

South Australia

# Ground Water (Qualco-Sunlands) Control Act 2000

An Act to reduce the risk of waterlogging and salinisation of land and increased levels of salinity in the River Murray caused by the irrigation of land in the Qualco-Sunlands irrigation area; and for other purposes.

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Legislative history

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**The Parliament of South Australia enacts as follows:**

## **Part 1—Preliminary**

### **1—Short title**

This Act may be cited as the *Ground Water (Qualco-Sunlands) Control Act 2000*.

### **3—Interpretation**

- (1) In this Act, unless the contrary intention appears—

*category* in relation to land means the category of the land prescribed by regulation;

*contribution year* means the period of 12 months from 1 October to the following 30 September;

*2000/2001 contribution year* means the period—

- (a) commencing on a date (whether falling in the year 2000 or 2001) to be fixed by the Minister, by notice in the Gazette; and
- (b) ending on 30 September 2001;

*disposal basins* means basins used, or intended to be used, to hold water pumped from the ground water mound and from underground water lying above the layer of Blanchetown Clay in the Scheme Area for the purpose of disposal by evaporation and seepage;

*disposal capacity of the Scheme* means the capacity of the Scheme infrastructure to pump water into the disposal basins and the capacity of the disposal basins to hold water;

*domestic partner* means a person who is a domestic partner within the meaning of the *Family Relationships Act 1975*, whether declared as such under that Act or not;

*electricity transmission lines* includes—

- (a) cables for the transmission of electricity; and
- (b) posts, pylons, pipes and equipment for carrying or laying electricity cables over or under land; and
- (c) transformers and other equipment required for the transmission and use of electricity;

*ERD Court* means the Environment, Resources and Development Court;

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***the ground water mound*** means the underground water in the Loxton Sands and the Murray Group Limestone aquifers the upper level of which has been raised to the shape of a mound by irrigation;

***irrigated land*** means land that—

- (a) is within the Scheme Area and comprises the whole or part of an irrigated property; and
- (b) is, or has in the past been, subject to irrigation with water taken pursuant to a water licence under the *Natural Resources Management Act 2004*;

***irrigated property*** means a property the whole or part of which is situated in the Scheme Area and—

- (a) is, or has in the past been, irrigated wholly or partly with water taken pursuant to a water licence under the *Natural Resources Management Act 2004*; and
- (b) is, or has in the past been, used to carry on the business of primary production or some other enterprise and is, or has in the past been, managed as a single unit for that purpose (whether the land comprising the property is a single parcel or is made up of a number of parcels physically separated from each other);

***irrigation authority*** means—

- (a) in the case of a private irrigation district under the *Irrigation Act 1994*—the irrigation trust for that district;
- (b) in the case of a government irrigation district under that Act—the Minister for the time being administering that Act;

***irrigation declaration*** means a declaration by the owner of an irrigated property under section 54;

***member of the Trust***—see section 5;

***Minister for Natural Resources Management*** means the Minister who has responsibility for the administration of the *Natural Resources Management Act 2004*;

***Murray-Darling Basin Agreement*** means the Murray Darling Basin Agreement (as amended from time to time) referred to in the *Murray-Darling Basin Act 1993*;

***owner*** of land means—

- (a) where the land has been granted in fee simple—
  - (i) in the case of land that is subject to a life estate—the holder of the life estate;
  - (ii) in any other case—the holder of the estate in fee simple in the land;
- (b) where the land is held from the Crown under lease or licence—the lessee or the licensee;
- (c) where the land is held from the Crown under an agreement to purchase—the person who has the right to purchase;

***relative*** in relation to a person means the spouse, domestic partner, parent or remoter lineal ancestor, son, daughter or remoter issue or brother or sister of the person;

**risk** in relation to land means the risk of waterlogging or salinisation of that land or other land resulting from irrigation of the firstmentioned land;

**risk management allocation**—see section 40;

**the Scheme** means the scheme established by this Act—

- (a) to pump water into the disposal basins from the ground water mound and from underground water lying above the layer of Blanchetown Clay in the Scheme Area; and
- (b) to drain water from the underground water lying above the layer of Blanchetown Clay in the Scheme Area into the ground water mound; and
- (c) to pump water from the underground water lying above the layer of Blanchetown Clay in the Scheme Area to land on which it will be used for irrigation;

**Scheme Area** means the area shown in Schedule 1;

**Scheme infrastructure** means the system of wells, pipes, pumps, tanks and other infrastructure (including electricity transmission lines) used, or to be used, for the purposes of the Scheme (but does not include disposal basins);

**spouse**—a person is the spouse of another if they are legally married;

**the Trust** means the Qualco-Sunlands Ground Water Control Trust established by this Act;

**water disposal easement**—see Part 4;

**water licence** means a water licence granted under the *Natural Resources Management Act 2004*;

**waterlogging and salinity risk management allocation**—see section 40;

**water usage year** means the period of 12 months from 1 July to the following 30 June;

**well** means—

- (a) an opening in the ground excavated for the purpose of obtaining access to underground water;
  - (b) an opening in the ground excavated for some other purpose that gives access to underground water;
  - (c) a natural opening in the ground that gives access to underground water.
- (2) Subject to subsection (3), where two or more irrigated properties are managed by the same person or by different persons who are associates (see subsection (4)), the properties will be taken to constitute a single irrigated property for the purposes of this Act.
  - (3) If, on the application of one or more of the persons referred to in subsection (2), the Trust is satisfied that one or more of the properties referred to in that subsection is managed as a single unit separately from the other or others, the Trust must declare the property to be an irrigated property separate from the other or others for the purposes of this Act.
  - (4) A person is an associate of another person if—
    - (a) a relationship of a kind referred to in subsection (5) exists between them; or

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- (b) they are linked by a series of relationships of a kind or kinds referred to in subsection (5) through one or more other persons.
- (5) Subsection (4) applies in relation to the following kinds of relationships:
- (a) the relationship between relatives;
  - (b) the relationship between a guardian and a child or a guardian and a protected person;
  - (c) the relationship between partners;
  - (d) the relationship between employer and employee;
  - (e) the relationship where one person is bound to, or usually does, act in accordance with the directions, instructions or wishes of another person;
  - (f) the relationship between a body corporate and an executive officer of the body corporate;
  - (g) the relationship between a body corporate and a person who is in a position to control or influence the activities of the body corporate;
  - (h) fiduciary relationships.
- (6) Where—
- (a) land in the Scheme Area is irrigated with underground water supplied by the Trust under a scheme to reuse underground water for irrigation; and
  - (b) at times when underground water is scarce the Trust uses water taken pursuant to a water licence under the *Natural Resources Management Act 2004* to meet its obligations to supply water to the land,
- the use of water taken pursuant to a water license for that purpose will not be taken into account in determining whether the land is an irrigated property for the purposes of this Act.
- (7) For the purposes of this Act—
- (a) a water usage year corresponds to the contribution year that commences during the water usage year; and
  - (b) a contribution year corresponds to the water usage year that ends during the contribution year.
- (8) In this Act, a reference to **contribution year** includes a reference to the 2000/2001 contribution year.
- (9) The first water usage year for the purposes of this Act is the period of 12 months from 1 July 2000 to 30 June 2001.

#### 4—Provisions relating to irrigation districts

- (1) Where the whole or part of an irrigation district under the *Irrigation Act 1994* comprises part of the Scheme Area and there are no water allocations under that Act in respect of any of the irrigated properties (within the meaning of that Act) comprising the district (or the part of it that is within the Scheme Area) or water allocations do exist in respect of some of those properties but not all of them, the following provisions apply—
  - (a) the irrigation authority for the irrigation district is a member of the Trust if a waterlogging and salinity risk management allocation is attached to the irrigated land of the district; and
  - (b) the irrigation district (or the part of it within the Scheme Area) will be taken to be an irrigated property owned by the irrigation authority; and
  - (c) the irrigated properties (within the meaning of the *Irrigation Act 1994*) comprising the irrigation district (or the part of it within the Scheme Area) are not irrigated properties for the purposes of this Act; and
  - (d) each of the owners of the irrigated properties (within the meaning of the *Irrigation Act 1994*) comprising the irrigation district (or the relevant part of it) will be taken not to own their respective properties but to be an occupier of the property concerned in addition to any other person in actual occupation of the property.
- (2) Subject to subsection (3), where the whole or part of an irrigation district under the *Irrigation Act 1994* comprises part of the Scheme Area and water allocations exist under that Act in respect of all of the irrigated properties (within the meaning of that Act) comprising the district (or that part of the district that is within the Scheme Area), the following provisions apply—
  - (a) the irrigation authority for the irrigation district is not a member of the Trust; and
  - (b) the irrigated properties comprising the irrigation district (or the relevant part of it) are irrigated properties for the purposes of this Act as though the irrigation district did not exist; and
  - (c) the owners of those properties to which, or to part of which, a waterlogging and salinity risk management allocation is attached under this Act are members of the Trust.
- (3) Where subsection (1) applies in relation to an irrigation district under the *Irrigation Act 1994* and water allocations are subsequently fixed under that Act so that water allocations exist under that Act in respect of all of the irrigated properties under that Act comprising the district (or the relevant part of it), subsection (1) will continue to apply in relation to the district until the expiration of three months (or such longer period as is fixed in the notice) after the irrigation authority for the district has served written notice on the Trust that subsection (2) will apply to the irrigation district instead of subsection (1).

- (4) Where subsection (2) applies to an irrigation district in pursuance of a notice under subsection (3), the waterlogging and salinity risk management allocation attached to each of the categories of irrigated land comprising the district will be divided between the irrigated properties (comprising the district) that include the relevant category of land in proportion to the water allocations under the *Irrigation Act 1994* of the properties concerned.
- (5) For the purposes of this Act, land may comprise an irrigated property within the meaning of the *Irrigation Act 1994* despite the fact that a water allocation does not apply to the property under that Act (see the definition of *irrigated property* in section 4(1) of the *Irrigation Act 1994*).

## **Part 2—The Qualco-Sunlands Ground Water Control Trust**

### **Division 1—Establishment of the Trust**

#### **5—Establishment of the Trust**

- (1) The Qualco-Sunlands Ground Water Control Trust is established.
- (2) The members of the Trust are the owners for the time being of irrigated properties to which, or to a part of which, a waterlogging and salinity risk management allocation is attached under this Act (if section 4(1) applies to an irrigation authority, the authority is a member of the Trust).
- (3) The Trust—
  - (a) is a body corporate; and
  - (b) has perpetual succession and a common seal; and
  - (c) can sue and be sued in its corporate name; and
  - (d) holds its property on behalf of the Crown; and
  - (e) has the functions assigned to, or conferred on, it by or under this or any other Act; and
  - (f) has all the powers of a natural person in addition to the powers conferred on it by this or any other Act.
- (4) Where a document appears to bear the common seal of the Trust, it will be presumed, in the absence of proof to the contrary, that the document was duly executed by the Trust.
- (5) The following matters are declared to be excluded matters for the purposes of section 5F of the *Corporations Act 2001* of the Commonwealth in relation to the whole of the Corporations legislation to which Part 1.1A of that Act applies:
  - (a) the Trust;
  - (b) an act or omission of any person, body or other entity in relation to the Trust.

## **6—Transfer of assets etc of Qualco-Sunlands District Drainage Incorporated to Trust**

- (1) On the commencement of this section, the property and rights of Qualco-Sunlands District Drainage Incorporated comprising or related to the Scheme infrastructure are divested from that body and vest in the Trust.
- (2) On the commencement of this section, the liabilities of Qualco-Sunlands District Drainage Incorporated incurred under contracts for or in relation to the construction of the Scheme infrastructure cease to be liabilities of that body and become liabilities of the Trust.
- (3) The persons who were, immediately before the commencement of this section, employed by Qualco-Sunlands District Drainage Incorporated will, at the commencement of this section, be taken to be employed (and to have been employed since the commencement of their employment with Qualco-Sunlands District Drainage Incorporated) by the Trust on the terms and conditions of their employment by Qualco-Sunlands District Drainage Incorporated.

