

IRRIGATION (AMENDMENT) ACT.

New South Wales



ANNO VICESIMO SECUNDO

ELIZABETHÆ II REGINÆ

Act No. 3, 1973.

An Act to make further provision with respect to the sinking of bores or wells by the Water Conservation and Irrigation Commission; for this purpose to amend the Irrigation Act, 1912; to reduce the indebtedness to the Crown of the Goodnight Irrigation Trust; to provide for the fixing and levying by that Trust of a supplementary drainage rate; and for purposes connected therewith. [Assented to, 21st March, 1973.]

BE

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BE it enacted by the Queen's Most Excellent Majesty, by No. 3, 1973 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.

1. This Act may be cited as the "Irrigation (Amendment) Act, 1973". Short title.

2. This Act is divided as follows :—

Division of
Act.

PART I.—PRELIMINARY—ss. 1, 2.

PART II.—AMENDMENT OF IRRIGATION ACT, 1912—
s. 3.

PART III.—GOODNIGHT IRRIGATION TRUST—ss. 4–12.

PART II.

AMENDMENT OF IRRIGATION ACT, 1912.

3. The Irrigation Act, 1912, is amended by inserting next after section 8B the following new section :—

Amendment
of Act No.
73, 1912.
New sec.
8BA.
Sinking of
bores or
wells, etc.,
on payment
therefor
being made
in advance.

8BA. (1) Section 8B does not apply in any case where the owner or occupier of land pays in cash in advance to the Commission an amount which the

Commission

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Commission estimates will be not less than the probable cost of sinking a bore or well on that land, or of carrying out thereon any works, being works referred to in subsection (3A) of section 8B.

(2) In any such case the Commission may, on the application of the owner or occupier of the land, sink the bore or well, or carry out the works, on such terms and conditions (including terms and conditions relating to the charge for so doing) as are agreed upon by the Commission and the owner or occupier of the land.

(3) Where the charge agreed upon by the Commission and the owner or occupier of the land for sinking the bore or well, or for carrying out the works, is the actual cost to the Commission of so doing, there may be included as part of that cost all proper supervision costs and overhead expenses incurred by the Commission.

(4) When the bore or well has been sunk or the works carried out one of the Commissioners constituting the Commission shall issue a certificate under his hand certifying an amount as the amount of the charge for sinking the bore or well, or for carrying out the works, and a copy of that certificate shall be sent to the owner or occupier of the land.

(5) A certificate issued pursuant to subsection (4) shall be received in evidence in any proceedings and shall—

(a) in any case where the charge agreed upon by the Commission and the owner or occupier of the land for sinking the bore or well, or for carrying out the works, is the actual cost to the Commission of so doing—be conclusive evidence that the amount certified therein is the amount of such actual cost; or

(b)

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(b) in any other case—be prima facie evidence that **No. 3, 1973**
the amount certified therein is the amount of the
charge agreed upon by the Commission and the
owner or occupier of the land for sinking the
bore or well, or for carrying out the works.

(6) Where the amount of the charge for sinking
a bore or well, or for carrying out any works—

(a) is less than the amount paid in advance pursuant
to this section to the Commission by the owner
or occupier of the land, the Commission shall
pay the excess to the person who so paid the
amount in advance; or

(b) is greater than the amount so paid, the balance
shall be a debt due to the Commission and may
be recovered by the Commission in any court of
competent jurisdiction from the person who so
paid the amount in advance.

(7) For the purposes of this section “occupier”,
in relation to any land, means the person in actual occu-
pation of that land or, where there is no person in actual
occupation, the holder of the land under any tenure.

PART III.

GOODNIGHT IRRIGATION TRUST.

4. (1) In this Part, except in so far as the context or **Interpreta-**
subject matter otherwise indicates or requires—**tion.**

“account” means the savings bank account opened by
the Trustees pursuant to section 9;

“current

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“current owner”, in relation to any lands, means the owner of the lands on the date upon which the supplementary rate is levied upon the lands;

“existing drainage rate” means a drainage rate fixed and levied under the Water Act, 1912, by the Trustees before 1st July, 1972, upon lands in the trust district which benefited by the works of drainage;

“former owner”, in relation to any lands, means a person who was an owner of the lands before the date on which the supplementary rate is levied upon the lands;

“reduced amount” means an amount of \$16,135;

“supplementary rate” means a rate fixed under section 8 (1);

“the Trust” means the Goodnight Irrigation Trust constituted under Part III of the Water Act, 1912, on 28th May, 1926, by proclamation in the Gazette;

“the Trustees” means the Trustees of the Trust;

“works of drainage” means the three several works of drainage the completion and transfer to the Trust of which were notified in the Gazette pursuant to section 65A (3) of the Water Act, 1912, on 16th January, 1959, and on 27th April, 1962.

