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ELIZABETHAE II REGINAE

A.D. 1988

No. 61 of 1988

An Act to amend the Irrigation Act, 1930.

[Assented to 15 September 1988]

The Parliament of South Australia enacts as follows:

Short title

1. (1) This Act may be cited as the *Irrigation Act Amendment Act, 1988*.
- (2) The *Irrigation Act, 1930*, is in this Act referred to as "the principal Act".

Commencement

2. This Act will come into operation on a day to be fixed by proclamation.

Arrangement of Act

3. Section 4 of the principal Act is amended by striking out—

PART V—Management of an irrigation area

DIVISION I—General powers, duties, and functions of the Minister:
 DIVISION II—Water supply:
 DIVISION III—Drainage:

and substituting:

PART V—IRRIGATION AND DRAINAGE

DIVISION I—PRELIMINARY
 DIVISION II—POWERS OF THE MINISTER
 DIVISION III—ALLOCATION OF WATER FOR IRRIGATION
 DIVISION IV—RATES
 DIVISION V—GENERAL.

Interpretation

4. Section 6 of the principal Act is amended—
 - (a) by striking out the definition of "channel" and substituting the following definition:

"channel" includes a closed channel or pipe;
 - and
 - (b) by striking out the definitions of "the consumption year" and "embankment".

Substitution of Part V

5. Part V of the principal Act is repealed and the following Part is substituted:

**PART V
IRRIGATION AND DRAINAGE**

DIVISION I—PRELIMINARY

Interpretation

54. In this Part, unless the contrary intention appears—

“the consumption year” means a period of approximately 12 months in respect of which the volume of water supplied to, or in relation to, any land is assessed or measured:

“domestic rate” means a water supply rate declared in respect of water supplied for domestic purposes:

“to drain” includes to pump water from low-lying land:

“drainage channel” means a channel in an irrigation area used for draining water from land:

“irrigation channel” means a channel in an irrigation area used for irrigating land:

“irrigation rate” means a water supply rate declared in respect of water supplied for irrigation purposes:

“owner” of land means—

(a) where the land has been alienated from the Crown by grant in fee simple—the holder of an estate in fee simple in the land;

(b) where the land is held from the Crown by lease or licence—the lessee or licensee;

(c) where the land is held from the Crown under an agreement to purchase—the purchaser:

“watercourse” means the banks and bed of a river or creek or any other natural channel along which water flows continually or periodically.

DIVISION II—POWERS OF THE MINISTER

Irrigation and drainage of land

55. (1) Subject to this Act, the Minister may on such terms and conditions as the Minister determines—

(a) supply water for irrigation, domestic or other purposes to land within, or adjacent to, an irrigation area;

(b) drain water (including storm and surface water and water resulting from natural seepage) from land within, or adjacent to, an irrigation area.

(2) For the purposes of this Part the Minister may take water from, or discharge water into—

(a) the River Murray or any other river or creek that flows through or adjacent to an irrigation area;

or

(b) any lake, lagoon or other body of water that is in, or adjacent to, an irrigation area.

Powers of the Minister

56. In order to supply water to, or drain water from, land the Minister may—

- (a) construct channels, embankments, roads, buildings and other works on any land within, or adjacent to, an irrigation area and may install and operate machinery and equipment;
- (b) clear, maintain and repair channels, clear and maintain watercourses and clear land adjacent to channels and watercourses;
- (c) maintain and repair buildings, machinery and equipment;
- (d) control the flow of water in any irrigation or drainage channel;
- (e) take soil, stone or other materials from any land;
- (f) enter and occupy any land and obtain access to land across any other land;
- (g) acquire an estate or interest in any land either by agreement or compulsorily.

Obligation on owner of land

57. The Minister may, by notice in writing served on the owner of land in an irrigation area require the owner within the time fixed by the notice—

- (a) to clear or repair irrigation or drainage channels on the land or to clear watercourses on the land;
- (b) to clear the land adjacent to channels or watercourses;
- (c) to render the sides and bed of a channel on the land impervious to water in accordance with specifications set out in the notice;

or

- (d) to drain the land by constructing channels specified in the notice and connecting those channels to drainage channels constructed by the Minister.

Minister may carry out work where owner fails

58. (1) Where the Minister has served a notice under this Division requiring the owner of land to carry out clearance, repair or other work and the owner has failed to comply with the notice, the Minister may carry out the necessary work.

(2) The Minister's costs in carrying out work under subsection (1) are payable by the owner of the land.

