

Irrigation (Drainage Rating) Bill.

EXPLANATORY NOTE.

THE object of the accompanying Bill is to authorise the Water Conservation and Irrigation Commission to declare lands which are within irrigation areas and which are benefited or capable of being benefited by drainage works constructed by the Crown or the Commission to be benefited lands.

The Commission is required to publish a statement indicating the lands which it deems are benefited or capable of being benefited by the drainage works, and at the same time to specify whether or not the capital cost of the drainage works or any part of such capital cost is to be repaid by the owners for the time being of the benefited lands, and whether or not special circumstances exist which render it desirable that interest payments should be met wholly or in part out of rates.

Rates are payable in respect of benefited lands to defray the costs of control, maintenance, management and repair of the drainage works, and also, when the Commission has notified the existence of special circumstances, to meet interest in respect of the capital cost or the part thereof which is not charged on benefited lands.

Where the whole or part of the capital cost is to be repaid by the owners for the time being of the benefited lands contributions are payable by such owners.

The rates and contributions are to be fixed in respect of the area of land of an owner deemed by the Commission to be benefited or capable of being benefited by the drainage works and may vary according to the extent of that area.

The contributions may be required to be paid in one or more instalments.

The rates and contributions are to be payable to the Rural Bank of New South Wales and are to constitute a charge upon the land.

[CONFIDENTIAL.]
(Rough Draft for Consideration Only.)

No. , 1940.

A BILL

To make provision for the imposition of rates for certain purposes on certain lands within irrigation areas; to make provision for the repayment of the whole or part of the capital cost of certain works of drainage within irrigation areas; for these and other purposes to amend the Irrigation Act, 1912-1931, and certain other Acts in certain respects; and for purposes connected therewith.

Irrigation (Drainage Rating).

BE it enacted by the King's Most Excellent Majesty, by 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 :—

1. (1) This Act may be cited as the "Irrigation (Drainage Rating) Act, 1940." Short title.

(2) The Irrigation Act, 1912-1931, as amended by subsequent Acts and by this Act, may be cited as the Irrigation Act, 1912-1940.

2. (1) The Irrigation Act, 1912-1931, as amended by subsequent Acts, is amended by inserting next after Part IV the following new Part :— Amendment of Act No. 73, 1912. New Part IVa.

PART IVa.

15 RATES AND CONTRIBUTIONS.

16A. In this Part— Definitions.

20 "Irrigation area" includes the irrigation area constituted by the Wentworth Irrigation Act and the irrigation area constituted by the Hay Irrigation Act, 1902.

"Owner," in relation to land, includes every person who jointly or severally, whether at law or in equity—

25 (a) is entitled to the land for an estate of freehold in possession; or

(b) is a person to whom the Crown has lawfully contracted to grant the fee-simple under the Crown Lands Acts or any other Act relating to the alienation of lands of the Crown; or

30 (c) is entitled to receive, or is in receipt of, or if the land were let to a tenant would be entitled to receive, the rents and profits thereof, whether as beneficial owner, trustee, mortgagee in possession or otherwise:

35 Provided

Irrigation (Drainage Rating).

Provided that the Crown shall be deemed to be the owner of—

- (i) all lands of the Crown; and
- 5 (ii) all lands vested in a statutory body representing the Crown as defined in the Local Government Act, 1919.

“Owned,” “owning” and similar expressions have a meaning corresponding with that of owner.

10 “Ratable person,” “person ratable” and similar expressions include the Crown in respect of ratable land owned by the Crown and mean—

- 15 (a) an owner in any case where this Act provides that a rate or contribution shall be paid by the owner;
- (b) the holder of a lease in any case where this Act provides that a rate or contribution shall be paid by the holder of the lease.

20 “Rating year” means the period from the first day of July in one year to the thirtieth day of June in the next following year.

