

Act 1994 No. 41

IRRIGATION CORPORATIONS BILL 1994*

NEW SOUTH WALES



EXPLANATORY NOTE

(This Explanatory Note relates to this Bill as introduced into Parliament)

The objects of this Bill are:

- (a) to establish State owned corporations to manage certain existing irrigation schemes; and
- (b) to enable those and other irrigation schemes to be owned and managed by corporations on behalf of the irrigators.

PART 1—PRELIMINARY

Clause 1 specifies the short title of the proposed Act.

Clause 2 provides for the commencement of the proposed Act.

Clause 3 states the purposes of the proposed Act which are to establish State owned corporations to manage certain existing irrigation schemes and to enable those and other irrigation schemes to be owned and managed by corporations on behalf of irrigators.

Clause 4 contains definitions of expressions used in the proposed Act.

PART 2—CLASS 1 IRRIGATION CORPORATIONS

Division 1—General provisions

Clause 5 provides that a company mentioned in Schedule 1 to the proposed Act becomes a class 1 irrigation corporation when its name is inserted into the State Owned Corporations Act 1989 (“the SOC Act”). The amendment to the SOC Act is effected under clause 6.

* Amended in committee—see table at end of volume.

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Clause 6 enables Schedule 1 to the SOC Act to be amended to insert the following corporations:

Coleambally Irrigation Limited
 Jemalong Wyldes Plains Irrigation Limited
 Lower Murray Irrigation Limited
 Murray Irrigation Limited
 Murrumbidgee Irrigation Limited.

Clause 7 provides that the Water Administration Ministerial Corporation (“the Ministerial Corporation”) will no longer exercise functions in relation to an irrigation scheme area for which a class 1 irrigation corporation has been established, except specified functions that will be ongoing functions of the Corporation.

When the Ministerial Corporation delegates a function, it is divested of the function and is not responsible for the manner in which the irrigation corporation exercises the function. Neither the Ministerial Corporation nor the State is liable for anything arising from the exercise or non-exercise of functions delegated to an irrigation corporation or the non-exercise of functions which, because of the operation of the clause, the Ministerial Corporation is not capable of exercising.

Clause 8 allows the Ministerial Corporation to make an order transferring certain staff of the Department of Water Resources or of the Ministerial Corporation to the service of a class 1 irrigation corporation. The provisions of the SOC Act relating to transferred staff apply.

Clause 9 enables irrigation scheme areas specified in Schedule 1 in relation to a class 1 irrigation corporation to be altered or omitted and irrigation scheme areas to be inserted in that Schedule.

Clause 10 enables a class 1 irrigation corporation to acquire land by agreement, or compulsorily acquire land in accordance with the Land Acquisition (Just Terms Compensation) Act 1991, for the purposes of the proposed Act.

An irrigation corporation must obtain the approval of the Minister to the compulsory acquisition of land under the clause.

Division 2—Functions of class 1 irrigation corporations

Clause 11 specifies the functions of a class 1 irrigation corporation. Its primary activity is to exercise functions delegated to it under the proposed Act.

Clause 12 enables the Ministerial Corporation to delegate certain functions to a class 1 irrigation corporation in relation to the area of operations of the irrigation corporation.

Division 3—Transfer to Schedule 2

Clause 13 enables the Governor, on application to the Minister by a class 1 irrigation corporation, to apply this Division to the corporation.

Clause 14 gives express authority for negotiations to be conducted for the transfer of the issued shares in a class 1 irrigation corporation in anticipation of the transfer of the irrigation corporation to Schedule 2. The transfer of shares does not have effect until the name of the corporation has been inserted in Schedule 2.

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Clause 15 enables the Ministers who are voting shareholders of a corporation that is transferring from Schedule 1 to Schedule 2 to make certain necessary amendments to the memorandum and articles of association of the corporation.

Clause 16 enables any agreement reached under clause 14 to provide for the payment by the irrigation corporation concerned of amounts to the State in addition to the consideration payable for the transfer of shares.

Clause 17 provides that any amounts referred to in clause 16 are to be paid into the Consolidated Fund after the expenses of the transfer have been met.

Clause 18 enables the Minister to direct that assets identified for the purpose in an agreement reached under clause 14 are to be transferred to the Crown. Such assets will vest in the Ministerial Corporation (subject to any existing leases, licences or permissive occupancies).

Clause 19 removes the name of a class 1 corporation from Schedule 1 to the SOC Act when it is inserted as a class 2 irrigation corporation in Schedule 2 to the proposed Act (this is done under Division 1 of Part 3).

