

## IRRIGATION AND WATER (AMENDMENT) ACT.

### Act No. 11, 1964.

**Elizabeth II,**  
**No. 11, 1964**

An Act to include in the Irrigation Act, 1912, as amended by subsequent Acts, provisions for the acquisition of land for constitution as, or addition to, an irrigation area; to remove the necessity to refer certain applications for authorities for joint water supply schemes to the local land board; to make provisions for authorising the construction of joint water supply schemes and incidental works on land not occupied by the parties to the schemes; to restrict the transfer of holdings within the Hay Irrigation Area; for these and other purposes to amend the Irrigation Act, 1912, the Water Act, 1912, the Hay Irrigation Act, 1902, and certain other Acts in certain respects; to validate certain matters; and for purposes connected therewith. [Assented to, 9th April, 1964.]

**B**E it enacted by the Queen'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 :—

#### PART I.

##### PRELIMINARY.

Short title,  
division  
into Parts  
and citation.

**1.** (1) This Act may be cited as the "Irrigation and Water (Amendment) Act, 1964".

(2) This Act is divided into Parts as follows :—

PART I.—PRELIMINARY.

PART II.—AMENDMENTS OF THE IRRIGATION ACT,  
1912, AS AMENDED BY SUBSEQUENT ACTS.

PART

**Irrigation and Water (Amendment) Act. 195**

**PART III.—AMENDMENTS OF THE WATER ACT, 1912, No. 11, 1964  
AS AMENDED BY SUBSEQUENT ACTS.**

**PART IV.—AMENDMENTS OF THE HAY IRRIGATION  
ACT, 1902, AS AMENDED BY SUBSEQUENT ACTS,  
AND BY PROCLAMATIONS MADE UNDER SECTION  
TWELVE OF THAT ACT, AS SO AMENDED.**

**PART V.—AMENDMENTS OF THE CROWN LANDS  
CONSOLIDATION ACT, 1913, AS AMENDED BY  
SUBSEQUENT ACTS.**

**PART VI.—AMENDMENTS OF THE IRRIGATION, WATER  
AND RIVERS AND FORESHORES IMPROVEMENT  
(AMENDMENT) ACT, 1955.**

(3) The Irrigation Act, 1912, as amended by subsequent Acts and by this Act, may be cited as the Irrigation Act, 1912-1964.

(4) The Water Act, 1912, as amended by subsequent Acts and by this Act, may be cited as the Water Act, 1912-1964.

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**PART II.**

**AMENDMENTS OF THE IRRIGATION ACT, 1912, AS  
AMENDED BY SUBSEQUENT ACTS.**

**2. The Irrigation Act, 1912, as amended by subsequent Acts, is amended—**

- (a) by inserting in section 4A after the word “this” the words “or any other”;
- (b) by omitting from section five the words “two thousand” wherever occurring and by inserting in lieu thereof the words “three thousand”;

Amendment  
of Act No.  
73, 1912.

Sec. 4A.  
(Incorporation  
of Commission.)

Sec. 5.  
(Appointment  
of officers.)

(c)

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Subst.  
sec. 5F.Certain  
persons  
deemed to  
have been  
appointed  
by  
Commission.

(c) by omitting section 5F and by inserting in lieu thereof the following section :—

5F. Any person who at the date of commencement of the Irrigation and Water (Amendment) Act, 1964, is in the service of the Commission and whose yearly salary at such date does not exceed three thousand pounds shall, for the purpose of section five, section 5A, section 5B, section 5C and section 5E of this Act, be deemed to have been appointed by the Commission.

Further  
amendment  
of Act No.  
73, 1912.New sec.  
5G.Power to  
acquire  
land.

3. (1) The Irrigation Act, 1912, as amended by subsequent Acts, is further amended by inserting next before section six the following new section :—

5G. (1) Any land required for constitution as, or for the alteration of, an irrigation area may, subject to this section be acquired under the provisions of the Public Works Act, 1912, as amended by subsequent Acts, and any such acquisition shall be deemed to be made for an authorised work within the meaning of that Act, as so amended, and the Minister shall be deemed to be the Constructing Authority for the same within the meaning of that Act, as so amended.

(2) Where in pursuance of this section any land has been resumed or is proposed to be purchased, the following provisions shall have effect :—

- (a) an advisory board, constituted under the Closer Settlement (Amendment) Act, 1907, as amended by subsequent Acts, shall make a valuation of such land;
- (b) where the acquisition is by way of purchase the price to be paid shall be the price agreed upon in writing between the owner and the said advisory board;

(c)

(c) where the acquisition is by way of resumption **No. 11, 1964**  
the compensation to be paid in respect of such  
resumption shall be—

(i) where the owner has within the time specified by the said advisory board agreed in writing with the advisory board as to the compensation to be paid—the amount so agreed upon;

(ii) where the owner has not so agreed—the fair market value of the land as assessed by the said advisory board or determined by the Land and Valuation Court on appeal;

(d) in determining, for the purposes of paragraph (c) of this subsection, the compensation to be paid in respect of any such resumption the said advisory board or the Land and Valuation Court, as the case may be, shall—

(i) exclude any added value which would accrue or is likely to accrue or has accrued to the land from the construction of any works under the Barren Jack Dam and Murrumbidgee Canals Construction Act, 1906, as amended by subsequent Acts, or from the proposed construction or utilisation or the construction or utilisation of any work by the Commission pursuant to the relevant provisions of any Act whereby such work is deemed to be an authorised work within the meaning of the Public Works Act, 1912, as amended by subsequent Acts, and the Commission is the Constructing Authority for the same within the meaning of the said Act, as so amended;

