

Broken Hill Water and Sewerage (Radium Hill) Amendment Act 1954 No 12

[1954-12]



New South Wales

Status Information

Currency of version

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Provisions in force

The provisions displayed in this version of the legislation have all commenced.

Notes—

- **Does not include amendments by**
[Water Legislation \(Repeal, Amendment and Savings\) Act 1987 No 143](#) (not commenced — to commence on the commencement of the [Water Supply Authorities Act 1987](#))

Authorisation

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Broken Hill Water and Sewerage (Radium Hill) Amendment Act 1954 No 12



New South Wales

An Act to ratify and provide for the carrying out of an Agreement entered into between the Premier of the State of New South Wales, the Premier of the State of South Australia and the Broken Hill Water Board respecting the supply of water by the Broken Hill Water Board to the Government of the State of South Australia; to amend the *Broken Hill Water and Sewerage Act 1938-1951* in certain respects; and for purposes connected therewith.

1 Name of Act, citation and commencement

- (1) This Act may be cited as the *Broken Hill Water and Sewerage (Radium Hill) Amendment Act 1954*.
- (2) The *Broken Hill Water and Sewerage Act 1938*, as amended by subsequent Acts and by this Act, may be cited as the *Broken Hill Water and Sewerage Act 1938-1954*.
- (3) This Act shall commence upon a day to be appointed by the Governor and notified by proclamation published in the Gazette.

2 Act to bind the Crown

This Act shall bind the Crown.

3 Definitions

In this Act, unless the context otherwise requires:

Land includes Crown lands and buildings, messuages, tenements, and hereditaments of any tenure, and any easement, right or privilege in, over or affecting any land.

The Agreement means the Agreement, a copy of which is set out in the Schedule to this Act.

The Board means the Broken Hill Water Board, constituted under the provisions of the *Broken Hill Water and Sewerage Act 1938*, as amended by subsequent Acts.

4 Ratification of Agreement

The Agreement is hereby ratified and approved and shall come into force on the date of commencement of this Act, and all matters and things agreed to be done by or on behalf of the State of New South Wales are hereby sanctioned and authorised.

5 Construction of works in New South Wales

- (1) The Government of South Australia is hereby authorised and empowered to construct, reconstruct, operate and maintain, for the purposes of the Agreement, the works referred to in the Agreement; and such works shall be deemed to be authorised works within the meaning of the *Public Works Act 1912*, as amended by subsequent Acts; and the provisions of that Act, sections thirty-four, thirty-five, thirty-six and thirty-seven excepted, shall apply to and in respect of such works.
- (2) For the purposes of the construction or reconstruction of such works the State of South Australia or any authority person or corporate body thereto authorised by it shall be the Constructing Authority within the meaning of the *Public Works Act 1912*, as amended by subsequent Acts.

6 Resumption of land

The Governor may resume, acquire or appropriate under the provisions of the *Public Works Act 1912*, as amended by subsequent Acts, any land required in New South Wales for or incidental to the purpose of constructing, reconstructing, operating or maintaining the works referred to in the Agreement, and for the purpose of such resumption, acquisition or appropriation the Minister for Public Works for the State of New South Wales shall have all the powers of a Constructing Authority under that Act, as so amended. Upon publication of a notification in the Gazette that the Governor has resumed or appropriated land for the purposes of the Agreement, the land described in such notification shall thereupon vest in the State of South Australia, or in such corporation, constituted by or under any Act of the Parliament of that State, as is named in such notification.

7 Disposal of surplus lands

- (1) Any land resumed, acquired or appropriated pursuant to the provisions of section six of this Act, which is not required for the purposes of or incidental to works constructed under the Agreement may be sold, leased or otherwise dealt with under the *Public Works Act 1912*, as amended by subsequent Acts, or may be reconveyed or retransferred to the persons entitled in full or partial satisfaction of any claim for compensation in respect of the resumption, acquisition or appropriation of the land.

