

Balranald Irrigation Act 1902 No 78

[1902-78]



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—

- **Repeal**

The Act was repealed by Sch 7 to the [Water Management Act 2000 No 92](#) with effect from 1.1.2001.

Authorisation

This version of the legislation is compiled and maintained in a database of legislation by the Parliamentary Counsel's Office and published on the NSW legislation website, and is certified as the form of that legislation that is correct under section 45C of the [Interpretation Act 1987](#).

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Contents

Long title	4
Part 1 Preliminary	4
1 Name of Act	4
2 Repeal, saving and operation	4
3 Repeal of parts of Mining Act of 1874	5
4 Definitions	5
Part 2 Administration	5
5 Administration of Act	5
6–9 (Repealed)	5
10 Restriction on sale of certain land	5
11 Power of the Commission	5
12–15 Repealed (Repealed)	6
16 Qualified engineers to be employed	6
17 (Repealed)	6
18 Compensation for damage done by the Commission	6
19 (Repealed)	6
20 Arbitration	6
21 Commission may lease	7
22 No lessee shall transfer his or her lease without sanction of Commission	7
23 Permanent improvements to land may be valued and paid up upon termination of tenancy	7
24 Commission may re-offer lease	7
25 Commission may contract to supply water for a term of years	8

26 When water insufficient, Commission may supply proportionally, and not liable for any inability to supply	8
27 Water-rights not transferable, save by permission of Commission	8
28 Water to be used only in manner prescribed	8
29 Right-of-way for water	9
30 Water-way through land not to confer right to water on owner	9
31 Bridges to be built at road crossings	9
32 Water to be sold by measurement	9
33 Power to fix, and recovery of, rates	9
34 Saving of by-laws	10
35 Regulations	10
Part 4 (Repealed)	11
Part 5 Offences and penalties	11
49 Offences and penalties	11
50 Wilful injury to works	11
51 Waste of water	11
52 Waste of water under Mining Act	12
53 (Repealed)	12
54 Offenders liable to pay compensation as well as penalty	12
55 Offenders liable to punishment under other Acts	12
First Schedule	12
Second Schedule (Repealed)	13

Balranald Irrigation Act 1902 No 78



New South Wales

An Act to consolidate enactments relating to the conservation and utilisation of water for irrigation for the Municipality of Balranald..

Part 1 Preliminary

1 Name of Act

This Act is the *Balranald Irrigation Act 1902*.

2 Repeal, saving and operation

- (1) The Act fifty-sixth Victorian number twenty-six is hereby repealed.
- (2) All rules, regulations, and by-laws made under the provisions of the said Act, and in force at the commencement of this Act, shall be deemed to have been made under the corresponding provisions of this Act.
- (3) All persons appointed under or by virtue of the Act hereby repealed, and holding office at the commencement of this Act, shall remain in office as if this Act has been in force at the time they were appointed and they had been appointed hereunder, and this Act shall apply to them accordingly.
- (4) All works, constructed or erected, all purchases, sales, exchanges, mortgages and leases made, given or granted, all liabilities incurred, and all other acts or things done under or by virtue of the Act hereby repealed, shall be deemed to have been constructed, erected, made, given, granted, incurred or done respectively under the corresponding provision of this Act, but at the date at which the same were in fact constructed, erected, made, given, granted, incurred or done.
- (5) Nothing contained in the *Local Government Act 1993* shall be construed to control, limit or restrict the operation of this Act, or to interfere with its provisions in respect of the construction or maintenance of works, or the storage, distribution, or supply of water, or in respect of the borrowing of money, the valuation of property, or the fixing or levying of rates.

3 Repeal of parts of Mining Act of 1874

Notwithstanding anything contained in any Act, now in force, relating to mining, no holder of a miner's right or mineral licence shall be entitled to divert or use water to the prejudice of any rights acquired or enjoyed under this Act; but no rights acquired or enjoyed under any Act relating to mining shall be interfered with, or prejudiced, or taken from the owner thereof without compensation.

4 Definitions

(1) In the construction of this Act, unless the context or subject-matter otherwise indicates or requires, the expression:

Domestic use, when employed with reference to water, means use for household purposes, but does not include use for the irrigation of gardens or land, or for the watering of stock or the washing of sheep.

Irrigation area means the lands and hereditaments described in the First Schedule to this Act, and any adjoining land which may be purchased or obtained with the sanction of the Governor.

Owner includes lessee or occupier, as well as owner in fee-simple.

Regulations means the regulations made under this Act.

Stock means cattle, horses, sheep, and all other domestic animals.

Part 2 Administration

5 Administration of Act

This Act shall be administered by the Commission and shall be read subject to the provisions of the [Irrigation Act 1912](#) and the [Water Act 1912](#).