25 16B. (1) Where any works of drainage have been constructed by the Crown or the Commission, either before or after the commencement of the Irrigation (Drainage Rating) Act, 1940, and the Commission is satisfied that any land within an irrigation area (not being land within the boundaries of a city, town or village as defined in the Crown Lands Consolidation Act, 1913) is benefited or is capable of being benefited by such works of drainage, the Commission may, by notification in the Gazette, declare such land to be benefited land for the purposes of this Part, and shall, in any such notification, define the land thereby declared to be benefited land.

Benefited lands.

Irrigation (Drainage Rating).

5 (2) Where the Commission is satisfied that
 by reason of any alteration or extension of or
 addition to any works of drainage in respect of which
 benefited lands have been defined, or by reason of
 10 any other circumstance whatsoever, any other land
 within the irrigation area (not being land within the
 boundaries of a city, town or village as defined in
 the Crown Lands Consolidation Act, 1913) is bene-
 fitted or is capable of being benefited by such works
 of drainage, the Commission may, by notification in
 the Gazette, declare such other land to be benefited
 land for the purposes of this Part, and shall, in any
 such notification, define the land thereby declared
 to be benefited land.

15 (3) Where the Commission is satisfied that
 any land which has been declared to be benefited land
 for the purposes of this Part has ceased to benefit
 or to be capable of being benefited by the works of
 drainage, the Commission may, by notification in the
 20 Gazette, declare that such land is no longer benefited
 land, and shall, in any such notification, define the
 land thereby declared to be no longer benefited land.

25 (4) Any notification under subsection one,
 subsection two or subsection three of this section may
 define the land therein referred to by reference to a
 map or plan sealed with the seal of the Commission
 and filed in the office of the Commission in the
 irrigation area within which the benefited land is
 30 situated, or, if there is no such office, in the office of
 the Commission at such place as may be determined
 by the Commission and specified in the notification.

35 (5) Any notification under subsection two or
 subsection three of this section shall have and take
 effect as from the commencement of the rating year
 next after the date of publication of the notification.
 Such notification shall not affect the operation of
 any charge of rates or of contributions on the land
 existing at the date the notification takes effect nor
 shall it exempt any person from liability to pay such
 40 rates or contributions.

(6)

Irrigation (Drainage Rating).

(6) Where in any notification under this section any lands are declared to be benefited lands for the purposes of this Part, the Commission shall, in the notification, also declare—

- 5 (a) whether or not the whole or part of the capital cost of the works of drainage is to be repaid by the owners for the time being of the benefited lands and, where part only is to be so repaid, shall specify the amount thereof;
- 10 (b) whether or not special circumstances exist which render it desirable that the interest payable in respect of the capital cost of the works of drainage, or, as the case may be,
- 15 of so much thereof as is not to be so repaid, should be met out of rates.

16c. (1) All benefited land (whether the property of the Crown or not) shall be ratable except—

Ratable land.
cf. Act No. 41, 1919, s. 132 (1).

- 20 (a) land which is vested in the Crown or in a public body or in trustees and is used for a public cemetery; and
- (b) land which is vested in the Crown or in a public body or in trustees and is used for a common; and
- 25 (c) land which is vested in the Crown or in a public body or in trustees and is used for a public reserve; and
- (d) land owned by the Crown not being land held under a lease from the Crown for private purposes; and
- 30 (e) land which is a public place.

In this subsection the expressions "public reserve" and "public place" have the meanings ascribed thereto respectively in the Local Government Act, 1919.

Irrigation (Drainage Rating).

5 (2) Where ratable land is owned by the Crown and is held by any person under a lease therefrom, the rates and the contributions (if any) fixed and levied under this Act in respect of that land shall be paid by the holder of the lease:

cf. Act No. 41, 1919, s. 145 (2).

10 Provided that where a Crown lease is transferred by way of mortgage rates or contributions may not be recovered by the bank from the mortgagee unless and until the bank has failed to recover them from the mortgagor.