In any conveyance or transfer made pursuant to this subsection an easement over or right of using the whole or any part of the subject land may be reserved.

- (2) Where any easement, right or privilege in over or affecting any land has been resumed or appropriated for the purposes of the Agreement, but is no longer required

for the purposes of or incidental to the Agreement, the Governor may by notification published in the Gazette, declare that such easement right or privilege has been divested from the State of South Australia, or other the person or corporation in whom such easement or right was vested upon the resumption thereof, and may in any such notification further declare that the land previously subject to such easement, right or privilege, shall, from the date of publication of such notification, be released and discharged from the burden of such easement, right, or privilege, and such easement right or privilege shall thereupon cease and determine.

8 Special powers to Broken Hill Water Board

- (1) The Board is hereby authorised and empowered, notwithstanding any provision of the *Broken Hill Water and Sewerage Act 1938*, as amended by subsequent Acts, to the contrary, to supply water to the Government of South Australia upon and subject to the terms and conditions of the Agreement, and also to do all acts necessary on its part to give effect to the Agreement.
- (2) The Board may, if so requested by the Government of South Australia, act as agent for that Government, upon such terms and conditions as may be mutually agreed upon, for the construction, reconstruction, maintenance or operation of any works authorised by this Act to be constructed, reconstructed, maintained or operated by that Government within the State of New South Wales.

9 Amendment of Act No 20, 1938

The *Broken Hill Water and Sewerage Act 1938-1951* is amended:

- (a) by inserting in section two next after the matter relating to Division 4 of Part 5 the following new matter:

DIVISION 4A—*Menindee-Broken Hill Rising Main*—ss 48A-48B.

- (b) by inserting next after section forty-eight the following new Division:

Division 4A Menindee-Broken Hill Rising Main

48A Supply of water from Menindee-Broken Hill Rising Main

The Board may, notwithstanding any other provision of this Act, the regulations or by-laws, supply water from the rising main, constructed between Menindee and Broken Hill, to any person on land adjoining such rising main upon such terms and conditions as the Board may, in the particular circumstances relating to such supply, deem appropriate.

Such terms and conditions may include terms and conditions:

- (a) forbidding the use of water so supplied for other than domestic or stock-watering purposes,
- (b) requiring the person requesting such a supply to defray the cost of installing and maintaining water pipes and fittings, including any necessary pressure reduction valve, required between such rising main and the point of metering,
- (c) forbidding the use of water so supplied for stock-watering purposes within a specified distance of such rising main,
- (d) empowering the Board to limit the occasions on which such supply will be given,
- (e) empowering the Board to terminate any such supply in any event upon three months notice, and to terminate it immediately upon breach of any of the terms and conditions imposed by it.

48B Exemption from rating

The provisions of section seventy-seven of this Act shall not apply with respect to any land which adjoins the rising main between Menindee and the pumping station at Stephens Creek, and which forms part of a holding under the *Western Lands Act of 1901*, as amended by subsequent Acts, or forms part of a freehold title, unless the whole of the land comprised within such holding or title is situate within the area of operations.

Schedule

AGREEMENT made the Tenth day of December one thousand nine hundred and fifty-three BETWEEN: THE HONOURABLE JOHN JOSEPH CAHILL Premier of the State of New South Wales for and on behalf of that State of the first part THE HONOURABLE THOMAS PLAYFORD Premier of the State of South Australia for and on behalf of that State of the second part and THE BROKEN HILL WATER BOARD the body corporate constituted by the *Broken Hill Water and Sewerage Act, 1938-1951* (hereinafter called "the Board") of the third part: WHEREAS the Government of South Australia is desirous of obtaining a supply of water from the Board for use at Radium Hill within the State of South Australia and to that end has requested the Premier of the State of New South Wales and the Board to join in and execute this Agreement which they have agreed to do: NOW IT IS HEREBY AGREED as follows:—

1.

Submission to Parliament.