6-9 (Repealed)

10 Restriction on sale of certain land

No part of the land described in the First Schedule shall be sold without the approval of the Governor.

11 Power of the Commission

(1) Subject to the provisions hereinafter contained, it shall be lawful for the Commission to exercise any of the following powers, that is to say:

(a) To erect and construct upon any part of the irrigation area such dams, weirs, flood-gates, culverts, aqueducts, sluices, flumes, pipes, engines, pumping machinery, reservoirs, canals, watercourses, embankments, or other works as may be

necessary or expedient for carrying out the objects of this Act,

- (b) to control and use all waters, and at all times hereafter from all creeks, watercourses, lagoons, swamps, canals, trenches, tanks, reservoirs, or other sources lying within or to be constructed or excavated within the irrigation area,
- (c) to widen or deepen, or to close or divert any existing creek, lagoon, swamp, or watercourse within the irrigation area,
- (d) to lay pipes or cut trenches or ducts outside the irrigation area for the purpose of delivering water to owners of adjoining lands,
- (e) to take water from the river Murrumbidgee by means of pumping or other machinery erected within or near the irrigation area on a suitable site to be selected by the Commission.

(2) (Repealed)

- (3) Nothing in this section shall be construed to authorise the Commission to construct any dam, weir, embankment, or other work whatever in or upon the river Murrumbidgee, so as to obstruct, impede, or in any way interfere with the natural flow or the navigation of such river.

12-15 Repealed (Repealed)

16 Qualified engineers to be employed

- (1) The Commission shall employ qualified engineers and surveyors for the preparation of the designs, surveys, plans, and estimates for all works proposed to be carried out in pursuance of this Act.

(2) (Repealed)

17 (Repealed)

18 Compensation for damage done by the Commission

Whenever any person employed by the Commission in pursuance of this Act while in the execution of his or her duties, causes injury to land, fences, or other property, or causes loss or damage to any owner of land or other property, the person suffering such injury, loss, or damage shall be entitled to be compensated by the Commission.

19 (Repealed)

20 Arbitration

When any person claims compensation from the Commission, on account of injury, loss, or damage sustained, and such claim is disputed by the Commission, the settlement of the dispute shall be referred to arbitration under the [Commercial Arbitration Act 1984](#).

21 Commission may lease

- (1) The Commission may from time to time, demise, or assign, for any term of years not exceeding thirty years, any lands, tenements, or hereditaments purchased, taken in exchange, or on lease by the Commission in pursuance of this Act, or being a portion or portions of the irrigation area; or may let or lease any such lands, tenements, or hereditaments from year to year, or for any term not exceeding three years.
- (2) All moneys to arise from any such demise or letting shall be applied towards the construction, maintenance, or improvement of the works or property of the Commission, or in paying or discharging any interest, debt, or obligation which the Commission may be liable to pay or discharge.

22 No lessee shall transfer his or her lease without sanction of Commission

No lessee or occupier shall be allowed to transfer his or her lease to any other person without first having obtained the sanction of the Commission in writing to such transfer.

23 Permanent improvements to land may be valued and paid up upon termination of tenancy

- (1) At the expiration of any term for which land may be leased or rented from the Commission, in the event of the lessee or occupier being unwilling to enter upon a fresh tenancy or lease from the Commission, the Commission may appoint one valuer, and the outgoing lessee or occupier may appoint another valuer, and the two persons so appointed shall proceed to value all permanent improvements upon the land, the lease of which has expired, that have been effected at the sole cost of lessee or occupier, and in the event of such valuers disagreeing as to the value of such improvements, some third impartial person shall be mutually chosen as umpire, whose decision shall be final, and all costs of such valuation shall be borne equally by the said lessee or occupier and the Commission.
- (2) The land aforesaid shall then be publicly offered by the Commission, for lease or occupation, upon such terms and conditions as the Commission may deem expedient and subject to the provisions of section twenty-two, and any person applying for the lease or occupation of such improved land shall pay to the Commission an amount equal to the value of the permanent improvements estimated as aforesaid, and this payment for improvements shall be paid to the outgoing lessee, less any expenses that may have been incurred in the transfer or valuation, and the said lessee shall give to the tenant a full discharge in writing upon receiving such payment.

24 Commission may re-offer lease

Should there be no application to lease such land when publicly offered in the manner specified in section twenty-three, then it shall be lawful for the Commission, after the expiration of three months from the date of its being first offered, to reduce the estimated value of the improvements to such an amount as the Commission decides upon, from

time to time, and to publicly offer the lease again until the same is disposed of, but nothing contained herein shall bar or prevent the outgoing lessee from again applying for such lease.