## **7—Presiding officer and deputy presiding officer of the Trust**

- (1) Subject to subsections (2) and (3), the first presiding officer and deputy presiding officer of the Trust will be the persons who were, immediately before the commencement of this section, the chairman and deputy chairman of Qualco-Sunlands District Drainage Incorporated.
- (2) The presiding officer and deputy presiding officer of the Trust must be members of the Trust.
- (3) A resolution passed at a general meeting of the Trust—
  - (a) may remove a person from the office of presiding officer or deputy presiding officer of the Trust; and
  - (b) may appoint to the office of presiding officer or deputy presiding officer any member of the Trust.
- (4) The deputy presiding officer may act in the absence of the presiding officer or during a vacancy in the office of presiding officer.

## **Division 2—Meetings of the Trust**

### **8—Calling of meetings**

- (1) A meeting of the Trust may be called at any time by the presiding officer or by a group of members who would constitute a quorum at a meeting of the Trust.
- (2) The presiding officer must call a meeting of the Trust (the annual general meeting) at least once in each year.
- (3) At least 14 days written notice specifying the time and place of each meeting must be given to every member of the Trust.
- (4) The time and place of a meeting of the Trust must, as far as practicable, be convenient to the members of the Trust.

## 9—Procedure at meetings of Trust

- (1) The presiding officer will preside at meetings of the Trust or, in his or her absence, the deputy presiding officer will preside or, in the absence of both of them, a member chosen by the members present will preside.
- (2) Members at a meeting of the Trust form a quorum if—
  - (a) their number is equal to or greater than one third of the number of members of the Trust; and
  - (b) the aggregate of the waterlogging and salinity risk management allocations attached to the land owned by those members is at least one third of the aggregate of all risk management allocations attached to land in the Scheme Area.
- (3) The following provisions apply when determining whether a quorum is present at a meeting—
  - (a) if one third of the number of members of the Trust include a fraction, the fraction will be ignored; and
  - (b) two or more persons who are members of the Trust in respect of the same irrigated property will be counted as one member of the Trust; and
  - (c) a non-member who has been nominated to represent a member at the meeting will be counted (but if the non-member is representing two or more members, he or she will only be counted once).
- (4) Subject to this Act, a resolution will be carried if—
  - (a) the number of votes supporting it exceeds the number of the votes against it; and
  - (b) the value of the votes supporting the resolution exceeds the value of the votes against it,

(if the number or value of the votes are equal under paragraph (a) or (b), the deadlock in each case will be resolved by the casting vote of the person presiding at the meeting).
- (5) A resolution of the Trust to make a recommendation to the Governor to vary the regulations that determine the shares in which members contribute to the cost of the Scheme can only be carried if—
  - (a) twenty one days notice of the proposed resolution has been given to the members; and
  - (b) the number of votes supporting the resolution exceeds one half of the number of members who are entitled to attend and vote on the resolution; and
  - (c) the value of the votes supporting the resolution exceeds one half of the total value of the votes that could be cast at the meeting if all members of the Trust had attended and voted on the resolution.
- (6) Twenty one days notice must be given of a resolution that varies or revokes a decision made by resolution of the Trust within the preceding 12 months.
- (7) Subject to this Act, the Trust may determine its own procedures.
- (8) The Trust must keep minutes of its proceedings.

## **10—Notice of meetings where ownership of property changes**

Where the ownership of an irrigated property has changed, notice of a proposed meeting or resolution will be taken to have been given to the new owner if it had been given to the previous owner.

## **11—Voting**

- (1) Subject to this section, each member of the Trust is entitled to vote at meetings of the Trust.
- (2) A member may nominate another person to attend a meeting instead of the member and to vote at the meeting on his or her behalf.
- (3) Where two or more persons are members of the Trust by reason of their ownership of the same irrigated property, a person must be nominated by both or all of them to vote on their behalf.
- (4) A nomination referred to in subsections (2) and (3) must be made by written notice to the Trust and may be revoked by the member, or all of the members, concerned by subsequent written notice to the Trust.
- (5) Where a person who is not a member of the Trust has been nominated by a member or members to attend and vote at a meeting of the Trust, that person must be regarded as a member of the Trust for the purposes of proceedings at the meeting.
- (6) Subject to subsection (7), the values of votes at meetings of the Trust will be in proportion to the amount of the respective waterlogging and salinity risk management allocations attached to the land owned by the members voting.
- (7) The basis for determining the values of votes can be changed by a resolution of the Trust if the following requirements are complied with:
  - (a) twenty one days notice of the proposed resolution must have been given to the members; and
  - (b) the number of votes supporting the resolution must exceed one half of the number of members who are entitled to attend and vote on the resolution; and
  - (c) the value of votes supporting the resolution must exceed one half of the total value of the votes that could be cast at the meeting if all members of the Trust had attended and voted on the resolution.
- (8) Where an irrigation authority is a member of the Trust, a person who is the owner of an irrigated property within the meaning of the *Irrigation Act 1994* that comprises part of the authority's irrigation district under that Act is entitled to attend meetings of the Trust but is not entitled to notice of meetings or to vote at meetings of the Trust.

## **Division 3—Board of management, committees and delegation**

### **12—Board of management**

- (1) The Trust may appoint a board of management to carry out the day to day operations of the Trust.
- (2) The Trust may appoint committees for specific purposes.

### **13—Delegation**

- (1) Subject to subsection (2), the Trust may delegate any of its functions or powers under this Act to its board of management, a committee or to any other person.
- (2) The Trust cannot delegate its power of delegation or the power to make decisions that are required by this Act to be made by a resolution of which 21 days notice has been given.
- (3) A delegation must be in writing and may be conditional or unconditional.
- (4) The Trust may vary or revoke a delegation at will and a delegation does not prevent the carrying out of any function or the exercise of any power by the Trust.

### **14—Notice of resolution**

The decision of the Trust—

- (a) to appoint a board of management; or
- (b) to delegate functions or powers to a board of management, a committee or to any other person,

must be made by resolution of which 21 days notice has been given.

## **Division 4—Accounts and audit**

### **15—Accounting records to be kept**

- (1) The Trust must keep accounting records that correctly record and explain its financial transactions and financial position.
- (2) The records must be kept in a form—
  - (a) that facilitates the convenient and proper auditing of the records; and
  - (b) that facilitates the preparation of true and fair financial statements in a form that facilitates the convenient and proper auditing of the statements.

### **16—Preparation of financial statements**

- (1) The Trust must, as soon as practicable after the end of each contribution year, cause financial statements in respect of that contribution year to be prepared in accordance with recognised accounting standards and cause the statements to be audited.
- (2) An audit must be carried out by—
  - (a) a registered company auditor; or
  - (b) a firm of registered company auditors; or
  - (c) a member of the Australian Society of Certified Practising Accountants; or
  - (d) a member of The Institute of Chartered Accountants in Australia.
- (3) The following persons must not be appointed as auditor of the accounts of the Trust:
  - (a) a member of the Trust; or
  - (b) the owner of an irrigated property who is not a member of the Trust; or
  - (c) the owner of an irrigated property within the meaning of the *Irrigation Act 1994* who is not a member of the Trust (see section 4(1)).

- (4) An auditor of the Trust has a right of access at all reasonable times to the accounting records and other records of the Trust and is entitled to require from any officer or employee of the Trust or any other person such information and explanations as he or she requires for the purposes of the audit.
- (5) An officer or employee of the Trust or other person must not, without lawful excuse—
  - (a) refuse or fail to allow an auditor access, for the purposes of an audit, to any accounting records and other records of the Trust in his or her custody or control; or
  - (b) refuse or fail to give any information or explanation as and when required by an auditor; or
  - (c) otherwise hinder, obstruct or delay an auditor in the exercise or performance of a power or function of the auditor.

Maximum penalty: \$5 000.

- (6) An auditor must, on the completion of the audit, prepare a report on the audit.

### **17—Accounts etc to be laid before annual general meeting**

- (1) At each annual general meeting of the Trust, the Trust must lay before the meeting—
  - (a) a copy of the audited financial statements of the Trust for the previous contribution year and a copy of the auditor's report; and
  - (b) a report prepared by the Trust on the operations of the Trust in the previous contribution year.
- (2) At the request of the Minister or any member of the Trust, the Trust must provide the Minister or member with a copy of the audited financial statements, the auditor's report and the report prepared by the Trust in respect of the contribution year to which the request relates.
- (3) The Trust must make the minutes of meetings of the Trust available for inspection by its members and must, on payment of the prescribed fee, provide a member with a copy of the minutes of one or more of its meetings.

## **Division 5—Appointment of administrator**

### **18—Appointment of administrator**

- (1) The Minister may appoint an administrator of the Trust and may remove or replace an administrator previously appointed.
- (2) Before appointing an administrator of the Trust, the Minister must be satisfied that the Trust—
  - (a) has persistently failed to perform its functions properly; or
  - (b) has contravened, or failed to comply with, a provision of this Act; or
  - (c) has been guilty of financial mismanagement.
- (3) The function of an administrator is to reorganise the management and operations of the Trust to the extent necessary to enable it to perform its function and duties and exercise its powers efficiently on a continuing basis in accordance with this Act.

- (4) An administrator has, while the appointment remains in force, full and exclusive power to perform the functions and duties and exercise the powers of the Trust.
- (5) An administrator must comply with any directions that the Minister may give from time to time.
- (6) If an administrator has a direct or indirect personal or pecuniary interest in any matter in relation to which he or she proposes to act as administrator under this section, he or she must disclose the nature of the interest to the Minister before acting.  
Maximum penalty: \$10 000.
- (7) The remuneration of an administrator will be fixed by the Minister and is payable from the Trust's funds.
- (8) The administrator may, by written instrument, delegate any of his or her powers except this power of delegation.
- (9) A delegation under subsection (8)—
  - (a) may be made on such conditions as the administrator thinks fit; and
  - (b) is revocable at will; and
  - (c) does not derogate from the power of the administrator to act in any matter personally.
- (10) A person to whom powers have been delegated under subsection (8) who has a direct or indirect personal or pecuniary interest in any matter in relation to which he or she proposes to exercise those powers must disclose the nature of the interest in writing to the administrator.  
Maximum penalty: \$10 000.
- (11) It is a defence to a charge of an offence against subsection (6) or (10) to prove that the defendant was not, at the time of the alleged offence, aware of his or her interest in the matter.

## **Part 3—Functions and powers of the Trust**

### **Division 1—Construction and maintenance of the Scheme infrastructure**

#### **19—Construction of the Scheme infrastructure**

- (1) Subject to subsection (3), the Trust must construct such infrastructure (that is not already in existence) as is required for the purpose of pumping water into the disposal basins.
- (2) The infrastructure must be constructed in accordance with specifications determined or approved by the Minister as to—
  - (a) depth, size and capacity; and
  - (b) quality of materials and equipment; and
  - (c) design and method of construction; and
  - (d) such other matters as the Minister thinks fit.
- (3) The Trust is only required to comply with this section if it receives adequate Government funding to do so.

- (4) The Minister and the Trust may agree to increase the capacity of the Scheme infrastructure under this section at any time by increasing the capacity of the existing wells, pipes, pumps, tanks or other infrastructure or adding new wells, pipes, pumps, tanks or other infrastructure to the Scheme.

## **20—Infrastructure for reuse of underground water**

The Trust may purchase or construct such infrastructure as it requires to enable the reuse of underground water for irrigation.

## **21—Maintenance and repair of infrastructure**

The Trust must maintain and repair the Scheme infrastructure so that it is capable of operating efficiently at all times.

## **22—Vesting of Scheme infrastructure**

- (1) The Scheme infrastructure is vested in the Trust.
- (2) Subsection (1) does not preclude the Trust from transferring or otherwise dealing in the Scheme infrastructure.

## **23—Insurance of Scheme infrastructure**

- (1) The Trust must, to the extent that it is reasonably practicable to do so, insure the Scheme infrastructure against—
  - (a) risks that a normally prudent person would insure against; and
  - (b) risks that are prescribed by regulation.
- (2) The insurance must, if possible, be for the full cost of replacing the Scheme infrastructure with new materials and equipment.
- (3) The Trust must, to the extent that it is reasonably practicable to do so, insure itself against—
  - (a) risks that a normally prudent person would insure against; and
  - (b) risks that are prescribed by regulation.

## **Division 2—Disposal basins**

### **24—Provision of disposal basins**

The Minister will provide, or arrange for the provision of, one or more disposal basins connected to the Scheme infrastructure having a collective capacity—

- (a) to accept water from the Scheme infrastructure at the rate of 100 litres per second; and
- (b) that ensures that there will be no period of 12 months during which the disposal basins are unable to accept at least 2840 megalitres of water.

