



ANNO QUINTO

GEORGII VI REGIS.

A.D. 1941.

No. 38 of 1941.

An Act to amend the Irrigation Act, 1930-1936.

[Assented to 20th November, 1941.]

BE IT ENACTED by the Governor of the State of South Australia, with the advice and consent of the Parliament thereof, as follows :

Short titles.

1. (1) This Act may be cited as the "Irrigation Act Amendment Act, 1941".

(2) The Irrigation Act, 1930-1936, as amended by this Act, may be cited as the "Irrigation Act, 1930-1941".

(3) The Irrigation Act, 1930-1936, is hereinafter referred to as "the principal Act".

Amendment of
s. 6 of
principal Act—
Definition of
"ratable
land".

2. The definition of "ratable land" in section 6 of the principal Act is amended by striking out the words "other than unleased Crown lands" therein and by inserting in lieu thereof the words "for which a water supply is available".

Amendment of
s. 23 of
principal Act—
Payment of
rent.

3. Section 23 of the principal Act is amended—

(a) by adding at the end of paragraph (b) of subsection (2) thereof the word "or"; and

(b) by inserting in subsection (2) thereof after paragraph (b) the following paragraph :—

(c) that there is any other reason why the provisions of subsection (1) hereof should not apply,

Amendment of
s. 25 of
Principal Act—
Area of
holdings.

4. Section 25 of the principal Act is amended by striking out the words "in the Jervois Irrigation Area" in the eighth line

thereof and by inserting in lieu thereof the words " which is reclaimed land ".

5. Section 47 of the principal Act is amended—

(a) by striking out the word " Governor " in the fifth line thereof and by inserting in lieu thereof the word " Minister ";

(b) by inserting therein after subsection (1) thereof the following subsection :—

(1a) The lessee under any perpetual lease subject to revaluation or under any miscellaneous lease, of any land included in any irrigation area, may tender a surrender of his lease for the purpose of obtaining a perpetual lease under this Act, and the Minister may, if he deems proper, accept such surrender in the name and on behalf of His Majesty the King.

Amendment of s. 47 of principal Act—
Surrender for perpetual lease.

6. The principal Act is amended by inserting therein after section 48 the following section :—

48a. If the Minister is satisfied that any block is such that the lessee thereof has no reasonable prospects of meeting his commitments from the income to be derived from the block, the lessee may surrender the lease and the Minister may accept the surrender in the name of and on behalf of His Majesty the King. In any such case, the Minister may, out of moneys to be provided by Parliament, make such *ex gratia* payment to the lessee upon the surrender of his lease as the Minister, on the recommendation of the Land Board, thinks just and proper. No such *ex gratia* payment shall exceed the sum of three hundred pounds.

Amendment of principal Act—

Power to accept surrender of uneconomic block.

7. Section 68 of the principal Act is amended by adding at the end thereof the following paragraph :—

xv. for the purpose of supplying water to any block in any irrigation area, to divert water through any channel on any other block.

Amendment of s. 68 of principal Act—

Powers of Minister.

8. Section 74 of the principal Act is amended by striking out the figure " (3) " in the fourth line of subsection (5) thereof and by inserting in lieu thereof the figure " (2) ".

Amendment of s. 74 of principal Act—
Irrigation rates.

9. Section 75 of the principal Act is amended by striking out the words " fixed rate " in the second line of subsection (3) thereof and by inserting in lieu thereof the words " rate of five ".

Amendment of s. 75 of principal Act—
Recovery of rates.

Repeal of
ss. 60-64 of
principal Act.

10. Sections 60 to 64 (both inclusive) of the principal Act are repealed.

Amendment of
principal Act—

11. Part V. of the principal Act is amended by adding at the end thereof the following Division :—

DIVISION III.

DRAINAGE.

Drainage
committee.

80a. (1) There shall be a committee to be called the "Drainage Committee".

