Ministerial Corporation, cut down, ringbark, remove or destroy any such timber.

(4) Any consent given under this clause may be withdrawn at any time by the Ministerial Corporation.

Payment of rent

11. (1) The rent under a lease for the period from the end of the first 6 months (covered by the deposit) to 30 June is payable on that date.

(2) The rent under a lease thereafter becomes payable in advance on 30 June in each year.

Payment of value of improvements

12. (1) If leased land contains Ministerial Corporation improvements that have not already been paid for by a previous tenant, the capital value of the improvements (as set out in the advertisement of the availability of the land for lease) is to be paid to the Ministerial Corporation by the incoming tenant.

(2) The capital value must be paid in the manner specified in the advertisement, together with interest at the rate so specified.

(3) If payment is to be made by more than one instalment, the first instalment is payable on the commencement of the lease, the second instalment is payable on 1 January or 1 July, whichever occurs first, following the commencement of the lease and subsequent instalments are payable at six monthly intervals thereafter.

Non-payment of rent etc.

13. (1) Any amount payable under this Regulation may be recovered as a debt due to the Ministerial Corporation.

(2) If any amount payable under this Regulation remains unpaid for more than one month after becoming due and payable, the Ministerial Corporation may re-enter the leased land, eject the lessee and (by notification in the Gazette) cancel the lease.

(3) Re-entry, ejectment and cancellation do not extinguish any debt to the Ministerial Corporation in respect of any amount payable under this Regulation.

Postponement or waiver of rent

14. (1) The Ministerial Corporation may, on application made by the lessee, postpone or waive payment of any rent payable or due to become payable in respect of the lease.

(2) A postponement or waiver may be granted subject to such conditions as the Ministerial Corporation considers appropriate.

Interest on payments in arrears

15. (1) Any amount payable under the Act or this Regulation accrues interest at the rate prescribed for the time being under section 148 (2) of the Crown Lands Act 1989.

(2) The Ministerial Corporation may, if it is satisfied that the circumstances so warrant, postpone or waive payment of the whole or any part of any interest payable under this clause or remit the whole or any part of any interest that has been paid.

Erection of fencing

16. (1) A lessee must, within the period of 6 months from the commencement of the lease, fence the external boundaries of the leased land to the satisfaction of the Ministerial Corporation.

(2) A lessee must maintain the fences to the satisfaction of the Ministerial Corporation.

Division 3—Transfers, surrenders etc.

Application for consent to transfer etc.

17. (1) An application for the consent of the Ministerial Corporation to a dealing, as referred to in section 17A of the Act, must be in the approved form and be lodged at the Hay Lands Office.

(2) The application must be accompanied by a fee of the amount prescribed for the time being under clause 12 of the Crown Lands (Continued Tenures) Regulation 1990 and, if a written agreement has been entered into in relation to the dealing, by a copy of the agreement.

Appeal against refusal by Ministerial Corporation to consent to transfer etc.

18. (1) An appeal against a refusal by the Ministerial Corporation to consent to a dealing, as referred to in section 17A of the Act, must be in the approved form and be lodged with the Registrar of the Local Land Board for the land district of Mirrool within 28 days of receipt by the lessee of notice of the Ministerial Corporation's determination.

(2) The appeal must be accompanied by a fee of the amount prescribed for the time being under clause 42 (2) of the Crown Lands Regulation 1990.

Surrender of leases

19. (1) A lessee may at any time, with the consent of the Ministerial Corporation, surrender the lease or part of the lease.

(2) The Ministerial Corporation may accept a surrender and let the land as it considers appropriate.

(3) The lessee is entitled to a refund of any rent paid in advance for the period from the date of the acceptance of the surrender to the following 30 June.

PART 3—MISCELLANEOUS**Removal of improvements**

20. (1) On expiry or surrender of a lease the lessee is entitled to remove, within the following period of 6 months, all improvements made or paid for by the lessee.

(2) Any improvements not removed within that period, or within such further period as the Ministerial Corporation may allow, become the property of the Ministerial Corporation.

(3) A lessee is not entitled to any compensation or to remove improvements merely because the lease is cancelled or declared forfeited, or merely because the land is re-entered, under this Regulation.

Granting of licences to occupy

21. (1) The Ministerial Corporation may, by advertisement in a local newspaper circulating in the area in which the land is situated, invite tenders for licences to occupy lots within the irrigation area.

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(2) The Ministerial Corporation may grant a licence to occupy subject to such conditions, including payment of rent, as it determines.

(3) A licence to occupy may be terminated at any time by either party by notice in writing to the other party.

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EXPLANATORY NOTE

The object of this Regulation is to remake the Hay Irrigation Regulations 1926. The Regulations related to leases in the Hay irrigation area.

The new Regulation deals with:

- the advertising of land available for lease and the lodging and determination of applications for leases;
- the renewal, surrender and transfer of leases;
- conditions attaching to leases (including payments for rent etc. required)

The Regulation is made in connection with the staged repeal of subordinate legislation under Part 3 of the Subordinate Legislation Act 1989.