## **Division 3—Operation of the Scheme**

### **25—Operation of the Scheme**

- (1) The Trust must operate the Scheme in a manner that achieves a Government cost/benefit ratio that is equal (as far as practicable) to the Trust's cost/benefit ratio.

- (2) The Governments' cost/benefit ratio is the ratio of the money contributed to, or in relation to, the Scheme by the Commonwealth Government and the State Government to the benefits (expressed in monetary terms) derived by the State Government and the South Australian community generally as a result of reduction in salinity levels in the River Murray from the operation of the Scheme.
- (3) Except for the first \$300,000 dollars expended by the Minister in providing disposal basins as required by Division 2, the cost of providing disposal basins in compliance with that Division will not be taken into account when determining the Governments' cost/benefit ratio.
- (4) Any cost to the Government in increasing the number or capacity of the disposal basins above the requirements of Division 2 will be taken into account when determining the Governments' cost/benefit ratio.
- (5) The Trust's cost/benefit ratio is the ratio of the money contributed by the owners and occupiers of those irrigated properties that are owned by members of the Trust to the operation and maintenance of the Scheme to the benefits (expressed in monetary terms) derived by the owners and occupiers of those irrigated properties from the operation of the Scheme.
- (6) The methodologies to be used to determine the Governments' and the Trust's cost/benefit ratios must be designed by an expert appointed by the Minister and the Trust.
- (7) The Trust must keep (and make available to the Minister) such records as are necessary or desirable for the application of the methodologies referred to in subsection (6).
- (8) The methodologies must be reviewed from time to time at the request of the Minister or the Trust by an expert appointed by them.
- (9) If the Minister and the Trust cannot agree on the appointment of an expert under this section, the appointment will be made by the Governor.
- (10) The cost of, or relating to, designing the methodologies for the purposes of this section will be paid by the Minister and the Trust in equal shares.
- (11) The cost of, or relating to, reviewing the methodologies will be paid by the party requesting the review and must be taken into account when determining cost/benefit ratios under this section.

## **26—Creation of salinity credits by Trust**

- (1) Subject to subsection (2), the Trust may enter into an agreement with another person to produce salinity credits recognised under the Murray-Darling Basin Agreement on behalf of that person by pumping additional water from the ground water mound or from underground water lying above the layer of Blanchetown Clay in the Scheme Area.
- (2) An agreement under subsection (1) can not be made without the approval of the Minister.
- (3) The costs incurred by the Trust in producing salinity credits under an agreement referred to in subsection (1) and the consideration received by the Trust under the agreement must be taken into account when determining the Trust's cost/benefit ratio under section 25.

## Division 4—Powers of the Trust

### 27—Powers of Trust

- (1) The Trust has all powers necessary for or incidental to the construction, maintenance, purchase and operation of the Scheme infrastructure in accordance with this Act.
- (2) Without limiting subsection (1), the Trust may—
  - (a) enter or occupy any land or authorise any other person to enter or occupy any land if, in the Trust's opinion, it is necessary or desirable for the Trust or other person to do so for the purpose of planning, designing, constructing, maintaining or operating the Scheme infrastructure or carrying out any other function or exercising any other power of the Trust under this Act (this power is in addition to the rights of the Trust under the water disposal easement);
  - (b) drill wells;
  - (c) lay pipes above or below ground;
  - (d) construct pumping stations and install and operate pumps and other equipment;
  - (e) construct or erect embankments, roads, buildings, structures or any other works;
  - (f) construct electricity transmission lines;
  - (g) excavate trenches;
  - (h) inspect, clean, maintain, repair, alter, renew or replace any well, pipe, pumping station or other component forming part of the Scheme infrastructure;
  - (i) clear any well, pipe, pumping station, or other component forming part of the Scheme infrastructure;
  - (j) inspect, examine or survey land in connection with the planning, design or construction of the Scheme infrastructure and for that purpose the Trust may—
    - (i) fix posts, stakes or other markers on the land;
    - (ii) dig trenches or sink test holes on the land to determine the nature of the top soil and underlying strata;
    - (iii) remove samples of any material from the land for analysis;
  - (k) with the written approval of the Minister, purchase, sell or deal in any other manner with salinity credits recognised under the Murray-Darling Basin Agreement;
  - (l) with the written approval of the Minister, transfer, mortgage, lease or otherwise deal with the Scheme infrastructure and the other property of the Trust;
  - (m) with the written approval of the Treasurer, borrow money or obtain any other form of financial accommodation.

- (3) A person entering land under this section must comply with the requirements of section 71.
- (4) The written approval of the Minister under subsection (2)(1) may be to a transaction identified in the approval or may be to unidentified future transactions of a class identified in the approval.

## **Part 4—Water disposal easement**

### **28—Acquisition of easement**

- (1) The Minister is authorised to acquire an easement (the *water disposal easement*) for the purpose of the construction, operation and maintenance of the Scheme infrastructure as initially constructed or subsequently extended under this Act.
- (2) The easement will be an easement in gross and does not depend on the existence of a dominant tenement.
- (3) The Minister may acquire the easement pursuant to a contract with the owners of the land concerned or pursuant to the *Land Acquisition Act 1969*.
- (4) The Minister must, as soon as reasonably practicable after the easement is vested in the Minister, transfer the easement to the Trust.
- (5) No duty is payable under the *Stamp Duties Act 1923* in respect of the transfer.

### **29—Rights conferred by easement**

- (1) The easement entitles the person in whom it is vested and any person authorised by that person to use the land subject to the easement (the servient land) for the purpose of, or relating to—
  - (a) drilling wells; and
  - (b) laying pipes so that the uppermost surface of the pipe is at least 600 millimetres below ground level; and
  - (c) constructing pumping stations and installing pumps and other equipment; and
  - (d) constructing roads, buildings, structures and other works; and
  - (e) constructing electricity transmission lines; and
  - (f) excavating trenches; and
  - (g) using the Scheme infrastructure to pump water in accordance with this Act and using the electricity transmission lines for the transmission of electricity; and
  - (h) monitoring the operation of the Scheme infrastructure; and
  - (i) inspecting, cleaning, clearing, maintaining, repairing, altering, renewing and replacing any part of the Scheme infrastructure; and
  - (j) any other activity that is necessary or desirable for the purposes of this Act.
- (2) For the purposes of carrying out the Trust's functions, the Trust, or a person authorised by the Trust, may temporarily enter and occupy land adjacent to the servient land.

- (3) The Trust, or a person authorised by the Trust, may, for the purpose of exercising rights conferred by the easement, enter, pass over and occupy the servient land or the land referred to in subsection (2) at any time (with or without motor vehicles and other equipment).
- (4) A person entering land under this section must comply with the requirements of section 71.

### **30—Minimisation of damage etc**

- (1) A person exercising rights under the water disposal easement must take reasonable steps—
  - (a) to minimise damage to land or other property (including damage to pastures and native vegetation) from work or activities carried out in the exercise of rights conferred by the easement; and
  - (b) to avoid unnecessary interference with land or other property, or the use or enjoyment of land or other property, caused by the exercise of rights under the easement.
- (2) A person exercising rights under the water disposal easement must not engage in activities involving substantial destruction of vegetation on the servient land unless—
  - (a) there is no feasible way of avoiding clearance of the vegetation if rights conferred by the easement are to be effectively exercised; or
  - (b) the Minister gives written approval for clearance of the vegetation.

### **31—Issue of certificate of title for water disposal easement**

The Registrar-General must, on application by the Trust, issue a certificate for the water disposal easement or a particular part of the easement.

### **32—Dealing with easement**

- (1) The Trust must not enter into an agreement or other transaction affecting the water disposal easement without the written approval of the Minister.
- (2) The Registrar-General must not register any dealing with the easement without the written approval of the Minister.

## **Part 5—Impact of irrigation on waterlogging and salinisation**

### **Division 1—Classification of land**

#### **33—Classification of land in the Scheme Area**

- (1) The Minister and the Trust must classify all irrigated land as land the irrigation of which creates a high, medium or low risk of waterlogging or salinisation of that land or other land.
- (2) The land must be classified twice under this section in respect of the risk of waterlogging or salinisation caused by—
  - (a) firstly—the rising level of the ground water mound; and

- (b) secondly—the rising level of underground water accumulating above the layer of Blanchetown Clay in the Scheme Area.
- (3) If the regulations prescribe degrees of risk other than high, medium and low for the purposes of classification under this section, the Minister and the Trust must, as soon as practicable after the regulations come into operation, classify all irrigated land in accordance with those degrees of risk.
- (4) The Minister and the Trust, on the application of—
- (a) the owner of an irrigated property who proposes irrigating part of the property that is unclassified; or
  - (b) the owner of unclassified land in the Scheme Area who proposes developing the land as an irrigated property or adding the land to an existing property,
- must classify in accordance with this section that part of the land that will be irrigated.
- (5) The classification of land under this section must be—
- (a) based on such information as the Minister and the Trust (or the Governor acting under subsection (9)) thinks is relevant; and
  - (b) in accordance with a hydrogeological model approved by the Minister and the Trust.
- (6) The Minister and the Trust may require the owner of land to provide (at the owner's expense) the Minister and the Trust with information in relation to the land for the purposes of subsection (5)(a).
- (7) If a landowner fails to provide information required under subsection (6), the Minister and the Trust (or the Governor acting under subsection (9)) may classify the land at the highest degree of risk.
- (8) The Minister and the Trust—
- (a) may approve variations to the hydrogeological model referred to in subsection (5), or may approve a different model in substitution for the previous model, at any time; and
  - (b) must, if the Minister considers that it is necessary to do so, review the classification of all, or any part, of the land classified under this section; and
  - (c) must review the classification of all land classified under this section at intervals of not more than 5 years; and
  - (d) may vary the classification of land under this section following a review under paragraph (b) or (c).
- (9) If the Minister and the Trust cannot reach agreement as to—
- (a) the approval of a variation to the hydrogeological model or the approval of a different model in substitution for the previous model; or
  - (b) the classification, or variation of the classification, of land under this section,
- the Minister may refer the matter to the Governor for determination.
- (10) On—
- (a) the initial classification of land under this section; or

- (b) the classification of land following the prescription of degrees of risk by regulation under subsection (3); or
- (c) the classification of previously unclassified land under subsection (4); or
- (d) the variation of the classification of land under subsection (8)(d),

the Minister and the Trust must cause to be published in the Gazette a map showing all the classified land in the Scheme Area and the classification of that land.

### **34—Members of the Trust to be consulted**

- (1) Before the Minister and the Trust vary the classification of land under section 33 or before the Minister refers a question of the variation of classifications to the Governor under that section, the Trust must serve notice on the owner of each irrigated property that will be involved in, or affected by, the reclassification, inviting the owner to make written submissions as to the impact of irrigation on his or her land or neighbouring land.
- (2) The notice must provide a period of at least 28 days within which the owner may make submissions.
- (3) Before varying the classification of land under section 33, the Minister and the Trust (or, where the Governor is making a determination under section 33(9), the Governor) must have regard to all submissions made in accordance with the notice.
- (4) Where two or more persons are members of the Trust by virtue of ownership of the same irrigated property, service of the notice under subsection (1) on one of them will be taken to be service on all of them.

## **Division 2—Categories of land**

### **35—Categories of land**

- (1) The regulations may prescribe categories of irrigated land based on the classification of that land under Division 1.
- (2) The category of the land may be a factor specified by regulations under section 48 for determining the shares in which the owners and occupiers of irrigated properties are liable for the costs of the Scheme.