(2) There shall be three members of the committee who shall be appointed by the Minister as follows :—

I. One member shall be an officer of the Irrigation Branch of the Department of Lands :

II. One member shall be an officer of the Soils Division of the Council for Scientific and Industrial Research :

III. One member shall be a drainage engineer.

(3) Members of the committee shall be appointed for a term of four years and shall, from moneys provided by Parliament, be paid such fees and allowances as are from time to time fixed by the Minister.

(4) The Minister shall appoint one of the members of the committee to be the chairman thereof.

(5) In addition to any powers and duties specifically vested in or imposed upon the committee by this Division, the committee shall perform and undertake such powers and duties as may be entrusted to it by the Minister.

Power of
Minister to
carry out
drainage
works.

80b. (1) For the purpose of draining any block or blocks in any irrigation area, or for the prevention or removal of seepage conditions in any irrigation area, the Minister may from time to time carry out any drainage works.

(2) All such drainage works shall be as follows, namely :—

I. A drain into which drainage is discharged from a block or blocks and is by means of the drain discharged directly or indirectly into the River Murray or into any place which provides an outlet of a permanent nature, together with any other works necessary for the operation thereof or com-

plementary thereto. Any such drain and works are hereinafter in this Division referred to as a "permanent outlet":

II. Any other drainage works, together with any other works necessary for the operation thereof or complementary thereto, for the drainage of any block or blocks. Any such works are hereinafter in this Division referred to as a "temporary outlet".

(3) For the purpose of carrying out any drainage works, the Minister or any person authorized by him may—

- (a) enter and remain upon any land for such time as is necessary to enable the works to be completed;
- (b) do all things necessary to carry out the said works.

80c. For the purposes of this Division, a block shall be deemed to have direct access to an outlet if the drain or other works constituting the outlet or some part thereof is constructed on the block or up to the boundary of the block or upon any road or Crown lands abutting the block.

Where outlet directly available to block.

1941/2/27
to 1941/2/27
1941/2/27

80d. (1) Upon the completion of any drainage works as aforesaid the Minister shall by notice in the *Gazette* specify which of the said works constitute a permanent outlet or outlets and which of the said works constitute a temporary outlet or outlets and state the block or blocks in any irrigation area which—

Notice of provision of drainage for blocks.

- (a) have direct access to any such permanent outlet;
- (b) have direct access to any such temporary outlet.

(2) If any drainage works are completed before the passing of the Irrigation Act Amendment Act, 1941, the Minister, as soon as may be after the said passing, shall by notice in the *Gazette*, specify which of the said works constitute a permanent outlet or outlets and which of the said works constitute a temporary outlet or outlets and state the block or blocks in any irrigation area which—

- (a) have direct access to any such permanent outlet;
or
- (b) have direct access to any such temporary outlet.

(3) Every such notice shall also state—

- (a) the date of the completion of the outlet; and
- (b) the cost of the construction of the outlet.

(4) Every such notice shall be conclusive as to the date of completion and the cost of the construction of any such outlet and as to whether the outlet is a permanent outlet or a temporary outlet and as to what blocks have direct access to the outlet.

Settlers to
drain blocks.

80e. (1) All lessees of blocks which have direct access to any such outlet shall take such measures, by the connection of private drains or channels with the completed outlet, as the Minister considers necessary to drain their blocks effectively.

(2) If any lessee fails to comply with the provisions of this section and such default continues for one month after service upon him of a notice in writing by the Minister requiring him to so comply, the Minister may take such measures as aforesaid on behalf of the said lessee, and the cost thereof shall be a debt due to the Minister and until paid shall be a charge upon the land comprised in the block.

Payment of
cost of
outlet.

