

# RIGHTS IN WATER AND IRRIGATION.

3° GEO. VI., No. XVI.

No. 16 of 1939.

**AN ACT to amend section twenty-seven of the Rights in Water and Irrigation Act, 1914.**

[Assented to 22nd November, 1939.]

**B**E it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of Western Australia, in this present Parliament assembled, and by the authority of the same, as follows:—

Short title.

1. This Act may be cited as the *Rights in Water and Irrigation Act Amendment Act, 1939*, and shall be read as one with the Rights in Water and Irrigation Act, 1914 (No. 19 of 1914), hereinafter referred to as the principal Act.

Amendment of s. 27 of principal Act. Repeal and new section.

2. Section twenty-seven of the principal Act is repealed and a new section is inserted in lieu thereof as follows:—

Application of Part III. of this Act

27. (1) This Part of this Act shall be deemed to have applied to and to have had effect in relation to artesian wells as from the commencement of this Act, and shall continue to apply to and to have effect in relation to artesian wells throughout the State.

Provided that this subsection shall not be deemed to affect the right of property of any private owner in any artesian well constructed prior to or after the commencement of this section in any other manner or to any greater extent than that in or to which such right of property was affected by this Part of this Act as in force prior to the commencement of this section.

(2) In so far as rivers, streams, watercourses, lagoons, lakes, swamps, and marshes are situated within the boundaries of irrigation districts constituted under Part IV. of this Act, before the commencement of this section and the water therefrom has been and is still required for irrigation under Part IV. of this Act, and in so far as the water in rivers, streams, watercourses, lagoons, lakes, swamps, and marshes not situate within an irrigation district has prior to the commencement of this section been required and used for irrigation under Part IV. of this Act, this Part shall be deemed to have applied to and to have had effect in relation to such rivers, streams, watercourses, lagoons, lakes, swamps, and marshes as from the dates respectively when the irrigation districts aforesaid, within the boundaries whereof they are situated, were constituted as aforesaid, and as from the dates respectively when water in the rivers, streams, watercourses, lagoons, lakes, swamps, and marshes not situated within an irrigation district began to be required for irrigation under Part IV. aforesaid, as the case may be, and after the commencement of this section, this Part shall continue to apply to and to have effect in relation to all the said rivers, streams, watercourses, lagoons, lakes, swamps, and marshes, notwithstanding that the water therefrom may not now or may hereafter cease to be required for irrigation under Part IV. of this Act, and notwithstanding that the irrigation district within which any such river, stream, watercourse, lagoon, lake, swamp, or marsh is situated may be dissolved or the boundaries thereof altered, until the Governor by proclamation under this section as hereinafter provided for declares that this Part shall no longer apply to or have effect in relation to any such river, stream, water-

course, lagoon, lake, swamp, or marsh or to that part of the State in which the same is situated.

(3) Notwithstanding anything to the contrary contained in this Act but subject to subsection (2) hereof, this Part shall not apply to or have effect in relation to any river, stream, watercourse, lagoon, lake, swamp, or marsh, whether or not the same is at the commencement of this section now situate in an irrigation district constituted under Part IV. of this Act, if the water therefrom is not required for irrigation under Part IV. aforesaid, unless and until the Governor by proclamation under this section declares that this Part shall apply to and have effect in relation to such river, stream, watercourse, lagoon, lake, swamp, or marsh or to that part of the State in which the same is situated or constitutes that part of the State in which the same is situated an irrigation district under Part IV. of this Act.

(4) Whenever after the commencement of this section any part of the State is constituted an irrigation district under Part IV. of this Act, then as and from the constitution of such irrigation district, every river, stream, watercourse, lagoon, lake, swamp, or marsh situated within the boundaries of such district, whether the water from the same is or is not required for irrigation under Part IV. aforesaid, shall become subject to this Part, and this Part shall apply to and have effect in relation to every such river, stream, watercourse, lagoon, lake, swamp, or marsh accordingly.

(5) After the commencement of this section the Governor, without constituting any irrigation district under Part IV. of this Act, may, on the recommendation of the Minister, and acting with the advice of the Commissioners, at any time and from time to time by proclamation—

(a) declare that this Part shall apply to and have effect in relation to any river, stream, watercourse, lagoon, lake, swamp, or marsh specified in the proclamation to which immediately prior to the issue of the proclamation this Part by virtue of subsection (3) of this section does not apply;

- (b) declare that this Part shall extend to and have effect in and throughout any portion of the State, to be defined in the proclamation, and shall apply to and have effect in relation to all the rivers, streams, watercourses, lagoons, lakes, swamps, and marshes situated within that portion of the State specified and defined as aforesaid;
- (c) declare that this Part shall no longer apply to or have effect in relation to any river, stream, watercourse, lagoon, lake, swamp, or marsh, to be specified in the proclamation, to which immediately prior to the issue of the proclamation this Part by virtue of subsection (2) of this section does apply, or that this Part shall no longer extend to or have effect in any portion of the State defined in the proclamation, or apply to or have effect in relation to any rivers, streams, watercourses, lagoons, lakes, swamps, or marshes situated within such portion of the State; and
- (d) cancel and revoke any proclamation previously issued under the authority of this subsection.

Provided that no such declaration, cancellation, or revocation shall be made until after the expiration of thirty days after notice of intention to make such declaration, cancellation, or revocation has been given to the local authority or authorities in or through whose district or districts such river, stream, watercourse, lagoon, lake, swamp, or marsh run or are situate to the intent that before the making of such declaration, cancellation, or revocation any objection by such local authority or local authorities may be considered.

(6) Whenever the Governor issues any proclamation under the authority of either paragraph (a) or paragraph (b) of subsection (5) of this section, this Part shall apply to and have effect in relation to rivers, streams, watercourses, lagoons, lakes, swamps, and marshes, according to the tenor of the proclamation, notwithstanding that such rivers.

streams, watercourses, lagoons, lakes, swamps, or marshes may not be situated within an irrigation district constituted under Part IV. of this Act and the water therefrom may not be required for irrigation under the said Part IV.:

Provided that, notwithstanding anything to the contrary contained in this Part—

- (i) where in any section contained in this Part any time for the doing of any act, matter, or thing is prescribed to run from the commencement of this Act or from any other specified time, the time for the doing of such act, matter, or thing shall be deemed to be prescribed to run from the date of the publication of the proclamation, and the said section shall be read and construed accordingly;
- (ii) where in any section contained in this Part any act, matter, or thing is regulated or governed by any condition or circumstances existing at the commencement of this Act, such act, matter, or thing shall be deemed to be regulated or governed by the corresponding or relative condition or circumstances as existing at the date of the publication of the proclamation, and the said section shall be read and construed accordingly; and
- (iii) unless the context otherwise requires, any reference to this Act in any section contained in this Part shall, so far as may be necessary or expedient to enable the proclamation to have and take effect according to the tenor thereof, be read and construed as if such reference were a reference to the issue of the proclamation.

(7) Whenever the Governor issues any proclamation under the authority of paragraph (c) of subsection (5) of this section, this Part shall, as from the publication of the proclamation and in accordance with the tenor thereof, cease to apply to or have effect in relation to any rivers, streams, water-

courses, lagoons, lakes, swamps, or marshes affected by the proclamation or to which the proclamation relates.

3. The principal Act as amended by this Act may be cited as the Rights in Water and Irrigation Act, 1914-1939. Citation of principal Act as amended.

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