(ii) have regard to the matters referred to in subsection three of section three of the Closer Settlement (Amendment) Act, 1907, as amended by subsequent Acts;

(e)

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- (e) (i) where any land is resumed under this section any owner of such land who has not agreed in writing with the said advisory board as to the compensation to be paid in respect of such resumption and who is dissatisfied with the fair market value of the land as assessed by the said advisory board may appeal to the Land and Valuation Court against such assessment in accordance with rules of court and the Land and Valuation Court shall have jurisdiction to hear and determine the appeal;
- (ii) notice of appeal shall be lodged within twenty-eight days after the assessment of the said advisory board of the fair market value of the land is received by the owner or within such further time as the Land and Valuation Court may, either generally or in any particular case, allow;
- (f) the provisions of section twenty-three of the Closer Settlement (Amendment) Act, 1909, as amended by subsequent Acts, shall *mutatis mutandis* apply to and in respect of costs in appeals under paragraph (e) of this subsection.

(3) For the purpose of this section, but not otherwise, the provisions of paragraphs (a), (c), (e) and (f) of subsection two of this section, in so far as they relate to resumptions, shall apply in lieu of the valuation under section one hundred and three of the Public Works Act, 1912, as amended by subsequent Acts, and in lieu of the provisions of sections one hundred and four, one hundred and five and one hundred and six of that Act, as so amended.

(4) The provisions of subsection one of this section shall extend to the resumption of any public road.

(5)

(5) Where any public road is resumed under the authority of this section the following provisions shall have effect notwithstanding anything contained in this section or in any other Act—

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- (a) the municipal or shire council within whose area the public road so resumed is situated shall be entitled to claim compensation therefor;
- (b) subject to paragraphs (c) to (j) inclusive of this subsection the compensation shall be limited to the capital sum expended by the council upon the construction of the road together with the sum, if any, paid by the council for the purchase or resumption of the land therefor, together with the capital sum expended by the council in providing and constructing, laying, suspending, or otherwise placing upon, under or over the road, for or in connection with any water, sewerage or drainage works, or any trading undertaking, of the council, any pipes, tunnels, poles, wires, cables or structures which, at the time of the resumption were owned and used by the council for or in connection with any such works or trading undertakings, but where any such pipes, tunnels, poles, wires, cables or other structures can reasonably continue to be used by the council for or in connection with any such works or trading undertakings, no compensation shall be payable in respect of such pipes, tunnels, poles, wires, cables or other structures;
- (c) in any case where the council decides that it is necessary to purchase or resume and construct a new road to replace that resumed it shall notify the Constructing Authority of its decision not later than three months after the date of resumption;
- (d) any notification referred to in paragraph (c) of this subsection shall be accompanied by a plan of the location of the proposed new road,  
together

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together with an estimate of the cost of the purchase or resumption and construction of the proposed new road;

(e) where, having regard to the requirements of the public as at the date upon which the public road is resumed, the Constructing Authority is of opinion—

(i) that it is not necessary to replace the road resumed; or

(ii) that the location of the proposed new road is not satisfactory; or

(iii) that the cost of the purchase or resumption and construction of the proposed new road is excessive; or

(iv) that, for any reason whatsoever, the decision of the council shall not be carried out either wholly or in part—

the Constructing Authority shall notify the council accordingly;

(f) the notification referred to in paragraph (e) of this subsection shall be accompanied by—

(i) a statement setting out the grounds upon which the opinion of the Constructing Authority is based;

(ii) details of any alternative proposal which in the opinion of the Constructing Authority should be adopted, together with such plans and estimates of costs (if any) as may be necessary to provide the council with full information in relation to the carrying out of such alternative proposal;

(g) any matter in dispute between the council and the Constructing Authority under paragraphs (e) and (f) of this subsection may be referred by either the council or the Constructing Authority to the Land and Valuation Court in accordance with rules of court;

(h)

- (h) the Land and Valuation Court shall have jurisdiction to hear and determine any matter referred to it pursuant to the provisions of paragraph (g) of this subsection and that court may in its discretion award such costs as it thinks fit in relation to any matter so referred; No. 11, 1964
- (i) the determination of the Land and Valuation Court in relation to any matter referred to it under the provisions of paragraph (g) of this subsection shall be final and shall be carried into effect by the council and the Constructing Authority;
- (j) where the Land and Valuation Court by its determination decides that it is necessary to replace any public road to which the provisions of this subsection apply the amount of compensation shall be such sum, not exceeding the cost of purchase or resumption and construction of the new road, as the said court may determine and in making such determination the said court shall have regard to the actual condition of such public road as at the date of resumption and to the extent to which the same was used by the public before that date and also to any damage to the road caused by the Constructing Authority or the Commission before that date;
- (k) for the purpose of paragraphs (c) to (j) inclusive of this subsection, the cost of constructing a new road shall include the cost of providing upon, under or over such road all such necessary pipes, tunnels, poles, wires, cables or structures required to provide services similar to those owned and used by the council in the road resumed;
- (l) any amount paid to the council by way of compensation pursuant to the provisions of paragraphs (c) to (j) inclusive of this subsection shall be placed by the council in a trust fund until expended on such new road or on any services, referred to in paragraph (k) of this subsection, upon, under or over such new road.



**Irrigation and Water (Amendment) Act.**

**No. 11, 1964** (2) (a) The several Acts mentioned in the Schedule to this Act are to the extent therein expressed hereby repealed.

Amendment of Act No. 2, 1916.  
Sec. 68.  
(Valuation for resumption purposes.)