80f. (1) The cost of providing any outlet shall be paid to the Minister by the lessees of the blocks which have direct access to the outlet, as follows :—

- I. If one block only has direct access to the outlet the lessee shall pay the whole of the cost of the outlet :
- II. If two or more blocks have direct access to the outlet the cost of the outlet shall be apportioned by the Minister among the lessees of those blocks in direct proportion to the ratable land comprised in each of the said blocks :
- III. In no case shall any lessee be required to pay more than five pounds per acre of the ratable land comprised in his block :
- IV. The amounts payable as aforesaid shall be payable in ten equal annual instalments :
- V. If the outlet is constructed after the passing of the Irrigation Act Amendment Act, 1941, the first of the said instalments shall be payable at the expiration of three years after the publication of the notice required to be given by section 80d, and if the outlet was constructed before the passing of the Irrigation Act Amendment Act, 1941, the first of the said instalments shall be payable at the expiration of three years after the completion of the outlet or of three months after the publication of the notice required to be given by section 80d, whichever last occurs.

(2) If any such outlet is a temporary outlet and before all the instalments payable as aforesaid are paid the Minister is satisfied, on the report of the Drainage Committee, that the outlet has ceased to function as an effective outlet, no further instalments shall be payable under this section in respect of the temporary outlet unless and until the Minister, on the report of the Drainage Committee, is satisfied that the outlet has again become an effective outlet. If any instalments are paid under this section in respect of a temporary outlet for any block and subsequently a permanent outlet is constructed and the block has direct access thereto, the amount which would otherwise be payable in respect of that block for the payment of the cost of the permanent outlet shall be reduced by any amounts paid in respect of the temporary outlet.

80g. (1) For the maintenance of any outlet in respect of which notice has been given as provided by section 80d the Minister may recover an annual charge from the lessees of the blocks which have direct access to the outlet.

Drainage charge before constitution of drainage area.

(2) The annual charge shall be an amount sufficient, in the opinion of the Minister, to pay—

- (a) the cost of cleansing, repairing, and maintaining the outlet ;
- (b) the expenses connected with the care, control, and management of the outlet ;
- (c) interest at the fixed rate on the cost of the construction of the outlet, or on the balance of such cost for the time being remaining unpaid.

(3) The amount to be charged as aforesaid shall be such amount per acre of ratable land comprised in such blocks as is fixed by the Minister. Until the thirtieth day of June, nineteen hundred and forty-six, the amount fixed as aforesaid shall not exceed ten shillings per acre of ratable land. After that date the Minister may by notice in the *Gazette* fix, for any successive period of five years, an amount per acre of ratable land which the amount to be fixed as aforesaid shall not exceed.

(4) If the outlet in respect of which the charge under this section is made is constructed after the passing of the Irrigation Act Amendment Act, 1941, no charge under this section shall be made until three years after the publication of the notice required to be given by section 80d, and if the outlet was constructed before the passing of the Irrigation Act Amendment Act, 1941, no charge under this section shall be made until the expiration of three years after the completion of the outlet or of three months after the publication of the notice required to be

given by section 80d, whichever last occurs. The Minister may, on the recommendation of the Drainage Committee, direct that the said charge shall, in respect of any such outlet, commence to be payable from any date later than as provided by this subsection.

(5) If the outlet in respect of which the annual charge is made is a temporary outlet, and the Minister is satisfied on the report of the Drainage Committee that the outlet has ceased to function as an effective outlet, no further annual charge shall be payable in respect of that outlet unless and until the Minister is satisfied, on the report of the Drainage Committee, that the outlet has again become an effective outlet.

Drainage area:

80h. (1) The Minister, on the recommendation of the Drainage Committee, may by notice in the *Gazette* declare any area in an irrigation area to be a drainage area and may, on the said recommendation and by notice published as aforesaid, from time to time alter the boundaries of any drainage area.

(2) The land to be included in a drainage area shall be—

(a) blocks which have direct access to an outlet :

(b) blocks which do not have direct access to an outlet but which, in the opinion of the Drainage Committee, are directly or indirectly benefited by the construction of any outlet :

(c) blocks from which, in the opinion of the Drainage Committee, the drainage or seepage flows on to, in to, or under any other blocks and thence into an outlet.