25 Commission may contract to supply water for a term of years

Subject to the provisions of this Act, the Commission may enter into an agreement in writing with the owner or occupier of any land within the irrigation area or not being distant more than 5 kilometres in a straight line from the boundary thereof for the supply and delivery of water upon such land for a term of years not exceeding ten years, or from year to year, at a price by measure to be stated in such agreement, and in every such agreement the owner of such land shall agree to pay such price for the term limited in the agreement, and to take from the Commission not less water in any year than the minimum quantity in such agreement specified, and such agreement by such owner, whether under seal or not, shall be deemed to be a covenant running with the land, and shall bind the land and the successive owners thereof during the said term. But nothing in such agreement shall be construed to create any obligation on the part of the Commission to supply any stated quantity of water in the event of there being at the disposal of the Commission an insufficiency of water, as hereinafter provided; but such owner or occupier shall pay for the water actually supplied to him or her at the price provided for in such agreement.

26 When water insufficient, Commission may supply proportionally, and not liable for any inability to supply

If at any time the supply of water at the disposal of the Commission be insufficient to afford to all persons entitled by contract the supplies which they may respectively be entitled to receive from the Commission, it shall be competent for the Commission to deliver to such persons such amount as the Commission may deem proper, in quantities proportionate to the quantities which such persons would have been respectively entitled to receive had there been enough water available, and such persons shall be chargeable accordingly, and in no case shall the Commission be liable to any action or other proceeding for not supplying water to any person.

27 Water-rights not transferable, save by permission of Commission

No person supplied with water by the Commission shall have the right to transfer such supply, or any portion thereof, to any other person without the sanction of the Commission. And in all receipts given for water-rates paid to the Commission, and in all papers and documents referring to such rates, a note shall be entered to the effect that the right to any water supplied by the Commission is not transferable, save by permission of the Commission, given in writing.

28 Water to be used only in manner prescribed

Water supplied by the Commission shall be delivered as prescribed, and no person shall

have the right to convey or use such water in a manner or for a purpose other than those prescribed.

29 Right-of-way for water

- (1) The Commission may acquire by purchase or lease a right-of-way for water through any land, whether it belongs to a private individual, a corporation, or the Crown.
- (2) If a right-of-way for a distributory channel, pipe, or conduit of any kind is required by any person to enable him or her to obtain a supply of water from the Commission, the Governor may resume a right-of-way for such water supply, and vest the same in the Commission; and in estimating the amount due as compensation to any owner, there shall be deducted from the value of the right-of-way so resumed and the damage (if any) done by severance or otherwise, the amount by which the remaining land of the said owner has been increased in value by the projected works.
- (3) In no case shall the owner have a right to claim in respect of the right-of-way so resumed the increased value due to the projected works.
- (4) Any compensation payable under this clause shall be a charge against the funds of the Department of Water Resources.

30 Water-way through land not to confer right to water on owner

Under no circumstances shall the passage of water through the land of any owner confer on such owner any right, title, or vested interest in such water; but if in open drains, the same shall be fenced by the Commission, or no compensation shall be allowed for trespass of stock.

31 Bridges to be built at road crossings

Wherever it is necessary to construct a canal or channel of any kind, or to carry a supply of water across any road, a suitable bridge or culvert or other means of crossing without hindrance to the traffic on the said road must be constructed by the Commission.

32 Water to be sold by measurement

In the sale of water the Commission shall, as far as practicable, sell the water by measurement.

33 Power to fix, and recovery of, rates

- (1) The Commission shall have power to fix rates for water supplied or for land irrigated by the works to be carried out pursuant to this Act.
- (2) The rates for water shall be of three kinds, viz:
 - (a) for domestic use, and for watering stock and washing sheep,

(b) for irrigation,

(c) for power.

- (3) In addition to these rates, the Commission may fix a rate per hectare on land so irrigated as aforesaid; and also when the measurement of water for irrigation is impracticable, may fix rates per hectare for different crops grown, according to their nature; and where it is impracticable to measure water used by stock, the Commission may fix rates for all kinds of stock to which water is supplied at per head, according to the kind thereof.
- (4) All rates and moneys due to the Commission for water supplied and otherwise may be recovered in a summary way before any two justices by any person appointed by the Commission to collect and recover the same.

34 Saving of by-laws

Any by-law:

- (a) made or deemed to be made under this section and in force immediately before the substitution of this section by the *Statute Law (Miscellaneous Provisions) Act (No 1) 1987*, or
- (b) set out in the Second Schedule immediately before the repeal of that Schedule by the *Statute Law (Miscellaneous Provisions) Act (No 1) 1987*,

shall be deemed to be a regulation.