15 (3) Where ratable land is held under a lease from the Crown by two or more persons successively in the same rating year, whether with or without any interval between their holding, the Commission may, if it thinks fit—

cf. Ibid. s. 145 (4).

(a) make such adjustment (if any) of the rate and of the contribution (if any) whether paid or unpaid as it thinks proper between such persons;

20 (b) direct the bank to make any refund in accordance with the adjustment;

(c) direct the bank to write off any amount in respect of the interval between the holding of such persons.

25 The bank may recover from each of such persons his proportion of the rate and of the contribution (if any) as fixed by the adjustment.

16d. (1) (a) Rates under this Part shall be payable in respect of all ratable land.

Rates and contributions.

30 (b) Rates under this Part shall be fixed for the purpose of defraying the cost of the control, maintenance, management and repair of the works of drainage, and may, where, pursuant to section 16b of this Act, the Commission has declared that special circumstances exist which render it desirable that the interest payable in respect of the works of drainage or, as the case may be, of so much thereof

35

as

Irrigation (Drainage Rating).

as is not charged on the benefited land, should be met out of rates, be fixed also for the purpose of meeting such interest.

5 (2) Where, pursuant to section 16B of this Act, the Commission has declared that the whole or part of the capital cost of any works of drainage is to be repaid by the owners for the time being of the benefited lands, contributions shall be payable in respect of the ratable land comprising or included in the benefited lands referred to in the notification under that section.

(3) All rates and all contributions under this Part shall be fixed by the Commission.

15 (4) Rates and contributions under this Part shall be fixed in respect of the area of ratable land owned by each owner and differential rates or differential contributions may be fixed having regard to the extent of that area.

20 16E. Rates under this Part shall be fixed by the Commission for and during each rating year. Rates.

16F. (1) Before fixing rates under this Part for any rating year the Commission may, in respect of that year, make a provisional fixation, in accordance with the provisions of this Part, of the rates. Provisional fixation. cf. Act No. 44, 1912, s. 139A.

25 (2) Such provisional fixation shall be made on the basis of amounts by way of rates to be determined by the Commission so that the total of the amounts shall not exceed—

30 (a) where the provisional fixation is made before the rates under this Part are first fixed in respect of the ratable lands—one half the sum estimated by the Commission to be required by it for the purpose of defraying the cost of the control, maintenance, management and repair of the works of drainage for the rating year; or

(b)

Irrigation (Drainage Rating).

5 (b) where the provisional fixation is made in any rating year after the rates have been first fixed in respect of the ratable lands— one half the total of the rates fixed in respect of the next preceding rating year.

10 (3) Where provisional fixations have been made under this section in respect of any rating year, and any amount has been paid in or towards satisfaction of the rates so provisionally fixed, such amount shall, when the rates have been fixed for that year, pursuant to section 16E of this Act, be credited against the rates so fixed.

15 16G. (1) Every rate shall be levied by the service of a rate notice and every contribution shall be levied by the service of a contribution notice, but a rate notice and a contribution notice may be included in the same form.

Levy of rates and contributions, of Act No. 41, 1919, s. 139.

20 (2) Every rate and every contribution shall be levied in respect of a separate parcel of land, but the rate or contribution in respect thereof may be included in the rate notice or contribution notice in respect of any other land.

25 (3) Every rate and every contribution in respect of any land shall be levied upon the person ratable in respect of the land, that is to say—

(a) upon the owner, in any case where this Act provides that the rate or the contribution shall be paid by the owner; and

30 (b) upon the holder of a lease, in any case where this Act provides that the rate or the contribution shall be paid by the holder of the lease.

35 (4) In any case when more than one person is an owner or holder of the land within the meaning of this Act, the rate or contribution may be levied upon any one or more of such persons, and the bank may recover the rate or the contribution as against any person upon whom the rate or the contribution, as the case may be, is so levied.

Provided

Irrigation (Drainage Rating).

Provided that nothing in this subsection shall entitle the bank to recover more than the full amount of the rate.