(3) No drainage area shall be constituted unless the Drainage Committee advises the Minister that, in the opinion of the committee, substantial provision has been made, by the construction of permanent outlets or temporary outlets, or both, for the drainage of the area.

Drainage rate.

80i. (1) The Minister may declare a drainage rate on all the ratable lands comprised in any blocks within a drainage area.

(2) The drainage rate shall be an annual rate and shall be of such amount per acre of ratable land comprised in any blocks within the drainage area as will be sufficient, in the opinion of the Minister, to pay out of the proceeds thereof—

(a) the cost of cleansing, repairing, and maintaining all outlets constructed by the Minister for the drainage of the drainage area :

- (b) the expenses connected with the care, control, and management of such outlets :
- (c) interest at the fixed rate on the cost of the construction of such outlets or on the balance of such cost for the time being remaining unpaid.
- (3) Until the thirtieth day of June, nineteen hundred and forty-six, the drainage rate shall not exceed ten shillings per acre of ratable land. After that date the Minister may, by notice in the *Gazette*, fix, for every successive period of five years, an amount per acre of ratable land which the drainage rate in any drainage area shall not exceed.
- (4) After a drainage area has been constituted no charge shall be made pursuant to section 80g in respect of any block included in the drainage area but every such block shall be rated as provided by this section.
- (5) In any case in which an application has been made by the lessee of any block for the construction of an outlet for the drainage thereof but such outlet has not been constructed and the Drainage Committee is of opinion that for the effective drainage of the block an outlet is necessary, the Minister, on the recommendation of the Drainage Committee, may by notice in the *Gazette* exempt the block from rating under this section for such period as is from time to time fixed by the Minister.
- (6) If any block has direct access to a temporary outlet and the Minister is satisfied, on the report of the Drainage Committee, that the outlet has ceased to function as an effective outlet, the Minister, on the recommendation of the Drainage Committee, may by notice in the *Gazette* exempt the block from rating under this section for such period as is from time to time fixed by the Minister.
- (7) No ratable land shall be subject to any drainage rate until three years after the constitution of the drainage area or such longer period as the Minister, on the recommendation of the Drainage Committee, fixes : Provided that in the case of any ratable land comprised in a block having direct access to an outlet constructed after the passing of the Irrigation Act Amendment Act, 1941, the land shall be subject to the drainage rate after the expiration of three years from the giving of notice as provided by section 80d, or the date of the constitution of the drainage area, whichever last occurs : Provided further that in the case of any ratable land comprised in a block having direct access to an outlet constructed before the passing of

the Irrigation Act Amendment Act, 1941, the land shall be subject to the drainage rate after the expiration of three years from the completion of the outlet or the date of the proclamation of the drainage area, whichever last occurs.

Provision for recovery of charges and drainage rates.

80j. (1) Notice of amounts payable pursuant to section 80f shall be published in the *Gazette* and shall describe the blocks in respect of which the amounts are payable, the irrigation area in which the blocks are situated, the amount per acre of ratable land payable, and the times when and place where the said amounts are payable.

(2) Notice of any annual charge fixed by the Minister shall be published in the *Gazette* and shall describe the blocks in respect of which it is payable, the irrigation area in which the blocks are situated, the amount per acre of ratable land of the charge, the period for which it is payable, and the time when and place where it is payable.

(3) Notice of any drainage rate declared by the Minister shall be published in the *Gazette* and shall state the name of the irrigation area and the drainage area in respect of which it is payable, the amount per ratable acre of the rate, the period for which it is declared, and the time when and place where it is payable.

(4) All amounts payable pursuant to section 80f and all annual charges and drainage rates shall be due and payable by and recoverable from the lessees for the time being of the blocks in respect of which the same are payable, and shall, until payment, be a continual charge upon the land comprised in those blocks, and no statute of limitations shall affect any action or other proceedings which may be brought for the recovery or enforcement of such amounts or charges or rates. The Minister shall have the like powers of distress and sale in cases where such amounts or charges or rates are unpaid as are conferred upon the Commissioner of Waterworks by the Waterworks Act, 1932.

