

# RIGHTS IN WATER AND IRRIGATION ACT

No. 19 of 1914.

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Approved for Reprint 6th September, 1960.

WESTERN AUSTRALIA.

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# RIGHTS IN WATER AND IRRIGATION ACT, 1914-1954.

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No. 19 of 1914.

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(Affected by Acts No. 16 of 1932; 26 of 1932; 15 of 1945; 60 of 1945;  
and 62 of 1947.)

[Amended by Acts:

No. 8 of 1925 assented to 24th September, 1925;  
No. 16 of 1939 assented to 22nd November, 1939;  
No. 32 of 1941 assented to 16th December, 1941;  
No. 3 of 1945 assented to 18th October, 1945;  
No. 9 of 1949 assented to 14th September, 1949;  
No. 18 of 1951 assented to 26th November, 1951;  
No. 73 of 1954<sup>1</sup> assented to 14th January, 1955;

and reprinted pursuant to the Amendments Incorporation Act,  
1938].

**AN ACT relating to Rights in Natural Waters,  
to make provision for the Conservation and  
Utilisation of Water for Industrial Irrigation,  
and for the Construction, Maintenance, and  
Management of Irrigation Works, and for other  
purposes.**

*[Assented to 22nd September, 1914.]*

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

## PART I.—PRELIMINARY.

1. (1) This Act may be cited as the *Rights in  
Water and Irrigation Act, 1914-1954.*

Short title.  
Amended by  
No. 73 of  
1954, ss. 5  
and 8.

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<sup>1</sup> Came into operation on 1st March, 1955. See *Gazette* of 18/2/55.

Division.

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

PART I.—PRELIMINARY.

PART II.—THE MINISTER.

PART III.—RIGHTS IN NATURAL WATERS.

PART IV.—IRRIGATION DISTRICTS.

PART V.—IRRIGATION BOARDS.

PART VI.—THE CONSTRUCTION AND MAINTENANCE  
OF WORKS.

PART VII.—THE SUPPLY OF WATER.

PART VIII.—FINANCE.

PART IX.—ACCOUNTS AND AUDIT.

PART X.—BY-LAWS.

PART XI.—GENERAL PROVISIONS.

Interpreta-  
tion.

Amended by  
No. 32 of  
1941, s. 2.

Q., 1910,  
No. 25, s. 4.

2. In this Act, unless the context otherwise indicates:—

“Artesian Well” means an artesian well, together with all works as hereinafter defined, constructed, or erected in connection therewith; the term does not include any well from which the water does not flow naturally, but has to be raised by pumping or other artificial means.

See Vic.,  
No. 2016, s. 3.

“Bed” with reference to any watercourse, lake, lagoon, swamp or marsh means the land over which normally flows, or which is normally covered by, the water thereof, whether permanently or intermittently; but does not include land from time to time temporarily covered by the flood waters of such watercourse, lake, lagoon, swamp or marsh, and abutting on or adjacent to such bed.

“Board” means an Irrigation Board constituted under this Act, and in Part III, includes a Board constituted under the Water Boards Act, 1904;<sup>1</sup> the term also includes the Minister acting in the exercise of the powers and authorities conferred on a Board.

<sup>1</sup> Now Water Boards Act, 1904-1954.

“Crown Land” means land vested in His Majesty which is not for the time being dedicated to any public purpose, or subject to any grant, lease, license, contract, or engagement made by or on behalf of His Majesty. Q., 1910,  
No. 25, s. 4.

“District” means an Irrigation District constituted under this Act.

“*Gazette*” means the *Government Gazette* of Western Australia.

“Irrigable” as applied to land means land which the Commissioners appointed under this Act certify to be suitable for irrigation, and of such situation as to be capable of being irrigated from works or proposed works.

“Irrigation” means any method of causing water from a water-course or works to flow upon and spread over land for the purpose of cultivation of any kind or of tillage or improvement of pasture, or of applying water to the surface of land for the like purpose. Vic., No.  
2016, s. 3.

In the expression “Lake, lagoon, swamp or marsh,” each term means a natural collection of water into and out of which passes either continuously or intermittently in a natural channel a current forming the whole or part of the flow of a river, creek, stream, or water-course. Vic., No.  
2016, s. 3.

“Local Authority” means the Council of a Municipality constituted under the Municipal Corporations Act, 1906,<sup>1</sup> or a Road Board constituted under the Roads Act, 1911.<sup>2</sup>

“Minister” means the Minister for Water Supply, Sewerage, and Drainage, or such other member of the Executive Council as the Governor may appoint to administer this Act.

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<sup>1</sup> Now Municipal Corporations Act, 1906-1959.

<sup>2</sup> Now Road Districts Act, 1919-1959.

“Occupier” means the person by whom, or on whose behalf, any land is occupied, and if there is no occupier the person entitled to possession.

“Owner” means the person who, for the time being, is entitled to receive the rent of any land, either on his own account or on account of some other person, or who would be entitled to receive the rent if the land were let at a rent.

“Prescribed” means prescribed by this Act or the regulations or by-laws made under this Act.

See Q., 1910,  
No. 25, s. 4.

“Spring” means a spring of water naturally rising to and flowing over the surface of land.

“Water-course” means a river, stream, or creek in which water flows in a natural channel, whether permanently or intermittently.

“Works” means works for the conservation, supply, and utilisation of water, together with all sources of supply, streams, reservoirs, artesian wells, buildings, machinery, pipes, drains, and other works constructed or erected for the purposes of this Act, and all appurtenances to the same, and all lands reserved, occupied, held, or used in connection with works.

## PART II.—THE MINISTER.

The Minister  
and advisory  
Commissioners.

3. (1) The general administration of this Act shall be under the control of the Minister.

See Q., 1910,  
No. 25, s. 60.

(2) All lands acquired for or dedicated to the purposes of this Act, and all irrigation works constructed, or in course of construction under this Act, and all irrigation works constructed by the Government before the commencement of this Act



which the Governor may, by Order in Council, declare to be subject to this Act, shall vest in the Minister on behalf of His Majesty—

- (a) until such lands and works are vested in a Board, under the provisions hereinafter contained; or
- (b) on the dissolution of any Board in which such lands and works may have been vested.

(3) The Minister may exercise, within any District, all the powers and authorities, except the power to borrow money conferred by section fifty-two, and shall have all the immunities, conferred by this Act on a Board—

- (a) until the constitution of a Board for such District; and
- (b) after the dissolution of the Board for such District.

(4) The Governor shall, from time to time, appoint three or more persons, who may be officers of the Public Service, as Commissioners to advise the Minister upon matters relating to the administration of this Act, and any other Act in force for the time being relating to irrigation or land drainage.

The Governor may, from time to time, appoint any officer of the Public Service to act, for such time as the Governor thinks fit, as the deputy of a Commissioner during his absence or illness, or for other sufficient cause.

Any person appointed a Commissioner shall hold such office at the will of the Governor.

(5) The Governor may, from time to time, appoint such officers and servants as may be necessary for the administration of this Act.

## PART III.—RIGHTS IN NATURAL WATERS.

Natural  
waters vest  
in the  
Crown.  
See Vic.,  
No. 2016,  
s. 4.  
N.S.W.,  
1902,  
No. 51, s. 4.  
Q., 1910,  
No. 25, s. 5.

4. (1) The right to the use and flow and to the control of the water at any time in any water-course, and in any lake, lagoon, swamp or marsh, and in any spring, and subterranean source of supply shall, subject only to the restrictions hereinafter provided, and until appropriated under the sanction of this Act, or of some existing or future Act of Parliament, vest in the Crown.

(2) This section shall not operate so as to prevent any person from draining any land, or making any dam or tank upon any land, of which he is the owner or occupier: Provided that the flow of water in any water-course, or into or out of any lake, lagoon, swamp or marsh is not thereby sensibly diminished.

(3) Provided also that this Act shall not apply to the water flowing from any spring until it has passed beyond the boundaries of the land belonging to the owner or occupier of the land whereon such spring exists; and it shall also not apply to any subterranean source of water supply from which the water does not flow naturally, but has to be raised by pumping or other artificial means.

The *alveus*  
of water-  
courses and  
lakes not  
alienated.  
Vic., No.  
2016, s. 5.  
Q., 1910,  
No. 25, s. 6.

5. (1) Where a water-course or lake, lagoon, swamp or marsh forms the boundary or part of the boundary of a parcel of land heretofore alienated by the Crown, the bed thereof shall, for the purposes of this Act, be deemed to have remained the property of the Crown, and not to have passed with the land so alienated.