(b) The Valuation of Land Act, 1916, as amended by subsequent Acts, is amended by omitting from subsection one of section sixty-eight the words "the Water Act, 1912, and the Murrumbidgee Irrigation Act, 1910," and by inserting in lieu thereof the words "and the Water Act, 1912,".

(c) Any action taken, or negotiations commenced, for the acquisition of any land under any of the provisions of the Acts mentioned in the Schedule to this Act may be continued and completed in all respects as if those Acts had not been repealed and the amendment made by paragraph (b) of this subsection had not been made and any such action or negotiations may be continued and completed as if paragraphs (a) and (b) of this subsection had not been enacted.

Further amendment of Act No. 73, 1912.

**4. The Irrigation Act, 1912, as amended by subsequent Acts, is further amended—**

Sec. 6.  
(Constitution of irrigation areas.)

(a) by inserting in subsection four of section six after the words "shall include" the words "land vested in the Minister pursuant to section 5G of this Act and shall include";

Sec. 11c.  
(Conversion of leaseholds.)

(b) by omitting from paragraph (d) of subsection three of section 11c the words "the purchase money shall be paid to the bank by seventy-three equal half-yearly consecutive instalments including principal and interest at such rate as may be prescribed" and by inserting in lieu thereof the words "interest on the balance of purchase money at such rate as may be prescribed for the period commencing on the date of the sale and terminating on the thirtieth day of June, or the thirty-first day of December, whichever next follows the date of the sale shall be paid by the purchaser on such thirtieth day of June, or thirty-first day of December, as the case may be, and thereafter the purchaser shall pay the balance of the purchase money to the bank by seventy-three

seventy-three equal half-yearly consecutive instalments including principal and interest at such rate as may be prescribed, the first of such instalments to be paid on the thirtieth day of June, or the thirty-first day of December, whichever next follows the date on which interest is payable as aforesaid";

- (c) by inserting at the end of subsection two of section 11E the following new proviso :—

Provided that it shall be and be deemed always to have been valid and effectual for the purchase money or annual rental to be fixed by agreement between the Commission and the purchaser or lessee, as the case may be, after the expiration of the time so allowed and before the determination of the board, and the sum so fixed shall be, or be deemed to have been, the purchase money or annual rental, as the case may be.

Sec. 11E.  
(Reappraisal of purchase money and rentals.)

### PART III.

#### AMENDMENTS OF THE WATER ACT, 1912, AS AMENDED BY SUBSEQUENT ACTS.

5. The Water Act, 1912, as amended by subsequent Acts, is amended—

Amendment of Act No. 44, 1912.

- (a) (i) by omitting from subsection six of section seven the words "to use a pump with a capacity of more than six hundred gallons per minute for the purpose of taking water for watering stock" and by inserting in lieu thereof the words "to construct or use a work to which this Part extends with a capacity of more than six hundred gallons per minute for the purpose of taking water for any of the purposes mentioned in that subsection";

Sec. 7.  
(Rights of occupiers of riparian land.)

- (ii) by inserting in paragraph (b) of the same subsection after the word "dam" the words "or excavation";

(b)

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Sec. 9.  
(Rights of  
occupiers  
of work to  
which this  
Part  
extends.)

- (b) by omitting from paragraph (a) of section nine the words "to use" and by inserting in lieu thereof the words "to construct or use".

Further  
amendment  
of Act No.  
44, 1912.

Sec. 13A.  
(Application  
for license  
by person  
who does not  
occupy land  
on which  
works are to  
be con-  
structed.)

Sec. 13E.  
(License or  
authority  
shall lapse  
if works  
not  
constructed.)

Sec. 17B.  
(Offences.)

6. The Water Act, 1912, as amended by subsequent Acts, is further amended—

- (a) by inserting next after subsection eight of section 13A the following new subsection :—

(8A) For the purpose of subsections seven and eight of this section "licensee" includes servants and agents of the licensee.

- (b) by omitting section 13E ;

- (c) (i) by omitting from paragraph (a) of subsection one of section 17B the words ", without a license or authority or permit a work to which this Part extends, and for which a license or authority or permit should be obtained" and by inserting in lieu thereof the words "a work to which this Part extends otherwise than pursuant to a right conferred on him by this Part or a license, authority or permit granted to him under this Part";

- (ii) by omitting from paragraph (a) of subsection two of the same section the words "without a license or authority or permit and for which a license or authority or permit should be obtained" and by inserting in lieu thereof the words "otherwise than pursuant to a right conferred by this Part or a license, authority or permit granted under this Part";

(d)

- (d) by omitting from subsection two of section 20A the words "The Commission shall, whether or not an objection has been lodged with it" and by inserting in lieu thereof the words "The Commission shall, where an objection has been lodged with it pursuant to subsection one of this section";

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Sec. 20A.  
(Notifica-  
tion of  
application  
and refer-  
ence to local  
land board  
or police  
magistrate.)

- (e) by omitting subsection one of section 20B and by inserting in lieu thereof the following subsection :—

Sec. 20B.  
(Authority.)

(1) If no objection to the granting of the application has been lodged pursuant to subsection one of section 20A of this Act or the Commission has received the report of the local land board or stipendiary magistrate upon any inquiry pursuant to subsection two of that section, the Commission shall decide whether or not to grant the application but the Commission shall not refuse the application unless the local land board or stipendiary magistrate, as the case may be, has recommended that the application be refused or the Minister has approved of the refusal of the application.

- (f) by inserting at the end of section 20c the following new subsection :—

Sec. 20c.  
(Renewal  
of  
authority.)

(5) In this section, "authority" means an authority issued under section 20B of this Act.

- (g) by inserting next after section 20c the following new sections :—

New secs.  
20CA, 20CB.