## **Division 3—Certificate of zero impact**

### **36—Certificate of zero impact**

- (1) Subject to subsection (2), an owner of an irrigated property may apply to the Minister for a certificate that the irrigation of land comprising the whole or part of the property will have no impact on both—
  - (a) waterlogging or salinisation of the land or any neighbouring land; and
  - (b) the salinity levels in the River Murray.
- (2) Where—
  - (a) the land comprises part of an irrigation district under the *Irrigation Act 1994*; and

- (b) the irrigation authority for the district under that Act is not a member of the Trust under this Act,
- the application can only be made with the written approval of the irrigation authority.
- (3) The application must—
- (a) be made in the manner, and be accompanied by the information, required by the Minister; and
  - (b) be accompanied by the fee prescribed by regulation.
- (4) The Minister may grant a certificate of zero impact if he or she is satisfied—
- (a) that irrigation of the land will have no impact on either waterlogging or salinisation of the applicant's land or any other land or on salinity levels in the River Murray—
    - (i) because the land is adequately drained by a system that is independent of the Scheme infrastructure; or
    - (ii) because the only water used for irrigation is taken from underground water accumulated above the layer of Blanchetown Clay in the Scheme Area; or
    - (iii) for any other reason; and
  - (b) that the Scheme does not improve the use of the land for the purposes of primary production in any way.
- (5) Before granting a certificate, the Minister must consult the Trust and take into account the Trust's views.
- (6) The Minister may grant a certificate—
- (a) for such term as he or she thinks fit; and
  - (b) subject to such terms, conditions and limitations as he or she thinks fit.
- (7) Without limiting subsection (6), a certificate may—
- (a) limit the quantity of water that may be used to irrigate the land; and
  - (b) specify the method or methods that may be used to irrigate the land; and
  - (c) include requirements relating to the maintenance, repair and replacement of the drainage system for the land; and
  - (d) require the owner or occupier of the land to periodically provide the Minister with such declarations or other evidence as the Minister requires to satisfy the Minister that the terms, conditions and limitations of the certificate have been complied with; and
  - (e) require the owner and occupier of the land to permit the Minister, or a person authorised by the Minister, to—
    - (i) inspect the land; and
    - (ii) inspect the irrigation and drainage systems on the land; and
    - (iii) read meters; and

- (iv) do anything else that is reasonably required to ensure that the irrigation of the land continues to have no impact on waterlogging or salinisation of land and salinity levels in the River Murray; and
- (f) require the owner or occupier of the land to pay the reasonable costs of the Minister (to be fixed by the Minister) for the supervision required under paragraphs (d) and (e).

### **37—Variation or termination of certificate**

- (1) The Minister may vary or terminate a certificate of zero impact at any time if—
  - (a) the owner or occupier, or a person acting on behalf of the owner or occupier, contravenes or fails to comply with the terms, conditions or limitations of the certificate; or
  - (b) the Minister is satisfied that irrigation on the land is having an impact on waterlogging or salinisation of land or salinity levels in the River Murray.
- (2) The Minister must serve notice of the variation or termination of the certificate on the owner and occupier of the land concerned and, subject to section 38(6), the variation or termination will take effect at the expiration of 30 days, or such longer period as is specified in the notice, after the time of service.
- (3) The notice must set out detailed particulars of the Minister's reasons for the variation or termination of the certificate.

### **38—Appeal to the ERD Court**

- (1) Where on an application for a certificate under section 36—
  - (a) the Minister refuses the application; or
  - (b) the applicant is dissatisfied with the terms, conditions or limitations of the certificate,the applicant may appeal to the ERD Court within 30 days after receiving notice of the decision.
- (2) The owner or occupier of land may appeal to the ERD Court against the termination or variation under section 37 of a certificate of zero impact in relation to the land at any time before the termination or variation takes effect.
- (3) An appeal under this section must be instituted in a manner and form determined by the Court.
- (4) An appeal must be referred in the first instance to a conference under section 16 of the *Environment, Resources and Development Court Act 1993* (and the provisions of that Act will then apply in relation to the appeal).
- (5) On hearing an appeal, the Court may—
  - (a) affirm or vary the decision appealed against or substitute any decision that should have been made in the first instance; or
  - (b) remit the subject matter of the appeal to the Minister for further consideration.
- (6) If an appeal has been instituted under subsection (2), the Court may suspend the operation of the decision appealed against until the determination of the appeal.
- (7) The Court may terminate a suspension under subsection (6) at any time.

## Division 4—Reducing the impact of irrigation

### 39—Rewards for reducing the impact of irrigation

- (1) The Governor may, by regulation made on the recommendation of the Trust, establish a scheme under which the owner or occupier of an irrigated property is rewarded for reducing the impact of irrigation on the property on—
  - (a) waterlogging or salinisation of the land comprising the property or any other land; or
  - (b) salinity levels in the River Murray; or
  - (c) both of those problems.
- (2) Without limiting the power to make regulations establishing a scheme under subsection (1), regulations made for that purpose may—
  - (a) exempt a person entitled to rewards under the scheme from any provision of this Act or may modify the operation of any provision of this Act in relation to such a person;
  - (b) provide for appeals to the ERD Court in relation to the operation of the scheme.

## Part 6—Allocation of the Scheme's risk management capacity

### 40—Waterlogging and salinity risk management allocation

- (1) A waterlogging and salinity risk management allocation (or *risk management allocation*) is an allocation to the irrigated land of an irrigated property of part of the capacity of the Scheme to manage the risk of waterlogging and salinisation of land and increasing levels of salinity in the River Murray resulting from irrigation of land in the Scheme Area.
- (2) The risk management allocation of an irrigated property is attached to the irrigated land comprising the whole or part of the property.
- (3) A risk management allocation, or part of a risk management allocation, may be transferred in accordance with section 44 from one category of irrigated land to another.
- (4) The risk management allocation attached to a category of irrigated land authorises (for the purposes of this Act but not for the purposes of any other Act) the person in occupation of the land to use a quantity of water taken pursuant to a water licence equivalent to the allocation to irrigate the land in each water usage year.
- (5) Subject to this Part, a risk management allocation—
  - (a) cannot be dealt with separately from the land to which it is attached; and
  - (b) is attached proportionally to all parts of that land so that if part of the land is transferred (or dealt with in any other manner) an equivalent part of the allocation is transferred with it.

- (6) Although a risk management allocation is attached proportionally to the land for the purpose of transfer or other dealings with the land, the quantity of water authorised by an allocation for the irrigation of a particular category of land comprising the whole or part of an irrigated property can be used on any part of that land.
- (7) The owner of land may, in an irrigation declaration, surrender the whole or part of the risk management allocation attached to the land.

#### **41—Application for initial risk management allocation**

- (1) The owner of an irrigated property to which a water licence referred to in Schedule 2 was applicable on 10 April 2000 is entitled, in his or her irrigation declaration for the 2000/2001 contribution year, to apply for and be granted a waterlogging and salinity risk management allocation for the quantity of water appearing opposite the water licence in that Schedule.
- (2) An owner of an irrigated property who applies under subsection (1) for a risk management allocation in the irrigation declaration referred to in that subsection may also apply under section 43 in the same declaration for an additional risk management allocation from the excess risk management capacity of the Scheme.

#### **42—Determination of excess capacity**

- (1) The excess capacity (if any) of the Scheme infrastructure to manage the waterlogging and salinisation of land and increasing levels of salinity in the River Murray must be determined and redetermined by the Minister and the Trust in accordance with this section.
- (2) The first determination of risk management capacity operates in relation to the contribution year in which the pumping of water into the disposal basins commences and in relation to subsequent contribution years.
- (3) The excess capacity of the Scheme infrastructure must be redetermined by the Minister and the Trust at intervals of not more than 5 years.
- (4) Redeterminations of the excess risk management capacity operate in relation to the contribution year commencing in the calendar year following the calendar year in which they are made and in relation to subsequent contribution years.
- (5) The Scheme infrastructure may only be determined to have excess capacity to the extent that its capacity exceeds—
  - (a) the capacity accounted for by existing risk management allocations; and
  - (b) the capacity needed to fulfil the requirements of section 25; and
  - (c) the capacity needed to meet the Trust's obligations under an agreement under section 26.
- (6) If the Minister and the Trust cannot agree on the initial determination or on a redetermination of the excess capacity of the Scheme, the determination or redetermination must be made by the Minister.
- (7) The Trust must on or before 30 September in each year, adjust the excess capacity as determined or redetermined under this section or previously adjusted under this subsection in respect of the following contribution year to take account of any increase or reduction in risk management allocations of irrigated properties or any other relevant factor not previously taken into account.

### **43—Request for increase in, or for a new, risk management allocation**

- (1) The owner of an irrigated property who is a member of the Trust may, in his or her annual irrigation declaration, apply to the Trust for an increase in the risk management allocation attached to the whole or part of his or her irrigated land or for a risk management allocation to be attached to other land that has been classified under section 33.
- (2) An owner of land that has been classified under section 33 but who is not a member of the Trust may apply in writing to the Trust to be granted a risk management allocation in relation to the land.
- (3) An application under subsection (1) or (2)—
  - (a) cannot (unless the regulations provide otherwise) be made in respect of the category of land under this Act having the highest risk;
  - (b) may be made in respect of land of any other category;
  - (c) in respect of an irrigated property, may, subject to paragraph (a), be made in respect of any part of the land comprising the property.
- (4) An application must be justified by demonstrating—
  - (a) —
    - (i) the need to use more water to irrigate existing plants; or
    - (ii) the need to irrigate proposed new planting to be undertaken on land that is suitable for the purpose; and
  - (b) that the quantity of the risk management allocation requested is not excessive when the species of plants and the area involved are taken into account.
- (5) An application must include such information as is required by the regulations and such further information as is required by the Trust.
- (6) The Trust may refuse an application if the applicant fails to convince the Trust that his or her application is justified under subsection (4).
- (7) If the application is refused, the applicant may apply to the Minister for Natural Resources Management and, if the Minister is satisfied that the application is justified, he or she may direct the Trust to accept it.
- (8) Subject to subsections (9) and (10), those persons who have applied successfully in accordance with this section for an increase in their risk management allocation or for a new allocation are entitled to have the excess risk management capacity of the Scheme divided equally between them (regardless of any differences in the amounts they have applied for) until their respective applications are satisfied.
- (9) An applicant whose application is only partially satisfied—
  - (a) is entitled to have it satisfied in a subsequent year or years before any new applications are satisfied; but
  - (b) is not entitled to make a further application until the previous application is satisfied or is withdrawn.

(10) Where—

- (a) the capacity of the Scheme infrastructure is increased pursuant to an agreement between the Minister and the Trust under section 19(4); and
- (b) it is a term of the agreement that the resulting increase in the capacity of the Scheme is to be divided between the irrigated properties to which a water licence was applicable on 10 April 2000 but to which a risk management allocation has never previously been attached,

the owner of an irrigated property referred to in paragraph (b) may apply to the Trust for a risk management allocation proportional to, but not exceeding, the risk management allocation appearing opposite the number of the water licence applicable to that property in Schedule 2.

#### **44—Transfer of risk management allocations**

- (1) Subject to subsection (2), the owner of an irrigated property may transfer a waterlogging and salinity risk management allocation, or a part of such an allocation, attached to part of his or her irrigated land to another part of his or her irrigated land if the land to which the allocation is transferred is of the same category as, or a category having a lower degree of risk than, the land from which the allocation is transferred.
- (2) A risk management allocation or part of an allocation can only be transferred to land—
  - (a) that formed part of the risk management allocation's irrigated property when the allocation first became attached to land comprising part of the property; or
  - (b) that is contiguous to land referred to in paragraph (a) and has subsequently become part of that irrigated property.
- (3) For the purposes of subsection (2), one parcel of land will be taken to be contiguous with another parcel of land if they abut one another at any point or if they are separated only by—
  - (a) a street, road, railway, thoroughfare, watercourse or channel; or
  - (b) a reserve or other similar open space dedicated for public purposes.
- (4) For the purposes of subsection (3) parcels of land will be taken to be separated by intervening land if a line projected at right angles from any point on the boundary of one of the parcels with the intervening land would intersect a boundary of the other parcel with the intervening land.
- (5) The means of transferring a risk management allocation, or part of an allocation, under this section is by informing the Trust of the transfer in an annual irrigation declaration.