Each of the contracting Governments shall take every practicable step to have this Agreement ratified by its Parliament during the present Session of such Parliament, or if such Parliament is not in Session at the date of this Agreement then at the first Session of such Parliament held after the date of this Agreement.

2.

Commencement and duration.

This Agreement shall come into force upon the date of commencement of the Acts of the Parliaments of the State of New South Wales and South Australia, ratifying the provisions hereof and shall continue in force for a period of ten years and thereafter unless and until determined by either of the contracting Governments or the Board giving to the other parties hereto at any time twelve months previous notice in writing of determination which notice may be given at any time on or after the commencement of the last year of the said period of ten years.

3.

(1)

The Act ratifying this Agreement by the Parliament of the State of New South Wales shall—

- (a) authorise the Government of South Australia to construct reconstruct operate and maintain within the State of New South Wales a pipeline and ancillary works between the Umberumberka Storage Area (being the land resumed by notification published in the New South Wales Government Gazette on the 12th day of July, 1911), and the South Australian Border, a pipeline pumping station and ancillary works within the Umberumberka Storage Area and a pipeline to by-pass the Board's service reservoir situated at Blue Anchor Hill on land resumed by notification published in the New South Wales Government Gazette on the 5th day of November, 1913 (which last-mentioned pipeline is hereinafter referred to as the "by-pass");
- (b) authorise the resumption by the Governor of New South Wales, under the *Public Works Act, 1912*, as amended by subsequent Acts, of all land and all easements rights or privileges in over or affecting land required in New South Wales but outside the Umberumberka Storage Area aforesaid for or incidental to any pipelines and ancillary works to be constructed under this Agreement and for the vesting of such land easements rights and privileges in the State of South Australia or any corporation constituted by or under any Act of the Parliament of the State of South Australia as may be nominated for that purpose by the Governor of South Australia.

N.S.W. ratifying legislation.

(2)

The Government of South Australia will at the request of the Minister for Public Works of the State of New South Wales pay to the said Minister for Public Works all and every sums and sum of money that may become due or payable by Her Majesty or the said Minister for Public Works in connection with or in respect of or incidental to any and every resumption effected under the preceding provisions of this clause whether as compensation money interest costs charges expenses damages or otherwise howsoever.

4.

South Australian ratifying legislation.

The Act ratifying this Agreement by the Parliament of the State of South Australia shall authorise the Government of South Australia to construct reconstruct operate and maintain the said pipeline pumping station by-pass and ancillary works within the State of New South Wales.

5.

(1)

Works
constructed
within
Umberumberka
Storage area.

The Board will grant free of charge to the Government of South Australia a licence to construct reconstruct operate and maintain such pumping station, pipelines and ancillary works within the said Umberumberka Storage Area as shall be necessary to enable it to fulfil this Agreement. The location of such works shall be subject to the approval of the Board.

(2)

Such licence shall include a right in the Government of South Australia to dismantle the said works and to carry away the same on the termination of this Agreement but so that the Government of South Australia shall in such dismantling and carrying away do no damage to the said Umberumberka Storage Area or shall forthwith make good any damage which it may occasion thereto AND such licence shall be subject to a condition that upon the termination of this Agreement the Government of South Australia shall, if so required by the Board, dismantle and carry away all such works.

6.

Supply to be
given by the
Board.

Subject to the provisions of this Agreement the Board shall give and the Government of South Australia shall take a supply of water at a point selected by the Board within the said Umberumberka Storage Area (which point is hereinafter referred to as "the point of supply") PROVIDED THAT the Board shall not at any time during the continuance of this Agreement be obliged to supply to the Government of South Australia more than two hundred thousand (200,000) gallons of water in any one day nor more than one million two hundred and fifty thousand (1,250,000) gallons in any one week.

7.

(1)

The Government of South Australia shall at its own expense construct operate and maintain the pipeline pumping station by-pass and all ancillary works necessary for taking supply of water at the point of supply.