DIVISION III—ALLOCATION OF WATER FOR IRRIGATION**Entitlement to water**

59. Subject to the availability of water, the owner of a block comprised of ratable land is entitled to the supply by the Minister in each consumption year of the quantity of water (the water allocation) for the time being allocated for irrigation purposes in respect of the block.

Allocation of water

60. (1) Subject to subsection (2), the water allocation in respect of a block is—

- (a) the water allocation applying at the commencement of the *Irrigation Act Amendment Act, 1988*;

or

- (b) if no such allocation applied at that time—the quantity of water (if any) allocated by the Minister pursuant to subsection (2).

(2) The Minister may at the request of the owner of a block allocate a quantity of water for irrigation purposes in respect of the block or increase an existing water allocation that applies in respect of the block.

(3) The Minister may, at the request of the owner of a block, decrease or revoke the water allocation applying in respect of the block.

(4) The Minister may, at intervals of not less than five years, in accordance with the findings of a review of the water allocation of all blocks in an irrigation area conducted by the Minister, increase or decrease the water allocation of individual blocks by notice in writing given to the owners or occupiers of those blocks.

(5) Subject to the availability of water, the Minister must base the allocation of water or a variation in the allocation of water (except a decrease requested by the owner of a block) on the requirements of the crop growing, or that the Minister believes will be grown, on the block and for that purpose may take into account rainfall, the extent to which the soil retains water and any other relevant factor.

(6) A water allocation in respect of a block can be increased or decreased only—

(a) by the Minister pursuant to subsection (2), (3) or (4);

or

(b) by transfer pursuant to section 61.

Transfer of allocation

61. (1) The owner of a block may, with the approval of the Minister, transfer the whole or part of the water allocation in respect of the block to the owner of another block.

(2) An application for approval under subsection (1)—

(a) must be made in a manner and form approved by the Minister;

and

(b) must be accompanied by the prescribed fee.

(3) The applicant must provide the Minister with such information as the Minister requires to consider and determine the application.

(4) The Minister's approval may be conditional or unconditional.

Record of allocations

62. The Minister must keep a record of the water allocation applying from time to time in respect of each block and must make the record available for public inspection on payment of the prescribed fee.

DIVISION IV—RATES

Rates

63. (1) The Minister may recover costs of supplying water to land under this Part by means of a water supply rate or water supply rates.

(2) The Minister may recover costs of draining water from land under this Part by means of a drainage rate or, at the request of the Advisory Board established in respect of the irrigation area to which the rate applies, as a component of a water supply rate.

(3) A water supply rate that includes a component for the recovery of drainage costs may apply to land throughout an irrigation area or to land in any part of an irrigation area.

Water supply rates

64. (1) In respect of each financial year the Minister may, by notice in the *Gazette*, declare a water supply rate or water supply rates based on the volume of water supplied to ratable land in the consumption year that ends during the financial year to which the declaration applies.

(2) The Minister may declare different rates for water supplied for irrigation purposes and domestic purposes.

(3) In the case of water supplied for irrigation purposes the Minister may declare a basic rate in respect of the water allocation and a further rate, or series of rates, that increase in accordance with the quantity of water supplied to the block in excess of the water allocation.

Minimum rate payable

65. (1) The following amounts are payable by way of rates in each financial year in respect of water made available by the Minister for consumption on ratable land whether or not the water is in fact consumed:

(a) in the case of a block to which a water allocation applies—a proportion (declared by the Minister when declaring the water supply rate) of the amount payable by way of the water supply rate on the assumption that the quantity of water allocated in respect of the block had been consumed;

and

(b) in the case of a block or other land to which water is made available for domestic purposes—the amount declared by the Minister (when declaring the water supply rate) in respect of the meter belonging to and installed by the Minister to measure the volume of water supplied for domestic purposes and, if more than one such meter has been installed, the aggregate of the amounts declared in respect of each of those meters.

(2) An amount paid pursuant to subsection (1) is paid on account of the relevant water supply rate.

Drainage rate

66. (1) In respect of each financial year the Minister may, by notice in the *Gazette*, declare a drainage rate based on the area of ratable land in an irrigation area.

(2) For the purpose of calculating an amount payable in respect of a drainage rate, the area of land will be determined to the nearest one-tenth of a hectare (0.05 of a hectare being increased to the next one-tenth of a hectare).

(3) A drainage rate is not payable in respect of land that is not adjacent to and is not connected to the drainage system provided by the Minister.

Reduction of rates in respect of undeveloped blocks

67. (1) Where, at the time that a block first becomes subject to an irrigation rate, the block has not been developed to a stage where it is capable of producing income, the rate in respect of the block will be reduced as follows:

(a) in the first year after the block first becomes subject to the rate, the rate will be reduced by 75 per cent;

(b) in the second year after the block first becomes subject to the rate, the rate will be reduced by 50 per cent;

and

(c) in the third year after the block first becomes subject to the rate, the rate will be reduced by 25 per cent.