5 (5) Where land which was not ratable has become ratable, the rate and the contribution (if any) in respect thereof shall be proportionate to the portion of the year during which the land is ratable.

10 (6) Where land which was ratable becomes not ratable, part of the rate and the contribution (if any) paid in respect thereof proportionate to the period of the year during which the land is not ratable shall be refunded by the bank.

15 (7) Rates and contributions shall be payable by the person ratable in respect of any land, whether or not he uses the works of drainage.

20 16H. (1) (a) Where pursuant to section 16B of this Act the Commission has declared that the whole or part of the capital cost of any works of drainage is to be repaid by the owners for the time being of the benefited lands, it shall fix the amount which is to be repaid in respect of each separate parcel of benefited land and shall also fix the terms, times and conditions of payment of that amount.

Contributions.

25 (b) Without prejudice to the generality of paragraph (a) of this subsection the Commission may, in fixing the terms, times and conditions of repayment of any such amount, provide that such repayment is to be made in one or more contributions, and where it so provides for the making of more than one contribution shall fix the times or intervals at which the contributions shall be payable and may require the payment of interest at a rate to be determined by the Commission on so much of the amount as is, for the time being, unpaid.

30 35 (2) Particulars of the amount repayable in respect of each parcel of benefited land and the terms, times and conditions of payment of contributions in respect of each such parcel fixed by the Commission shall be supplied by it to the bank.

Irrigation (Drainage Rating).

16i. (1) Every rate or rate and contribution under this Act shall be a charge on the land in respect of which the rate or contribution is levied:

Charge of rates on land.

cf. Act No. 41, 1919, s. 152.

Provided that—

- 5 (a) no such charge for any rate or contribution shall be of any effect as against a bona fide purchaser for value who at the time of purchase made due inquiry but had no notice of the liability; and
- 10 (b) a purchaser shall be deemed to have made due inquiry who has obtained a certificate of the Commission as to the amount (if any) due in respect of rates and contributions.

15 (2) Where the land is owned by the Crown the charge shall not affect or extend to—

- (a) the estate or interest of the Crown in the land; or
- 20 (b) the estate or interest of any person holding under a lease from the Crown where the lease is granted after the rate or the contribution is levied, whether the land has been previously held under a lease from the Crown or not.

25 16j. (1) Every owner shall become liable to the payment of rates fixed or provisionally fixed under this Part on the expiration of thirty days after the service upon him by the bank of a rate notice in the prescribed form.

Rate notices.

30 (2) Every owner shall become liable to the payment of contributions fixed under this Part on the expiration of thirty days after the service on him of a contribution notice in the prescribed form.

Contribution notice.

35 16k. A rate notice or a contribution notice under this Part may be served upon the owner—

Service of notices.

(a) personally; or

(b)

Irrigation (Drainage Rating).

- 5 (b) by delivering the same at or on the premises at which the owner lives or carries on business or by leaving the same with any person apparently above the age of fourteen years resident or employed thereat; or
- (c) by posting the same to the owner by prepaid letter addressed to the owner at his place of abode or business last known to the bank.

10 16L. (1) Overdue rates and overdue contributions shall be increased in accordance with this section.

Overdue rates and contributions—extra charge. cf. Act No. 41, 1919, s. 158.

15 (2) If the rates or contributions are unpaid at the expiration of three months from the due date, the amount due shall be increased by a sum calculated at the rate of five per centum per annum and the increase shall be deemed to be part of the rates or contributions, as the case may be.

20 (3) The calculation under subsection two of this section shall be made in respect only of as many complete months as have expired between the due date and the date of payment, excluding any remaining portion of a month.

(4) If in any case the percentage is less than threepence the increase shall be threepence.

25 (5) The increase in the rates or contributions under this section shall continue to apply to all unpaid rates or contributions notwithstanding that judgment may have been obtained in any court, including the district court.

30 16M. Any rate or contribution under this Part may be recovered by the bank as a debt in any court of competent jurisdiction.

Recovery of rates.