20CA. (1) The occupiers of the whole of the lands supplied or proposed to be supplied with water obtained by means of a joint water supply scheme (hereinafter in this section referred to as the "supply work") who desire to construct and use the supply work for the purpose of domestic water supply, stock water supply or irrigation, but one or more of whom do not occupy—

Application  
for  
authority  
by persons  
who do not  
occupy land  
on which  
works are  
to be  
constructed.

- (a) the whole of the lands on which they desire to construct the supply work; or

(b)

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- (b) the whole of the lands on which they desire to construct works (hereinafter in this section referred to as the "conveying works") to convey the water from the supply work to the lands on which they desire to use the water,

and who cannot obtain occupation of the land required for the supply work or conveying works may apply to the Commission in the form prescribed for an authority to construct the supply work and to take and use for the purpose or purposes specified in the application the water, if any, conserved or obtained thereby.

(2) The provisions of subsection two of section twenty, paragraphs (c) and (e) of subsection two of section 13A and subsection one of section 20A of this Act shall mutatis mutandis apply to an application under this section.

(3) (a) After the expiry of a period of twenty-eight days after the date of the publication of the later of such advertisements, the Commission shall decide whether the application should be granted or refused.

(b) In any case where the decision of the Commission is that the application should be refused, the applicants shall be notified in writing of such decision.

(4) In any case where the decision of the Commission is that the application should be granted, the following provisions shall have effect :—

- (a) the Commission shall direct the local land board or a stipendiary magistrate to hold a public inquiry as to the desirability of granting the application ;
- (b) the Commission shall notify the owners and occupiers of the intervening lands of the application and of the reference thereof to the local land board or the stipendiary magistrate ;

(c)

- (c) the holding of the inquiry shall be notified **No. 11, 1964** once in the Gazette and once in a newspaper published and circulating in the district where the supply work is or is proposed to be situated;
- (d) the Commission and all persons whose interests appear to be affected by the granting of the application shall be permitted to attend at the inquiry and be heard in support of, or in opposition to, the granting of the application;
- (e) the local land board or stipendiary magistrate, as the case may be, holding the inquiry shall announce its or his decision in open court and shall thereupon report in writing upon the inquiry to the Commission;
- (f) where the decision of the local land board or stipendiary magistrate is in favour of granting the application, the local land board or stipendiary magistrate, as the case may be, shall also make recommendations to the Commission as to—
- (i) the arrangements which should in its or his opinion be made by the occupiers in respect of the provision, construction, operation, maintenance and renewal of the works, the apportionment between them of the water taken by means of such works and any payments to be made by any of them in respect of the works or the water supply (hereinafter in this section referred to as the "works arrangements"); and
  - (ii) the period for which the authority should be granted, the terms, limitations and conditions which should be applied to the authority concerning the occupancy and use of the intervening

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intervening lands by the holders of the authority, the payments (if any and by whom) to be made in respect of such occupancy and use and the construction, use and maintenance of the supply work and conveying works;

- (g) on receipt of the report of the local land board or stipendiary magistrate deciding in favour of granting the application, the Commission shall determine the works arrangements and the period, terms, limitations and conditions including those relating to the taking of water;
- (h) the decision of the local land board or stipendiary magistrate as to the desirability or otherwise of granting the application shall be notified by the Commission to the applicants and to the owners and occupiers of the intervening lands and to any person who attended at the inquiry by the local land board or stipendiary magistrate in support of or in opposition to the granting of the application;
- (i) where such decision is in favour of the granting of the application the Commission shall in such notification include the period, terms, limitations and conditions to be applied to the authority and, in the notification to the applicants, the works arrangements determined by the Commission;
- (j) any owner or occupier of the intervening lands may, within twenty-eight days after the posting to him of the Commission's notification, appeal to the Land and Valuation Court against the decision of the local land board or stipendiary magistrate or the determination by the Commission of the period, terms, limitations and conditions to be applied to the authority;
- (k) the decision of the said Court shall be final;  
(l)

- (1) the appeal shall be made as prescribed by No. 11, 1964 rules of court of the Land and Valuation Court and be accompanied by a fee of five pounds as security for the costs of the appeal. Notice of appeal in the prescribed form shall be given by the appellant to the Commission upon the lodging of the appeal in the Land and Valuation Court.

(5) In dealing with the application the Commission, local land board, stipendiary magistrate or Land and Valuation Court, as the case may be, shall mutatis mutandis be governed by the provisions of subsection five of section 13A of this Act.

(6) (a) The Commission shall, in compliance with any decision of the local land board or stipendiary magistrate upon an inquiry held under subsection four of this section or of the Land and Valuation Court upon appeal favouring the granting of the application for an authority on payment of the prescribed fee and on receipt by it of the certified copy of the agreement executed by the applicants as hereinafter provided, issue to the applicants an authority for a joint water supply scheme subject to the works arrangements determined by the Commission and subject to the period, terms, limitations and conditions determined by the Commission or set out in the decision of the Land and Valuation Court, as the case may be.

(b) No authority shall be issued under this subsection for a period exceeding ten years.

(c) No authority shall be issued under this subsection pending any appeal.

(d) An authority under this section shall be issued only upon payment of a fee calculated in the manner and according to the scale prescribed by regulations under this Act.

(e)



(e) If the applicants fail to pay to the Commission within the time prescribed the fee payable upon the issue of the authority the Commission may at any time thereafter reject the application.

(f) Where an application is rejected under paragraph (e) of this subsection the deposit accompanying such application or any part of such deposit may, in the discretion of the Commission, be retained by it.