(2) Where a watercourse, or lake, lagoon, swamp or marsh shall form the boundary, or part of the boundary of a parcel of land hereafter alienated by the Crown, the bed thereof shall, notwithstanding such alienation, remain the property of the Crown, and shall not pass with the land so alienated.

(3) In any such case, whether of land heretofore or hereafter alienated by the Crown, such bed shall be and remain the property of the Crown notwithstanding that one and the same person has been or is the owner of the lands adjacent to both banks.

6. Except as hereinafter provided, or except under the sanction of this Act or of some existing or future Act of Parliament, no person shall divert or appropriate any water from any water-course, or from any lake, lagoon, swamp or marsh, save in the exercise of the general right of all persons to take water for domestic and ordinary use, and for watering cattle or other stock from any water-course, and from any lake, lagoon, swamp or marsh, vested in the Crown and to which there is access by a public road or reserve.

Diversions from water-courses, etc., prohibited, except under legal sanction.  
Vic., No. 2016, s. 6.  
Q., 1910, No. 25, s. 7.

7. Notwithstanding anything in this Act contained—

- (a) the owner or occupier for the time being of any land adjacent to any water-course, lake, lagoon, swamp, or marsh, the bed whereof is by this Act declared to have remained the property of the Crown, shall have the like access to the portion of such bed to which such land is adjacent, and the like use of such portion as if this Act had not passed, provided that such portion has not been actually appropriated by or under the sanction of the Crown for any of the purposes of this Act; and
- (b) such owner or occupier may have and pursue against any person trespassing upon such portion any remedy for such trespass which such owner or occupier might have had and pursued if this Act had not passed, and as if such person were a trespasser upon land in the possession of such owner or occupier.

Owner of land adjacent to water-course to have access and remedy for trespass.  
Vic., No. 2016, s. 7.  
Q., 1910, No. 25, s. 8.

But, save for the access and use aforesaid, this section shall not be deemed to restrict the right of the Crown to pursue any remedy against any person trespassing upon such bed nor shall this section entitle such owner or occupier to have or pursue any remedy for trespass against the Crown, the Minister, or a Board, or any person acting under the sanction of the Crown, the Minister, or a Board.

Presumption  
of grant by  
length of use  
annulled.  
Vic., No.  
2016, s. 8.  
Q., 1910, No.  
25, s. 9.

8. No right to take and divert water from any water-course, or from any lake, lagoon, swamp or marsh for use on any land adjacent to the bed thereof shall be acquired by any owner of such land, and no right to the permanent diversion or to the exclusive use of such water shall be acquired by any person whomsoever by length of use or otherwise than as the same may be acquired or conferred under the provisions of this Act, or of some existing or future Act of Parliament.

Water-course  
or race on  
alienated  
land not to  
be  
obstructed.  
See Vic., No.  
2016, s. 9.

9. (1) When at the time of the grant or demise of any land heretofore or hereafter made by the Crown under the sanction of any Act of Parliament or regulation providing for the alienation of Crown lands, any creek, stream, race, or drain flows through or over the land so granted or demised, or the bed of any disused stream, race, or drain, or any dam or reservoir is upon the land so granted or demised, although no reservation or exception thereof be contained in the Crown grant or lease of such land, no person shall obstruct or destroy the same or interfere therewith except under the sanction of this Act or of some existing or future Act of Parliament.

Obstruction  
an offence.

(2) Any person who shall so obstruct, destroy, or interfere, except as aforesaid, shall be guilty of an offence against this Act; and any person who, being the occupier of any land granted or demised as aforesaid, shall continue or shall fail to remove any such obstruction or interference shall be guilty of an offence against this Act on every day during which such obstruction or interference shall be continued or not removed, after notice in writing to

discontinue or to remove the same shall have been given by or on behalf of the Minister to such occupier.

10. (1) If any person throws or conveys, or causes or permits to be thrown or conveyed, any rubbish, dirt, filth, or other noisome thing, or causes the water of any sink, sewer, or drain, or other filthy water belonging to him or under his control to run or be brought into any river, creek, stream, or water-course, lake, lagoon, swamp or marsh, or conveys or discharges, or causes or permits to be conveyed and discharged thereinto, any sludge, mud, earth, gravel, or other matter likely to obstruct any such river, creek, stream, or water-course, or the current through any lake, lagoon, swamp or marsh, he shall be guilty of an offence against this Act.

Pollution of water.  
See Vic.,  
No. 2016,  
s. 10.

(2) Nothing contained in this section shall be held to take away, limit, or curtail any right or privilege conferred by the Mining Act, 1904.<sup>1</sup>

11. (1) The Crown by its officers and servants, and the Minister (in the name and on behalf of the Crown) by any person thereto empowered by the Minister, may in the exercise of the right of the Crown to the control of the waters in water-courses, and in lakes, lagoons, swamps or marshes, enter upon any land and inspect the same and take such measures as may be thought fit for the conservation and regulation of such water and for its preservation from pollution, and for the protection of the bed over or within which it flows or is contained, and for removing any obstruction from such bed, and for clearing and deepening and straightening and otherwise altering the channel of any such water-course, and may interfere summarily to prevent the undue, excessive, or illegal diversion or pollution of such water or interference with such bed; and it shall not be necessary for the Crown or the Minister to obtain an injunction or other order of a Court for the purpose of such entry or measures.

Right of entry to the Crown to prevent interference with water-course.  
Amended by  
No. 13 of  
1951, s. 3.  
See Vic.,  
No. 2016, s. 11.

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<sup>1</sup> Now Mining Act, 1904-1957.

Obstructing  
officer an  
offence.

(2) Any person who shall obstruct, impede, or interfere with any officer or servant of the Crown, or with any person acting under the sanction of the Minister, in entering upon any land or in taking any measures for any of the purposes aforesaid, shall be guilty of an offence against this Act.

Owner of  
land ad-  
jacent to any  
water-course  
may have  
permission  
to protect  
land from  
damage by  
erosion or  
flooding.  
See Vic.,  
No. 2016,  
s. 12.

12. The Minister may, in the name and on behalf of the Crown, grant to the owner or occupier of any land adjacent to any water-course, or to any lake the bed whereof is by this Act declared to have remained the property of the Crown, permission subject to such conditions as the Minister may think fit to carry out works at the expense of such owner or occupier for the protection of such land from damage by erosion or flooding, provided that in the opinion of the Minister such works will not injuriously affect such bed or unduly obstruct such water-course or lake.

Minister  
entitled  
to institute  
proceedings.  
See Vic.,  
No. 2016,  
s. 13.

13. (1) The Minister shall be entitled, in the name and on behalf of the Crown, to institute and maintain by any person empowered for that purpose by the Minister any proceeding in any Court of Justice, whether such proceeding be for any civil remedy or for the recovery or enforcement of any penalty against any person for illegally diverting or taking or for polluting the water of any water-course, or of any lake, lagoon, swamp or marsh, or for unlawfully interfering with the bed thereof.

(2) In such proceedings it shall not be necessary for the Minister to show that either the Crown or the Minister or any person has sustained damage by such illegal diversion or taking or pollution of water or unlawful interference with such bed; nor that the Crown or the Minister is a riparian owner or otherwise entitled to the use or to the protection of the water-course, or of the lake, lagoon, swamp or marsh from which water is illegally diverted or taken, or the water whereof is polluted, or whose bed is unlawfully interfered with; but the Minister shall be entitled to judgment in his favour if it be proved

that the water has been illegally diverted or taken or polluted, or that the bed has been unlawfully interfered with; and the Minister shall, in the discretion of the Court, be entitled to the costs and expenses of the proceedings against the person by whom the Court in its discretion shall order such costs and expenses to be paid.

14. All owners or occupiers of land alienated from the Crown through or contiguous to which runs any water-course, or within or contiguous to which is wholly or partly situate any lake, lagoon, swamp or marsh, shall in respect to such ownership or occupation have rights free of charge to the water in such water-course or lake, lagoon, swamp or marsh, for the domestic and ordinary use of themselves and of their respective families and servants, and for watering cattle or other stock, and every owner of land alienated from the Crown before the commencement of this Act shall have a further right to such water for the irrigation of a garden not exceeding five acres in extent, being part of such land and used in connection with a dwelling.

Ordinary  
riparian  
right  
defined.  
See Vic.,  
2016, s. 14.  
Q., 1910,  
No. 25,  
s. 11.