(2)

The Government of South Australia will at its own cost, construct and maintain or at the option of the Board defray the cost to the Board of constructing and maintaining all works necessary to give the supply of water at the point of supply from the existing works operated by the Board.

South Australia to pay capital cost.

(3)

The Government of South Australia shall also defray the cost of installing or replacing meters rendered necessary for the purpose of the giving of the supply by the Board.

(4)

A certificate under the hand of the Secretary-Manager of the Board or the person acting as such for the time being as to the amount of any costs incurred by the Board under subclauses (2) and (3) of this clause shall be prima facie evidence thereof.

8.

The Government of South Australia shall pay to the Board for water supplied under this Agreement at the rate of twenty one shillings (21/-) per thousand gallons of water supplied during the period of three years from the commencement of this Agreement and thereafter at such rates as may be prescribed as applicable to the supply under this Agreement by by-laws from time to time made under the provisions of the *Broken Hill Water and Sewerage Act, 1938*, as amended by subsequent Acts.

Price to be paid by S.A. Government for water.

9.

The Board shall during the continuance of this Agreement deliver or post to the Government of South Australia monthly accounts showing the quantity of water supplied by the Board during the month immediately preceding and the amount payable therefor. The Government of South Australia shall, within twenty-eight days after the delivery or posting to it of each such account, pay to the Board the amount due in respect of water supplied during the month to which such account relates as shown by such account.

Rendering and payment of accounts.

10.

(1)

The quantity of water supplied to the Government of South Australia under this Agreement shall be measured by a tested meter to be supplied and controlled by the Board at the point of supply. The registration recorded by such meter shall be prima facie evidence of the quantity of water supplied. If the accuracy of the meter be questioned by either the Government of South Australia or the Board, the meter shall be tested by the Board and a person representing the Government of South Australia shall be entitled to attend such test. Should the test show that the meter registered inaccurately the Board shall pay the cost of such test and at its own cost have the meter adjusted so that it registers correctly or should adjustment prove to be impracticable the Board shall forthwith instal another tested meter but should the test show that the meter registers correctly or within five per centum of the correct quantity (in which case it shall be deemed to register correctly) the cost of the test shall be borne by the party questioning the accuracy of the meter.

(2)

Supply by
metering.

In the event of a test showing that the meter registers incorrectly within the meaning of this clause or in the event of the meter ceasing to register the quantity of water passing through it, an adjustment shall be made, as hereinafter in this clause provided, in the amounts payable to the Board under this Agreement for water supplied, but no such adjustment shall be made in respect of any period preceding the month during which the incorrect reading was recorded, or in which the meter ceased to register. If a reading of the meter was recorded for the corresponding period of the previous year the charge for water supplied shall be calculated on the basis of a daily consumption equal to the average daily consumption during the corresponding period of the previous year. If no reading was recorded during the corresponding period of the previous year the charge for water supplied shall be calculated upon the basis of a daily consumption equal to the average daily consumption during the month immediately preceding the month in which the incorrect registration was recorded or in which the meter ceased to register, as the case may be, and the period covered by the first monthly reading after the meter has been adjusted or replaced PROVIDED ALWAYS that in any such case the charge for water supplied may be adjusted upon such other basis as is mutually agreed upon between the Government of South Australia and the Board.

(3)

No adjustment shall be made under subclause (2) of this clause unless the accuracy of the meter shall have been questioned within two (2) months after the date of delivery or posting to the Government of South Australia of the account for the month in which the incorrect registration was recorded.

11.

Interest on
overdue
payments.

In the event of any amount payable by the Government of South Australia to the Board under this Agreement not being paid within the time appointed for payment thereof such amount shall carry interest at the rate of five and one-half per centum from the due date until the date of payment thereof.

12.

Termination of Agreement on default.

