

# FARM WATER SUPPLIES ACT.

Act No. 22, 1946.

An Act to enable farmers to obtain advances for the purposes of carrying out works of water supply; to empower the Water Conservation and Irrigation Commission to carry out such works on behalf of farmers; and for purposes connected therewith. [Assented to, 4th April, 1946.]

George VI.  
No. 22, 1946.

**B**E 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 "Farm Water Supplies Act, 1946."

Short  
title and  
commence-  
ment.

(2) This Act shall commence upon a date to be appointed by the Governor and notified by proclamation published in the Gazette.

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Interpre-  
tation.

**2.** In this Act, unless the context or subject matter otherwise indicates or requires—

“Bank” means the Rural Bank of New South Wales.

“Commission” means the Water Conservation and Irrigation Commission constituted under the Irrigation Act, 1912, as amended by subsequent Acts.

“Farming lands” means lands used for farming, agricultural, horticultural, viticultural, vegetable-growing, market gardening, pastoral or grazing purposes or any other lands which the Governor by proclamation published in the Gazette declares to be farming lands for the purposes of this Act.

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

- (a) is entitled to the land for any 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
- (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; or
- (d) is the holder of a lease from the Crown or any statutory body representing the Crown.

“Works” means works necessary for the provision or improvement of the water supply to farming lands for domestic, stock or irrigation purposes, or for the preparation of land for irrigation.

Application  
for an  
advance.

**3.** (1) Any owner of farming lands who desires an advance for the purpose of the carrying out of works may make an application to the Commission for an advance. (2)

(2) Such application shall be in or to the effect of **No. 22, 1948.**  
 the prescribed form and shall be accompanied by the  
 prescribed deposit as security for the cost of the  
 investigation in connection with such application, and  
 such deposit may be applied by the Commission in pay-  
 ment or part payment of the cost of such investigation.

**4.** (1) Upon receipt of an application the Commission **Commission**  
 shall decide whether or not an advance shall be made. **may grant**  
**or refuse**  
**application.**

(2) In the event of the Commission deciding that  
 an advance shall be made it shall furnish to the applicant  
 a statement, setting out a description of the works it  
 has approved should be carried out and, where the  
 Commission so determines, the cost of the works as  
 estimated by the Commission. Where the works are to  
 be carried out by any person or body, including the  
 owner, other than the Commission, the Commission shall  
 set out in such statement the amount of the advance,  
 not exceeding ninety per centum of the cost of the  
 works as estimated by the Commission, which it has  
 tentatively approved should be made.

Where the applicant desires the Commission to carry  
 out the works and the Commission is prepared to carry  
 out the works, the Commission shall set out in such state-  
 ment the terms and conditions under which it is prepared  
 to carry out the works, including the charge to be paid  
 therefor or the manner in which such charge shall be  
 assessed, and the amount, not less than ten per centum  
 of the cost of the works as estimated by the Commission,  
 to be paid to the Commission in accordance with  
 subsection three of this section.

(3) If, on receipt of the statement referred to in  
 subsection two of this section, the applicant is desirous of  
 obtaining the advance, he shall notify the Commission  
 to that effect in the prescribed form, and where he desires  
 the works to be carried out by the Commission, the  
 notification shall be accompanied by the amount set out  
 in the statement referred to in subsection two of this  
 section to be paid to the Commission.

**5.** (1) In any case where the applicant notifies the **Bank to**  
 Commission under subsection three of section four of this **make**  
 Act that he desires the advance such advance shall, **advances.**  
 subject to the provisions of this Act, be made by the  
 Bank

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**No. 22, 1946.** Bank by way of loan bearing interest at such rate as may be fixed by the Bank and prevailing at the time the advance is made.

(2) The powers, authorities, duties and functions conferred or imposed upon the Bank by this Act shall be exercised and performed by the Bank through its Irrigation Agency.

(3) To the extent that the same are applicable and are not inconsistent with this Act, the provisions of Division I of Part VI<sub>B</sub> of the Government Savings Bank Act, 1906, as amended by subsequent Acts, shall apply to all moneys which become payable to or recoverable by or which are received by the Bank in pursuance of this Act.

Conditions precedent to advances.

**6.** No advance shall be made under this Act unless the Commission is satisfied—

- (a) that farming operations will be carried on on the farming lands efficiently and with a reasonable prospect of success; and
- (b) that the carrying out of the works in respect of such farming lands is necessary to ensure a more efficient carrying on of those operations on such lands.

Amount of advance where work not carried out by Commission.