(2) Where, at the time that a block first becomes subject to an irrigation rate part only of the block has been developed to a stage where it is capable of producing income, the amount of the reduction in the rate prescribed by subsection (1) will be reduced in proportion to the area of the block that is capable of producing income.

Reduction of rate in case of surplus water

68. Where, in the Minister's opinion, more water than will be required by the owners and occupiers of ratable land in an irrigation area is available for distribution the Minister may, by notice in the *Gazette*, reduce one or more of the water supply rates applying in relation to that area for such period as the Minister thinks fit.

Liability for rates and interest on rates

69. (1) The following persons are jointly and severally liable for the payment of rates and interest on rates—

(a) the owner and occupier of the land in respect of which the rates are payable as at the date on which the rates first became payable;

and

(b) any person who becomes an owner or occupier of that land after the rates first became payable but before the liability to pay the rates or interest (or both) is satisfied.

(2) Notice of the amount payable by way of rates, setting out the date on which the amount becomes payable, must be served on the owner or occupier of the land in respect of which the rates are payable.

(3) Where an amount payable by way of rates remains unpaid for three months or more after the date for payment set out in the notice, interest will be added to the outstanding amount as follows:

(a) upon the expiration of the first three months, five per cent of the amount then outstanding will be added to that amount;

and

(b) upon the expiration of each succeeding month, a further one per cent of the total amount then outstanding (including interest) will be added to that amount.

(4) Rates and interest on rates are, until payment, a charge on the land on which the rates were declared.

Minister may remit interest

70. Where, in the Minister's opinion, the payment of interest under section 69 would cause hardship, the Minister may remit the whole, or part, of the interest.

DIVISION V—GENERAL

Insufficient supplies of water

71. (1) Where the quantity of water available is insufficient to meet the needs of the owners or occupiers of land in an irrigation area the Minister may distribute the available water so as to avoid, or reduce to a minimum, the incidence of financial loss.

(2) An owner or occupier of land (including land in relation to which a water allocation applies) cannot make a claim against the Minister in respect of the Minister's failure to supply water because of the insufficiency.

Records to be made by the Minister

72. The Minister must, in respect of each irrigation area, record—

- (a) a description of the ratable land within the area;
 - (b) the names of the owners and occupiers of the ratable land within the area;
 - (c) the area of each block constituted of ratable land within the area;
- and
- (d) the number of meters belonging to, and installed by, the Minister to measure the volume of water supplied for domestic purposes to ratable land within the area.

Supply of water to and drainage of water from non-ratable land

73. (1) The Minister may, on such terms and conditions as the Minister determines, supply water to, or drain water from, land that is not ratable land whether the land is situated in an irrigation area or not.

(2) The following persons are jointly and severally liable to pay for water supplied to, or for the drainage of water from, land under this section and for interest in respect of any amount unpaid:

- (a) the owner and occupier of the land as at the date on which the amount payable first became payable;
- and
- (b) any person who becomes an owner or occupier of that land after the amount payable first became payable but before the liability to pay the amount or interest (or both) is satisfied.

(3) Notice of the amount payable under this section must be served on the owner or occupier of the land and the amount becomes payable on the date stated in the notice.

(4) Any amount that remains unpaid bears interest, and may be recovered by the Minister, as if it were unpaid rates.

(5) An amount payable under this section (including interest) is, until payment, a charge on the land.

Failure to pay rates or other charges, etc.

74. Where an owner or occupier of land fails to pay rates or other charges for the supply of water to, or the drainage of water from, the land or contravenes or fails to comply with a term or condition upon which the Minister supplies water to, or drains water from, the land under this Part, the Minister may discontinue the supply of water to, or the drainage of water from, the land.

Repeal of ss. 119 and 120

6. Sections 119 and 120 of the principal Act are repealed.

Substitution of schedule 1

7. The first schedule to the principal Act is repealed and the following schedule is substituted:

SCHEDULE 1**TRANSITIONAL PROVISIONS**

1. Where rates became due and payable before the commencement of the *Statutes Amendment (Irrigation) Act, 1983*, and an amount payable by way of those rates or interest on those rates (or both) remains unpaid for one month or more after the commencement of that amending Act, then, upon the expiration of each month after the commencement of that amending Act, interest of one per cent of the amount then outstanding (including interest) must be added to that amount.

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

D. B. DUNSTAN, Governor