For the purposes of this and the next following section, land in process of alienation at the commencement of this Act shall be deemed to be alienated land.

15. (1) Wherever the water of any water-course, or of any lake, lagoon, swamp or marsh, has been permanently diverted, or at intervals during every year exclusively taken and used by the owner or occupier or the successive owners or occupiers of any parcel of land alienated from the Crown before the commencement of this Act, and has from a date prior to the commencement of this Act been so taken and used by such owner or owners or occupier or occupiers for purposes and uses in respect of such land, other than domestic and ordinary use and watering cattle or other stock and the irrigation of a garden not exceeding five acres in extent, being part of such land and used in connection with a dwelling, such owner or occupier may at any time

Certain  
riparian  
owners may  
apply for  
special  
licenses to  
divert and  
use water.  
Amended by  
No. 3 of  
1945, s. 2.  
See Vic.,  
2016, ss. 15  
to 21.  
Q., 1910,  
No. 25, s. 12.

within twelve months from the commencement of this Act apply to the Minister for a special license to continue in like manner to divert or take and use such water for a further period of ten years from the date of the commencement of this Act.

*Application.*

(2) Such application shall be in writing signed by the applicant or by his agent duly empowered in writing, and shall give the following particulars:—

- (a) A sufficient description of such land to enable proper searches as to title to be made;
- (b) The name or description of such water-course, lake, lagoon, swamp or marsh;
- (c) The use to which such land is applied at the time of making the application;
- (d) The approximate date when the water was first so diverted or taken and used, and approximately the quantity used daily;
- (e) The mode of such diversion;
- (f) The date when any dam was constructed or channel cut or flume erected for the purpose of such diversion, with a statement of the dimensions and other sufficient description of such dam, channel, or flume;
- (g) A description of any engines or other machinery in use at the time of the application;
- (h) The quantity of water for daily consumption for which the license is sought;
- (i) The names and addresses of the occupier or occupiers of such land, and of the owners and occupiers respectively of the lands contiguous to such water-course, lake, lagoon, swamp or marsh, within a distance of three miles of such land;
- (j) The application shall be accompanied by a statutory declaration verifying the several statements therein made.



(3) The Minister shall cause notice of every such application to be published in the *Gazette*, and in at least one issue of a newspaper circulating generally in the neighbourhood of the land, and shall direct copies of such notice to be served on such persons as he thinks fit, and shall appoint a time, not more than six months from the date of such notice or of the first of such advertisements, within which objections to such application may be received.

Advertise-  
ment.

(4) Within the time limited as aforesaid, any owner or occupier of land contiguous to such water-course, or lake, lagoon, swamp or marsh within the said distance of three miles may, in writing signed by him and addressed to the Minister, object to such application being granted, and submit to the Minister the grounds of such objection, together with evidence by statutory declaration supporting the same.

Objections.

(5) (a) The Minister after such inquiry into the subject matter of the application and of any objections thereto as he thinks proper to direct may refuse the application or, subject to the approval of the Commissioners, may grant the application either wholly or in part.

Powers of  
Minister.  
Subsection  
(5) sub-  
stituted by  
No. 3 of  
1945, s. 2.

(b) Where the Minister grants the application he shall issue to the applicant a special license, in the prescribed form in respect of the land and user of the water specified in the application or of so much of such land and water as the Minister thinks fit.

(c) Such special license shall be subject to such special conditions and provisions as the Minister with the approval of the Commissioners shall determine, and to the provisions of this Act so far as the same are applicable thereto, and to the further condition that, notwithstanding that such special license is expressed to be for a period of ten years, it may be determined or modified at any time in the event or manner hereinafter prescribed.

Privileges  
and duty  
of special  
licensee.

(6) The licensee under such special license may divert, take, and use water to the extent and in respect of the land and in the manner specified in such license.

The licensee shall, at the end of each year of the currency of such license, lodge at the office of the Minister a statutory declaration, headed in the matter of this Act and of his special license, declaring whether the diversion and use of the water have been throughout the past year and still are only as sanctioned by the license.

Determina-  
tion of  
special  
license.  
Amended by  
No. 8 of 1945,  
s. 2.

(7) If at any time during the currency of such license it is proved to the satisfaction of the Minister that the licensee has failed to observe and perform the conditions and provisions subject to which it was issued and held, or that it is expedient, in the interests of the public, as to the diversion and user of the water sanctioned by such license, that the license should be determined or modified, the Minister may give the licensee notice in writing by registered letter sent through the post office that after the expiration of one month from the date of such notice, it is his intention to revoke or to modify such license.

Unless the licensee before the expiration of the month so fixed shows to the Minister sufficient cause why the license should not be revoked and determined or modified, the Minister may make an order revoking or modifying such license.

If such order is made in the interests of the public the Minister may recommend to the Governor payment to the licensee by way of compensation of such amount out of the Consolidated Revenue Fund as to the Minister seems equitable, and if the Governor approves of such recommendation effect shall be given thereto accordingly.

Ordinary  
licenses.  
See N.S.W.,  
1902, No. 51,  
s. 10.

16. The Minister may, on the advice of the Commissioners, grant a license to any owner or occupier of land to take, use, or dispose of water from any water-course, lake, lagoon, swamp or marsh, and on such terms, and subject to such conditions, and for not exceeding such period, as may be prescribed.

17. The right of any owner or occupier of lands adjoining the bed of any watercourse, or of any lake lagoon, swamp or marsh, which may be either wholly or partially supplied with water from or whose volume may be increased by any public works of water supply, whether constructed before or after the commencement of this Act, to take and use the water thereof shall be subject to the following limitations, and shall be exercised only in accordance with the following provisions and the regulations from time to time in force:—

Conditions for the exercise of certain rights to take and use water.  
See Vic. No. 2016, s. 24.  
Q. 1910, No. 25, s. 13.

After the construction of any such works of water supply, such person shall be entitled, by virtue of such right, to use only so much water as would be equal to the quantity of the water of the water-course, or lake, lagoon, swamp or marsh which would be available to him, and to which he would be lawfully entitled but for the existence of such works of water supply; but in no case shall he be entitled to a greater quantity of water than five thousand gallons per day for domestic and ordinary use and for watering cattle or other stock, in respect of every mile of frontage measured by the general course to such water-course, or to such lake, lagoon, swamp or marsh, and three hundred thousand cubic feet per annum for the irrigation of a garden not exceeding five acres in extent, being part of the land adjoining the bed thereof, and used in connection with a dwelling.

18. (1) No artesian well shall be commenced, and no artesian well existing at the commencement of this Act, or thereafter constructed, shall be enlarged, deepened, or altered in any manner, unless—

Artesian wells to be licensed.  
N.S.W., 1906, No. 59, s. 22.  
Q. 1910, No. 25, s. 35.

(a) By the Crown; or

(b) In pursuance of a license under this Act.

Penalty.

(2) If any person contravenes this section, he and the owner of the well in respect of which the contravention has occurred shall each be liable to a penalty not exceeding one hundred pounds, and a further penalty of not exceeding five pounds for each day during which the contravention continues after conviction.

Wells commenced before commencement of Act.  
N.S.W. 1906,  
No. 59, s. 22.  
Q. 1910,  
No. 25, s. 36.

19. (1) Where the work of constructing an artesian well is being carried on, but is not completed at the commencement of this Act, the owner of or contractor for the work shall, within two months after such commencement, give notice to the Minister, in the form prescribed, of the locality, size, and proposed depth of the well, and that the work is being carried on as aforesaid, and that he intends to continue and complete the work, and stating such other particulars as may be prescribed.

Penalty.

(2) If after the expiration of two months from such commencement, the work of sinking such well is continued without such notice having been given, or otherwise than in accordance with such notice or in contravention of this section, or if any of the prescribed conditions are not carried out or are contravened, the owner of the well, and any person carrying on works at the well, shall each be liable to a penalty not exceeding twenty pounds, and to a further penalty not exceeding two pounds for each day during which the offence continues after conviction.

Applications for licenses.  
N.S.W. 1906,  
No. 59 ss. 24,  
25, 26.  
Q. 1910,  
No. 25, s. 37.

20. (1) Every application for a license for any new artesian well, or for enlarging, deepening, or altering any then existing well, shall be made to the Minister in the form prescribed, accompanied by the prescribed plans and specifications, together with a statement of the purposes for which it is proposed to utilise the water.

Issue of license.