If at any time during the continuance of this Agreement the Government of South Australia shall make default in the due payment of any moneys payable by it to the Board under this Agreement, or shall fail or neglect to observe or perform all or any of the terms and conditions herein contained and on the part of the Government of South Australia to be observed and performed and such failure default or neglect shall continue for a period of twenty-eight (28) days after written notice specifying such default failure or neglect shall have been given by the Board to the Government of South Australia, then and in any such case it shall be lawful for the Board (notwithstanding that it shall not have taken advantage of some previous default, failure or neglect of a like nature) at any time thereafter, by notice in writing to the Government of South Australia to discontinue the supply or at its option to determine this Agreement but such discontinuance or determination shall not affect any right claim or power which may have accrued to the Board or which may be enforceable by it against the Government of South Australia under or by virtue of these presents or otherwise.

13.

Amounts to fall due on termination.

In case this Agreement is determined for any reason whatsoever then and in such case the whole of the moneys then owing to the Board by the Government of South Australia under this agreement shall immediately become due and payable and that whether the time hereby appointed for payment thereof shall have arrived or not and shall be recoverable by the Board with interest at the rate of five and one-half per centum per annum.

14.

Board not liable for failure to supply.

The Board shall not be liable in damages for any breach of this Agreement by reason of the total or partial failure or temporary cessation of the supply of water from any cause whatsoever or by reason of the fact that the water supplied is at any time unfit for dietetic purposes and the Board shall at all times be entitled to discontinue the supply whenever it deems it necessary for the efficient working of the Broken Hill Water supply generally. The Board shall restore the supply as soon as reasonably practicable.

15.

Arbitration.

If any dispute or difference shall arise between the Board and the Government of South Australia touching the meaning or construction of this Agreement or any clause herein contained or any matter or thing arising hereunder or incidental hereto or as to the rights liabilities or duties of either party hereunder the same shall be referred to two arbitrators one to be appointed by the Board and the other by the Government of South Australia in accordance with the provisions of the *Arbitration Act, 1902*, of the State of New South Wales, or any amendment thereof or in substitution therefor.

16.

(1)

Any notice direction communication or certificate required to be or that may be given or made under this Agreement by the Board to the Government of South Australia shall be deemed to have been duly given or made if signed by the Secretary-Manager of the Board or by the person acting as such for the time being or by a person authorised by either of them and delivered to or left at the office of the Minister of Works, Victoria Square, Adelaide, or sent by prepaid post addressed to Minister of Works at the said office.

Notices.

(2)

Any notice or communication required to be or that may be given or made under this Agreement by the Government of South Australia to the Board shall be deemed to have been duly given or made if signed by the said Minister of Works or by the person acting as such for the time being and delivered at the office of the Secretary-Manager of the Board at Broken Hill or sent by prepaid post addressed to the Secretary-Manager, Broken Hill Water Board, Broken Hill.

(3)

Any notice direction communication or certificate sent by post shall be deemed to have been received at the time when the same would in the ordinary course be delivered.

17.

Marginal notes.

The marginal notes placed opposite the several clauses of this Agreement and indicating or purporting to indicate the contents or objects of such clauses respectively shall not be taken as part of this Agreement or in any manner affect the construction hereof or of any clause or thing in this Agreement contained.

IN WITNESS whereof the parties hereto have executed these presents the day and year first before written.

SIGNED SEALED and DELIVERED by the said
The Honourable JOHN JOSEPH CAHILL the
Premier of the State of New South Wales in the
presence of

} J. J. CAHILL

G. GRAY

SIGNED SEALED and DELIVERED by the said
The Honourable THOMAS PLAYFORD the
Premier of the State of South Australia in the
presence of

} T. PLAYFORD (L.S.)

R. G. HITCHCOX.

The common seal of THE BROKEN HILL WATER BOARD was affixed hereto in the presence of a quorum of the Board on the Tenth day of December, 1953.

As witness the hands of ALAN RICHMOND GRANT and HORACE CLAUDE LUNAM two of the Members in whose presence the seal was so affixed.



ALAN R. GRANT

H. C. LUNAM