(5) If any such amount or charge or rate is not paid within one month after it falls due, interest at the rate of five pounds per centum per annum from the time when it falls due until payment thereof shall be added to the amount or charge or rate, and shall be payable by the person liable to pay the same. The Minister may, in any case of hardship, remit the whole or any part of any interest payable pursuant to this subsection.

12. The principal Act is amended by inserting therein after Part VII the following Part :—

Amendment of principal Act—

PART VIIA.

POWERS WITH RESPECT TO THE RECOVERY OF
MONEYS DUE.

113a. In this Part—

Interpretation.

“ landholder ” means—

- (a) a lessee of any block within an irrigation area ;
- (b) the holder on lease or agreement for sale or purchase of any land which is charged with a mortgage to secure the repayment to the Minister of Irrigation of any advance made under the Discharged Soldiers Settlement Act, 1934-1940, or any Act repealed by that Act ;
- (c) the owner of any estate of freehold in land which is charged with a mortgage to secure the repayment to the Minister of Irrigation of any advance made under the Discharged Soldiers Settlement Act, 1934-1940, or any Act repealed by that Act :

“ person ” includes firm, company, body corporate, and incorporated or unincorporated association of persons.

113b. (1) Every person carrying on the business of a fruit packing-house, winery, distillery, fruit agent, fruit cannery, butter factory, or dairy produce merchant, or other business through whom in the course of the business of such person any part of the crop or produce of any landholder is marketed or to whom in the course of the business of such person any part of the crop or produce of any landholder is sold or delivered by the landholder or agreed by the landholder to be sold or delivered, shall keep such books, accounts and records as are sufficient to disclose full particulars of the following matters :—

Duty of agent, etc., to keep books.

- I. The quantity of any crop or produce delivered or sold by any landholder to such person or held for sale or sold on behalf of any landholder by such person :
- II. The amount paid or credited to any landholder by any such person on the sale of any such crop or produce :
- III. The amount of any advances made to any landholder by such person :

iv. The value of any goods supplied to any landholder by such person :

v. The amount standing to the credit or debit of any landholder in the accounts of such person.

(2) If any such person fails to keep any such books, accounts, or records, such person shall be guilty of an offence and liable to a penalty not exceeding fifty pounds.

Power to
inspect books,
etc., of
packing
sheds, etc.

113c. (1) If any amount is due and payable to the Minister by a landholder (whether payable under this Act or the Discharged Soldiers Settlement Act, 1934-1940, or any Act repealed by this Act or the said Act) the following provisions shall apply with respect to such landholder.

(2) The Minister, or any person authorized in writing by the Minister, may at any time inspect and make copies of any entries (whether made before or after the passing of the Irrigation Act Amendment Act, 1941) in the books, accounts, and records of any person carrying on the business of a fruit packing-house, winery, distillery, fruit agent, fruit cannery, butter factory, or dairy produce merchant, or through whom in the course of business any part of the crop or produce of any landholder is marketed, or to whom in the course of business any part of the crop or produce of any landholder is sold or delivered or agreed to be sold or delivered, for the purpose of ascertaining—

- (a) the quantity of any crop or produce delivered or sold or agreed to be delivered or sold by any such landholder to such person or held for sale or sold on behalf of any such landholder by such person ;
- (b) the amount paid or agreed to be paid or credited to any such landholder by any such person on the sale of any such crop or produce ;
- (c) the amount of any advances made to any such landholder by such person ;
- (d) the value of any goods supplied to any such landholder by such person ;
- (e) the amount standing to the credit or debit of any such landholder in the accounts of such person.

(3) If any person refuses or neglects to permit the Minister or any person authorized as aforesaid to inspect or make any copy of any entry in any such books, accounts, or records, or in any way wilfully hinders the Minister or any person authorized as aforesaid in any such inspection, such person shall be guilty of an offence and liable to a penalty not exceeding fifty pounds.