Clause 20 provides that the SOC Act ceases to apply to the irrigation corporation when it is transferred to Schedule 2.

Clause 21 provides for the payment of dividends that have been declared by a class 1 irrigation corporation before it transfers to Schedule 2 but have not been paid before the transfer.

Clause 22 preserves the liability of a class 1 irrigation corporation transferring to Schedule 2 to pay any tax-equivalents due and payable to the Treasurer under the SOC Act.

Clause 23 provides for the continued application of the reporting and auditing requirements of the SOC Act to a class 1 irrigation corporation transferring to Schedule 2 in respect of any period before the transfer.

Clause 24 deals with the rights of staff of a class 1 irrigation corporation that is transferring to Schedule 2.

Clause 25 continues in force any irrigation water management works licence and any operating licence granted under the proposed Act and held by a class 1 irrigation corporation that is transferring to Schedule 2.

Clause 26 states that the Division has effect despite anything in the SOC Act or the memorandum or articles of a class 1 irrigation corporation that is transferring to Schedule 2.

PART 3—CLASS 2 IRRIGATION CORPORATIONS

Division 1—General provisions

Clause 27 enables the Governor, by proclamation, to designate a corporation as a class 2 irrigation corporation by inserting the name of the corporation in Schedule 2 to the proposed Act.

A corporation may be designated as a class 2 irrigation corporation whether or not it has been a class 1 irrigation corporation.

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Clause 28 provides that a proclamation may only be made under clause 27 on the application of the corporation concerned that has been approved by the Minister.

Clause 29 specifies the matters that the Minister may have regard to in considering an application under clause 28 and enables the Minister to refuse an application on reasonable grounds. The Minister may approve an application if satisfied as to certain matters.

Clause 30 describes certain aspects of a class 2 irrigation corporation (a corporation listed in Schedule 2), such as that it does not represent the Crown and cannot render the State liable for any debts unless the proposed Act, or any other Act, otherwise provides.

Clause 31 enables the Ministerial Corporation to order that certain staff of the Department of Water Resources or the Ministerial Corporation are transferred to the service of a class 2 corporation. The clause also deals with rights of such staff.

Clause 32 provides that a corporation ceases to be a class 2 irrigation corporation when its name is removed from Schedule 2 to the proposed Act. This can only be done by further legislation, by a proclamation made at the request of the irrigation corporation or if the irrigation corporation ceases to exist.

Division 2—Special provisions relating to corporations connected with irrigation scheme areas

Clause 33 states that the Division applies to class 2 irrigation corporations established or proposed to be established to continue arrangements in existing or former irrigation scheme areas.

Clause 34 provides that the Minister may not approve an application by such a corporation unless satisfied that each existing irrigator will be assured of certain rights relating to the number of shares that the irrigator will hold in the corporation and the irrigator's future water entitlements.

Clause 35 provides for the dissolution of existing irrigation scheme areas for which class 2 irrigation corporations are established.

Clause 36 permits the entry onto land of a person authorised by a class 2 corporation for purposes connected with its operations.

Clause 37 requires a class 2 corporation to ensure that in exercising powers under clause 36 as little damage as possible is caused and that such damage is repaired or compensation is paid.

PART 4—PROVISIONS RELATING TO CLASS 1 AND CLASS 2 IRRIGATION CORPORATIONS

Division 1—Assets

Clause 38 vests in an irrigation corporation works installed in or on land by the corporation and works transferred to it under Part 5.

Division 2—Operating licences

Clause 39 enables the Governor to grant an operating licence to an irrigation corporation. An operating licence enables an irrigation corporation to supply water

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provided to it under an irrigation corporation water management works licence granted under the Water Act 1912 and, in the case of a class 1 irrigation corporation, to exercise functions delegated to it under clause 12.

Clause 40 allows the Governor to refuse an application for an operating licence on such grounds as the Governor considers appropriate.

Clause 41 enables the Governor to determine the terms and conditions of an operating licence. An example of a condition that may be included is a requirement that the corporation provide, construct, maintain, manage and operate efficient, co-ordinated and commercially viable water services.

Clause 42 states that an operating licence may only be amended in the manner specified in the licence.

Clause 43 provides for the term of an operating licence.

Clause 44 specifies the action that may be taken if an irrigation corporation contravenes its operating licence.

Clause 45 enables the Governor to cancel an operating licence in specified circumstances.

Division 3—Irrigation corporation water management works licences

Clause 46 contains definitions of expressions used in the proposed Division.