(2) The Minister may, in his discretion, issue a license to the applicant in the prescribed form, and subject to such conditions as are prescribed:

Provided that before granting a license the Minister may require such alterations to be made in or in connection with the work, or in the plans and specifications of the same, as he thinks fit.

21. A license shall be deemed to be held by and shall operate for the benefit of the lawful occupier for the time being of the land whereon the well is sunk or is proposed to be sunk.

License to be for benefit of occupier of land.  
N.S.W. 1906, No. 59, s. 21.

22. (1) During the currency of such license no alterations shall be made in or in connection with the well, nor shall the water from the well be used for purposes other than those authorised by the license:

Penalty for alterations in licensed well or contravention of license.  
N.S.W. 1906, No. 59, s. 28.  
Q. 1910, No. 25, s. 39.

Provided that works necessary for the maintenance of the well in good order or occasioned by any unforeseen emergency may be carried out; but written notice of all such works shall be given to the Minister within seven days after the same are commenced.

(2) Any person who contravenes this section, or contravenes or fails to carry out any condition of the license, shall be liable to a penalty not exceeding fifty pounds, and a further penalty of five pounds for each day during which the offence continues after conviction; and, in addition to the imposition of the said penalty, the license may, by notice in the *Gazette*, be cancelled.

(3) The holder of any such license may, during the currency thereof, apply for an amended license allowing alterations in the well; and every such application shall be dealt with as is herein provided in respect of applications for a license in the first instance.

23. (1) The Governor may, by Order in Council, place under the permanent or temporary control of a Board any artesian well which has been constructed or acquired by the Crown within a district.

Control of artesian wells.  
Amended by No. 8 of 1925, s. 2.  
Q. 1910, No. 25, s. 40.

In every such case, in the same or a subsequent Order in Council, the Governor shall declare what has been the actual cost of the artesian well, and that the Board is required to raise and pay in each year to the Treasurer interest on the said cost at a rate to be fixed by the said order, but not exceeding six pounds per centum.

When an artesian well is placed under the control of a Board in pursuance of this section, the Governor may reserve an area not exceeding forty acres at the actual site of the well, and a strip of land not exceeding thirty-three feet in width on each side of every drain connected with the well, and place all such lands under the control of the Board.

For such purpose the Governor shall be entitled to take, acquire, or resume the necessary lands, under the provisions of the Public Works Act, 1902.<sup>1</sup>

(2) The Board shall be charged with the care, control, and management of all artesian wells within the district which have been placed under its control by the Governor in pursuance of this Act, and shall have and may exercise all the powers in respect thereto which it possesses in respect of other works and water under its control.

Power to  
lease.  
Q. 1910,  
No. 25, s. 41.

24. (1) The Governor may lease any artesian well which has been constructed or acquired by the Crown, upon such terms and conditions as he thinks fit.

(2) When any such lease is made to a private person or corporation, the Governor may, by Order in Council, declare that all or any of the rights, powers, authorities, and obligations which a Board has or is liable to under this Act, except the power of making and levying rates, shall, in respect of such artesian well, be vested in and attached to the lessee in the same manner and to the same extent as if the lessee were a Board; and thereupon such rights, powers, and obligations shall be vested in, and may be exercised by, and shall attach to, the lessee accordingly.

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<sup>1</sup> Now Public Works Act, 1902-1956.

25. (1) The Governor may from time to time make regulations as to the issue of special and other licenses, the privileges and obligations of licensees thereunder, the fees to be paid in respect thereof, and such other regulations as the Governor shall deem necessary or advisable to give effect to this part of this Act.

Governor may make regulations. Amended by No. 18 of 1951, s. 4. See Vic. No. 2016, s. 23.

(2) Penalties not exceeding for each offence the sum of Twenty pounds may be imposed by such regulations for any breach thereof.

(3) [*Repealed by No. 18 of 1951, S.4*].

Cf. No. 30 of 1918, s. 36 as amended.

(4) [*Repealed by No. 18 of 1951, S.4*].

26. Notwithstanding anything in this part of this Act contained to the contrary—

Alveus of water-course defined. Application of Part III.

- (a) The bed of any lake, lagoon, swamp, or marsh situated on land heretofore or hereafter alienated by the Crown, and declared by this Act to be deemed to have remained or to remain the property of the Crown, shall not exceed in width the width of the watercourse at its inlet to or outlet from such lake, lagoon, swamp, or marsh; and
- (b) This part of this Act shall not apply to the bed of any lake, lagoon, swamp, or marsh situated on the land heretofore or hereafter alienated by the Crown, and cultivated either wholly or in part at any time during the year, or capable of being drained and cultivated.

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.

Application of Part III. of this Act, No. 19 of 1914, s. 27, repealed and new s. 27 inserted by No. 16 of 1939.

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 situate, 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, watercourse, 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,

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

#### PART IV.—IRRIGATION DISTRICTS.

Constitution  
of Irrigation  
Districts.

See W.A.  
1904, No. 4,  
Sec. 4.

See Q. 1910,  
No. 25, ss. 14,  
16.

Vic. No. 2016,  
s. 52.

28. (1) The Governor may, on the recommendation of the Minister, acting with the advice of the Commissioners, by Order in Council—

- (a) Constitute any defined part of the State an Irrigation District for the purposes of this Act;
- (b) Specify the boundaries of such District;
- (c) Assign a name to such District;
- (d) State the particulars of the scheme of local works for the service of such District;
- (e) State the estimated cost of such scheme;
- (f) State the quantities of water assigned to such District and the sources from which, the seasons at which, and the conditions under and subject to which they are to be received.

(2) Any such Order in Council may contain such provisions not inconsistent with this Act as according to the facts and circumstances of each case the Governor may think fit.

(3) Every such Irrigation District, save as in this Act otherwise provided, shall be entitled to and shall receive the quantities of water assigned thereto by the Order in Council constituting such District, or by any subsequent order varying or amending such order, from the sources, at the seasons, and under and subject to the conditions set forth in such order, or such varying or amending order.

Governor  
in Council  
may by  
Order alter  
boundaries  
of Districts.  
Amended by  
No. 9 of  
1949, s. 3.  
Vic. No.  
2016, s. 53.

29. The Governor may, at any time, on the recommendation of the Minister, acting with the advice of the Commissioners, by Order in Council, do any of the following things:—

- (a) Unite any two or more Districts so as to form one District;

- (b) Subdivide any District and constitute thereout two or more Districts;
- (c) Excise any portion of a District;
- (d) Add any portion excised from a District to any other District;
- (e) Extend any District by the addition thereto of any land that has not theretofore formed part of a District;
- (f) Apportion, settle, adjust, and determine the extent of the respective interests and obligations of the several parties in regard to any property, income, assets, rights, or liabilities in any case of the union or subdivision of Districts or of excision from or addition to any District;
- (g) Repeal, vary, or amend any of the provisions of any previous order relating to any District;
- (h) Divide any District into sub-areas;
- (i) Define the boundaries of any sub-area;
- (j) Alter the boundaries of any sub-area;
- (k) Abolish a sub-area.

Cf. No. 26 of 1947, ss. 2 and 3, and s. 40 (3) post.

#### PART V.—IRRIGATION BOARDS.

30. The Governor may, by Order in Council, direct that for any Irrigation District there shall be an Irrigation Board, to be constituted under and subject to the provisions of this Act:

Irrigation Boards.  
See W.A. 1904, No. 4, sec. 6.

Provided that the Governor may, in like manner, revoke any order made under this section, and dissolve any Board constituted pursuant to such order.

31. (1) A Board shall be constituted by the appointment of one of the members thereof by the Governor, and the election of the other members by the occupiers of irrigable land in the district.

Mode of constituting Boards.  
See W.A. 1904, No. 4, ss. 7, 11.  
Q. 1910, No. 25, s. 19.

(2) A person may be qualified to be a member of the Board, notwithstanding that such person is not a ratepayer within the district.

Number and  
qualification  
of members.  
See W.A.  
1904, No. 4,  
s. 8.

(3) The Order in Council for the constitution of a Board shall declare the number of members of the Board, the time and mode of election of the elective members, their term of office not exceeding three years, and the time at which they shall go out of office, and make provision for the filling up of vacancies and for all other matters incident to the office of member.

(4) If at any election a sufficient number of members is not elected, the Governor may appoint a member or members to fill the place or places of the member or members who ought to have been elected.

Any member so appointed shall hold office for the period for which the member who ought to have been elected would have held office.