**7.** The amount of any advance to be made to any owner where the works are to be carried out by any person or body, including the owner, other than the Commission, shall be finally determined by the Commission upon the completion of the works. Such amount shall not exceed ninety per centum of the actual cost incurred by the owner in respect of the carrying out of the works.

Payment of advance where works not carried out by Commission.

**8.** Where any works in respect of which an advance is to be made under this Act are carried out by any person or body, including the owner, other than the Commission, such advance shall be made in such manner as the Commission directs and upon the Commission certifying that the works have been carried out or are being carried out in a satisfactory manner and in accordance with the approval of the Commission.

For the purposes of this section, the Commission may by its officers and servants enter the lands of the owner and inspect the works.

**9.**

9. (1) In any case where the owner desires the Commission so to do the Commission may for or on behalf of and at the cost of the owner carry out works in respect of which an advance is to be made under this Act.

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Commission may carry out work where advance is made.

(2) Any works carried out by the Commission under this section shall be carried out on such terms and conditions, including the charge to be paid therefor or the manner in which such charge is to be assessed, as may be agreed upon by the owner and the Commission.

(3) Where the charge to be paid by the owner for any works carried out by the Commission under this section is the actual cost incurred by the Commission in carrying out the works, the amount of the actual cost shall include all proper supervision costs and overhead expenses and the certificate referred to in subsection five of this section shall be accepted as final and conclusive evidence of such actual cost.

(4) Where any works are carried out by the Commission under this section, the amount of the advance to be made by the Bank shall be the charge agreed to be paid by the owner to the Commission for the carrying out of the works less the amount paid to the Commission by the owner under the provisions of subsection three of section four of this Act.

(5) On completion of any such works carried out by the Commission, a certificate under the hand of one of the Commissioners constituting the Commission setting out the amount of the charge to be paid to the Commission for the carrying out of the works shall be forwarded to the Bank whereupon the amount of the advance shall be paid to the Commission by the Bank and thereupon the advance shall, for the purposes of this Act, be deemed to have been made to the owner.

10. (1) The Commission may let on hire any machinery, plant or equipment for the purpose of the carrying out of works by an owner of farming lands.

Commission may let machinery, etc., on hire.

(2) Where the Commission has let out on hire any machinery, plant or equipment for the purpose of carrying out any works in respect of which an advance is to be made under this Act, the Bank shall, out of the moneys to be advanced to the owner, pay to the Commission the amount of any such hire and any such amount shall, for the purposes of this Act, be deemed to have been advanced to the owner.

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Works of  
joint  
water  
supply.

**11.** (1) The owners of two or more separate parcels of land who are desirous of having water supplied to their lands by means of a joint water supply scheme may, whether or not the whole of the works are to be constructed on the land of one owner, make an application for an advance for the carrying out of works for that purpose. The provisions of subsection two of section three and of section four of this Act shall apply, mutatis mutandis, to and in respect of an application under this section.

(2) The amount of every advance made in pursuance of an application lodged under this section shall be repaid by the whole of the owners in such proportions as may be agreed upon between them. Notification of such proportions shall be given to the Commission when giving notification in accordance with subsection three of section four of this Act.

Repayment  
of advance  
secured by  
deed of  
charge.

**12.** (1) The repayment of every advance made under this Act together with interest as hereinbefore provided shall be secured by a deed of charge over the farming lands of the owner in such form as may be required by the Bank.

Where the advance is made to two or more owners under section eleven of this Act, each owner shall execute a deed of charge to secure the repayment of his respective proportion of the amount of the advance.

(2) Such deed of charge shall, where the works are to be carried out by any person or body, including the owner, other than the Commission, be expressed to be made between the owner of the farming lands and the Bank, and where the works are to be carried out by the Commission, be expressed to be made between the owner of the farming lands, the Commission and the Bank, and shall provide for the repayment of the amount advanced to such owner by consecutive half-yearly instalments within a period, not exceeding fifteen years, determined by the Commission, together with interest as aforesaid on the amount owing from time to time, and shall contain—

- (a) a condition to the effect that in the event of the owner failing to maintain the works in respect of which the advance is made to the satisfaction of  
the

the Commission the whole of the principal and interest secured by the charge shall at the option of the Bank become immediately due and payable; and

(b) such other powers, covenants, provisions, conditions and clauses as the Bank determines.

(3) Where any works are to be carried out by the Commission such deed of charge shall be executed by the owner before the commencement of the construction of the works by the Commission and where any works are to be carried out by any person or body, including the owner, other than the Commission, such deed of charge shall be executed by the owner before any advance is made to the owner.

(4) Any sum payable under a deed of charge under this section shall be paid to the Bank and shall, until so paid, be and remain a charge in its favour on the land mentioned in the deed, and shall be recoverable by the Bank in any court of competent jurisdiction from the owner of the land for the time being.