35 16N. (1) Where the land is owned or held jointly by two or more ratable persons such persons shall be jointly and severally liable for payment of the rate and the contribution (if any) to the bank, but as between themselves shall only be liable for such part of the rate or the contribution as is proportionate to his interest in the land and in the improvements thereof.

Liability where land is owned or held jointly. cf. Act No. 41, 1919, s. 147.

Irrigation (Drainage Rating).

(2) If any such person pays to the bank more than his proportionate part he may recover the excess by way of contribution from the others.

5 16o. If an owner transfers his estate or interest in ratable land he shall within thirty days of such transfer give notice thereof to the Commission. Notice of transfer to be given.

10 16p. (1) Where any owner disposes of his estate or interest in ratable land he shall nevertheless remain liable for the rate and the contribution (if any) to the same extent as if he had not disposed of his estate or interest, provided the rate or contribution is levied, either— Liability where estate or interest is transferred. cf. Act No. 41, 1919, s. 148.

- (a) before he disposes of his estate or interest; or
- 15 (b) before he has given notice to the Commission of the transfer of his estate or interest.

20 (2) If any owner who disposes of his estate or interest in ratable land pays to the bank any rate or contribution which is levied after he disposes of his estate or interest and before the notice of transfer is given to the Commission he may recover the amount from the person to whom he disposes of his estate or interest.

25 (3) As between an owner and any other person from whom or to whom he derives or disposes of his estate or interest in ratable land every rate or contribution shall be considered as accruing from day to day and shall be apportionable in respect of time accordingly.

30 16q. (1) Where a person by becoming entitled to an estate or interest in the land becomes a ratable person, he shall be liable to pay to the bank the current rate and the current contribution (if any) and all arrears of the rate or contribution owing by 35 any previous owner in respect of the land, notwithstanding the fact that he became entitled to the estate or interest after the rate or contribution was levied. Liability where a person becomes entitled to an estate or interest. cf. *Ibid.* s. 149.

Irrigation (Drainage Rating).

5 (2) If any ratable person who becomes entitled to an estate or interest in the land pays to the bank any rate or contribution in respect thereof, which was levied before he became entitled to the estate or interest, he may recover a proportion of the amount from the person who was liable for the rate or contribution at the time when the same was levied.

10 (3) The proviso to subsection one of section 16r of this Act relating to a charge for rates or contributions shall apply mutatis mutandis to the liability for rates or contributions under this section.

15 16r. (1) Any person may apply for a certificate under this section as to the amount (if any) due or payable for rates and contributions (if any) in respect of any land.

Certificate as to amount due. cf. Act No. 41, 1919, s. 160.

(2) Application for the certificate shall be made in writing, and shall state the name and address of the applicant, and the particulars of the land in respect of which the information is required.

20 (3) The Commission shall upon payment of a fee of two shillings and sixpence for each certificate having reference to a parcel of land which is benefited land forthwith give or post to the applicant a certificate in writing signed by the secretary to the Commission or other prescribed officer of the Commission and stating what (if any) sums of money are due or payable, whether as rates or as contributions, in respect of the land, with the particulars thereof, and when the same became due or payable, or that no such rates or contributions are then due or payable, as the case may be.

35 (4) The production of the certificate shall for all purposes be deemed conclusive proof in favour of a bona fide purchaser for value that at the date thereof no rates or contributions other than those stated in the certificate were due or payable in respect of the land.

Irrigation (Drainage Rating).

(5) For the purposes of this section rates or contributions shall be deemed to be due or payable, notwithstanding that the requisite period after service of any notice may not have expired.

5 (2) The Irrigation Act, 1912-1931, as amended by subsequent Acts, is further amended by inserting in section one next after the matter relating to Part IV the following new matter:—

Further
amendment
of Act
No. 73, 1912.
Sec. 1.
(Division
into Parts.)

PART IVA: RATES AND CONTRIBUTIONS—SS. 16A-16R.