Clause 47 enables the Governor, on the recommendation of the Ministerial Corporation, to grant an irrigation corporation water management works licence (“irrigation corporation licence”) on payment of a fee calculated in accordance with the regulations.

Clause 48 allows an irrigation corporation to take water and construct or use water management works in accordance with the irrigation corporation licence.

Clause 49 provides for the making of an application for an irrigation corporation licence by an irrigation corporation.

Clause 50 enables the Governor to determine an application for an irrigation corporation licence.

Clause 51 specifies matters that the Ministerial Corporation must take into account in deciding whether to recommend the granting of an irrigation corporation licence.

Clause 52 enables the Governor to refuse an application for an irrigation corporation licence on such grounds as the Governor considers appropriate.

Clause 53 states that an irrigation corporation licence is subject to conditions imposed in accordance with the proposed Act.

Clause 54 allows the Governor to impose conditions on an irrigation corporation licence after its grant, but only if requested by the licensee or after the licensee has been given an opportunity to make representations.

Clause 55 enables the Governor to revoke conditions imposed on an irrigation corporation licence by the Governor.

Clause 56 provides that the term of an irrigation corporation licence is 15 years.

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Clause 57 provides for the Governor to periodically review the terms and conditions of an irrigation corporation licence.

Clause 58 specifies requirements as to the form of an irrigation corporation licence.

Clause 59 allows the Governor to amend an irrigation corporation licence on the recommendation of the Ministerial Corporation made on the application of the licensee.

Clause 60 allows the Governor to suspend or vary an irrigation corporation licence for such reasons as the Governor considers appropriate, but only if the licensee has been given an opportunity to make representations.

Clause 61 specifies circumstances (for example, that a water management work has not been used in accordance with an irrigation corporation licence) in which the Governor may cancel an irrigation corporation licence or take other action in relation to the licence.

Clause 62 enables the Ministerial Corporation to levy service charges on an irrigation corporation in accordance with the regulations.

Clause 63 makes it an offence for an irrigation corporation to use water management works when the irrigation corporation licence for the works is suspended or cancelled or to contravene the terms and conditions of the licence.

Clause 64 provides for certain evidentiary matters for the purposes of proceedings arising under the proposed Act.

Division 4—Arrangements with subsidiaries

Clause 65 allows an irrigation corporation to arrange for a subsidiary of the corporation to exercise its functions under the proposed Act or the irrigation corporation's operating licence or irrigation corporation licence.

Clause 66 enables the Ministerial Corporation to treat acts or omissions of a subsidiary of an irrigation corporation as acts or omissions of the irrigation corporation for certain purposes if the irrigation corporation has made an arrangement with the subsidiary under clause 65.

Division 5—Miscellaneous

Clause 67 provides that Parts 2 and 3 do not prevent an irrigation corporation from exercising functions that do not relate to the supply of water. This is subject to restrictions that might be included in the terms and conditions of the operating licence.

Clause 68 applies provisions of the Act relating to irrigation corporations with subsidiaries to irrigation corporations that have no subsidiaries.

Clause 69 enables an irrigation corporation to be connected with more than one irrigation scheme area.

Clause 70 makes a new owner of land liable for amounts levied by an irrigation corporation in respect of the land that have not been paid by the previous owner.

Clause 71 requires an irrigation corporation, on application, to certify whether any amounts levied in relation to particular land have been paid and, if not, the amount owing.

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Clause 72 prevents an irrigation corporation to which the business undertaking of an irrigation scheme area has been transferred under Part 5 from levying rates and charges as a statutory charge or as a charge on land.

Clause 73 allows the Minister to provide funds to an irrigation corporation, either as a grant or a loan, out of money appropriated by Parliament or otherwise legally available. The funds may be advanced on terms and conditions determined by the Minister.

Clause 74 states that certain provisions of the Public Works Act 1912, the Water Act 1912, the Irrigation Act 1912, the Wentworth Irrigation Act 1890 and regulations under the Irrigation Act 1912 cease to apply to an irrigation scheme area for which an irrigation corporation has been established. Those provisions impose duties on the Ministerial Corporation to maintain certain works.

Clause 75 prevents a claim being made against an irrigation corporation or officer or employee of an irrigation corporation in respect of any nuisance caused by a work in the area of operations of the corporation. The clause also extends to irrigation corporations the protection given to councils by section 733 of the Local Government Act 1993 in respect of advice given or action taken in good faith concerning the flooding of land or land in the coastal zone affected by coastal hazard.