(5) Every Board shall be a body corporate with perpetual succession and a common seal, and shall, under such name as is assigned to it by the Governor, be capable in law of suing and being sued, of holding land and of doing and suffering all other acts and things which bodies corporate may by law do and suffer.

(6) A change in the mode of constitution of a Board shall not affect its continuity as a body corporate.

(7) The Governor may make regulations for the preparation and revision of electoral rolls, the appointment of returning officers and polling clerks, and the conduct of elections.

Board to  
have the  
powers and  
authorities  
of a Water  
Board.  
Q. 1910,  
No. 25, s. 20.

32. The Board shall, for the purposes and subject to the provisions of this Act, have, enjoy, perform, and be liable to all the powers, authorities, duties, and obligations conferred and imposed upon a Water Board by the Water Boards Act, 1904; and all the provisions of that Act shall extend to and apply to Irrigation Boards, except as by this Act is otherwise provided, and except such of those provisions as the Governor may, by Order in Council, in the case of any Board, declare not to be applicable to it.

PART VI.—THE CONSTRUCTION AND MAINTENANCE  
OF WORKS.

33. (1) Subject as hereinafter provided the Minister may from time to time, either before or after the constitution of the Board, construct and maintain irrigation works within any district.

Construction and main-  
tenance of  
works.  
Amended by  
No. 32 of  
1941, s. 3.

(2) Before undertaking the construction of such works, except such distributory works, the estimated cost of which shall not exceed five hundred pounds, as the Governor may exempt from the operation of this section, the Minister shall—

- (a) Cause to be prepared plans, descriptions, books of reference, and an estimate of the cost of the proposed works, together with a statement showing the earnings estimated to be derived from them, also the acreage of the rateable property to be benefited by them, and cause the same or certified copies thereof to be deposited in the office of the Minister and also in the office of the Board (if any);
- (b) Cause an advertisement to be published in the *Gazette* and in a newspaper generally circulating in the district, specifying—
  - (i) the description of the proposed works;
  - (ii) the times when and the places at which the plans, descriptions, books of reference, and estimates may be inspected.

(3) The plans, descriptions, books of reference, and estimates so deposited shall be open to inspection by any person interested, and every such person shall be allowed to make copies of and extracts from the same free of charge.

(4) If within a period of one month after such publication a petition against the proposed works is presented to the Minister, signed by persons who constitute a majority of the owners of irrigable land within the district, the Minister shall not carry out the proposed works.

(5) If no such petition is presented the Minister shall submit the plans, descriptions, books of reference, and estimates to the Governor for approval, and if they are approved the Governor may forthwith, by Order in Council, empower the Minister to undertake the construction of the said works, and such order shall be notified in the *Gazette*.

(6) For the construction and maintenance of such works, the Minister may exercise all the powers conferred on the Board by this Act, except the power to borrow money conferred by section fifty-two:

Provided that any moneys borrowed by a Board for the construction of works within its district may be applied by the Board to recoup the expenditure by the Minister in the construction of such works.

Works may  
be placed  
under  
control of  
Board.

34. The Governor may, by Order in Council, place any works constructed by the Minister as aforesaid under the management and control of the Board, or may absolutely vest such works in the Board on such terms and conditions as to the Governor may seem fit.

No action  
maintain-  
able.  
Vic. No. 2016,  
s. 234.

35. Notwithstanding anything in this Act contained, from and after the passing of this Act no action, suit, claim, or proceeding whatsoever shall be maintainable against the Crown or a Board, or against any servants or agents of, or contractor under, the Crown or a Board, except as hereinafter provided, for or in respect of any of the following matters:—

For injury  
to riparian  
rights.

(a) Any injury, loss, or damage caused by any violation or infringement of any rights to or easements over any water constantly or intermittently flowing in or through any place whatsoever;

Or for  
flooding.

(b) Any injury, loss, or damage to property caused by flooding or by water in any way sent on to such property.



36. Subject to the provisions of this Act compensation shall be made in respect of any injury to any rights to or easements over any water constantly or intermittently flowing or by flooding as aforesaid if notice in writing stating the nature and extent of the injury complained of has been furnished to the Minister or the Board (as the case may be) within one year after the alleged injury has occurred of which such notice is given, and after giving such notice the person claiming compensation proceeds without unreasonable delay to obtain such compensation in the manner hereinafter provided.

Compensation.  
Vic. No. 2016,  
s. 236.

37. Where any claim is made by any person in respect of any such injury and such person and the Minister or the Board (as the case may be) do not agree on the questions raised by such claim, the questions whether any, and, if so, what compensation shall be made to such person shall be determined by arbitration under the provisions of the Arbitration Act, 1895.<sup>1</sup>

Disputes as to compensation, how settled.  
See Vic. No. 2016, s. 237.

38. In determining whether any and what compensation is to be made under this Part, the arbitrator shall in each case have regard to and is hereby empowered and directed to apply the following principles:—

Principles in awarding compensation.  
Vic. No. 2016, s. 238.

(a) No compensation shall be awarded save in respect of some item set forth in the notice in writing stating the nature and extent of the injury complained of furnished to the Minister or the Board as hereinbefore provided.

(b) No compensation shall be awarded for any diminution or deterioration of the supply of water to which any person may be entitled unless in the opinion of the arbitrator such diminution or deterioration is such as to deprive the claimant of a supply of water previously legally enjoyed by him and which

None where injury to water supply temporary only.

<sup>1</sup> 59 Vict. No. 13 as amended by 1 and 2 Edw. VII, No. 14, s. 3 and No. 36 of 1935, s. 3.

supply was sufficient for domestic purposes, or for watering cattle or other stock, and the irrigation of a garden not exceeding five acres in extent; and unless in the opinion of the arbitrator such diminution or deterioration is the direct and will be the permanent result of the completed works.

None for  
taking  
waters by  
legal powers.

- (c) No compensation shall be made for the taking or diverting of any water which the Minister or the Board is empowered by or under this Act to take or divert, either permanently or temporarily, from any river, creek, stream or water-course, lake, lagoon, swamp or marsh.

Benefit to  
claimant by  
works under  
this Act.

- (d) There shall be considered, in reduction of all claims for compensation for injury, whether (by reason of the execution of any works by the Minister or the Board against which any claim is made) any and, if so, what enhancement in value of any property of the claimant wherever situate has been directly or indirectly caused, and whether any and, if so, what immediate or proximate benefit has been gained by or become available to such claimant by reason of the construction or use of such works or of any other works by the Minister or Board under this Act; and a deduction shall be made accordingly from the amount which but for this provision would have been paid or payable as compensation.

Measure of  
damages.

- (e) The measure of damages shall in all cases be the direct pecuniary injury to the claimant by the loss of something of substantial benefit accrued or accruing, and shall not include remote, indirect, or speculative damages.

Continuing  
injury.

- (f) In any case where the injury complained of may appear to be of a permanent or continuing character or likely to be repeated, a sum may be awarded which the Court may declare to be a compensation for all injury, loss, or damage sustained in respect of the matter complained of to

the date of the making of the award, and also for all future injury, loss, or damage in respect of the same matter; and after such award no further compensation shall be made in respect of any such future injury, loss, or damage.

PART VII.—THE SUPPLY OF WATER.

39. After providing for the requirements of riparian rights as defined in Part III., the remainder of the available water supply may be appropriated by the Minister for irrigation.

Appropriation of water for irrigation.

39A. If any person shall take water from any water supply, which in accordance with section thirty-nine of this Act the Minister has appropriated for irrigation, in any quantity or in any manner or by any means not authorised or not permitted by this Act or to which he is not entitled he shall be guilty of an offence.

Unlawful taking of water an offence.  
S. 39A added by No. 3 of 1945, s. 3.

Penalty—One hundred pounds or imprisonment for twelve months.

40. (1) An Irrigation Board may, with the approval of the Minister, from time to time make and levy rates, to be called irrigation rates, upon all irrigable lands situated within the District; but such rate shall not exceed in any year such amount per acre as may in the opinion of the Board be necessary, due regard being had to the other revenues of the Board, to provide the interest on the cost of works, contribution to a sinking fund, and a fund for the replacement of depreciating property, the interest on and contributions to the sinking fund for the redemption of loans, and for the maintenance, management, and control of the works, and the management of the business of the Board.

Irrigation rates.  
See Q. 1910, No. 25, s. 22.

Provided that land shall not be rateable if the Commissioners certify that such land is, in their opinion, unsuitable for irrigation, nor until works are constructed from which the Board is prepared to supply water to such land.