(2) Subject to subsection (1), section 28 of the Water Act, 1912, applies for the purpose of interpreting this Part as it applies for the purpose of interpreting Part III of the Water Act, 1912.

(3) Where an existing drainage rate was paid in respect of lands when the lands were owned—

(a) by one person who is not the sole owner of the lands on the date when the supplementary rate is levied upon the lands; or

(b)

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- (b) jointly by a group of persons and that group of persons, unaltered in number or in the identity of the persons making up the group, is not the owner of the lands on that date, No. 3, 1973

the existing drainage rate shall be treated as having been paid by a former owner of the lands and not by the current owner of the lands.

5. (1) Notwithstanding any provision in the Water Act, 1912, as on and from the date upon which this Act commences—

- (a) the Trust shall cease to be liable to pay to the Crown the amount which, immediately before that commencement, it was liable so to pay in respect of the works of drainage, together with any interest then owing on that amount; and
- (b) the notifications in the Gazette relating to the completion and transfer to the Trust of the works of drainage shall be deemed to have been consolidated, and to have been varied so as to provide that the Trust shall pay to the Crown in respect of the works of drainage the reduced amount together with interest at five per centum per annum.

Variation
of liability
of Good-
night Irriga-
tion Trust
in respect
of certain
works.

(2) The reduced amount, together with the interest payable thereon, shall be paid—

- (a) by the provision of a sinking fund; and
- (b) within a period of thirty years from the date upon which this Act commences.

(3) Interest and payments to the sinking fund shall commence to run from the date upon which this Act commences.

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Existing drainage rates deemed to have been fixed at certain amount.

6. (1) Notwithstanding any provision in the Water Act, 1912, every existing drainage rate shall be deemed to have been fixed and levied at \$1.25 per acre per annum.

(2) Subsection (1) shall not—

- (a) operate so as to entitle any person to recover from the Trustees, or to set off against any amount owing to the Trustees, any part of an existing drainage rate paid before the date upon which this Act commences; or
- (b) apply in determining for the purposes of sections 8 and 10 the amount of any existing drainage rates paid.

Existing drainage rates cease to be payable when supplementary rate paid.

7. (1) When the supplementary drainage rate levied upon any lands is paid to the Trustees, all existing drainage rates then owing in respect of those lands shall cease to be payable to the Trustees.

(2) Subject to subsection (3), where an existing drainage rate, being a rate or part of a rate owing to the Trustees in respect of any lands by a former owner of those lands, ceases under and by virtue of subsection (1) to be payable to the Trustees, the current owner of those lands may recover in a court of competent jurisdiction from that former owner the amount by which the supplementary rate paid by him in respect of those lands would have been reduced, pursuant to section 8 (3) and (4), if that existing drainage rate had been paid in full by that former owner before the supplementary rate was levied on the lands, less any part of that existing drainage rate actually paid by that former owner.

(3) A current owner of lands is not entitled to recover from a former owner of lands the amount referred to in subsection (2) in respect of an existing drainage rate if—

- (a) as a former owner of the lands, he was liable immediately before the date when the supplementary rate was levied on the lands to pay the existing drainage rate to the Trustees; or

(b)

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- (b) he agreed with the former owner of the lands to No. 3, 1973 take over the liability of the former owner to pay the existing drainage rate to the Trustees.

8. (1) As soon as practicable after the date upon which this Act commences the Trustees shall fix and levy a supplementary drainage rate for the year which commenced on 1st July, 1972, upon the whole of the lands in the trust district which benefited by the works of drainage. ^{Supplementary rates.}

(2) The supplementary rate shall be fixed at the rate of—

- (a) \$16.25 per acre upon lands which benefited from that part of the works of drainage the completion and transfer to the Trust of which was notified in the Gazette on 16th January, 1959; and
- (b) \$12.50 per acre upon lands which benefited from any part of the works of drainage other than the part referred to in paragraph (a).

(3) Subject to subsection (4), the amount of the supplementary rate levied upon any lands shall be reduced by the amount of all existing drainage rates, together with interest thereon, paid in respect of the lands before the supplementary rate is levied upon the lands.