35 Regulations

- (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that, by this Act, is required or permitted to be prescribed by regulations or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act, and, in particular, for or with respect to:
- (a) the form of lease to be issued under this Act,
 - (b) the administration and maintenance of the works constructed pursuant to this Act,
 - (c) the conditions on which water shall be supplied,
 - (d) the mode of assessing property and levying rates, and
 - (e) the ensuring of bona fide settlement, improvement and cultivation of land within the irrigation area, and all matters relating thereto.
- (2) A regulation may create an offence punishable by a penalty not exceeding 2 penalty units.

Part 4

36-48 (Repealed)

Part 5 Offences and penalties

49 Offences and penalties

Whoever, without proper authority and voluntarily, does any of the following acts, that is to say:

- (a) obstructs in any way any person acting under the authority of the Commission under this Act,
- (b) removes, injures, or in any way interferes with any pegs, bench-marks, or other marks, or objects placed in the execution of his or her duty by any person employed in pursuance of this Act, in making surveys, levels, or other investigations in connection with any work or project authorised by this Act,
- (c) deposits material or refuse of any kind within the bounds of any land resumed or otherwise acquired for any work authorised by this Act,
- (d) pollutes or renders less useful the water standing or flowing in any river or work for water conservation and utilisation vested in the Commission under this Act,
- (e) interferes with the supply or flow of water in any river, creek, stream, or lake managed or maintained under this Act by the Commission, or causes injury to fences, works, land, or any other property held or managed or maintained under this Act by the Commission,

shall for every such offence be liable to a penalty not exceeding 0.5 penalty unit, or to imprisonment for a term not exceeding three months.

50 Wilful injury to works

Any person who wilfully damages or obstructs any work for water conservation and utilisation vested in the Commission under this Act, and any person who, without proper authority, interferes with the supply or flow of water in, into, or from any work constructed or maintained under the provisions of this Act, shall for every such offence be liable to imprisonment for a period not exceeding six months, or to a fine not exceeding 2 penalty units, or to a fine and imprisonment combined within the limits aforesaid.

51 Waste of water

Any person who, being responsible under the provisions of this Act for the proper use and management of a supply of water, neglects to take proper precautions for the prevention of waste of the water, or interferes with the authorised distribution thereof, or uses such water in an unauthorised manner, shall for every such offence be liable to a penalty not

exceeding 0.5 penalty unit, or to imprisonment for a term not exceeding one month.

52 Waste of water under Mining Act

The penalties directed under the last section for the wilful or negligent waste of water shall apply to the water-rights acquired under the *Mining Act of 1874*, or under any other Act or regulation in force relating to mining.

53 (Repealed)

54 Offenders liable to pay compensation as well as penalty

Any person offending against this Act may be sued for compensation on account of the loss or damage incurred or sustained through his or her offence; and this liability for the loss and damage caused will not in any way mitigate or affect the concurrent liability to punishment for the said offence under the terms of this Act.

55 Offenders liable to punishment under other Acts

Nothing herein contained shall prevent any person from being prosecuted under any other law for any offence punishable under this Act: Provided that no person shall be punished twice for the same offence.

First Schedule

All that piece or parcel of land in the State of New South Wales, county of Cairn and parish of Balranald, area about two thousand acres: Commencing at the north-west corner of the permanent common of one thousand four hundred and sixty-four acres, dedicated twelfth January, one thousand eight hundred and eighty-three; and bounded thence on part of the east by part of the western boundary of that common bearing south about one hundred and ninety-six chains seventy-four links to a point east of the north-east corner of portion nine of ten acres one rood; on part of the south by a line west to that corner by the northern boundary of that portion, the northern boundaries of portions ten, eleven, and twelve of ten acres one rood each, and a line in all bearing westerly about forty-two chains to the eastern boundary of the suburban lands at Balranald, as proclaimed in the Gazette of twenty-second February, one thousand eight hundred and eighty-eight; on part of the west by part of that boundary bearing north about one hundred and one chains to the north-east corner of those suburban lands; on the remainder of the south by the northern boundary of the suburban lands aforesaid bearing west one hundred and fifty chains to the north-west corner of those suburban lands, being a point north of the north-east corner of portion fifteen of two hundred and ninety-two acres one rood; again on part of the west by a line bearing north about ninety-eight chains to a point west of the north-west corner of portion one hundred and twenty of three hundred acres, dedicated for a racecourse, twenty-first May, one thousand eight hundred and ninety-two; on part of the north by a line bearing east about one hundred and five chains to that corner; on the remainder of the east by the western boundary of that portion bearing southerly fifty chains to its south-west corner; again on part of the north by the southern boundary of that portion bearing easterly sixty chains to its south-east corner; and on the remainder of the west by the eastern boundary of that portion bearing northerly fifty chains to its north-east corner; and on the remainder of the north by a line bearing easterly about thirty chains, to the point of commencement.

Second Schedule Repealed