(2) Any person rated to an irrigation rate may appeal from the rate on the ground that the land rated is not irrigable, under and subject to the provisions of the Water Boards Act, 1904,<sup>1</sup> relating to appeals from valuation.

(3) The provisions of the Water Boards Act, 1904,<sup>1</sup> relating to the making and levying and the payment and recovery of rates are, *mutatis mutandis*, incorporated herewith, and shall apply to irrigation rates made and levied under this Act.

(4) Subsection seven of section one hundred and eight of the Water Boards Act, 1904,<sup>1</sup> is amended by inserting after the word "shall," in the seventh line thereof, the words "notwithstanding that the certificate of title is not produced."

Supply of  
water for  
irrigation.

41. Every ratepayer shall, subject as hereinafter provided, and to the payment of the rate, be entitled to receive from the Board a supply of water for irrigation at such times, in such quantities, and on such conditions, as may be prescribed by the By-laws of the Board.

Who en-  
titled to  
water for  
irrigation.  
Amended by  
No. 18 of  
1951, s. 5.  
See Q. 1910,  
No. 25, s. 29.

42. (1) Subject to this Act the owners or occupiers of rateable lands in the Irrigation District shall alone be entitled to the supply of water for irrigation purposes:

Provided that the Board may, in its discretion, supply water for such purposes within or beyond the boundaries of the District, to other persons, upon such terms, at such charges, and with such guarantees and securities for payment, and generally upon such conditions, as the Board thinks proper and that subject to the provisions of this Act and the by-laws and payment of the prescribed charges, the Board may, in its discretion, supply to a ratepayer for the purposes of irrigation, water in excess of that to which he is entitled in respect of rates pursuant to the provisions of the last preceding section.

<sup>1</sup> Now Water Boards Act, 1904-1954.

(2) The Board may, in its discretion, supply water for domestic purposes, or for the watering of stock, or for any other purpose approved by the Governor, on such terms and conditions as may be prescribed.

Supplies for domestic purposes.

(3) All charges due for water supplied under this Act shall be recoverable by the Board from the person liable to pay the same as money due for water supplied is recoverable by a Water Board under the provisions of the Water Boards Act, 1904.<sup>1</sup>

Recovery of charges.

42A. (1) The Board may cause a measuring instrument to be installed on any land to which it supplies water pursuant to the provisions of this Act.

Installation of measuring instruments.

Added by No. 18 of 1951, s. 6.  
Cf. Water Boards Act, 1904, s. 58.

(2) Where a measuring instrument is so installed the owner or occupier of the land shall not, without the Board's consent, receive water on to the land unless it is measured by the measuring instrument except when, in the opinion of the Board, the measuring instrument is not functioning properly in which case the owner or occupier of the land shall not receive water on to the land otherwise than as prescribed.

42B. The Board may prescribe the manner in which may be ascertained the quantity of water supplied to a consumer whether by means of a measuring instrument or otherwise, and a certificate purporting to be signed by an officer of the Board stating the quantity so ascertained, shall in any proceedings in which the quantity of water is in question, be *prima facie* evidence of the quantity of water supplied.

Ascertainment of quantity of water supplied.

Added by No. 18 of 1951, s. 6.  
Cf. Water Boards Act, 1904, s. 59.

43. If at any time the supply of water at the disposal of a Board is insufficient, in the opinion of the Board, to afford to all consumers the supplies

Where supply of water insufficient, Board to supply proportionally.  
See Q. 1910, No. 25, s. 32.

<sup>1</sup> Now Water Boards Act, 1904-1954.

which they are respectively entitled to receive, the Board may deliver to such consumers such amount of water as is then at the disposal of the Board in quantities proportional to the quantities which such consumers would, if sufficient water had been available, have respectively been entitled to receive.

Governor  
may regulate  
order of  
supply in  
cases of  
deficiency.  
Q. 1910,  
No. 25, s. 33.

44. In the event of the water available to a Board for supply falling short of the quantity necessary to supply water in sufficient quantity to be of practical service to all consumers the Governor may, whenever and as often as he is satisfied of the actual or approaching insufficiency of such supply, from time to time make, alter, and repeal Orders in Council regulating the order of priority in which and the quantities with which the various consumers shall be entitled to be supplied.

Supply of  
water not  
compulsory.  
See Vic.  
No. 2016,  
s. 183.

45. Notwithstanding anything contained in this Act or in any agreement it shall not be compulsory on any Board to supply or to continue to supply any water to any person whomsoever, and no Board shall be liable to any penalty or damages for not supplying water to any person if the want of such supply arises from drought or any other cause or accident.

#### PART VIII.—Finance.

Minister  
may de-  
termine  
value of  
works trans-  
ferred to  
Board.  
Amended by  
No. 8 of  
1925, s. 2.  
See 1904,  
No. 4, s. 110.

46. On the constitution of an Irrigation District, and from time to time thereafter, the Minister shall, if the Governor so directs, prepare a statement of the works constructed within the District before or after the commencement of this Act, out of moneys appropriated by Parliament for the purpose, and the amount expended upon such works, as determined by the Minister, shall be charged against the Board, and shall be a liability of the Board to the Treasurer, and bear interest at such rate and be payable by such instalments as the Treasurer may determine.

47. All moneys received by a Board from rates, charges, rents, or otherwise under this Act, shall be carried to the account of a fund to be called the "Irrigation Fund," and such fund shall be applied in manner following, that is to say:—

Revenue,  
how applied.  
Amended by  
No. 8 of  
1925, s. 2.  
See 1904,  
No. 4, s. 111.

- (1) In defraying the expenses incurred in the maintenance and management of the works, and the conduct of the business of the Board;
- (2) In payment of interest at such rate as may be determined by the Treasurer, on any expenditure charged against the Board under the last preceding section;
- (3) In the payment of contributions to a fund for the replacement of depreciating property;
- (4) In the payment of any interest or instalments of principal or contributions to the sinking fund due in respect of any money advanced to the Board by the Treasurer, or borrowed by the Board under the powers hereinafter conferred.

48. The Board may pay out of the Fund any sum due under an agreement lawfully made for the purposes of this Act, and any sum recovered against the Board by process of law, and any sum which by any order made, or purporting to be made under this Act, the Board is directed to pay by way of compensation, damages, costs, or otherwise.

Payments to  
be made out  
of Fund for  
any  
authorised  
purpose.  
1904, No. 4,  
s. 112.

49. The Treasurer may, from time to time, advance to a Board, out of any moneys appropriated by Parliament for that purpose, such sums of money on loan as are required for the construction and extension of works.

Treasurer  
may advance  
moneys.  
Amended by  
No. 8 of 1925,  
s. 2.  
1904, No. 4,  
s. 124.

All such sums shall bear interest at such rate and shall be repaid in such instalments as may be agreed upon between the Treasurer and the Board.

Such advances to be a charge on the works and revenue. Amended by No. 8 of 1925, s. 2.

1904, No. 4, s. 125.

Subsidy may be withheld. Amended by No. 8 of 1925, s. 2. 1904, No. 4, s. 126.

50. All moneys advanced by the Treasurer to a Board shall, by virtue of this Act, be charged upon all works constructed by or vested in the Board and on all the revenues thereof.

51. If a Board, being a Local Authority, in any year fails to pay the full amount of all such interest and instalments, the Treasurer may withhold so much of any subsidy payable to the Local Authority as is sufficient to provide for such interest and instalments.

Power to borrow money. Amended by No. 8 of 1925, s. 2.

52. (1) A Board may, with the approval of the Governor, borrow money—

- (a) For the construction of works;
- (b) For payment of the cost of works charged to the Board under section forty-six;
- (c) To discharge the principal money of any loan to or other indebtedness of the Board;
- (d) For any other purpose approved by the Governor.

(2) No proposition for borrowing money shall be adopted by a Board unless a notice thereof has been published in the *Gazette* and in a newspaper generally circulating in the district.

Within one month after the publication of such notice of any proposition to borrow money it shall be competent for one-fourth of the owners of the irrigable land in the district by notice delivered to the Board to demand that the question whether or not such loan be incurred be submitted to the election of the owners of irrigable land in the district.

When any demand has been made the votes of such owners shall be taken on a day to be fixed by the Board, not less than twenty-one days nor more than one month after the delivery of such demand, and such day shall be notified in some newspaper circulating in the district; and on such day a poll shall be taken of all such owners for and against the proposed loan.