#### **45—Agreement with landowner to increase risk management capacity**

- (1) The following persons may enter into an agreement with the Trust under which the person pays for, or contributes towards, an increase in the capacity of the Scheme infrastructure:
  - (a) where the Scheme Area includes the whole or part of an irrigation district under the *Irrigation Act 1994* and the irrigation authority for the district under that Act is a member of the Trust under this Act—
    - (i) the irrigation authority; and

- (ii) a person who is the owner of an irrigated property or other land in the Scheme Area that is outside the irrigation district;
  - (b) in any other case—a person who is the owner of an irrigated property or other land in the Scheme Area.
- (2) Subject to the written approval of the Minister, the agreement may provide that a risk management allocation, or an increased risk management allocation, will be attached by the Trust to land specified in the agreement when the risk management capacity of the Scheme is increased.
- (3) The Trust must not agree to a provision referred to in subsection (2) unless—
  - (a) the Minister and the Trust have agreed on the extent to which the risk management capacity of the Scheme will be increased; and
  - (b) the risk management allocation, or the increase in the risk management allocation, referred to in subsection (2) is accommodated by the increase in the risk management capacity of the Scheme.
- (4) A new risk management allocation, or an increase in an existing allocation, cannot (unless the regulations provide otherwise) be attached to the category of land having the highest degree of risk.
- (5) As far as practicable the Trust must not benefit, or suffer any detriment, from an agreement under subsection (1).

## **Part 7—Funding the operation and maintenance of the Scheme**

### **Division 1—Funding the Scheme**

#### **46—Money required for operation and maintenance**

- (1) The Minister and the Trust must determine at least three months before the commencement of each contribution year the amount of money that the Trust will require (in addition to the funds that are already available to it) to operate and maintain the Scheme infrastructure in accordance with this Act and to carry out its other functions under this Act during that year.
- (2) The amount determined under subsection (1) may include an amount to cover a shortfall in the Trust's budget from the previous contribution year.
- (3) If the Minister and the Trust fail to reach agreement at least three months before the commencement of the contribution year on the amount required, the amount required will be taken to be the amount determined by the Minister as being the amount that is likely, in his or her opinion, to be required for those purposes.
- (4) The amount must include (but is not limited to) the following components:
  - (a) the amount required to cover the cost of maintaining, repairing and replacing the Scheme infrastructure during the relevant contribution year; and
  - (b) the amount required to cover the cost of pumping water into the disposal basins and any related expenses that are not covered in the component referred to in paragraph (a); and

- (c) a contribution to the future cost of the maintenance, repair and replacement of the Scheme infrastructure.
- (5) The amount of the component referred to in subsection (4)(c) must be calculated to spread the burden of future costs as far as possible equally amongst those who are presently, and those who in the future will be, liable for the maintenance of the Scheme.
- (6) The Minister must determine the amount required to cover the costs of, and relating to, the recovery from the persons liable under section 55 of the amount paid by the Treasurer to the Trust under section 47 in respect of the relevant contribution year.
- (7) On or before 15 August in each year (or, in respect of the 2000/2001 contribution year, some other date agreed between the Minister and the Treasurer), the Minister must inform the Treasurer in writing of the amount determined under subsection (1) or (3) in respect of the immediately following contribution year.

#### **47—Payment by the Treasurer**

- (1) The Treasurer must pay to the Trust from the Consolidated Account (which is appropriated to the necessary extent) the amount determined under section 46 that will be required by the Trust for the relevant contribution year.
- (2) The amount must be paid—
  - (a) in respect of the 2000/2001 contribution year—in such instalments and on or before such dates as are agreed by the Minister and the Treasurer;
  - (b) in respect of all other contribution years—in equal quarterly instalments on or before the first days of October, January, April and July in the relevant year.

#### **48—Recovery of money paid by Treasurer to Trust**

- (1) Subject to subsection (2), the following amounts may be recovered by the Minister from the owners and occupiers of irrigated properties in shares determined in accordance with the regulations:
  - (a) an amount equivalent to the amount paid, or to be paid, by the Treasurer to the Trust under section 47 for the relevant contribution year; and
  - (b) an amount equivalent to the amount determined by the Minister under section 46(6) to cover recovery costs for that contribution year; and
  - (c) an amount (if any) payable by the Minister as a Goods and Services Tax or any other tax imposed by or under an Act of the Commonwealth in respect of the amount paid to the Minister in pursuance of a liability under section 55.
- (2) Subsection (1) does not apply to the owner or occupier of an irrigated property to which a water licence referred to in Schedule 2 was applicable on 10 April 2000 if a risk management allocation is not, and never has been, attached to any land comprising the irrigated property.
- (3) Subject to subsection (6), regulations may only be made by the Governor under subsection (1) on the recommendation of the Minister and the Trust.

- (4) Regulations made under subsection (1) may provide that the shares payable by the owners and occupiers of irrigated properties will be based on one or more of the following factors:
  - (a) the category or categories of the irrigated land of the irrigated property;
  - (b) the quantity of water used to irrigate the irrigated land of the property;
  - (c) the extent (if any) to which irrigation of the irrigated land of the irrigated property increases salinity levels in the River Murray;
  - (d) the waterlogging and salinity risk management allocation attached to the irrigated land comprising the whole or part of the irrigated property;
  - (e) such other factor or factors as are specified in the regulations.
- (5) The first regulations made under subsection (1) will be taken to have been made on the recommendation of the Minister and the Trust as required by subsection (3).
- (6) The Governor may make regulations under subsection (1) varying the regulations under that subsection on the recommendation of the Minister alone without the recommendation of the Trust if—
  - (a) the Minister and the Trust cannot agree on the recommendation to be made to the Governor; or
  - (b) in the Minister's opinion, the regulations need to be varied because they are causing, or are likely to cause, substantial unfairness to one or more persons.
- (7) The amount determined under the regulations as being payable in respect of an irrigated property must be increased or reduced under section 49 to take account of any under payment or over payment in respect of the previous contribution year or years in relation to the irrigated property.

#### **49—Adjustment of contributions**

- (1) Where—
  - (a) the share payable in a contribution year by an owner and occupier of an irrigated property depends on the quantity of water used to irrigate the land in the corresponding water usage year; and
  - (b) the quantity actually used in that year differs from the quantity on which the share was based,

the share must be redetermined after the end of the water usage year based on the actual quantities used and the share determined under section 48 in respect of that irrigated property for the following contribution year must be adjusted to take account of an underpayment or overpayment in respect of the previous year.

- (2) The regulations may provide that a share (based on the quantity of water used) initially payable by an owner and occupier of an irrigated property in respect of a contribution year may be based on the quantity of water used to irrigate the property in the water usage year corresponding to the immediately preceding contribution year or on an estimation by the Trust of the water to be used in the current water usage year.

## **50—Payment in respect of the unauthorised use of water**

- (1) The use of water to irrigate an irrigated property to which, or to part of which, a risk management allocation is attached is unauthorised for the purposes of this Part if the use of the water constitutes an overuse in the relevant water usage year under section 51.
- (2) If in a water usage year the quantity of water used to irrigate an irrigated property to which a water licence referred to in Schedule 2 was applicable on 10 April 2000 but to which a risk management allocation has never been attached exceeds the risk management allocation appearing opposite that water licence in Schedule 2, the use of all of the water used to irrigate that property in that year is unauthorised for the purposes of this Part.
- (3) Subsection (2) does not apply in relation to an irrigated property in relation to a water usage year if, in the opinion of the Trust, the excessive use of water is trifling.
- (4) The use of any water to irrigate an irrigated property that is not referred to in subsection (1) or (2) is unauthorised for the purposes of this Part.
- (5) An amount determined in accordance with the regulations may be recovered by the Minister in respect of the unauthorised use of water from the owner and occupier of the land on which the water was used (the amount may be a share of the amounts referred to in section 48(1)).
- (6) Subject to subsection (9), regulations may be made by the Governor under subsection (5) only on the recommendation of the Minister and the Trust.
- (7) Regulations under subsection (5) may—
  - (a) be based on one or more of the factors referred to in section 48(4) or such other factors as are specified in the regulations;
  - (b) impose a penalty for the unauthorised use of water.
- (8) The first regulations made under subsection (5) will be taken to have been made on the recommendation of the Minister and the Trust as required by subsection (6).
- (9) The Governor may make regulations under subsection (5) varying the regulations under that subsection on the recommendation of the Minister alone without the recommendation of the Trust if—
  - (a) the Minister and the Trust cannot agree on the recommendations to be made to the Governor; or
  - (b) in the Minister's opinion, the regulations need to be varied because they are causing, or are likely to cause, substantial unfairness to one or more persons.

## **51—Computing overuse of water**

- (1) Subject to this section, if the total quantity of water used to irrigate a particular category of land comprising the whole or part of an irrigated property over a period comprising a block of three consecutive water usage years exceeds the quantity prescribed by subsection (2), the owner or occupier of the land will be taken to have overused water on that category of land in the last of those years to the extent of the excess.

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- (2) The quantity of water for the purposes of subsection (1) is the quantity of water authorised for irrigation of the land during the relevant block of three consecutive water usage years by the waterlogging and salinity risk management allocation (if any) attached to the land.
- (3) By way of explanation—
- (a) the first block of three consecutive years is comprised of the first, second and third water usage years of the operation of the Scheme;
  - (b) the second block is comprised of the second, third and fourth water usage years of the Scheme;
  - (c) the third block is comprised of the third, fourth and fifth water usage years, and so on.
- (4) In order to avoid an owner and occupier being charged more than once in respect of the unauthorised use of water, where—
- (a) the quantity of water used to irrigate land in a particular water usage year (the *relevant year*) will be included to determine the question of the overuse of water in respect of two or three blocks of consecutive years under subsection (1) (for example the second water usage year will be included in determinations in respect of the first and second blocks of consecutive years and the third and subsequent water usage years will be included in determinations in respect of three blocks of consecutive years); and
  - (b) the quantity of water used in the relevant year exceeded the risk management allocation attached to the land for the corresponding contribution year; and
  - (c) the quantity of water used in the relevant year has already been taken into account in determining that an overuse of water has occurred in one of the blocks of three consecutive water usage years of which the relevant year is a component year,

the quantity of water used in the relevant year for the purpose of determining whether water has been overused in a subsequent block of consecutive years of which the relevant year is a component year will be taken to be equivalent to the risk management allocation for the contribution year corresponding to the relevant water usage year.

- (5) The third water usage year of the Scheme and each subsequent water usage year will be the last year of a block of three years comprising that year and the two preceding years in respect of an irrigated property even though the land comprising the property was not an irrigated property until the last of those years.
- (6) For the purposes of this section—
- (a) there will be taken to be a risk management allocation of zero in respect of land to which a risk management allocation is not attached; and
  - (b) where during a particular period an owner or occupier uses water to irrigate more than one category of land, an overuse of water on a category of land having a lower risk will be reduced by the equivalent under use (if any) during that period on a category of land having a higher risk; and

- (c) if the overuse of water occurs on land that has not been classified under section 33, the overuse will be taken to have occurred on land having the highest degree of risk.
- (7) If the Trust has made a dry year declaration under section 53 in respect of a water usage year, the quantity of water used to irrigate land in that year will be notionally reduced in accordance with the declaration for the purposes of determining the overuse of water under this section.

## **52—Rules for computing water used where certificate of zero impact applies**

Where a certificate of zero impact is in force under section 36 in relation to land, the following rules apply when determining the contribution payable by the owner and occupier of the land to the costs of the Scheme and when computing the quantity of water used on the land for the purposes of sections 50 and 51:

- (a) where—
  - (i) the certificate of zero impact has been in force during the whole of a water usage year; and
  - (ii) all the water used to irrigate that land during that year has been used in accordance with the terms, conditions and limitations of the certificate,

the quantity of water used to irrigate the land during that year will be taken to be zero;

- (b) where—
  - (i) the certificate has not been in force during the whole of the water usage year; or
  - (ii) some or all of the water used to irrigate the land during that year has been used in contravention of the terms, conditions or limitations of the certificate,

the quantity of water used to irrigate the land during that year will be taken to be the quantity of water actually used for that purpose.

## **53—Dry year declarations**

- (1) Where, in the opinion of the Trust, the recharge to the ground water mound or to the underground water lying above the layer of Blanchetown Clay in the Scheme Area in a water usage year has been significantly reduced because of low rainfall or for any other reason, the Trust may issue a dry year declaration stating the extent to which the quantities of water used to irrigate land in that year will be notionally reduced for the purpose of determining amounts payable by owners and occupiers under this Part.
- (2) The Trust must serve a copy of the declaration on each member of the Trust.

## **54—Irrigation declarations**

- (1) If a waterlogging and salinity risk management allocation is attached to the irrigated land of an irrigated property, the owner of the property must provide the Trust with an irrigation declaration in relation to each contribution year in a form approved by the Trust.