(7) (a) Within three months of being notified by the Commission of the decision of the local land board or stipendiary magistrate favouring the granting of the application, or within three months of the decision of the Land and Valuation Court upon appeal favouring the granting of the application, as the case may be, an agreement, satisfactory to the Commission, embodying the works arrangements and covering the full period for which the authority has been granted, shall be executed by the applicants.

(b) A certified copy of such agreement shall be lodged with the Commission.

(c) In the event of such certified copy not being lodged with the Commission within the said period of three months, the Commission may at any time thereafter reject the application.

(d) Where an application is rejected under paragraph (c) of this subsection, the deposit accompanying such application or any part of such deposit may, in the discretion of the Commission, be retained by it.

(8) (a) Upon the issue of an authority for a joint water supply scheme under this section the holders thereof may, during the currency of the authority, enter, occupy and use, subject to the terms, limitations and conditions applied to the authority, the intervening lands set out in the authority

authority for the purpose of providing, constructing, operating, maintaining and using the supply work and the conveying works. No. 11, 1964

(b) In the event of the authority lapsing or being cancelled, the holders' right thereunder to enter, occupy and use the intervening lands shall, subject to the provisions of subsection eleven of this section, terminate.

(9) In the event of any of the holders of the authority failing to comply with any of the terms, limitations or conditions of the authority relating to his entry upon, occupancy or use of the intervening lands, the Commission shall, on being satisfied of such failure, cancel the authority.

(10) For the purpose of subsections eight and nine of this section "holders" shall include servants and agents of the holders.

(11) For the purpose of sections 17B and 17C of this Act each person who was, immediately before the lapse or cancellation of the authority, the holder of an authority issued under this section shall be deemed to be the occupier of the intervening lands set out in such authority.

20CB. (1) (a) Subject as hereinafter in this section provided an authority may be renewed from time to time by the Commission on the application of the occupiers of the lands supplied with water obtained by means of a joint water supply scheme and on payment of the prescribed fee. Renewal of  
authorities  
under sec-  
tion 20CA.

(b) Such application shall be made before the expiration of the period for which the authority was granted or last renewed, as the case may be.

(c) No renewal shall be for a longer period than ten years.

(d) Pending the consideration of the application by the Commission, the local land board or stipendiary magistrate or the Land and Valuation Court on appeal, as the case may be, the authority shall not lapse but should the prescribed fee

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fee be not paid within the prescribed time or the certified copy of the agreement be not lodged with the Commission as hereinafter provided the authority shall lapse.

(2) (a) Where the Commission decides that an application for the renewal of an authority should be granted, the Commission shall notify the owners or occupiers of the intervening lands set out in the authority of such decision and of the period, terms, limitations and conditions to be attached to the renewal of the authority, and any such owner or occupier may, within twenty-eight days after the posting to him of such notification, lodge with the Commission an objection to the Commission's decision to grant the application or to the said period, terms, limitations and conditions. Every such objection shall be in writing and shall specify the grounds of objection.

(b) Where an objection has been lodged under the provisions of this subsection the application shall be dealt with in the manner provided in subsection four of section 20CA of this Act.

(3) (a) The Commission shall, where its decision is that an application for renewal of an authority should be granted and no objection or appeal has been lodged under subsection two of this section, or in compliance with any decision of the local land board or stipendiary magistrate upon objection or that of the Land and Valuation Court upon appeal favouring the granting of the application for renewal of such authority and on receipt by it of the certified copy of the agreement executed by the applicants as hereinafter provided, issue to the applicants an authority for a joint water supply scheme subject to the works arrangements determined by the Commission and subject to the period, terms, limitations and conditions determined by the Commission or set out in the decision of the Land and Valuation Court, as the case may be.

(b)

(b) No authority shall be issued No. 11, 1964 under this subsection pending any appeal.

(c) An authority under this section shall be issued only upon payment of a fee calculated in the manner and according to the scale prescribed by regulations under this Act.

(4) (a) Within three months of being notified of the decision of the Commission or of the local land board or stipendiary magistrate to grant the application for renewal of an authority, or within three months of the decision of the Land and Valuation Court upon appeal favouring the granting of the application, as the case may be, an agreement, satisfactory to the Commission, embodying the works arrangements and covering the full period for which the authority has been renewed, shall be executed by the applicants.

(b) A certified copy of such agreement shall be lodged with the Commission within the said period of three months.

(5) In this section, "authority" means an authority issued under section 20CA of this Act.

- (h) (i) by omitting from paragraph (c) of subsection two of section 20E the words "The Commission shall, whether or not an objection has been lodged with it" and by inserting in lieu thereof the words "The Commission shall, where an objection has been lodged with it pursuant to paragraph (b) of this subsection"; Sec. 20E. (Amended authority to include additional lands.)
- (ii) by omitting paragraph (d) of the same subsection and by inserting in lieu thereof the following paragraph : —

(d) If no objection to the granting of the application has been lodged pursuant to paragraph (b) of this subsection or the Commission has received the report of the local land board or stipendiary magistrate upon any inquiry pursuant to paragraph (c) of this subsection, the Commission shall decide whether or not to grant the application but

the

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the Commission shall not refuse the application unless the local land board or stipendiary magistrate, as the case may be, has recommended that the application be refused or the Minister has approved of the refusal of the application.

(iii) by inserting at the end of the same section the following new subsection :—

(4) The provisions of paragraphs (c), (d) and (e) of subsection two and subsection three of this section shall not apply to an application under paragraph (a) of subsection two of this section for the amendment of an authority issued under section 20CA of this Act but any such application shall be dealt with as an application for an original authority under that section :

Provided that any such amended authority shall be issued only on payment of such fee as the Commission may determine in respect of the lands which may be supplied with water under the terms of the existing authority and the additional land, and in substitution for the existing authority and for the unexpired portion of the period for which the existing authority had been granted.