If no demand is made that the question whether or not such loan be incurred be submitted to the election of the owners, or if on a poll being taken a majority of votes polled does not forbid the Board to proceed further with such loan, the Board may proceed to borrow money for the purposes mentioned in such notice.

(3) Any money borrowed by a board may be raised by the issue of debentures in the prescribed form.

(4) All debentures, and the interest thereon, shall be a charge upon the works constructed by or vested in the Board under this Act, and upon the revenues of the Board.

(5) Before raising any loan the Board shall make provision for the repayment thereof by the creation of a sinking fund of one pound per centum per annum of the original amount of the loan; and for such purpose may, with the approval of the Governor, permanently appropriate any part of the revenues of the Board.

(6) All moneys so appropriated as a sinking fund, and all interest accruing thereon, shall be paid to and invested by the Treasurer in the joint names of the Treasurer and the Board, in such securities as the Treasurer may think fit.

(7) The accumulated sinking fund shall be applied in payment of the principal of the loan when the same becomes payable, or may be applied from time to time in the redemption of debentures issued.

(8) If at any time the principal or interest due upon any debentures is in arrear, a receiver for the debenture holders, appointed by the Supreme Court, may take possession of any works the property of the Board, and may levy and recover rates under this Act, and for that purpose may exercise all the powers of a Board.

Transfer of  
assets and  
liabilities on  
constitution  
or dissolution  
of  
Board.

53. (1) On the constitution of a Board for any District, all rates, charges, and other moneys due or accruing to the Minister in respect of such District, shall vest in, and be recoverable by, the Board, and all the liabilities of the Minister in respect of such District shall become the liabilities of the Board.

(2) On the dissolution of a Board all the property and assets of the Board, and all rates, charges, and other moneys due or accruing to the Board shall become vested in and be recoverable by the Minister, and all the liabilities of the Board shall become the liabilities of the Minister.

#### PART IX.—ACCOUNTS AND AUDIT.

Accounts.  
See 1909,  
No. 43, s. 141.

54. The Board shall cause books to be provided and kept, and true and regular accounts to be entered therein—

- (a) Of all moneys received and paid by the Board, and of all moneys owing to and by the Board under this Act, and of the several purposes for which such moneys are received and paid, and owing; and
- (b) Of all the assets and liabilities of the Board under this Act.

Books may  
be inspected.

55. All such books shall be open to the inspection of the Auditor General, and any person authorised by the Auditor General to inspect the same, and copies or extracts may be taken therefrom.

Accounts to  
be balanced.

56. The Board shall cause its accounts to be balanced every year on the thirtieth day of June, or such other date as the Governor may prescribe.

Accounts to  
be audited.

57. (1) The Board shall cause a full and true balance sheet of the assets and liabilities, together with a revenue account or profit and loss account

for each year, and such other statements as may be necessary to be compiled from the books and submitted to the Auditor General for audit.

(2) The Auditor General shall certify that he has found the accounts in order, or otherwise, as the case may be; and whether, in his opinion, the accounts are properly drawn up so as to present a true and correct view of the transactions for the period under review as shown by the books; and all items of receipts and payments and all known liabilities and assets have been brought into account, and the value of all assets fairly stated.

(3) The Auditor General may express an opinion upon the necessity of reserve or renewal funds of amounts set aside to meet depreciation and obsolescence of plant, and of the adequacy of such amounts.

(4) The Auditor General shall, in respect to such accounts, have all the powers conferred on him by the Audit Act, 1904,<sup>1</sup> and any amendments thereof.

58. Copies of such accounts, together with the Auditor General's report thereon, shall be laid before both Houses of Parliament annually.

Accounts and auditor's report to be laid before Parliament.

## PART X.—BY-LAWS.

59. Every Irrigation Board may, with the approval of the Governor, make By-laws with respect to the following matters, that is to say:—

Board may make By-laws. Amended by No. 18 of 1951, s. 7. See 1904, No. 4, s. 141. Vic. No. 2016, s. 306.

- (1) The General conduct of its business and proceedings.
- (2) The control, supervision, guidance, and duties of its officers and servants.
- (3) The construction, maintenance, repair, management, and use of the works of the Board.

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<sup>1</sup> Now Audit Act, 1904-1957.

- (4) Preventing and remedying the waste, misuse, undue consumption, fouling, or contamination of water contained in or supplied from the works or otherwise under the control of the Board.
- (5) The making and levying of rates.
- (6) Prescribing the quantity of water with which a consumer may be supplied in respect of any rates paid for any given period.
- (6a) Prescribing scales of charges for water supplied, and the minimum quantity of water to be charged for.
- (7) The imposing, payment, and collection of charges for water supplied, and determining the time at which they are payable, and whether in advance or otherwise, and the minimum quantity of water to be charged for.
- (8) Specifying the purposes for which, and the persons or classes of persons to whom, water may be supplied under agreement, and the general and special terms and conditions upon which water shall be so supplied.
- (9) The protection of the water and every part of the works from trespass or injury.
- (10) The control in the public interest of the flow of artesian bores.
- (11) Prescribing forms, and adapting the forms prescribed by the Water Boards Act, 1904,<sup>1</sup> to the purposes of this Act.
- (12) And for any other purposes relating to the administration of this Act and the exercise of the powers vested in the Board.

Cf. Water  
Boards Act,  
1904-1949,  
s. 141,  
paragraph  
(10).  
[18 of 1951,  
s. 7.]

Penalties for  
breach of  
by-laws.  
1904, No. 4,  
s. 142.

## 60. Every by-law—

- (1) May impose a penalty not exceeding twenty pounds for the breach thereof, and in the case of a continuing breach a further penalty not exceeding five pounds for each day

<sup>1</sup> Now Water Boards Act, 1904-1954.

the offence continues after notice thereof has been given by or on behalf of the Board to the offender; and

- (2) May provide that, in addition to the penalty, any expense incurred by the Board in consequence of the breach of such by-law shall be paid by the person committing such breach.

61. [*Repealed by No. 18 of 1951, S.8*].

PART XI.—GENERAL PROVISIONS.

62. (1) The Minister may, on the advice of the Commissioners and with the approval of the Governor, acquire any land within any District for the purposes of this Act, including closer settlement—

Land may be acquired and leased for cultivation.

- (a) By agreement with the owner; or
- (b) By compulsory process.

Provided that land actually under irrigation shall not be acquired by compulsory process, except so far as the land may be required for the construction of works.

(2) If the Governor approves of any such land being acquired by compulsory process, the Minister may, by notification published in the *Gazette*, declare that such land has been acquired accordingly.

(3) Upon publication of the notification in the *Gazette*, the land described therein shall, by force of this Act—

- (a) Be vested in His Majesty the King; and
- (b) Be freed and discharged from all trusts, obligations, estates, interests, contracts, licenses, rates, and assessments.

(4) If a copy of the notification in the *Gazette*, certified under the hand of the Minister, is lodged with the Registrar of Titles, or the Registrar of Deeds and Transfers, as the case may be, he shall register the certified copy of the notification in the

register, in the manner as nearly as may be in which dealings with land are registered (but production of the Certificate of Title shall not be required), and shall deal with and give effect to the notification as if it were an instrument of transfer or a conveyance of the land to His Majesty the King.

(5) Forthwith, after the publication of the notification in the *Gazette*, the Minister shall cause a copy of the notification to be served upon the owner and the occupier (if any) of the land, either personally or by registered letter posted to his last-known place of abode:

Provided that if the owner cannot, after diligent inquiry, be found, a copy of the notification shall be affixed upon some conspicuous part of the land.

(6) Upon the publication of the notification in the *Gazette*, the estate and interest of every person in the land specified in the notification shall be taken to have been converted into a claim against the Minister for compensation.

(7) Every claim for compensation, if disputed, shall be determined by the Compensation Court under and subject to the provisions of the Public Works Act, 1902,<sup>1</sup> or any Act amending the same.

(8) In determining the amount of compensation regard shall be had solely to the following matters:—

- (a) The probable and reasonable price at which such land, with any improvements thereon, or the estate or interest of the claimant therein, might have been expected to sell at the date the land was taken.
- (b) The damage (if any) sustained by the claimant by reason of the severance of such land from the other adjoining land of such claimant, or by reason of such other lands being injuriously affected by the taking.

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<sup>1</sup> Now Public Works Act, 1902-1956.