- (2) The declaration must include information required by the regulations for the administration of this Part or for the administration of any other Part of this Act.
- (3) If an owner fails to complete and return an irrigation declaration to the Trust as required by the regulations, a notional declaration including such information as the Trust considers appropriate will be taken to have been returned by the owner to the Trust in accordance with the regulations.

## **Division 2—Recovery of money from owners and occupiers**

### **55—Liability to pay Minister**

- (1) The following persons are jointly and severally liable to pay to the Minister the share determined under section 48, and the amount determined under section 50 (if any), in respect of each irrigated property for each contribution year:
  - (a) the owner or owners of the property at 12.01 a.m. on the first day of the contribution year; and
  - (b) the occupier or occupiers (if not also the owner or owners) of the property at that time.
- (2) An owner and occupier of an irrigated property who are liable under subsection (1) must, as between each other (subject to an agreement between them to the contrary), contribute equally to the amount payable to the Minister under this section and two or more co-owners or co-occupiers must contribute as between each other in proportion to the value of their respective interests in the land.
- (3) A subsequent owner of an irrigated property is liable to pay to the Minister an amount, or a part of an amount, in respect of that property that has not been paid under subsection (1).
- (4) A subsequent owner who has paid the whole or part of an amount under subsection (3) is entitled to recover—
  - (a) the amount paid from the person primarily liable or, if there are two or more such persons, from any one or more of them;
  - (b) a part of the amount paid from his or her co-owner (if any) that is in proportion to the value of their respective interests in the land.
- (5) A subsequent owner who has paid an amount to his or her co-owner under subsection (4)(b) is entitled to recover that amount from the person primarily liable or, if there are two or more such persons, from any one or more of them.
- (6) In this section—

*subsequent owner* of an irrigated property includes a person who has ceased to be an owner of the property.

### **56—Notice to persons liable of amount payable**

- (1) The Minister may serve notice on each person who is primarily liable under section 55 setting out—
  - (a) the amount, or amounts, payable to the Minister by the person under section 55(1); and

- (b) a brief statement of the manner in which the amount or amounts was or were determined; and
  - (c) the amount (if any) by which the amount determined in accordance with the regulations under section 48 has been increased or reduced pursuant to section 49.
- (2) The notice must state that the amount, or amounts, may be paid in equal quarterly instalments and must set out the days on or before which each instalment is payable.
- (3) The first instalment is payable on or before 1 November of the contribution year or on or before the expiration of the period of 30 days following service of the notice whichever is the later.
- (4) The other instalments are payable on or before 1 February, 1 May and 1 August respectively in the contribution year.
- (5) However, despite subsections (2), (3) and (4), the amount, or amounts, payable to the Minister in respect of the 2000/2001 contribution year will be payable in equal instalments on or before the dates fixed by the Minister for the purpose and specified in the notice (the date for payment of the first instalment being not less than 30 days after the date on which the notice is issued).

### **57—Interest**

- (1) Interest accrues—
  - (a) on an unpaid instalment; and
  - (b) on unpaid interest,in accordance with the regulations.
- (2) A person who is liable to pay an amount under section 55 is also liable to pay interest that accrues, or has accrued, on or in relation to that amount under this section.

### **58—Amount first charge on land**

- (1) An amount that is unpaid under section 55 and unpaid interest in relation to that amount are a first charge on the land comprising the irrigated property in relation to which the instalment is payable.
- (2) Where the whole or part of an irrigation district under the *Irrigation Act 1994* comprises part of the Scheme Area and the irrigation authority for the district is to be taken by virtue of section 4(1) to be the owner of the district, a part of an unpaid instalment or interest in relation to the district is a first charge on each irrigated property within the meaning of the *Irrigation Act 1994* comprising the district.
- (3) The part of an unpaid instalment or interest that is a first charge on an irrigated property referred to in subsection (2) bears the same proportion to the unpaid instalment or interest as the value of the property bears to the aggregate value of all irrigated properties in the irrigation district.
- (4) If the owner of an irrigated property that is subject to a first charge referred to in subsection (2) is not liable under another provision of this Division for the amount of the charge, he or she—
  - (a) is liable under this subsection to the Minister for that amount; and
  - (b) is entitled to recover the amount from the person primarily liable.

## 59—Sale of land for non-payment

- (1) Where an instalment, or interest in relation to an instalment, is a first charge on land under section 58 and has been unpaid for one year or more, the Minister may sell the land.
- (2) Before the Minister sells land in pursuance of this section, he or she must serve notice on the owner of the land—
  - (a) stating the period for which the instalment or interest has been in arrears; and
  - (b) stating the total liability for instalments and interest presently outstanding and charged on the land; and
  - (c) stating that if the total amount is not paid in full within one month of service of the notice (or such longer time as the Minister may allow), the Minister intends to sell the land for non-payment of that amount.
- (3) A copy of a notice must be served on the registered mortgagee or encumbrancee of the land (if any).
- (4) If the outstanding amount is not paid in full within the time allowed under subsection (2), the Minister may proceed to sell the land.
- (5) The sale will, except in the case of land held from the Crown under a lease, licence or agreement to purchase, be by public auction (and the Minister may set a reserve price for the purposes of the auction).
- (6) An auction under this section must be advertised on at least two separate occasions in a newspaper circulating generally throughout the State.
- (7) If, before the date of the auction, the outstanding amount and the costs incurred by the Minister in proceeding under this section are paid to the Minister, the Minister must withdraw the land from auction.
- (8) If—
  - (a) an auction fails; or
  - (b) the land is held from the Crown under a lease, licence or agreement to purchase,the Minister may sell the land by private contract for the best price that he or she can reasonably obtain.
- (9) Any money received by the Minister in respect of the sale of land under this section will be applied as follows:
  - (a) firstly—in paying the costs of the sale and any other costs incurred in proceeding under this section;
  - (b) secondly—in discharging the liability to the Minister for the total amount referred to in subsection (2) and any other liabilities to the Crown in respect of the land;
  - (c) thirdly—in discharging any liability to the Crown for rates, charges or taxes (including rates, charges or taxes that are a first charge on the land);
  - (d) fourthly—in discharging any liability to a council under the *Local Government Act 1999* for rates or any other liability to a council in respect of the land;

- (e) fifthly—in discharging any liabilities secured by registered mortgages, encumbrances or charges;
  - (f) sixthly—in discharging any other mortgages, encumbrances and charges of which the Minister has notice;
  - (g) seventhly—in payment to the former owner of the land.
- (10) If the former owner cannot be found after making reasonable inquiries as to his or her whereabouts, an amount payable to the former owner must be dealt with as unclaimed money under the *Unclaimed Moneys Act 1891*.
- (11) Where land is sold by the Minister in pursuance of this section, an instrument of transfer executed by the Minister will operate to vest title to the land in the purchaser.
- (12) The title vested in a purchaser under subsection (11) will be free of all mortgages, encumbrances and charges and all leases and licences.
- (13) An instrument of transfer passing title to land in pursuance of a sale under this section must, when lodged with the Registrar-General for registration or enrolment, be accompanied by a statutory declaration made by the Minister stating that the requirements of this section in relation to the sale of the land have been observed.
- (14) Where it is not reasonably practicable to obtain the duplicate certificate of title to land that is sold in pursuance of this section, the Registrar-General may register the transfer notwithstanding the non-production of the duplicate, but in that event he or she must cancel the existing certificate of title for the land and issue a new certificate in the name of the transferee.
- (15) In this section—  
*an instalment* includes part of an instalment.

## **60—Money recovered to be paid to Treasurer**

The Minister must pay money recovered under this Division to the Treasurer.

## **Part 8—Wells**

### **61—Activities relating to wells**

- (1) A person must not undertake any of the following activities in the Scheme Area unless authorised to do so by a permit granted by the Trust:
- (a) drilling, plugging, backfilling or sealing of a well;
  - (b) repairing, replacing or altering the casing, lining or screen of a well;
  - (c) draining or discharging water directly or indirectly into a well.
- (2) The Trust may undertake any of the activities referred to in subsection (1) without a permit.
- (3) A person who—
- (a) contravenes subsection (1); or
  - (b) contravenes or fails to comply with a condition to which a permit referred to in subsection (1) is subject,

is guilty of an offence.

Maximum penalty:

where the offender is a body corporate—\$20 000.

where the offender is a natural person—\$10 000.

## 62—Permits

- (1) An application for a permit must be in a form approved by the Trust and must, if a fee has been prescribed by regulation in relation to the application, be accompanied by the fee.
- (2) The applicant must provide the Trust with such information as the Trust reasonably requires to consider the application.
- (3) Subject to its terms, a permit is binding on and operates for the benefit of the applicant and the owner and occupier of the land to which it relates when it is granted and all subsequent owners and occupiers of the land.
- (4) A permit is subject to such conditions as are prescribed by this Act or by regulation under this Act or are specified in the permit by the Trust.
- (5) Depending on its nature, a condition may remain in force after the activity authorised by the permit has been completed or the permit is no longer in force.
- (6) It is a condition of a permit to drill, plug, backfill or seal a well or to repair, replace or alter the casing, lining or screen of a well that the work be undertaken by a person who is a licensed well driller or is supervised in carrying out the work by a licensed well driller.
- (7) If the Trust is satisfied that the holder of a permit, or a person acting on behalf of the holder of a permit, has contravened or failed to comply with a condition of the permit, the Trust may, by notice served on the holder of the permit, vary, suspend or revoke the permit.
- (8) Where the rising level of underground water is—
  - (a) damaging soil, rock or other structures; or
  - (b) damaging ecosystems; or
  - (c) affecting the natural drainage of surface water,the Trust or the Minister may revoke a permit to drain or discharge water directly or indirectly into a well that provides access to that underground water.
- (9) In any other case, the Trust may vary, suspend or revoke a permit with the consent of the holder of the permit.
- (10) The variation or revocation of a permit under this section will be effected by the Trust or the Minister serving notice of the variation or revocation on the holder of the permit.
- (11) In this section—

*licensed well driller* has the same meaning as in the *Natural Resources Management Act 2004*.

### 63—Defences

It is a defence to prosecution for an offence against section 61(3)(a) or an offence against section 61(3)(b) comprising the failure to use the services of a licensed well driller or a person supervised by a licensed well driller (see section 62(6))—

- (a) to prove—
  - (i) that the well had been drilled before the commencement of this Act and had been used both before and after that date solely or predominantly for the purpose of draining or discharging water directly or indirectly into the groundwater mound or the underground water accumulating above the layer of Blanchetown Clay in the Scheme Area; and
  - (ii) that the annual quantity of water draining or discharging directly or indirectly into the groundwater mound or the underground water accumulating above the layer of Blanchetown Clay has not increased since the commencement of this Act; or
- (b) to prove that the well is of a class specified by or under Schedule 3; or
- (c) to prove that the person who carried out the work was the owner of the land on which the well is situated or was the employee of the owner of that land and that—
  - (i) the well gives access to underground water the surface of which is at atmospheric pressure and the total dissolved salts of which exceed 1 800 milligrams per litre; and
  - (ii) the work was carried out solely for the purposes of maintenance and did not involve—
    - (A) substantial alteration to the casing, lining or screen of the well or the replacement of the casing, lining or screen with a casing, lining or screen of substantially different design or specifications; or
    - (B) a substantial repositioning of the casing, lining or screen; or
    - (C) deepening the well by more than 1.5 metres; or
- (d) to prove that—
  - (i) the work comprising the alleged offence was carried out to prevent or reduce pollution of water in the well and that in the circumstances it was unreasonable to expect the defendant—
    - (A) to have obtained a permit; or
    - (B) to have obtained the services of a licensed well driller; and
  - (ii) the work was carried out in accordance with the regulations (if any); and
  - (iii) the Trust was given written notice of the work as soon as practicable after it was completed; or
- (e) to prove that—

- (i) the work comprising the alleged offence was carried out pursuant to a permit issued by the Trust; and
- (ii) the work comprising the alleged offence was carried out by or under the supervision of the owner of the land on which the well is situated; and
- (iii) at the time of the alleged offence the well was not more than 15 metres in depth (or such other depth as may be prescribed by regulation); and
- (iv) the work was carried out in accordance with the regulations (if any).