Further  
amendment  
of Act No.  
44, 1912.  
Sec. 147.  
(Supply of  
water.)

**7. The Water Act, 1912, as amended by subsequent Acts, is further amended—**

(a) by inserting next after subsection two of section one hundred and forty-seven the following new subsection :—

(2A) Notwithstanding anything in this Part contained the Commission may at any time refuse to deliver water to any holding or may discontinue any delivery of water thereto if any rates or charges for water or charges for additional water are, and have been for a period of not less than six months after the due date of payment, unpaid. Any such refusal to deliver or discontinuance of delivery shall not in any way relieve the owner of the holding of liability

- liability for payment of any such rates and charges, and rates and charges shall continue to be leviable in respect of such holding as if water were available to the holding and notwithstanding such refusal or discontinuance. No. 11, 1964
- (b) by inserting in subsection two of section one hundred and fifty-eight after the word "works" the words "or for which provision for flood control and irrigation is made by the works and by works of the owner"; Sec. 158.  
(Fixing of rates.)
- (c) by inserting at the end of paragraph (b) of subsection one of section one hundred and fifty-nine the words "or upon which provision for flood control and irrigation is made by the works and by works of the owner"; Sec. 159.  
(Rates.)
- (d) by inserting in section one hundred and sixty after the word "provided" the words "or in respect of which provision for flood control and irrigation has been made by the works and by works of the owner"; Sec. 160.  
(Benefit to be taken into account.)

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#### PART IV.

#### AMENDMENTS OF THE HAY IRRIGATION ACT, 1902, AS AMENDED BY SUBSEQUENT ACTS, AND BY PROCLAMATIONS MADE UNDER SECTION TWELVE OF THAT ACT, AS SO AMENDED.

8. The Hay Irrigation Act, 1902, as amended by subsequent Acts and by proclamations made under section twelve of that Act, as so amended, is amended— Amendment of Act No. 57, 1902.

- (a) by inserting next after section seventeen the following new section :— New sec. 17A.

17A. (1) (a) Except with the consent of the Water Conservation and Irrigation Commission (hereinafter in this section referred to as "the Commission")— Restrictions as to assigns of holdings.

- (i) a lease from the Commission of land within the irrigation area shall not be transferred or assigned or subleased either in whole or in part or otherwise dealt with;

(ii)

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—

- (ii) a sublease of the whole or part of a lease from the Commission within the irrigation area shall not be assigned or subleased either in whole or in part or otherwise dealt with;
- (iii) land within the irrigation area in course of purchase in fee-simple from the Commission shall not be transferred or assigned or leased either in whole or in part or otherwise dealt with;
- (iv) a lease of the whole or part of land within the irrigation area in course of purchase in fee-simple from the Commission shall not be assigned or subleased either in whole or in part or otherwise dealt with;
- (v) land within the irrigation area, the fee-simple of which has been transferred from the Commission, shall not be transferred or leased either in whole or in part or otherwise dealt with;
- (vi) a lease of the whole or part of land within the irrigation area, the fee-simple of which has been transferred from the Commission, shall not be assigned or subleased either in whole or in part or otherwise dealt with.

(b) Application for the consent of the Commission shall be made in the prescribed form.

(c) The granting or refusing of any such application shall be entirely in the discretion of the Commission.

(d) Any transfer, assignment, lease, sublease or other dealing whatsoever, which would contravene, or have the effect of contravening the provisions of this subsection, shall not be valid for any purpose whatsoever.

(e) This subsection shall not apply to a mortgage or release of mortgage or a transfer of mortgage, and any such mortgage or release of mortgage

mortgage or transfer of mortgage may be effected without the consent of the Commission having been obtained. No. 11, 1964

(2) The consent of the Commission to a transfer or other dealing of any of the classes referred to in subsection one of this section shall be refused unless and until the Commission is satisfied that—

- (a) the whole of any moneys due to the bank or the Commission in respect of the lease or land the subject of the dealing, or such portion thereof as may be required to be paid by the bank or the Commission, has been paid; and
- (b) (i) the proposed transferee or assignee has signed an agreement that all moneys (if any) remaining owing to the Commission or the bank in respect of the lease or land the subject of the dealing shall be paid by him and that he will execute such security for the payment of all moneys owing as aforesaid to the Commission as the Commission may require or to the bank as the bank may require; and  
(ii) the proposed transferee or assignee has executed such security.

(3) (a) No person shall, except by way of mortgage, acquire by transfer, assignment, lease, sublease or otherwise any land within the irrigation area, which either by itself, or together with such land already held by him, would substantially exceed, in the opinion of the Commission, an area which, when used for any purpose for which it is reasonably fitted, would be sufficient for the maintenance in average seasons and in average circumstances of an average family.

(b) No transfer, assignment, lease or sublease or other dealing whatsoever in contravention of the provisions of this subsection shall be valid for any purpose whatsoever.

(4)



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(4) (a) In the event of the Commission refusing to consent to a transfer, assignment, lease or sublease to any person on the grounds referred to in subsection three of this section, either party may, on payment of the prescribed fee and in the prescribed manner, cause the matter to be referred to the special land board constituted under the provisions of the Crown Lands Consolidation Act, 1913, as amended by subsequent Acts, for the land district of Mirrool, for inquiry and report to the Minister.

(b) The Minister shall, upon consideration of the report of the special land board, give his decision on the matter and such decision shall be final and shall be carried into effect by the Commission.