- (c) The Court may award such amount as the Court deems proper, not exceeding ten pounds per centum on the amount ascertained under the provisions of this section for compulsory taking.
- (d) Where the land taken produces any rent or profits the amount thereof received by the Minister, less the reasonable cost of collection from the day the land was taken to the date of the award, shall be added to the compensation payable, or, at the option of the Minister, interest shall be paid on the amount of compensation for the same period, at the rate of six pounds per centum per annum:

Provided that unless the land is rated under this Act the value shall be assessed without reference to any increase in value arising from any works constructed or to be constructed under this Act.

(9) The Governor may dedicate any land of the Crown to the purposes of this Act, including closer settlement; and the capital value of such land, so dedicated, shall be charged by the Department of Lands and Surveys against the Minister.

(10) Upon any land so acquired for or dedicated to the purposes of this Act as aforesaid, the Minister may expend any money appropriated by Parliament for the purpose, on clearing and other works necessary to make such land fit for cultivation, and in subdividing the same.

(11) The Minister may, subject to the regulations, grant leases in perpetuity of any land dedicated or acquired as aforesaid, at an annual rent based on the unimproved capital value of the demised land (subject to re-appraisement at prescribed periods), and the value of the improvements thereon made before the commencement of the lease, and subject to such reservations, covenants, conditions, and provisions as are for the time being prescribed.

(12) The Governor may make regulations for the purposes of this section.

Minister  
may under-  
take work to  
render land  
fit for  
irrigation.

63. The Minister may, at the request of the owner or occupier of any land within a district, undertake and carry out any work upon such land that may be necessary to render the land or any portion thereof fit for irrigation, upon the repayment by such owner or occupier to the Minister of the moneys expended with interest being secured to the satisfaction of the Minister.

Water  
supply to  
railways.

64. Nothing in this Act shall take away or prejudicially affect any rights in water lawfully acquired or enjoyed before or after the commencement of this Act for the purposes of supplying water to or in connection with any railway constructed under the authority of a special Act; and, subject only to riparian rights under this Act, water may be lawfully taken for such purposes.

Delegation  
of powers.  
See W.A.  
1904, No. 4,  
s. 30; 1909,  
No. 43, s. 12.  
S.A. 1878,  
No. 106, s. 22.

65. (1) The Minister may authorise any officer of his department, and a Board may authorise any member or officer of the Board, to do any of the acts, matters, or things which the Minister or the Board, respectively, is by or under this Act authorised or required to do.

(2) Every person so authorised shall have and enjoy all such and the like powers as are, by this Act, conferred on the Minister and the Board, respectively, enabling such acts, matters, and things to be done; and all such acts, matters, and things, when done under such authority, shall be as valid and effectual as if they had been done by the Minister or the Board, and every person so authorised shall have and enjoy in respect of every such act, matter, or thing so done by him, all the immunities from personal liability as the Minister or the Board would have and enjoy if the Minister or the Board had done such act, matter, or thing.

Notices and  
demands,  
how served.  
1904, No. 4,  
s. 145.

66. (1) Any notice or demand required by this Act to be given to or made upon any person may be served—

(a) By delivering the same to such person;



- (b) By leaving the same at his usual or last known place of abode;
- (c) By forwarding the same by post in a prepaid letter addressed to such person at his usual or last known place of abode.

(2) A notice or demand forwarded by post shall be deemed to have been given or made, and to have been received at the time when, by ordinary course of post, the letter would be delivered.

When deemed to have been given.

(3) When a notice of demand under this Act is required to be given or made to any owner or occupier whose name or address is unknown to the Board, it shall not be necessary to name such owner or occupier, and such notice or demand may be served by placing it on some conspicuous part of the land of such owner or occupier, and by publishing it three times, at intervals of not less than a week between any two publications in a newspaper usually circulating in the district.

When name of owner or occupier unknown.

(4) A notice or demand may be served on a corporation, or incorporated company, or the members of a partnership, by being delivered, left, or posted in a prepaid letter; the notice or demand being addressed in each case to the corporation, company, or partnership at the registered office or principal place of business thereof in the State.

Service on corporations.

67. All notices and demands duly given to or made upon any owner or occupier shall be binding upon all persons claiming by, from, or under such owner or occupier.

Notices binding on persons claiming under owner or occupier.  
1904, No. 4,  
s. 146.

68. Every order, summons, notice, or other document requiring authentication by the Board may be sufficiently authenticated, without the common seal of the Board, if signed by the chairman.

Notices may be authenticated by signature of chairman without seal.  
1904, No. 4,  
s. 147.

Saving of  
civil remedy  
1904, No. 4,  
s. 149.

69. The institution of any proceedings, or the conviction of any person for any offence against this Act, shall not affect any remedy which the Board or any person aggrieved may be entitled to in any civil proceedings.

Obstructing  
Board or  
officers in  
performance  
of duty.  
1904, No. 4,  
s. 151.

70. Every person who obstructs the Board or any member thereof, or any person employed by the Board, in the performance of any act or thing which they are respectively authorised or required to do in the execution of this Act or any by-law made thereunder, shall be liable to a penalty not exceeding twenty pounds.

Penalty for  
refusing to  
give up  
possession  
of works.  
1904, No. 4,  
s. 152.

71. Any person having charge of any works vested in or under the control of the Board, who refuses, on lawful demand, to give up peaceable and quiet possession of the same to any person entitled to possession under the provisions of this Act, shall be guilty of an offence and shall be liable to a penalty not exceeding one hundred pounds and to be imprisoned for any period not exceeding six months.

General  
penalty.

72. Any person committing an offence against this Act shall, if no other penalty is imposed, be liable to a penalty not exceeding one hundred pounds.

Offender  
may be  
arrested.  
1904, No. 4,  
s. 153.

73. Any officer of the Board may, without warrant, arrest any person found committing an offence against this Act or any by-law thereunder, if the offender refuses to give his name and address.

Summary  
proceedings  
for offences  
and recovery  
of penalties.  
1904, No. 4,  
s. 154.

74. All penalties and forfeitures incurred under this Act or any by-law made thereunder may be recovered summarily before any two or more justices of the peace in the manner provided by the Justices Act, 1902<sup>1</sup>.

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<sup>1</sup> Now Justices Act, 1902-1959.

75. In any proceedings in any Local Court or Court of Petty Sessions, or before any justice, the secretary or any other officer of the Board appointed by the chairman, in writing, under his hand, may represent the Board in all respects as if he were the party concerned.

Board may be represented by secretary or other officer. 1904, No. 4, s. 156.

76. [*Repealed by No. 73 of 1954, Ss.5 and 8.*]

77. Any person appointed under the hand of the chairman of the Board may, for the purposes of this Act, search the public registers of the office of Land Titles and Registry of Deeds, or any office of the Department of Lands or of Mines, without payment of any fee.

Books of Land Titles and other offices may be searched without fee. 1904, No. 4, s. 158.

78. The Board shall be exempt from any rate, tax, or imposition which any Local Authority might, but for this section, lawfully levy and impose.

Property of Water Board not to be taxed. 1904, No. 4, s. 159.

79. In any legal proceedings under this Act, in addition to any other method of proof available,—

Proof of ownership or occupancy. 1904, No. 4, s. 160.

(1) Evidence that the person proceeded against is rated as owner or occupier of any land; or

(2) Evidence by the certificate, in writing, of—

(a) The Registrar of Deeds and Transfers, or his substitute or any assistant registrar of deeds and transfers, that any person appears from any memorial of registration of any deed, conveyance, or other instrument to be the owner of any land; or

(b) The Registrar of Titles, or any assistant or deputy registrar, that any person's name appears in any register book kept under the Transfer of Land Act, 1893,<sup>1</sup> or the Transfer of Land Act Amendment Act, 1909, as proprietor of any land; or

<sup>1</sup> Now Transfer of Land Act, 1893-1959.

- (c) The Under Secretary for Lands or the Under Secretary for Mines, that any person is registered in the Department of Lands or of Mines as the occupier or lessee of any land—

shall, until the contrary is proved, be evidence that such person is the owner or occupier, as the case may be, of such land.

Proof of  
works.  
Added by  
No. 3 of  
1945, s. 4.

**79A.** A certificate under the hand of the Minister that any specified dam, drain, channel, pipe or other work is included as portion thereof, in any works within the meaning of this Act (whether such works were constructed prior or subsequent to the commencement of this section) shall, for all purposes and in all courts be sufficient evidence of the fact as stated in such certificate.

**80.** [*Repealed by No. 18 of 1951, S.8.*]