(4) The reduction made to a supplementary rate levied upon any lands in respect of existing drainage rates paid by a former owner of the lands shall not exceed the amount represented by the product of \$1.25 and—

- (a) the number of acres, and any remaining part of an acre, of the lands in respect of which the existing drainage rates were fixed and levied while owned by that former owner; and

(b)

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(b) the number of years, and any remaining part of a year, before 1st July, 1972, for which existing drainage rates were fixed and levied in respect of those lands while owned by that former owner.

(5) Where in any case the amount by which a supplementary rate is to be reduced pursuant to subsections (3) and (4) is equal to or exceeds the amount of the supplementary rate the Trustees shall issue a nil assessment.

(6) Part III of the Water Act, 1912, section 55 (3) and (4) excepted, applies to the supplementary rate as it applies to a rate fixed and levied under that Part.

(7) Nothing in this section affects the fixing and levying under the Water Act, 1912, of a drainage rate by the Trustees in respect of the year in which the supplementary rate is levied.

**Savings
bank
account.**

9. (1) When, in the opinion of the Trustees, the supplementary rates have been substantially paid, all outgoings and expenses properly chargeable to the operation and maintenance of the works of drainage which accrued due before 1st July, 1972, and which are outstanding when the Trustees form that opinion, shall be deducted from the supplementary rates so paid and the Trustees shall then transfer the balance remaining after making that deduction to a separate savings bank account opened by the Trustees.

(2) The amount of any supplementary rates received from time to time shall be paid by the Trustees into the account.

Refunds.

10. (1) Where, before the supplementary rate was levied upon any lands, existing drainage rates were paid by a former owner in respect of those lands, the former owner is eligible

for

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for a refund of the amount, if any, by which the amount of No. 3, 1973
the existing drainage rates so paid exceeds the prescribed
amount in relation to that former owner.

(2) Where—

- (a) a nil assessment is issued under section 8 (5) in respect of any lands; and
- (b) existing drainage rates were paid by the current owner of the lands before the supplementary rate was levied upon the lands,

the current owner is eligible for a refund of the amount, if any, by which the sum of—

- (c) the existing drainage rates paid by the current owner; and
- (d) the prescribed amount in relation to a former owner of the lands who paid existing drainage rates in respect of the lands,

exceeds the supplementary rate so levied.

(3) The refund for which any person is eligible under this section is payable—

- (a) in instalments, at such intervals as the Trustees may determine;
- (b) from the amount (other than interest accrued) which may be at credit in the account; and
- (c) only if and to the extent that moneys are available in the account for payment of the refund.

(4) The amount of any instalment of a refund payable to any person pursuant to this section shall bear the same proportion to the amount of the refund then remaining unpaid to that person, as the amount of the refund so remaining unpaid bears to the amount of all of the refunds then remaining unpaid to the persons eligible therefor.

(5)

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(5) In determining for the purposes of subsection (4) the amount of a refund, or the amount of all of the refunds, remaining unpaid, any instalment of a refund determined but unpaid to the person entitled thereto, shall be disregarded.

(6) If, on the expiration of the two years following the determination of any amount payable under this section to any person, all practicable means have failed to effect payment of that amount to that person, the amount shall, subject to the concurrence of the Water Conservation and Irrigation Commission constituted under the Irrigation Act, 1912, be paid to the Treasurer as unclaimed moneys, and sections 9, 10 and 11 of the Unclaimed Moneys Act, 1917, shall apply to the amount so paid to the Treasurer.

(7) For the purposes of this section the prescribed amount in relation to a former owner of lands, is the amount represented by the product of \$1.25 and—

- (a) the number of acres, and any remaining part of an acre, of the lands in respect of which existing drainage rates were fixed and levied while owned by that owner; and
- (b) the number of years, and any remaining part of a year, before 1st July, 1972, for which existing drainage rates were fixed and levied in respect of those lands while owned by that owner,

or by the amount of the existing drainage rates paid in respect of the lands by the former owner, whichever is the lesser.

Interest on
account.

11. On the thirtieth day of June in each year interest accrued due on the account shall be transferred to and become part of the funds of the Trust to offset the cost of administering the account.

12.

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12. (1) In any audited accounts of the Trust submitted pursuant to section 58 of the Water Act, 1912, details shall be included of—

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Accounts.

- (a) all transactions on the account;
- (b) the amount paid pursuant to section 10 to each owner; and
- (c) any amount paid pursuant to section 10 to the Treasurer.

(2) The Trustees shall furnish with any such audited accounts a list of the owners who have not then received in full a refund of the amount for which they are eligible under section 10.

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