(5) Where under the provisions of this section it becomes a matter for determination by the Commission, the special land board or the Minister as to what area, when added to the area of land already held by any person, will constitute an area which, when used for any purpose for which it is reasonably fitted, would be sufficient for the maintenance in average seasons and in average circumstances of an average family, the Commission, the special land board or the Minister shall take into account in addition to lands already held by such person, lands already held by such person's wife or husband, as the case may be, as if the said lands were lands held by such person :

Provided that nothing herein contained shall apply to a case where husband and wife are living apart under a decree for judicial separation made by any court of competent jurisdiction.

(6) (a) If a holding within the irrigation area devolves under a will or intestacy upon a person who is not qualified under subsection three of this section to hold the same, such person may nevertheless hold such holding for a period of three years after the death of the testator or intestate, or  
for

for such further period as the Commission may permit or where the holding is a lease from the Commission for the unexpired period of the lease, whichever is the shorter period. Within such period or further period such person may, upon application to the Commission, and on showing that he is then qualified under that subsection to hold the same, receive from the Commission a certificate to that effect, which shall entitle him to hold the holding; or such person may, subject to this section, sell and transfer the holding. No. 11, 1964

(b) If by the provisions of the will or by law such person has power to sell the holding, the sale may be effected under such power; in any other case the sale may be effected with the consent of all persons beneficially entitled to the holding, or by order of the Supreme Court in its equitable jurisdiction.

(c) If such person does not within such period or further period obtain the certificate of the Commission as aforesaid nor transfer the holding as aforesaid, the same shall be liable to be forfeited.

(7) (a) Any execution creditor who has seized under process of any court any holding within the irrigation area and has offered the same for sale by public auction, if the debtor's interest in the land is not then sold to a bona fide purchaser who must be a person qualified to hold the holding under subsection three of this section, may, in the manner prescribed by regulations made under this Act, go into possession of the holding.

(b) The said execution creditor shall, within two years after the commencement of such possession, or within such further period as shall be approved by the Commission or, where the holding is a lease from the Commission, before the expiration of the period of the lease, whichever is the shorter period, sell the said debtor's interest in  
the

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the holding to a bona fide purchaser. Such purchaser must be a person qualified to hold a holding under subsection three of this section, and shall be subject to all conditions affecting the debtor.

(c) In default of sale within such period or further period the holding shall be liable to be forfeited.

(8) (a) If any holding within the irrigation area is mortgaged and the mortgagee enters into possession of the same under his mortgage, he may hold the same for a period of three years after the date of his entering into possession as aforesaid, or for such further period as the Commission may permit or, where the holding is a lease from the Commission, for the unexpired period of the lease, whichever is the shorter period.

(b) Every mortgagee who enters into possession of a holding shall, within a period of twenty-eight days after the date of entering into possession, notify the Commission of such entry, and in default of notice within such period the holding shall be liable to be forfeited, but the mortgagee shall not, notwithstanding the terms of his mortgage, so enter into possession of the mortgaged holding more than once except by permission of the Commission.

(c) Such mortgagee shall not foreclose the mortgage except with the consent of the Commission. Such consent shall be applied for and may be given or refused, as in the case of a transfer, and the provisions of subsection one of this section shall apply thereto.

(d) Such mortgagee shall not transfer the holding except in accordance with this section or by way of discharge of mortgage.

(e) If within such period of three years or such further period the mortgagee does not obtain the consent of the Commission to a foreclosure or does not transfer the holding in accordance with this section, the same shall be liable to be forfeited.

(f)

(f) A foreclosure or transfer in contravention of this subsection shall be void and any agreement or contract for the sale of any holding made without the permission of the Commission shall render such holding liable to be forfeited if such agreement or contract is not submitted for the approval of the Commission within three months from date of execution thereof.

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(g) The fact that the mortgagee or some person by his authority occupies or uses any part of the mortgaged holding shall be prima facie evidence that the mortgagee has entered into possession of the holding under the mortgage.

(9) Where any holding within the irrigation area becomes liable to forfeiture under this section such forfeiture may be declared by the Commission by notification published in the Gazette. Upon publication of such notification the holding shall vest in the Commission.

(10) In subsections six, seven, eight and nine of this section the expression "holding" means—

- (a) any lease from the Commission of land within the irrigation area;
- (b) any land within the irrigation area which is in course of purchase from the Commission;
- (c) any land within the irrigation area which has been transferred from the Commission.

(11) The provisions of this section shall apply to and in respect of all leases of land within the irrigation area, all lands within the irrigation area which are in course of purchase from the Commission and all lands within the irrigation area which have been transferred from the Commission whether the lease, purchase or transfer was made before or is made after the commencement of the Irrigation and Water (Amendment) Act, 1964.

(b) by omitting subsection three of section twenty-six. Sec. 26.

(Rent of lots.)

PART

222            **Irrigation and Water (Amendment) Act.**

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**PART V.**

**AMENDMENTS OF THE CROWN LANDS CONSOLIDATION ACT,  
1913, AS AMENDED BY SUBSEQUENT ACTS.**

Amendment of Act No. 7, 1913.    **9.** The Crown Lands Consolidation Act, 1913, as amended by subsequent Acts, is amended—

Sec. 145.  
(Conversion of I.F.L. to I.F.P., &c.)    (a) by omitting from subsection one of section one hundred and forty-five the words “the conditions of which have in the opinion of the Commission been complied with,”;

Sec. 147A.  
(Re-appraisal of annual rental or of purchase money.)    (b) by inserting next after subsection two of section 147A the following new proviso :—

Provided that it shall be and be deemed always to have been valid and effectual for the annual rental or purchase money to be fixed by agreement between the Commission and the lessee or purchaser, as the case may be, after the expiration of the time so allowed and before the determination of the Special Land Board, and the sum so fixed shall be, or be deemed to have been, the annual rental or purchase money, as the case may be.