#### **64—Notice to rectify unauthorised activity**

(1) Where a person has—

- (a) undertaken an activity in contravention of section 61; or
- (b) contravened or failed to comply with a condition of a permit,

the Trust may serve notice on the owner or occupier of the land on which the activity was undertaken directing him or her to take such action as is specified in the notice to rectify the effects of the activity and to take such other action as the Trust considers necessary or desirable in the circumstances.

(2) If the owner or occupier fails to comply with a notice—

- (a) he or she is guilty of an offence; and
- (b) the Trust may enter the land and take the action specified in the notice and such other action as the Trust considers appropriate in the circumstances and the Trust's costs will be a debt due by the owner or occupier to the Trust.

Maximum penalty:

where the offender is a body corporate—\$20 000.

where the offender is a natural person—\$10 000.

#### **65—Right of appeal**

(1) The following rights of appeal lie to the ERD Court:

- (a) an applicant for the grant of a permit under this Part may appeal to the ERD Court against a refusal to grant the permit or the imposition of conditions in relation to the permit;
- (b) the holder of a permit may appeal against the variation or revocation of the permit.

(2) An appeal under subsection (1) must be instituted in the manner and form determined by the Court within six weeks of the decision, direction or restriction appealed against or within such further time as the Court considers to be reasonable in the circumstances.

(3) An appeal must be referred in the first instance to a conference under section 16 of the *Environment, Resources and Development Court Act 1993* (and the provisions of that Act will then apply in relation to the appeal).

- (4) On an appeal the ERD Court may—
  - (a) affirm or vary the decision, direction or restriction appealed against, or substitute any decision, direction or restriction that should have been made in the first instance; or
  - (b) remit the subject matter of the appeal to the Trust, or the Minister (as the case requires) for further consideration.
- (5) Where the Trust has made a decision to vary or revoke a permit, or the Minister has made a decision to revoke a permit, and the Trust, the Minister or the Court is satisfied that an appeal against the decision has been instituted, or is intended, the Trust, the Minister or the Court may suspend the operation of the decision until the determination of the appeal.
- (6) A suspension granted under subsection (5) by the Trust, the Minister or the Court may be terminated by the Trust, the Minister or the Court (as the case requires) at any time.

## **Part 9—Operation of Chapter 7 of the *Natural Resources Management Act 2004* in the Scheme Area**

### **66—Exclusion of section 127 of the *Natural Resources Management Act 2004***

Section 127(3) of the *Natural Resources Management Act 2004* does not apply to, or in relation to, the following activities:

- (a) the drilling, plugging, backfilling or sealing of a well; or
- (b) the repairing, replacing or altering of the casing, lining or screen of a well; or
- (c) the draining or discharging of water directly or indirectly into a well,

if the well is situated in the Scheme Area.

### **67—Problem of disposal of water not to be considered on application for water licence etc**

- (1) Despite the provisions of the *Natural Resources Management Act 2004* or the relevant water allocation plan under that Act, the problem of the disposal of water used for irrigation must not be considered by the Minister under that Act when considering—
  - (a) an application for an increase in the water allocation attached to a water licence or a water allocation to be attached to a new licence; or
  - (b) an application to transfer a water allocation, or a part of a water allocation, from one water licence to another; or
  - (ba) the use of water under a water allocation,if—
  - (c) the licence to which the water allocation or the additional water allocation is or will be attached authorises, or will authorise, the use of the water for irrigation on irrigated land to which a waterlogging and salinity risk management allocation is attached but not on any other land; and
  - (d) (unless the regulations provide otherwise) the land on which the water can be used pursuant to the licence does not include the category of land having the highest degree of risk; and

- (e) the Minister is satisfied that the waterlogging and salinity risk management allocation attached to the land authorises, or will authorise, the use on the land of all the water allocated.
- (2) Where a person has made an application referred to in subsection (1) under the *Natural Resources Management Act 2004*, an assessment at the expense of the applicant under section 151(6) or 158(2) of that Act of the effect of allocating additional water must not include an assessment of the problem of disposing of the water used.

### **68—Lower levy for certain irrigated properties**

When declaring a levy under section 101 of the *Natural Resources Management Act 2004* that will be payable in respect of irrigated properties in the Scheme Area that include irrigated land to which a waterlogging and salinity risk management allocation is attached, the Minister under that Act must declare a lower levy payable in respect of those properties (based on the risk management allocation attached to the irrigated land of the property) to recognise the benefits provided by the operation of the Scheme under this Act after taking into account the provisions of the relevant water allocation plan.

### **69—Scheme to be acknowledged for levy refund purposes**

Where—

- (a) the relevant regional NRM board is considering an application for a refund under section 114 of the *Natural Resources Management Act 2004* from a person in respect of an irrigated property; and
- (b) entitlement to the refund is based wholly or partly on land management practices that comprise or include the control or management of drainage problems caused by irrigation,

the contribution to the Scheme under this Act as measured by the risk management allocation attached to the irrigated land of the property must be taken for the purposes of the application to comprise land management practices adopted by the applicant.

## **Part 10—Miscellaneous**

### **70—Inspection of infrastructure etc by Minister**

- (1) The Minister, or a person authorised by the Minister, may inspect the Scheme infrastructure and the disposal basins at any time during the course of construction and at any time after construction is completed.
- (2) For the purposes of an inspection under subsection (1), the Minister or authorised person may—
  - (a) enter any land whether on foot or in a vehicle; and
  - (b) put to any person any question relating to the construction or maintenance of the Scheme infrastructure or the disposal basins; and
  - (c) take photographs, films or video or audio recordings or make a record in any other manner or by any other means.

- (3) A person who—
- (a) without reasonable excuse hinders or obstructs the Minister or an authorised person engaged in exercising powers under this section; or
  - (b) fails to answer a question put by the Minister or an authorised person to the best of his or her knowledge, information or belief; or
  - (c) uses abusive, threatening or insulting language to the Minister or an authorised person when exercising powers under this section,

is guilty of an offence.

Maximum penalty: \$5 000.

- (4) A person is not excused from answering a question when required to do so under this section on the ground that the answer might tend to incriminate the person or make him or her liable to a penalty.
- (5) However, if the person objects to answering the question on that ground, the answer is not admissible against the person in any criminal proceedings other than proceedings for an offence with respect to false or misleading statements.
- (6) A person entering land under this section must comply with the requirements of section 71.

## **71—Entry onto land**

- (1) The owner or occupier of land that is liable to be entered by the Minister or the Trust, or a person authorised by the Minister or the Trust, under this Act may serve on the Minister or the Trust notice setting out the procedures that must be followed when entering the land in order to reduce the risk of pests or diseases entering the land.
- (2) The procedures set out in a notice under subsection (1) come into operation for the purposes of this section at the expiration of seven days after the notice is served on the Minister or the Trust.
- (3) The Minister or the Trust must serve a copy of every notice served on the Minister or the Trust under subsection (1) on the person or persons who are for the time being authorised by the Minister or the Trust to enter land under this Act.
- (4) A person who has notice of procedures referred to in subsection (1) that are in operation and are reasonable and are genuinely intended to reduce the risk of spreading pests or diseases must not enter the land to which the procedures relate pursuant to this Act without following them.
- Maximum penalty: \$5 000.
- (5) A person entering or occupying land under this Act must cause as little inconvenience to other users of the land as is reasonably practicable.

## **72—Property in water**

The underground water pumped by the Trust under this Act is, while the water is in the Scheme infrastructure, the property of the Trust and may be sold by the Trust to any person.

### **73—Measurement of water usage**

- (1) Where an irrigated property includes more than one category of land, the owner or occupier of the property may install an appropriate meter or meters to measure the quantity of water used to irrigate each category of land.
- (2) The owner and occupier of land on which a meter has been installed under subsection (1) must maintain the meter in proper working order.  
Maximum penalty: \$2 500.
- (3) The owner and occupier of an irrigated property must permit a person authorised by the Trust at any reasonable time to—
  - (a) read a meter referred to in subsection (1) or any other meter that measures the quantity of water used on the property;
  - (b) inspect or test a meter referred to in subsection (1).
- (4) A person must not—
  - (a) remove a meter referred to in subsection (1); or
  - (b) install a pipe or any other device that bypasses the meter; or
  - (c) alter, interfere with or damage the meter,without the written permission of the Trust.  
Maximum penalty: \$2 500.

### **74—Testing of meters**

- (1) If—
  - (a) the owner or occupier of an irrigated property requests the Trust to test the accuracy of a meter owned and used by the Trust to measure the quantity of water used to irrigate the property; or
  - (b) the Trust requests the owner or occupier of an irrigated property to test the accuracy of a meter owned and used by the owner or occupier of the property to measure the quantity of water used to irrigate the property,the Trust or the owner or occupier must arrange for the meter to be tested by a qualified person.
- (2) If a test referred to in subsection (1) finds that the inaccuracy of the meter is less than the degree of inaccuracy prescribed by regulation for the purposes of this subsection, the person who requested the test must pay to the owner of the meter the cost of the test.

### **75—Estimation by Trust of water usage**

Where the quantity of water used to irrigate land (whether an irrigated property to which, or to part of which, a risk management allocation is attached or not) is unknown to the Trust—

- (a) because a meter has not been installed to measure the water used on that land; or
- (b) because the Trust is satisfied that the quantity of water as measured by a meter is inaccurate; or

- (c) because the owner or occupier of the land has contravened or failed to comply with a requirement of section 73,

the Trust may estimate the quantity used and the quantity estimated will be taken for the purposes of this Act to be the quantity actually used.

## **76—Owners and occupiers of land to provide information**

- (1) The Trust may, by notice served on—
  - (a) the owner of an irrigated property or any other person who owns land in the Scheme Area; or
  - (b) an occupier of an irrigated property or any other land in the Scheme Area,request the person on whom the notice is served to provide the Trust with information specified in the notice that the Trust reasonably requires for the purpose of performing its functions or exercising its powers under this Act.
- (2) A person is only obliged to provide information under subsection (1) that is in his or her possession or under his or her control.
- (3) A person who fails to comply with a request under subsection (1) is guilty of an offence.  
Maximum penalty: \$2 500.
- (4) A person is not excused from providing information when required to do so under this section on the ground that the information might tend to incriminate the person or make the person liable to a penalty.
- (5) However, if the person objects to providing the information on that ground, the information is not admissible against the person in any criminal proceedings other than proceedings for an offence with respect to false or misleading information.

## **77—False or misleading information**

A person must not knowingly make a statement or provide information under this Act that is false or misleading in a material particular (whether by reason of the inclusion or omission of any particular).

Maximum penalty: \$5 000.

## **78—Service of notices**

- (1) A notice required or authorised by this Act to be served on a person may—
  - (a) be served on, or given to, the person or an agent of the person; or
  - (b) be left for the person at his or her place of residence or business with someone apparently over the age of 16 years; or
  - (c) be sent by post to the person or an agent of the person at his or her last known address; or
  - (d) be sent to the person by facsimile transmission; or
  - (e) be left in a conspicuous place on the land to which the notice relates.

- (2) Without limiting subsection (1), if a notice is to be served on or given to a company or registered body within the meaning of the *Corporations Law 2001* of the Commonwealth, the notice may be served on that company or registered body in accordance with section 109X or 601CX of that Act, as the case requires.