Clause 76 creates an offence, in respect of the area of operations of an irrigation corporation, of illegally taking or diverting water, using water without authorisation or tampering with meters registering the quantity of water supplied by an irrigation corporation (maximum penalty is 150 penalty units, currently \$15,000).

Clause 77 creates an offence of discharging substances into the works of an irrigation corporation without authorisation (maximum penalty is 150 penalty units, currently \$15,000).

PART 5—TRANSFER OF ASSETS, RIGHTS AND LIABILITIES

Clause 78 enables the Minister to make an order directing that the business undertaking of an irrigation scheme area be transferred to an irrigation corporation connected with the area.

Clause 79 enables an order under clause 78 to provide for the payment by the irrigation corporation concerned of amounts to the State in addition to the consideration payable for the transfer of the business undertaking.

Clause 80 provides that any amounts referred to in clause 79 are to be paid into the Consolidated Fund after the expenses of the transfer have been met.

Clause 81 enables an irrigation corporation (or some other person specified by the Ministerial Corporation) to take the place of the Ministerial Corporation as a party to an existing contract.

Clause 82 provides that causes of action accrued and proceedings commenced against the Ministerial Corporation before the transfer of a business undertaking to an irrigation corporation do not become the responsibility of the irrigation corporation.

Clause 83 provides that amounts due but not paid to the Ministerial Corporation before the transfer of a business undertaking to an irrigation corporation are included in the transfer.

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Clause 84 states the effect of the operation of the Part in relation to certain contractual matters.

PART 6—MISCELLANEOUS

Clause 85 provides that the proposed Act binds the Crown.

Clause 86 vests certain works constructed or controlled by the Water Administration Ministerial Corporation under the Water Act 1912, the Irrigation Act 1912 or the Water Administration Act 1986 in the Water Administration Ministerial Corporation.

Clause 87 states that nothing prevents a class 2 irrigation corporation from being registered as a co-operative.

Clause 88 gives exemptions from stamp duty in relation to certain transactions effected for the purposes of the proposed Act.

Clause 89 provides that the regulations may, for the purposes of the Trade Practices Act 1974 of the Commonwealth, authorise the transfer of the business undertaking of an irrigation scheme area to an irrigation corporation, the performance of contracts included in the business undertaking and the making and performance by an irrigation corporation, after the transfer, of certain contracts related to the supply of water and associated purposes.

Clause 90 provides that the regulations may exempt an irrigation corporation from the provisions of the Monopolies Act 1923.

Clause 91 makes it clear that nothing in the proposed Act affects any right of appeal or review that an irrigation corporation has in respect of anything done under the proposed Act.

Clause 92 provides that the prosecution or conviction of a person for an offence against the proposed Act does not affect the right of an irrigation corporation to take civil proceedings or other action against the person.

Clause 93 creates an offence of causing the commission of an offence against the proposed Act or aiding or abetting the commission of an offence against the proposed Act.

Clause 94 enables offences against the proposed Act to be disposed of summarily before a Local Court or the Land and Environment Court.

Clause 95 enables minor amendments to be made to Schedules 1 and 2 by regulation.

Clause 96 empowers the Governor-in-Council to make regulations for the purposes of the proposed Act and for savings and transitional matters.

Clause 97 gives effect to Schedule 3 which contains amendments to various Acts.

Clause 98 provides for the review of the proposed Act by the Minister 5 years after its commencement.

SCHEDULE 1—LIST OF CLASS 1 IRRIGATION CORPORATIONS

The Schedule specifies class 1 irrigation corporations.

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SCHEDULE 2—LIST OF CLASS 2 IRRIGATION CORPORATIONS

The Schedule will specify class 2 irrigation corporations, to be added by proclamation of the Governor-in-Council.

SCHEDULE 3—AMENDMENTS

The Schedule contains consequential amendments to other Acts, including:

Conveyancing Act 1919
Crown Lands Act 1989
Crown Lands (Continued Tenures) Act 1989
Dividing Fences Act 1991
Dried Fruits Act 1939
Forestry Act 1916
Hay Irrigation Act 1902
Irrigation Act 1912
Irrigation Areas (Reduction of Rents) Act 1974
Irrigation, Water and Rivers and Foreshores Improvement (Amendment) Act 1955
Land and Environment Court Act 1979
Mining Act 1992
National Parks and Wildlife Act 1974
Noxious Weeds Act 1993
Petroleum (Onshore) Act 1991
Real Property Act 1900
Water Act 1912
Wentworth Irrigation Act 1890