Amendment of Act No. 7, 1913.    **10.** (1) The Crown Lands Consolidation Act, 1913, as amended by subsequent Acts, is further amended—

Sec. 197.  
(Exchanges, resumptions and purchases for public purposes.)    (a) by omitting from subsection one of section one hundred and ninety-seven the words “or for constitution as an irrigation area or for the alteration of an irrigation area by including additional lands of the Crown,”;

(b) by omitting from the same subsection the words “Except as hereinafter provided the” where firstly occurring and by inserting in lieu thereof the word “The”;

(c) by omitting subsections five and six of the same section.

(2)

(2) (a) This subsection applies to the resumption of any land for constitution as an irrigation area or for the alteration of an irrigation area by including additional lands of the Crown made before the commencement of this Act under the provisions of section one hundred and ninety-seven of the Crown Lands Consolidation Act, 1913, as amended by subsequent Acts. No. 11, 1964

(b) In respect of the resumption of any land to which this subsection applies, not being a resumption of a public road, any owner who, at the commencement of this Act has not agreed in writing with an advisory board as to the compensation to be paid in respect of the land resumed in accordance with the provisions of the said section one hundred and ninety-seven and who is dissatisfied with the fair market value of the land as assessed by an advisory board (the said advisory board being hereby authorised to enter into the said agreement or make the said assessment, as the case may be) may appeal to the Land and Valuation Court within twenty-eight days after the assessment of an advisory board of the fair market value of the land is received by the owner and the provisions of section 5G of the Irrigation Act, 1912-1964, shall mutatis mutandis apply to and in respect of any such appeal.

(c) The provisions of sections one hundred and twenty-six, one hundred and thirty-five and one hundred and thirty-six of the Public Works Act, 1912, as amended by subsequent Acts, shall apply and be deemed always to have applied in respect of any resumption of land to which this subsection applies and the claim of each owner shall be dealt with or adjusted accordingly.

(d) Where, at the commencement of this Act, an owner has not agreed in writing with an advisory board, as mentioned in paragraph (b) of this subsection, as to the compensation to be paid in respect of the land resumed and a determination of that compensation has not been made by the Land and Valuation Court, the provisions of section one hundred and twenty-four of the Public Works Act, 1912, as

amended

224            **Irrigation and Water (Amendment) Act.**

**No. 11, 1964** amended by subsequent Acts, which relate to regard being had to the damage (if any) caused by the severing of the lands taken from other lands of the owner, shall mutatis mutandis apply in respect of any resumption of land to which this subsection applies and the claim of each owner shall be dealt with accordingly.

(e) In respect of the resumption of a public road, the provisions of subsection six of section one hundred and ninety-seven of the Crown Lands Consolidation Act, 1913, as amended by subsequent Acts, as in force before the commencement of this Act, shall continue to apply notwithstanding the amendments made by subsection one of this section.

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**PART VI.**

**AMENDMENTS OF THE IRRIGATION, WATER AND RIVERS AND  
FORESHORES IMPROVEMENT (AMENDMENT) ACT, 1955.**

**Amendment of Act No. 12, 1955.**    **11.** (1) The Irrigation, Water and Rivers and Foreshores Improvement (Amendment) Act, 1955, is amended—

**Sec. 20.**  
(Reduction  
of rentals  
of certain  
leases.)

- (a) by omitting from subparagraph (i) of paragraph (a) of subsection one of section twenty the words “constituted under” and by inserting in lieu thereof the words “as defined in section three of”;
- (b) by omitting subparagraph (ii) of paragraph (b) of the same subsection;
- (c) by omitting from subparagraph (v) of the same paragraph the words “throughout the whole of the period” and by inserting in lieu thereof the word “continuously”;

(d)

- (d) by omitting from the same subparagraph the words **No. 11, 1964** "to the first day of January, one thousand nine hundred and forty-eight";
- (e) by omitting from paragraph (a) of the same subparagraph the words "during such period" and by inserting in lieu thereof the words "since that day";
- (f) by inserting at the end of subsection three the following new proviso :—

Provided further that when any new lease referred to in paragraph (b) of subsection one of this section has been granted—

- (a) before the first day of January, one thousand nine hundred and forty-eight, the annual rental for such new lease shall, subject to this section, as from the said first day of January and for the unexpired portion of the term of such new lease be the annual rental of such new lease at the commencement thereof reduced by twenty-two and one-half per centum;
- (b) after the first day of January, one thousand nine hundred and forty-eight, the annual rental for such new lease shall, subject to this section, as from the commencement of such new lease and for the term thereof be the annual rental of such new lease at the said commencement reduced by twenty-two and one-half per centum.

(2) This section shall be deemed to have commenced upon the first day of January, one thousand nine hundred and forty-eight.



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## SCHEDULE.

Sec. 3 (2).

No. of Act.	Name of Act.	Extent of repeal.
1910, No. 13	Murrumbidgee Irrigation Area Resumption Act, 1910.	The whole.
1912, No. 73	Irrigation Act, 1912 ..	The words “, except—Sections one, six, twenty-three, and twenty-five. The Schedules. The definition of ‘The Construction Act’ in section three.” where occurring in subsection one of section two.
1918, No. 38	Irrigation (Amendment) Act, 1918.	The matter relating to Part I in subsection one of section one. Section two.
1940, No. 30	Murrumbidgee Irrigation (Amendment) Act, 1940.	The whole.
1946, No. 14	War Service Land Settlement and Closer Settlement (Amendment) Act, 1945.	Section eleven.