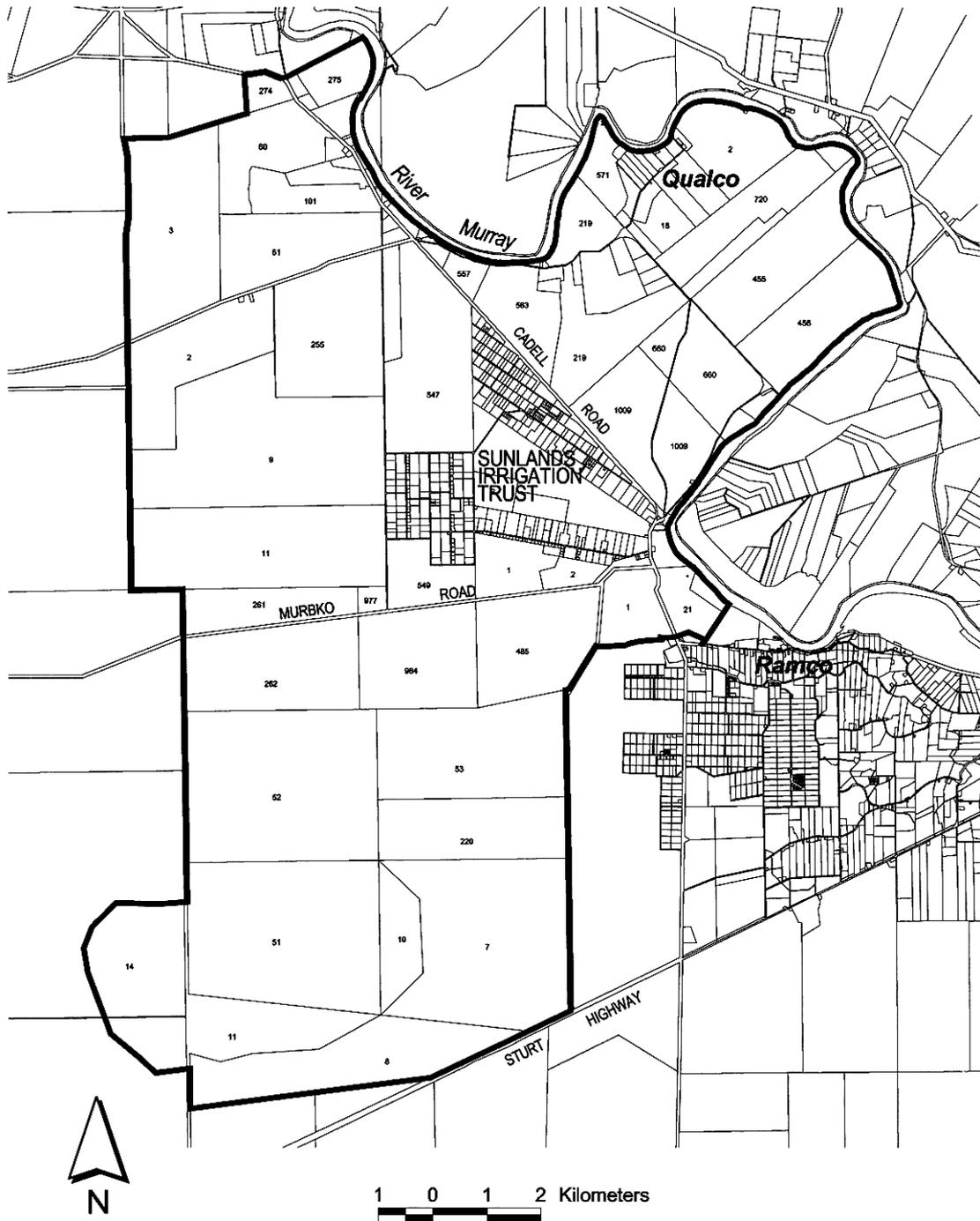
### **79—Expiry of Act**

- (1) This Act expires on 30 September 2030.
- (2) Immediately before the expiration of this Act the assets and rights (including the water disposal easement) and liabilities of the Trust vest in or attach to the Crown.

### **80—Regulations**

- (1) The Governor may make such regulations as are contemplated by this Act or as are necessary or expedient for the purposes of this Act.
- (2) Without limiting subsection (1), the regulations may—
  - (a) provide for the categorisation of land based on the classification under section 33 of the land's degree of risk; and
  - (b) provide for the measurement or estimation of the quantity of water used to irrigate land; and
  - (c) prescribe, and provide for the recovery of, fees relating to the administration of this Act; and
  - (d) prescribe fines not exceeding \$2 500 for contravention of or failure to comply with a regulation.
- (3) A regulation made under this section or any other provision of this Act may confer discretionary powers.

## Schedule 1—The Scheme Area



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## Schedule 2—Waterlogging and salinity risk management allocations

Waterlogging and salinity risk management allocations	Water licence number (as at 10 April 2000)
182	27
24	32
1130	65
364	128
1074	206
414	223
2730	242*
3525	252
1735	256
544	263**
109	282
2626	325
1281	344
1300	371*
34	463
100	465
111	467
165	471**
7956	499
297	837
24	850
15	913
30	1544
259	1676
155	1767
25	2356
1264	2567

Licence numbers which are each followed by a corresponding number of asterisks are each held by related irrigation enterprises.

## Schedule 3—Classes of well in relation to which a permit is not required

- 1 A well that is 2.5 metres or less in depth (or such other depth as may be prescribed by regulation).
- 2 A well—
  - (a) that is not used to provide a supply of water or to drain water into, or to recharge, an underground aquifer; and
  - (b) in relation to which requirements imposed by or under the *Mining Act 1971* or the *Petroleum Act 2000* are in force.
- 3 A well of one or more of the following classes if the well is not used to provide a supply of water from the well:
  - (a) a trench for the laying of pipes, cables or other equipment in relation to the supply of water, gas or electricity or the provision of sewerage or drainage;
  - (b) a drain that is under the control of the Commonwealth or State Government or a municipal or district council;
  - (c) an excavation for or in relation to a building or for a swimming pool;
  - (d) a private mine within the meaning of the *Mining Act 1971*;
  - (e) an excavation drilled for engineering or survey purposes if the excavation is not in a part of the State excluded from the operation of this paragraph by proclamation and the excavation is not more than 15 metres in depth;
  - (f) an excavation for the purposes of a toilet;
  - (g) an excavation (not exceeding 15 metres in depth) for the installation of cathodic protection anodes or the measurement of water pressure.
- 4 (1) A well drilled to a depth not exceeding the depth of the water table nearest to the surface for the purpose of obtaining samples of water or other material for scientific research.
  - (2) A well comprising an excavation (not exceeding three metres in depth) for the purposes of conducting an underground test or extracting material for testing.
- 5 A proclamation referred to in this Schedule may be varied or revoked by subsequent proclamation made by the Governor.

## Schedule 4—Transitional provisions

### Part 1—Transitional provisions

#### 1—Membership of the Trust

- (1) From the commencement of section 5 until the beginning of the 2000/2001 contribution year (the *transitional period*) Part 2 of the Act applies subject to this clause.

- (2) During the transitional period—
- (a) those persons who were immediately before the commencement of section 5 members of the management committee of Qualco-Sunlands District Drainage Incorporated will (subject to resignation) be members of the Trust in addition to any persons who become members pursuant to section 5(2);
  - (b) a person who is a member of the Trust by virtue of paragraph (a) may resign by notice in writing to the Minister and the Minister may appoint any suitable person to fill the vacancy;
  - (c) a quorum for a meeting of the Trust will be determined by dividing the number of members by two, ignoring any fraction and adding one;
  - (d) a resolution of the Trust will be carried if the number of votes supporting the resolution exceeds the number of votes against it (if the number of votes are equal the deadlock will be resolved by the casting vote of the person presiding at the meeting);
  - (e) the value of votes implied by paragraph (d) cannot be changed by resolution of the Trust.

## **2—Permits in respect of wells**

Where a permit under the *Water Resources Act 1997* (the original permit) authorised an activity referred to in section 61 in the Scheme Area immediately before the commencement of that section the following provisions apply:

- (a) the Trust will be taken to have granted a permit under section 62 to the holder of the original permit authorising the activity subject to the same conditions as the original permit; and
- (b) the original permit will no longer authorise that activity in the Scheme Area.

## Legislative history

### Notes

- Amendments of this version that are uncommenced are not incorporated into the text.
- Please note—References in the legislation to other legislation or instruments or to titles of bodies or offices are not automatically updated as part of the program for the revision and publication of legislation and therefore may be obsolete.
- Earlier versions of this Act (historical versions) are listed at the end of the legislative history.
- For further information relating to the Act and subordinate legislation made under the Act see the Index of South Australian Statutes or [www.legislation.sa.gov.au](http://www.legislation.sa.gov.au).

### Expiry of Act

The *Ground Water (Qualco-Sunlands) Control Act 2000* will expire on 30.9.2030: see s 79.

### Legislation amended by principal Act

The *Ground Water (Qualco-Sunlands) Control Act 2000* amended the following:

*Irrigation Act 1994*

### Principal Act and amendments

New entries appear in bold.

Year	No	Title	Assent	Commencement
2000	63	<i>Ground Water (Qualco-Sunlands) Control Act 2000</i>	3.8.2000	5.10.2000 ( <i>Gazette</i> 5.10.2000 p2328)
2001	23	<i>Statutes Amendment (Corporations) Act 2001</i>	14.6.2001	Pt 17 (ss 77 & 78)—15.7.2001 being the day on which the <i>Corporations Act 2001</i> of the Commonwealth came into operation: <i>Commonwealth of Australia Gazette</i> No. S 285, 13 July 2001 ( <i>Gazette</i> 21.6.2001 p2270)
2004	34	<i>Natural Resources Management Act 2004</i>	5.8.2004	Sch 4 (cl 18(2)—(7))—2.9.2004 ( <i>Gazette</i> 2.9.2004 p3545); Sch 4 (cll 13—17, 18(1), (8), 19, 20)—1.7.2005 ( <i>Gazette</i> 30.6.2005 p2093)
<b>2006</b>	<b>43</b>	<b><i>Statutes Amendment (Domestic Partners) Act 2006</i></b>	<b>14.12.2006</b>	<b>Pt 42 (s 121)—1.6.2007 (<i>Gazette</i> 26.4.2007 p1352)</b>
2007	24	<i>Natural Resources Management (Water Resources and Other Matters) Amendment Act 2007</i>	26.7.2007	Sch 1 (cll 1—3)—uncommenced
2008	41	<i>Murray-Darling Basin Act 2008</i>	6.11.2008	Sch 1 (cll 4 & 5)—15.12.2008 ( <i>Gazette</i> 11.12.2008 p5475)

## Provisions amended

New entries appear in bold.

Entries that relate to provisions that have been deleted appear in italics.

Provision	How varied	Commencement
Long title	amended under <i>Legislation Revision and Publication Act 2002</i>	2.9.2004
Pt 1		
s 2	<i>omitted under Legislation Revision and Publication Act 2002</i>	2.9.2004
s 3		
s 3(1)		
<b>domestic partner</b>	<b>inserted by 43/2006 s 121(1)</b>	<b>1.6.2007</b>
irrigated land	amended by 34/2004 Sch 4 cl 13(1)	1.7.2005
irrigated property	amended by 34/2004 Sch 4 cl 13(2)	1.7.2005
Minister for Natural Resources Management	inserted by 34/2004 Sch 4 cl 13(3)	1.7.2005
<i>Minister for Primary Industries and Resources</i>	<i>deleted by 34/2004 Sch 4 cl 13(3)</i>	<i>1.7.2005</i>
<b>relative</b>	<b>amended by 43/2006 s 121(2)</b>	<b>1.6.2007</b>
<b>spouse</b>	<b>inserted by 43/2006 s 121(3)</b>	<b>1.6.2007</b>
water licence	amended by 34/2004 Sch 4 cl 13(4)	1.7.2005
s 3(6)	amended by 34/2004 Sch 4 cl 13(5)	1.7.2005
Pt 2		
s 5		
s 5(5)	substituted by 23/2001 s 77	15.7.2001
Pt 6		
s 43		
s 43(7)	amended by 34/2004 Sch 4 cl 14	1.7.2005
Pt 8		
s 62		
s 62(11)		
licensed well driller	amended by 34/2004 Sch 4 cl 15	1.7.2005
Pt 9		
heading	substituted by 34/2004 Sch 4 cl 16	1.7.2005
s 66	amended by 34/2004 Sch 4 cl 17	1.7.2005
s 67		
s 67(1)	amended by 34/2004 Sch 4 cl 18(2)—(7)	2.9.2004
s 67(1)	amended by 34/2004 Sch 4 cl 18(1)	1.7.2005
s 67(2)	amended by 34/2004 Sch 4 cl 18(8)	1.7.2005
s 68	amended by 34/2004 Sch 4 cl 19(1), (2)	1.7.2005
s 69	amended by 34/2004 Sch 4 cl 20	1.7.2005

## Ground Water (Qualco-Sunlands) Control Act 2000—1.6.2007 to 14.12.2008

### Legislative history

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Pt 10

s 78

s 78(2)

substituted by 23/2001 s 78

15.7.2001

Sch 4

Pt 2

*omitted under Legislation Revision and  
Publication Act 2002*

2.9.2004

### Historical versions

Reprint No 1—15.7.2001

2.9.2004

1.7.2005