113d. (1) If any amount is due and payable to the Minister by a landholder (whether payable under this Act or under the Discharged Soldiers Settlement Act, 1934-1940, or any Act repealed by this Act or the said Act) the Minister may, by notice in writing, from time to time require the landholder during such period as is specified in the notice to keep at the place of business of the landholder such books, accounts and records as are sufficient to disclose full particulars of the following matters :—

Duty of landholder to keep books.

- i. The quantity of any crop or produce delivered or sold by the landholder to any person :
- ii. Any amounts paid or credited to the landholder by any person on the sale of any such crop or produce :
- iii. The amount of any advance made to the landholder by any person to whom any such crop or produce is delivered or sold or is agreed to be delivered or sold :
- iv. The value of any goods supplied to the landholder by any person to whom any such crop or produce is delivered or sold or is agreed to be delivered or sold.

(2) The Minister, or any person authorized in writing by the Minister, may at any reasonable time enter any place of business of the landholder and inspect and make copies of any entries in any such books, accounts or records.

(3) If any landholder fails to comply with any notice given pursuant to subsection (1) thereof or refuses or neglects to permit the Minister or any person authorized as aforesaid to inspect or make a copy of any entry in such books, accounts or records, or in any way wilfully hinders the Minister or any person authorized as aforesaid in such inspection, he shall be guilty of an offence and liable to a penalty not exceeding fifty pounds.

13. The principal Act is amended by inserting therein after section 118 the following section :—

Amendment of principal Act—

118a. (1) If any channel for the supply of water to two contiguous blocks is constructed on or near the common boundary of the blocks, and the channel is constructed so that part thereof is situated on one of the blocks and part thereof is situated on the other of the blocks, the lessee of each such block may, for the purposes of the irrigation of his block, divert, use, and take water

Use of party channels and drains.

from such part of the channel as is situated on the other block and may construct any works upon such other block as are necessary to divert, use, or take water as aforesaid and may for such purpose enter upon such other block.

(2) If any drain for the drainage of two contiguous blocks is constructed on or near the common boundary of the blocks and the drain is constructed so that part thereof is situated on one of the blocks and part thereof is situated on the other of the blocks, the lessee of each such block may, for the purposes of the drainage of his block, divert any water from his block into such part of the drain as is situated on the other block and may construct any works upon such other block as are necessary to divert water as aforesaid and may for such purpose enter upon such other block.

Amendment of
s. 117 of
principal Act—
Management
of certain
lands.

14. Section 117 of the principal Act is amended—

- (a) by striking out the word “ Commission ” in the third line thereof and by inserting in lieu thereof the word “ Minister ” ; and
- (b) by inserting after the word “ Act ” in the fourth line thereof the words “ or by the Commission under the provisions of ”.

Amendment of
Part IX. of
principal Act—

15. Part IX of the principal Act is amended by inserting therein after section 121 the following section :—

Power of
Minister to
carry out
work on
behalf of
lessee.

121a. (1) The Minister may, at the request and at the cost of the lessee of any block, carry out work on the block for the purpose of the drainage or the irrigation of the block or for any other purpose of a similar nature.

(2) The Minister may enter into such arrangements as he thinks fit for the payment of the said cost and interest thereon by the lessee, and may take such security for the payment of the said costs and interest as he thinks fit.

Amendment of
s. 4 of
principal Act—
Arrangement.

16. Section 4 of the principal Act is amended—

- (a) by inserting therein after the fifteenth line thereof the words :—“ Division III.—Drainage ” ; and
- (b) by inserting therein after the twenty-first line thereof the words :—“ Part VIIA.—Powers with respect to the recovery of moneys ”.

In the name and on behalf of His Majesty, I hereby assent to this Bill.

C. M. BARCLAY-HARVEY, Governor.