**13.** (1) Where the owner or occupier of any farming lands desires the Commission to carry out works and is prepared to pay in cash for the carrying out of such works, the Commission may carry out the works on such terms and conditions, including the charge to be paid therefor or the manner in which such charge is to be assessed, as may be agreed upon by the owner or occupier and the Commission.

Commission may carry out work where advance is not made.

(2) A certificate under the hand of one of the Commissioners constituting the Commission of the amount payable by the owner or occupier for any such works shall be forwarded to the owner or occupier, which certificate shall, where the charge to be paid for the works is the actual cost incurred by the Commission in carrying out the works, be accepted as final and conclusive evidence of the charge payable by the owner or occupier.

Such amount until paid shall be and remain a debt due to the Commission and if not paid in accordance with the terms and conditions agreed upon shall be recoverable by the Commission in any court of competent jurisdiction.

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Commission  
may carry  
out investi-  
gations,  
prepare  
estimates,  
etc.

**14.** (1) The Commission may—

- (a) supervise, on behalf of any owner, the carrying out of any works on any farming lands; and
- (b) carry out surveys and investigations and prepare designs for and estimates of cost of any works proposed to be carried out on any farming lands.

(2) The charge to be paid to the Commission for any supervision or technical work carried out by it pursuant to the provisions of subsection one of this section may—

- (a) where so agreed between the owner and the Commission be paid for in cash by the owner;
- (b) be the subject of an advance under and in accordance with the provisions of this Act; or
- (c) be included in the amount of any advance which is made under and in accordance with the provisions of this Act for the carrying out of any works.

(3) Where the charge for any supervision or technical work carried out by the Commission under the provisions of subsection one of this section is the subject of an advance under and in accordance with the provisions of this Act, or where any such charge is included in the amount of any advance being made under and in accordance with the provisions of this Act, the Bank shall, out of the moneys to be advanced to the owner, pay to the Commission the amount of such charge and any such amount paid by the Bank to the Commission shall, for the purposes of this Act, be deemed to have been advanced to the owner.

Entry on  
land and  
use of  
materials.

**15.** Where any works are to be carried out by the Commission under this Act the owner and the occupier of the farming lands on which the works are to be carried out shall for the purpose of enabling the Commission to carry out the said works grant to the Commission, its officers, workmen, servants, contractors or agents at all reasonable times, full and free right of ingress, egress and regress in, over or upon all or any of the farming lands and the right to the use of earth, stone, timber, gravel or sand or other materials or things dug, raised or obtained on such lands.

**16.**



**16.** No work to which Part II of the Water Act, 1912, **No. 22, 1946.** as amended by subsequent Acts, extends, which is proposed to be constructed or used for the purpose of— Work to be licensed.

- (a) water conservation, irrigation, water supply, or drainage; or
- (b) the prevention of inundation of land and overflow of water thereon; or
- (c) changing the course of a river,

shall be carried out under the provisions of this Act, unless and until a license, permit or authority under the said Part II has been obtained for the work.

**17.** Any person—

**Offences.**

- (a) who receives any advance from the Bank under this Act and in any manner directly or indirectly uses the same or permits the same to be used for any purpose other than the purpose for which the advance was made; or
- (b) who, while any money is owing to the Bank in respect of any advance under this Act, without the consent of the Bank removes, sells or otherwise disposes of any machinery, plant or other thing forming part of any works for the carrying out of which such advance was made,

shall be liable to a penalty not exceeding fifty pounds.

**18.** (1) The Commission may make regulations not inconsistent with this Act prescribing all matters which by this Act are required or permitted to be prescribed, or which are necessary or convenient to be prescribed for carrying this Act into effect, and may by such regulations impose a penalty not exceeding twenty pounds for any breach thereof. **Regulations.**

(2) The regulations shall—

- (a) be submitted to the Governor for his approval;
- (b) after approval by the Governor be published in the Gazette;
- (c) take effect from the date of publication thereof, or from a later date to be specified in the regulations; and

(d)

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(d) be laid before both Houses of Parliament within fourteen sitting days after publication if Parliament is then in session, and, if not, then within fourteen sitting days after the commencement of the next session.

(3) If either House of Parliament passes a resolution of which notice has been given at any time within fifteen sitting days after the regulations have been laid before such House, disallowing any regulation or part thereof, the regulation or part thereof shall thereupon cease to have effect.

**Recovery  
of  
penalties.**

**19.** Any penalty imposed by this Act or the regulations thereunder may be recovered in a summary manner in a court of petty sessions holden before a stipendiary or police magistrate.

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